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

FOURTH SECTION

DECISION

Application no. 70003/16
Mariana RARINCA
against Romania

The European Court of Human Rights (Fourth Section), sitting on 12 January 2021 as a Committee composed of:

Gabriele Kucsko-Stadlmayer, *President,*
Carlo Ranzoni,
Pere Pastor Vilanova, *judges,*
and Ilse Freiwirth, *Deputy Section Registrar,*

Having regard to the above application lodged on 15 February 2016,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Ms Mariana Rarinca, is a Romanian national who was born in 1959 and lives in Galați. She was represented before the Court by Mr C.L. Popescu, a lawyer practising in Bucharest.

I. THE CIRCUMSTANCES OF THE CASE

2. The facts of the case, as submitted by the applicant, may be summarised as follows.

A. Criminal proceedings against the applicant

3. On 4 June 2014 L.D.S. – a judge and the President of the High Court of Cassation and Justice ("the Court of Cassation") – brought criminal proceedings against the applicant for blackmail. L.D.S. never joined the proceedings as a civil party.

4. On 10 June 2014 the Bucharest County Court ("the County Court"), sitting as single-member bench composed of a liberties and detentions judge, allowed an application lodged by the National Anti-Corruption

Department (*Direcția Națională Anticorupție* – "the DNA") for the applicant to be detained pending trial on the grounds that the available evidence indicated that there was a reasonable suspicion that the applicant had blackmailed Judge L.D.S. After an appeal by the applicant, the Bucharest Court of Appeal ("the Court of Appeal"), sitting as a single-member bench composed of a liberties and detentions judge (namely, A.P.M.), upheld the County Court's decision on 17 June 2014.

5. On 30 June 2014 the DNA indicted the applicant for blackmail and sent her case to trial. The lawfulness of the DNA's indictment and of the evidence available in the case-file were confirmed by a final interlocutory judgment delivered by a pre-trial judge on 4 August 2014.

6. On 26 August 2014 the County Court, sitting as a single-member bench composed of a pre-trial judge, reviewed the lawfulness of the applicant's detention and maintained the measure. On 5 September 2014, after an appeal by the applicant, the Court of Appeal, sitting as a single-member bench composed of a pre-trial judge (namely, C.C.D.), upheld the County Court's decision on the grounds that the available evidence indicated that there was a reasonable suspicion that the applicant had committed the offence.

B. First-instance court's judgment

7. On 18 December 2014 the County Court convicted the applicant of blackmailing Judge L.D.S. and imposed on her a suspended prison sentence of three years.

8. Citing documentary and testimonial evidence, the court held that from August 2013 until June 2014 the applicant had threatened Judge L.D.S. that she would leak to the press compromising (but fabricated) information concerning her and her husband unless Judge L.D.S. paid the applicant 20,000 euros (EUR).

C. The parties' appeal against the first-instance judgment

9. The applicant and the DNA appealed against the judgment.

10. The applicant argued, *inter alia*, that she had expressly stated in a text message that she had sent to an undercover agent brought in to work on the case by the DNA that she had never asked Judge L.D.S. for EUR 20,000. Her messages had been aimed only at persuading Judge L.D.S. to pay back money that she owed her. The DNA had been biased against her and had not been interested in establishing the truth.

D. The second-instance court's judgment

11. By a judgment delivered on 20 May 2015, which was not amenable to an appeal in ordinary proceedings, the Court of Appeal, sitting as a bench

composed of two judges (namely, R.G. and D.M.), allowed the applicant's appeal, quashed the judgment of 18 December 2014, and acquitted the applicant.

12. The court held that Judge L.D.S. had never disclosed to the authorities the compromising acts that the applicant had threatened to disclose. Moreover, given Judge L.D.S.'s statements and the testimony given by the applicant's partner, the text messages sent by the applicant in which she had asked Judge L.D.S. to repay the above-mentioned debt could not have alarmed Judge L.D.S. or affected her psychological well-being. Those elements had been essential for the offence of blackmail to exist. The messages sent by the applicant to the undercover agent had not constituted a material element of the offence, as they had simply been sent in reply to messages sent by the agent.

13. The court furthermore held that the investigation against the applicant had breached Articles 6 and 8 of the Convention and that the DNA's acts and measures had been unlawful. Even though a pre-trial judge had confirmed the lawfulness of the evidence obtained by the undercover agent, the judges currently examining the case, as defenders of individual freedoms recognised across Europe, had to penalise the DNA's breach of Article 6 of the Convention. In addition, some of the steps taken by the DNA in the bill of indictment had been unlawful; it had investigated the case too speedily and without collecting evidence either supporting or against the applicant; and it had relied without any reason on the existence of imaginary compromising acts involving Judge L.D.S., in spite of the applicant's assertions that she had not tried to blackmail L.D.S.

14. The first-instance court had failed in its duty to examine the evidence and the applicant's defence. The evidence had suggested that the applicant and Judge L.D.S. had had an agreement that the applicant would perform various services for her. Therefore, the applicant's messages to Judge L.D.S. had been aimed at recovering money that belonged to her.

E. The DNA's appeal for annulment

1. The DNA's arguments

15. On 29 May 2015, the DNA lodged an application for leave to lodge an extraordinary appeal for annulment by which it sought to have the judgment of 20 May 2015 quashed on the grounds of the lack of impartiality of one of the members of the bench (R.G.). The DNA argued that Judge R.G.'s conduct and decisions during the proceedings, viewed within the context of her opinion regarding what constituted a judicial error – which she had expressed during a job interview that she had had on 16 May 2013 ("the 2013 conversation") with Judge L.D.S. (then serving as a member of an examination committee assessing judges' applications for promotion to the Court of Cassation) – had proved her lack of impartiality in respect of

the case and the fact that she had already formed her opinion regarding what the outcome of the case should be.

16. On 17 August 2015 the DNA submitted an additional argument for quashing the judgment of 20 May 2015 which concerned the reasoning of that judgment.

17. They contended that the reasoning given for the judgment, which had been drafted by Judge R.G., had amounted to a reassessment of the lawfulness of the available evidence, even though that question had already been examined and decided by a final pre-trial judge interlocutory judgment. The judgment had amounted to the indictment of the investigating prosecutors and of Judge L.D.S. and had referred exclusively to Judge L.D.S.'s statements, even though the court had had the obligation to take into account all the available evidence. Even though Judge R.G. could have clarified any doubts that she might have had in respect of the case by asking for further evidence to be added to the case file, she had failed to do so.

18. The Court's case-law referred to by the DNA in its application for leave to lodge an appeal for annulment had been cited in order to illustrate the Court's definition of an impartial tribunal and the relevant tests that had to be applied in that regard.

2. The applicant's arguments

19. The applicant lodged a challenge against the appeal for annulment. She argued that an appeal for annulment could not be used to convict an acquitted person. The DNA or Judge L.D.S. could – during the proceedings that ended in the judgment of 20 May 2015 (see paragraph 15 above) – have contested the manner in which Judge R.G. had conducted the proceedings and could have challenged that judge because of the opinions that she had expressed during the 2013 conversation. Therefore, the DNA and L.D.S. could no longer cite R.G.'s alleged lack of impartiality when lodging an extraordinary appeal for annulment. Moreover, Article 6 of the Convention had been inapplicable in respect of the case, given that Judge L.D.S. had not joined the proceedings as a civil party.

20. The applicant furthermore argued that the decision and interlocutory judgment of 23 July 2015 (see paragraphs 23-25 below) had been unlawful; accordingly she requested that they be declared null and void.

3. Preliminary steps taken by the court

21. On 24 and 26 June 2015 the Court of Appeal, sitting as a bench composed of two judges (namely, M.N. and C.C.C.), held the first two hearings in the case concerning the DNA's application to lodge an appeal for annulment. It held that the case could not be examined because the case file had been transferred to the Judicial Investigation Unit (*Inspecția*

Judiciară) attached to the Superior Council of the Judiciary (*Consiliul Superior al Magistraturii*). It requested the Judicial Investigation Unit to return the case file urgently to the court and adjourned the proceedings until, respectively, 26 June and 2 September 2015.

22. On 1 July 2015 the Judicial Investigation Unit returned the case file to the Court of Appeal.

23. On 23 July 2015 the DNA lodged an application with the Court of Appeal for the date of the hearing of the case to be changed from 2 September 2015 to an earlier date. It argued that an adjournment of two months was excessive, given the object of the case. The DNA justified its application by referring to the intense media scrutiny of the case and argued that such a case needed to be examined expeditiously. Citing a need to keep proceedings as short as possible, the DNA also invoked a Constitutional Court ("the CC") judgment of 14 July 2015 declaring unconstitutional the rules allowing the examination of the admissibility of an appeal for annulment without all the parties being summoned.

24. On the same date, the Court of Appeal, sitting as a single-member bench composed of Judge G.D.M., allowed the DNA's application and ruled that the admissibility of the appeal for annulment had to be examined immediately.

25. By an interlocutory judgment delivered on the same date, the Court of Appeal, sitting as a bench of two judges (namely, G.D.M. and B.C.T.I.), declared – without the applicant and Judge L.D.S. having been summoned – the appeal for annulment admissible and scheduled the examination of the merits of the appeal for annulment for 17 August 2015. It held that the appeal for annulment had met all the formal admissibility conditions.

26. On 4 and 8 August 2015 Judge R.G. lodged applications with the Court of Appeal, seeking to be allowed to intervene in the proceedings on her own behalf; she also asked Judge G.D.M. to withdraw from the case. In her submissions she stated that in early July G.D.M. had told her that he would allow the appeal for annulment because Article 6 of the Convention was applicable to the case.

27. On 13 August 2015 Judge G.D.M., as president of the bench, called to examine the merits of the appeal for annulment, determined the nominal composition of that bench. According to the report on his decision-making process in that regard he decided that the bench scheduled to examine the merits of the appeal for annulment on 17 August 2015 would include Judge A.T. He furthermore stated that he had been the only member of the Court of Appeal bench that had delivered the interlocutory judgment of 23 July 2015 (see paragraph 25 above) still to be working on 17 August 2015, as Judge B.C.T.I. (one of the judges on duty on 23 July 2015) had been on leave. According to a decision dated 27 May 2015 taken by the Court of Appeal's Management Board ("the CAMB") concerning the duty roster of

judges for the summer holiday period, Judge A.T. had been the judge on duty on 17 August 2015.

4. The applicant's challenge against the members of the bench examining the merits of the DNA's appeal for annulment

28. On 17 August 2015 the applicant lodged a challenge against Judges G.D.M. and A.T. on the grounds of their alleged bias and requested their removal. She cited the allegedly unlawful manner in which Judge G.D.M. had taken over the case file on 23 July 2015 and the fact that he had ignored the effects of the unpublished CC judgment of 14 July 2015. In addition, he had scheduled the examination of the merits of the appeal for annulment for a day on which (as he had known full well) A.T. would be the second judge on the bench. Moreover, there had been hostility between the applicant and the judges of the bench because of Judge G.D.M.'s aforementioned actions and the complaints that the applicant had lodged with the relevant authorities in that regard.

29. On the same date the Court of Appeal, sitting as a bench of two judges (namely, G.D.M. and A.T.), decided that the challenge against Judge G.D.M. was admissible and had to be examined on the merits. As to the applicant's challenge concerning Judge A.T., the court decided, with the parties' agreement, that it should be examined after her challenge against Judge G.D.M. had been decided.

30. By an interlocutory judgment not amenable to appeal delivered on the same date, the Court of Appeal, sitting as a bench of two judges (namely, A.T. and A.B.R.), dismissed the challenge against Judge G.D.M. It held that the applicant's arguments had concerned exclusively the administrative measures that that judge had taken in respect of the case file and the manner in which he had met some of the parties' requests. Those measures, and the manner in which those requests had been met, had fallen within the exclusive authority of the bench examining the case. The national judicial practice was unanimous that arguments concerning such aspects did not constitute grounds for a judge's removal. To hold otherwise would mean that the parties could choose the judges examining their case by removing those they disliked on grounds that lacked substance.

31. Likewise, the applicant could not rely on hostility as grounds for her challenge. National judicial practice had consistently dismissed as non-legitimate challenges that were based on criminal or administrative complaints lodged by parties against judges because they were viewed to be foul attempts to remove judges disliked by parties from examining a case. A judge was a legal professional and was capable of preserving his or her impartiality, even when parties to proceedings had adverse opinions of him or her.

32. On the same date, the Court of Appeal, sitting as a bench of two judges (namely, G.D.M. and A.T.), dismissed as inadmissible the

applicant's challenge against A.T. It held that she had not provided reasons for her challenge, as her submissions had only concerned the actions of another judge.

5. The judgment on the merits of the appeal for annulment

33. By a judgment of 17 August 2015 not amenable to any form of appeal the Court of Appeal, sitting as a bench of two judges (namely G.D.M. and A.T.), allowed the appeal for annulment, quashed the judgment of 20 May 2015, and scheduled for 21 August 2015 the re-examination of the parties' appeal against the judgment of 18 December 2014. In addition, the court dismissed as inadmissible Judge R.G.'s applications to be allowed to intervene in the proceedings and removed her submissions from the case file. Also, it dismissed the applicant's application for the decision and interlocutory judgment of 23 July 2015 (see paragraphs 23-25 above) to be declared unlawful.

34. The court held that the date of the hearing in the case had been lawfully changed by a member of the bench who had been on duty on the day when the request had been made (when Judges M.N. and C.C.C. had been on leave and therefore not able to exercise their professional duties). The decision in question had concerned the administration of the case file; accordingly, it had been permissible for only one member of the bench to take that decision, without the signatures of all the bench members being required. The interlocutory judgment of 23 July 2015 on the admissibility of the appeal for annulment was final.

35. The court furthermore held that it had to dismiss the applicant's argument that the DNA and Judge L.D.S. could have raised the matter of Judge R.G.'s alleged bias during the ordinary proceedings. R.G.'s lack of impartiality had to be assessed by taking into account both the views that she had expressed during the 2013 conversation (see paragraph 15 above) and the manner in which she had presented the reasons for the judgment of 20 May 2015, which had gone beyond the acceptable limits of the personal touch that a judge could apply when giving the reasoning for a judgment.

36. The court held that the manner in which Judge R.G. had presented the reasons for the judgment of 20 May 2015 had been peculiar and somewhat out of the ordinary, given the general judicial practice. The judgment had relied mainly on the argument that the evidence gathered by the investigators had been unlawful. That conclusion had breached the principle that judicial functions should be separated, given the fact that neither of the parties had contested the pre-trial judge's interlocutory judgment establishing the lawfulness of the evidence gathered by the investigators and of their acts and measures.

37. Judges R.G. and D.M. had realised that they were ignoring the *res judicata* effect of the pre-trial judge's interlocutory judgment. However, R.G. and D.M., using a completely new judicial approach, had nevertheless

deemed unlawful that part of the evidence gathered by the investigators that was unfavourable to the applicant. Referring to themselves as defenders of individual rights that were recognised across Europe, and relying abundantly on Article 6 of the Convention, they had deemed (i) some of the accusations made by the investigators against the applicant to be abusive, (ii) the text message sent by the applicant to the undercover agent to constitute evidence obtained by provocation, and (iii) the promptness of the proceedings to be unlawful.

38. Even assuming that in the interest of maintaining the fairness of the proceedings, the pre-trial judge's decision could have been considered not to have had a *res judicata* effect, judges nevertheless had a duty to grant parties to proceedings an opportunity to comment on any alleged unlawfulness of the evidence presented and to ask for new evidence to be adduced to the case file. However, in the case at hand, both the applicant and Judge L.D.S. had been convinced that the pre-trial judge's decision could no longer be contested; they had therefore failed to ask for new evidence to be added to the case file that could possibly have replaced the evidence removed by the court on the grounds of unlawfulness.

39. The court acknowledged that neither a breach of the principle that judicial functions should be separated nor a failure to grant parties to proceedings an opportunity to comment on the lawfulness of the available evidence would have amounted – viewed on their own – to grounds for allowing an appeal for annulment. However, the court had also been under an obligation to examine the parties' submissions regarding the 2013 conversation.

40. Judge R.G. had failed that job interview under circumstances whereby Judge L.D.S., as a member of the examination committee, had asked her very few questions; however, those questions had elicited answers reflecting the serious confusion that R.G. felt regarding the respective roles of fundamental legal institutions. When viewed together with the above-mentioned manner in which the reasons for the judgment of 20 May 2015 had been presented, they cast serious doubt on judge R.G.'s impartiality.

6. The applicant's appeal for annulment in respect of the judgment of 17 August 2015

41. The applicant lodged an appeal for annulment in respect of the judgment of 17 August 2015.

42. On 27 August 2015 the Court of Appeal allowed an application lodged by Judge A.P.M. to withdraw from the case. As one of the members of the bench called upon to examine the case, she argued that on 17 June 2014 (see paragraph 4 above) she had upheld the decision on the applicant's pre-trial detention and was therefore prevented by law from participating in the further examination of the case.

43. By a judgment of 2 September 2015 the Court of Appeal rejected as inadmissible the applicant's appeal for annulment on the grounds that the judgment of 17 August 2015 was not amenable to any form of appeal.

F. The re-examination of the parties' appeals against the judgment of 18 December 2014

1. Preliminary decisions of the court

44. On 21 August 2015 the Court of Appeal (namely Judges G.D.M. and A.T.) adjourned the re-examination of the parties' appeals until 10 September 2015 in order that the applicant could prepare her defence.

45. On 10 September 2015 the applicant challenged the above-mentioned judges for bias because they had refused a request lodged by her to have an unconstitutionality objection concerning certain Articles of the Criminal Code of Procedure referred to the CC and because she had lodged a criminal complaint against them.

46. On the same date, the Court of Appeal (namely Judges G.D.M. and A.T.) dismissed the applicant's challenge as inadmissible on the grounds that the applicant had not provided factual or legal arguments justifying her challenge. A challenge relying on criminal complaints lodged against a bench amounted to misuse of the removal procedure; moreover, the court's decision to reject the above-mentioned application for certain Articles of the Criminal Code of Procedure to be referred to the CC had not featured among the grounds concerning the removal of judges.

47. On the same date, the court allowed in part a request lodged by the applicant for additional evidence to be added to the case file and refused in part that request on the grounds that the evidence in question had not been relevant to the case.

2. The court's judgment

48. By a judgment of 11 September 2015 not amenable to an ordinary appeal the Court of Appeal, sitting as a bench of two judges, (namely G.D.M. and A.T.), dismissed the parties' appeals against the judgment of 18 December 2014.

49. Referring to (i) the content of the conversations between the applicant, Judge L.D.S. and the undercover agent, and (ii) the available testimonial evidence, the court held that the applicant had tried to take advantage of Judge L.D.S.'s vulnerable situation in the autumn of 2013. At that time, Judge L.D.S. had been the target of an intense media campaign organised by certain media groups trying to discredit her and to diminish her chances of being re-appointed as President of the Court of Cassation.

50. As a result, in September 2013 the applicant had contacted R.S. and had told him that Judge L.D.S. had to refund her the EUR 20,000 that she had allegedly paid to unidentified former clients of Judge L.D.S.'s late

husband. She had also informed R.S. that she had been contacted by television companies that had been interested in learning "spicy details", that she had signed an agreement with one of them, and that she was going to disclose to that television company information about Judge L.D.S.'s late husband's law practice.

51. The witness R.S. had not conveyed the applicant's message to Judge L.D.S. immediately; rather, in December 2013 the applicant had sent the witness a few text messages concerning the same matter, and the witness had then decided to inform Judge L.D.S. The latter had then asked the applicant for clarifications regarding the alleged debts and, according to her own statement, she had been told by the applicant that the latter would disclose to the press compromising information about her family if she refused to pay the money.

52. Even though the applicant and Judge L.D.S. had remained in contact after December 2013, the applicant had refrained from asking Judge L.D.S. to repay the alleged debt until June 2014, when she had again begun putting pressure on Judge L.D.S. She had sent Judge L.D.S. several text messages informing her that, unless Judge L.D.S. paid her debt, she intended to send to the press information that she had been withholding. When the undercover agent brought in to work on the case had contacted the applicant via text messages, she had told the undercover agent that she would respond to her at a later date.

53. The court furthermore held that the applicant had contacted a television company using the same telephone which had been used to send the above-mentioned text messages to Judge L.D.S. and which had been found in her possession during a search of her house – and which, given the applicant's statements, undoubtedly belonged to her. However, she had refused to explain to the court why she had called that television company.

54. None of the evidence, apart from the statements given by the applicant and her partner, suggested that Judge L.D.S. had owed her money. In any event, whether or not Judge L.D.S. had owed the applicant money was irrelevant, as long as the applicant had attempted to recover that money unlawfully. The court took the view that the content of the applicant's messages had been threatening and that her allegations, given the relevant rules concerning judges, had been capable of triggering disciplinary proceedings against Judge L.D.S. or at the very least significantly diminishing her chances of being re-appointed President of the Court of Cassation.

55. As to the undercover agent's actions, the court held that the agent had not provoked the applicant into committing the offence. In making contact with R.S. and Judge L.D.S., the applicant had been acting exclusively on her own initiative. The undercover agent had been used by the authorities only after Judge L.D.S. had lodged a complaint against the applicant. Given the content of the agent's messages it was clear to any

well-intentioned, reasonable observer that the agent had never attempted to compel the applicant to commit an offence, but that she had only sought to clarify the identity of the person sending the messages and the exact demands made.

56. Lastly, the court held that in her final words to the court the applicant had admitted that she had made a mistake in texting Judge L.D.S., rather than initiating court proceedings against her. Moreover, she had not known whether sending those messages had been lawful or not.

G. The applicant's appeal for annulment against the judgment of 11 September 2015

1. The applicant's submissions

57. The applicant lodged an appeal for annulment by which she sought to have the judgment of 11 September 2015 quashed. She argued that the bench that had delivered the judgment had not been composed lawfully and that the judges who examined her case had lacked impartiality. After having lodged the appeal for annulment she submitted further arguments on different dates.

58. Under the relevant rules, where the bench initially assigned to a case could not decide on an application concerning changes to the date of a hearing, that decision had to be taken by another randomly-assigned bench and not by the duty judge. A previous CAMB decision granting duty judges the authority to decide on such applications had been inapplicable to criminal cases; moreover, it had in any event been unlawful because – given the fact that the composition of the benches on duty had been known beforehand – it had made it possible for certain cases to be directed to a specific bench.

59. Judges M.N. and C.C.C. had been prevented from examining the case in June 2015 because of alleged administrative transfers of the case file that had either (i) not actually been requested or (ii) had taken place without having been requested in a lawful manner (that is to say without the approval of the president of the bench assigned to examine the case). Moreover, the bench that had taken the decision to bring the hearing of the case forward had been made up of only one judge, not two; furthermore that judge had been neither M.N. nor C.C.C., he had not provided any reasons for his decision, he had ignored the fact that the appeal for annulment proceedings lacked urgency, and he had tried to avoid the publishing of the CC judgment of 14 July 2015 (see paragraph 23 above), thus breaching the applicant's right to equality of arms.

60. The applicant furthermore argued that on 23 July 2015 Judge G.D.M. had in practice chosen the composition of the bench that would examine the admissibility of the DNA's appeal for annulment by setting the date of the hearing for the same day as that on which he was to serve as

president of the bench of judges on duty. Moreover, Judge G.D.M.'s only reason for choosing 17 August 2015 as the date for the examination of the merits of the DNA's appeal for annulment had been the names of the judges on the duty roster for that day and the possibility for him, as president, to choose the judge who would join him on the bench.

61. Judge G.D.M. had expressed his opinion on the outcome of the case even before delivering the judgment of 17 August. By allowing the DNA's appeal for annulment, he had breached the principles of *res judicata* guaranteed by Article 6 of the Convention and of *non bis in idem* guaranteed by Article 4 of Protocol No. 7 to the Convention. The appeal for annulment had been inadmissible because it had been in fact an ordinary appeal "in disguise". The DNA and Judge L.D.S. had been aware of Judge R.G.'s alleged lack of impartiality during the ordinary proceedings, but had failed to challenge that judge.

62. In addition, Judge G.D.M. had misinterpreted the discussion that Judge R.G. had had with Judge L.D.S. during the 2013 conversation because he had declined to view the full video recording of that conversation; moreover, the transcripts of the 2013 conversation submitted by the DNA had not contained key sentences of that discussion, which had taken place almost two years before R.G. had been placed in charge of examining the case and had concerned legal theory and the self-assessment that Judge R.G. had given in respect of her own strengths and weaknesses (after being asked to do so by the panel interviewing her). Judge G.D.M. had used R.G.'s bias towards L.D.S. as an argument to allow the DNA's appeal for annulment, even though Article 6 of the Convention had not been applicable in the case. Moreover, the grounds relied on by him for allowing the appeal for annulment had been raised outside the lawfully allowed time-limit; furthermore, one of those grounds had not even been raised by the DNA, but by Judge L.D.S.

63. When examining the applicant's appeal against the judgment of 18 December 2014, the bench presided over by Judge G.D.M. had ignored some of her written submissions and had not given her the opportunity to present them orally. In addition, on 10 September 2015 G.D.M. had wrongly dismissed her requests for additional essential evidence to be added to the case file.

64. The applicant also argued that Judges A.T. and B.C.T.I. had been biased. They had been selected by Judge G.D.M. to be members of his bench and had supported all his decisions against the applicant. Moreover, on 17 August 2015 Judge A.T. had dismissed the applicant's above-mentioned request to have Judge G.D.M. removed.

65. Reiterating the same arguments, the applicant requested the court to declare null and void the measures taken by Judge G.D.M. on 23 July 2015, the interlocutory judgment of 17 August 2015 dismissing her application to have G.D.M. removed, and the judgment of 17 August 2015. Moreover, she

asked the court to remedy all the breaches of her Convention rights as guaranteed by Articles 6, 14, 17, and 4 of Protocol No. 7.

66. The applicant furthermore argued that the bench assigned to examine her appeal for annulment had also been composed unlawfully and that Judges C.C.D. (see paragraph 68 below) and A.P.M. had lacked impartiality.

67. On 17 June 2014 Judge A.P.M. (like Judge C.C.D. on a later date) had confirmed the applicant's detention pending trial on the grounds that the injured party had been "a model of morality, professionalism, correctness, and dignity". Therefore, the interlocutory judgment of 20 October 2015 (see paragraph 70 below) had been null and void. In addition, the CAMB's decision of 29 September 2015 (see paragraph 68 below) had been unlawful and had to be declared null and void.

2. Preliminary steps concerning the applicant's appeal for annulment

68. On 29 September 2015 the CAMB – following a request lodged by the criminal section of the Court of Appeal – decided to change the composition of some of the benches of the court in order to cover the absences of some judges who had been on study visits or on leave. It decided that in October the bench called upon to examine the applicant's appeal for annulment was to be composed of Judges E.V.A.I. and C.C.D.

69. On 19 October 2015 the applicant initiated a challenge for bias against Judge C.C.D. She argued that on 5 September 2014 that judge had confirmed the lawfulness of her pre-trial detention. Therefore, C.C.D. had had an interest in seeing the applicant convicted because an acquittal would raise doubts about the lawfulness of the pre-trial detention. The composition of the bench had been determined by the CAMB after the applicant had lodged the appeal for annulment. Therefore, the applicant had been suspicious that Judge C.C.D. had been appointed in order to ensure that the appeal for annulment would be dismissed.

70. By an interlocutory judgment not amenable to appeal dated 20 October 2015, the Court of Appeal, sitting as a bench of two judges (namely, E.V.A.I. and A.P.M.) dismissed the applicant's challenge. It held that according to the Court's case-law the mere fact that a judge had examined preventive measures imposed in respect of a case before that case had been examined on the merits did not in itself raise doubts about that judge's impartiality. The relevant rules prohibited judges from examining an appeal in respect of a case only in circumstances where they had delivered judgments on the merits of that case. The type of grounds cited to justify a preventive measure were different from those cited to justify a decision on the merits of a case; the mere fact that Judge C.C.D. had examined the applicant's pre-trial detention had not been sufficient to raise objective doubts about her impartiality in respect of the case.

71. The court furthermore held that C.C.D. had not become a member of the bench of her own volition, but had been appointed by the CAMB. According to the relevant rules on judges' duties, she had been obliged to take part in the examination of the case and could not have refused to do so.

3. The court's judgment

72. By a final judgment of 22 October 2015 the Court of Appeal, sitting as a bench of two judges (namely, E.V.A.I. and C.C.D.) rejected as inadmissible the applicant's appeal for annulment. In addition, the court rejected as inadmissible the applicant's objection concerning the lawfulness of the CAMB's decision of 29 September 2015, her application seeking to have the interlocutory judgments of 20 October 2015 declared null and void, and her request for a copy of the audio recording of a hearing of 21 October 2015.

73. The court held that the CAMB's impugned 29 September 2015 decision had concerned the nominal composition of the benches of judges in individual cases. The applicant's objection to the aforementioned decision had sought to bypass the rules concerning the removal of judges, which she had already used in respect of Judge C.C.D.

74. The court also held that the interlocutory judgment of 20 October 2015 was not amenable to appeal. Moreover, the decisions taken on 23 July 2015 (see paragraphs 23-33 above) and the judgment of 17 August 2015 (see paragraph 36 above) were not amenable to an appeal for annulment. In addition, there had been no connection between the applicant's arguments and some of the grounds for the appeal for annulment relied upon by her. Furthermore, some of the issues raised had already been settled on 10 September 2015 by an interlocutory judgment not amenable to an appeal for annulment. Also, the judgment of 20 May 2015 had not been final because the proceedings in the case had been reopened following an appeal for annulment concerning serious procedural flaws in the proceedings in question.

75. The applicant's allegations – namely that (i) during the proceedings finalised on 21 September 2015, the court had ignored her submissions and arguments, and (ii) it had dismissed all the evidence requested by her – had not been supported by the available evidence. The applicant's chosen lawyer had refused to present to the court all the written arguments and conclusions that had been deposited in the case file, and the court had examined and allowed in part the requests for evidence lodged by the applicant.

76. Lastly, the court held that under the relevant procedure rule, no copy of the record of the court hearing of 21 October 2015 could be given to the applicant.

H. Other pertinent information

77. By final judgments of 30 September, 8 October, 9 and 25 November 2015 the Court of Cassation dismissed as ill-founded appeals lodged by the applicant against the Court of Appeal's decisions of 2, 10 and 4 September and 22 October 2015 rejecting as inadmissible the objections of unconstitutionality and the objection of non-compliance with the Convention raised by the applicant with regard to several articles of the Criminal Code of Procedure and the rules concerning changes to hearing dates. It reiterated the findings of the lower court that the applicant's unconstitutionality objections had not met the lawful conditions for a referral to the CC.

78. By final judgments of 5 October and 2 November 2015 the Court of Cassation dismissed as ill-founded, respectively, requests lodged by the applicant on 10 September and 20 October 2015 for the case to be transferred and examined by a different court of appeal on the grounds of the alleged bias (owing to Judge L.D.S.'s position as President of the Court of Cassation) of all the Court of Appeal's judges against her.

79. The court held that none of the acts and measures taken by the Court of Appeal judges in respect of the applicant's case had been unlawful and that her complaints and requests concerning their actions and possible removal had been examined and dismissed lawfully. In addition, the applicant's allegations of foul play had not been supported by the available evidence. Furthermore, accepting the argument that Judge L.D.S.'s position as President of the Court of Cassation would render all the judges of the Court of Appeal ineligible to examine her case would mean that all the judges of all the courts of appeal in the country would be rendered similarly ineligible. None of the available evidence suggested that the judges called upon to examine the applicant's case had lacked impartiality.

80. On 30 October 2015 the applicant lodged an administrative challenge against the CAMB's decision of 29 September 2015 (see paragraph 68 above) on the grounds that it had been unlawful. The CAMB dismissed her challenge on 3 November 2015 as ill-founded. It held that the bench's nominal composition had been changed lawfully.

II. RELEVANT DOMESTIC LAW

81. Articles 64 § 4, 426, 427, 428, 429, 431, and 432 of the Criminal Code of Procedure, as in force at the relevant time, provided that a liberties and detentions judge could not participate in the same proceedings as a pre-trial judge or a judge examining the same case at first instance or at the appeal stage of the proceedings in question.

82. An appeal for annulment could be lodged against a final judgment when the composition of the court that had delivered that judgment had

been composed unlawfully or had been unsuitable for the task in hand. An appeal for annulment could be lodged by any of the parties to the proceedings in question, by the injured party, or by the prosecutor. The application had to include the grounds for the appeal and the arguments supporting those grounds. It had to be lodged within ten days of the moment at which the person affected by the enforcement of the final judgment had been notified of that judgment.

83. An appeal for annulment had to be lodged with the court that had delivered the contested judgment. The court was to determine the admissibility of the appeal for annulment in chambers and without the parties being present. The court was to declare the appeal for annulment admissible and summon the interested parties in the event that it established that the appeal for annulment had been lodged within the allowed time-limit, the grounds relied on were among those provided for by Article 426, and the evidence available in the case file had been cited.

84. At the hearing scheduled for the examination of an appeal for annulment, if it was held that that appeal for annulment was well-founded (the parties and the prosecutor having been heard), the court was to quash the final judgment and proceed (either immediately or by setting a new hearing in respect of the case) to re-examine the ordinary appeal.

COMPLAINTS

85. Relying on Article 6 of the Convention, the applicant complained of the unfairness of the criminal proceedings that she had been involved in, given that:

(i) the bench that had delivered the decision and the interlocutory judgment of 23 July 2015, as well as the judgments of 17 August and 11 September 2015: α) had not been composed lawfully because the judges randomly assigned to her case had been prevented from examining it on the false ground that the case file had been temporarily removed from the court's registry and because the case had been unlawfully retained and examined by judges who had been chosen arbitrarily by the DNA and by Judge G.D.M.; and β) had lacked impartiality because Judge G.D.M. had informed Judge R.G. – even before he had taken over the case – that the applicant's acquittal had been unfair and that he would allow the DNA's appeal for annulment;

(ii) the examination of the admissibility of the DNA's appeal for annulment had been brought forward and had taken place in her absence on the ground that the CC decision declaring that practice unconstitutional had been about to be published, and even though it had been clear (even before the publishing of the CC decision) that that practice had been unconstitutional;

(iii) the bench that had delivered the judgment of 22 October 2015: α) had not been composed lawfully, given the fact that the CAMB had arbitrarily changed the composition of the bench to which her case had been assigned only for the month in which her case was to be examined by that bench; and β) had lacked impartiality because Judge C.C.D. had confirmed the lawfulness of the applicant's pre-trial detention on the grounds that Judge L.D.S. had been a model of morality and the applicant's challenge against Judge C.C.D. had been examined by Judge A.P.M., who had been in a similar situation to that of C.C.D. (that is to say A.P.M. had also confirmed the applicant's pre-trial detention) and had abstained from examining the case at an earlier stage of the proceedings;

(iv) the applicant's requests for the case to be transferred to another court of appeal had been dismissed on the sole ground that Judge L.D.S. had been the President of the Court of Cassation and had therefore had authority over all courts of appeal, and after the court had refused to order evidence to be added to the case file and had reverted the burden of proof to the applicant, even though the domestic authorities had refused to provide the applicant with the requested evidence;

(v) on 11 September 2015 the court had ignored written requests lodged by the applicant for her Convention rights to be protected and had failed to exercise its full jurisdiction by refusing to examine the lawfulness of the available evidence;

(vi) her objections of unconstitutionality had been dismissed arbitrarily by the courts, even though they had been relevant for the adjudication of the case; her conviction had relied mainly on evidence obtained by an undercover agent; and the court had ignored the evidence in her favour or had assessed it in an incorrect manner.

86. Relying on Article 4 of Protocol No. 7 to the Convention, the applicant complained to the Court that she had been charged and tried twice for the same crimes. In particular, the courts had allowed an appeal for annulment and had quashed the final judgment of 20 May 2015, even though there had not been any serious indication that the proceedings had been unfair, given that the grounds for the appeal for annulment being allowed had either been raised out of time, by Judge L.D.S. and not by the DNA, or had been unfair.

87. Relying on Articles 14, 17, and 18 of the Convention and 1 of Protocol No. 12 to the Convention, taken alone or in conjunction with Article 6 of the Convention and Article 4 of Protocol No. 7 to the Convention, the applicant raised other complaints concerning the alleged discriminatory treatment to which she had been subjected by the authorities and their alleged abuses of power and limitations that they had imposed on her rights.

THE LAW

I. COMPLAINTS UNDER ARTICLE 6 OF THE CONVENTION

88. The applicant complained that the criminal proceedings that she had been involved in had been unfair. She 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 an ... impartial tribunal established by law ...
>
> 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; ..."

89. The Court notes at the outset that the applicant's numerous complaints concern different sets of proceedings that she was involved in following the DNA's appeal for annulment of 29 May 2015 brought against the judgment of 20 May 2015 by which she had been acquitted.

90. The Court notes in this regard that the Court of Appeal delivered two separate decisions with regard to the applicant's case on 23 July 2015. Firstly, the court allowed the DNA's application for the date of the next hearing of the case to be changed and decided that the admissibility of the DNA's appeal of annulment against the judgments of 20 May 2015 had to be examined immediately (see paragraphs 23-24 above). Subsequently, the court delivered an interlocutory judgment holding that the DNA's aforementioned appeal for annulment was admissible (see paragraph 25 above). The Court also notes that the latter interlocutory judgment was not amenable to further judicial review (see paragraph 34 above) and that the applicant lodged her complaints with the Court on 15 February 2016.

91. It follows that the complaints concerning this interlocutory judgment (see paragraph 25 above) – including the complaint regarding the examination, in the applicant's absence, of the DNA's appeal for annulment's admissibility – were lodged outside the six-month time-limit.

92. The Court furthermore notes that some of the remaining sets of proceedings involving the applicant – namely, those that ended with the final judgments of 17 August and 22 October 2015 (see paragraphs 33 and 72 above) – concern appeals for annulment in respect of final judgments amenable to such forms of appeal. This form of appeal is characterised as an "extraordinary" remedy in domestic law and has as its scope the reopening of proceedings that have been brought to an end by final and enforceable court judgments (see *Chivorchian v. Romania*, no. 42513/98, §§ 33-35, 2 November 2004). Nevertheless, the Court has accepted that, in certain circumstances, the appeal of annulment might be an effective remedy for all

parties involved in the proceedings (see *Hilote v. Romania* (dec.) [Committee], no. 15838/06, § 11, 13 September 2016, and *Elisei-Uzun and Andonie v. Romania*, no. 42447/10, §§ 15 and 45, 23 April 2019) and could sometimes constitute the next logical element in the chain of domestic remedies rather than an extraordinary means of reopening the proceedings (ibid.)

93. The Court has held that Article 6 of the Convention's criminal limb is applicable to criminal proceedings concerning remedies classified as extraordinary in domestic law where the court is called upon to determine the charge. This issue is examined by seeking to establish whether, during the consideration of the remedy in question, the domestic court was required to determine the criminal charge (see *Moreira Ferreira v. Portugal (no. 2)* [GC], no. 19867/12, § 65, 11 July 2017). In this connection, the Court has accepted that where the national courts carried out an examination on the merits of a number of aspects of the disputed procedural issue and its consequences for the validity of the existing sentence, even though the court's task was to adjudicate on the application for the granting of the extraordinary appeal, that scrutiny could be regarded as an extension of the concluded proceedings and a re-determination of the criminal charge (ibid., §§ 70-72).

94. In the instant case, the Court considers it unnecessary to determine whether Article 6 is applicable to those proceedings that ended with the final judgments of 17 August and 22 October 2015. Even assuming that it is applicable, the applicant's complaints are inadmissible for the following reasons.

95. The Court will first examine the applicant's complaints about the alleged violations of her right to a "tribunal established by law" and to an "impartial" tribunal. It reiterates the principles set out in its case law regarding the requirement of a "tribunal established by law" (see *Lavents v. Latvia*, no. 58442/00, § 114, 28 November 2002, and *Guðmundur Andri Ástráðsson v. Iceland* [GC], no. 26374/18, §§ 211-13 and 216, 1 December 2020) and the impartiality of judges (see *Alexandru Marian Iancu v. Romania*, no. 60858/15, §§ 57-63, 4 February 2020).

96. Regarding the applicant's allegations concerning the bench that delivered the decision of 23 July 2015 (see paragraph 24 above) and the judgments of 17 August and 11 September 2015 (see paragraph 85 point (i) above), the Court notes that the judges initially assigned to examine the applicant's case had themselves established that the case file had been sent to the Judicial Investigation Unit and had not been available to the court on 24 and 26 June 2015. It seems that the Judicial Investigation Unit returned the case file to the Court of Appeal on 1 July 2015. The Court is unable to identify any element that would lead it to believe that the administrative transfer of the case file between the institutions in question was unlawful or undertaken for unlawful reasons.

97. Therefore, in spite of the applicant's allegations, the Court sees no reason to hold that the case file's temporary absence from the court's registry was an invention, or that its absence was not legitimate or did not constitute a reason for Judges M.N. and C.C.C. not to examine the case.

98. The Court also notes that the change to the composition of the bench called upon to examine the DNA's appeal for annulment was prompted by the DNA's application of 23 July 2015 for the next hearing of the case to be brought forward (see paragraph 85 point (i) above). Admittedly, the arguments supporting its request referred to the recently adopted and, at that time, unpublished CC decision declaring unconstitutional the relevant rules concerning the examination of the admissibility of an appeal for annulment without all the parties being present (see paragraph 23 above).

99. However, the DNA provided several arguments for their request which, read together, suggest that their intention had been to secure an expeditious examination of the case (in the light of the intense media coverage of the proceedings) rather than to avoid the possible effects of the above-mentioned CC decision. Moreover, the CC's decision had not been published at the time of the DNA's request and therefore did not have any implications in respect of the applicant's case. Furthermore, nothing in the applicant's submissions suggests that the CC's judgment or its possible effects would have precluded Judge G.D.M. from examining the request for a change to the date of the hearing.

100. The Court also notes that it is undisputed that G.D.M. was the judge on duty on 23 July 2015 or that Judges M.N. and C.C.C. could not exercise their professional duties on that day. Moreover, the applicant has not argued that having a duty roster for judges over the summer break was exceptional or prompted by arbitrary reasons, and there is no indication in the case file that the national authorities shared the applicant's view that Judge G.D.M. had lacked the authority to examine the request concerning the date of the hearing.

101. Given these circumstances, the Court cannot accept that the mere fact that the duty-roster judges composing the bench for a specific date were known in advance could be viewed as unlawful or as giving a party or judge the opportunity to arbitrarily choose the judges to be called upon to examine a case.

102. The Court notes that the applicant complained repeatedly to the national authorities of the illegality of the manner in which Judge G.D.M. had appropriated to himself the case for examination and established the composition of the bench that delivered the judgments of 17 August and 11 September 2015. However, in so far as this complaint was raised at the appropriate stage of the proceedings, the national authorities examined its merits and dismissed it, giving reasons for their decision.

103. The Court reiterates that, in principle, a violation by a "tribunal" of domestic legal provisions relating to the establishment and competence of

judicial organs gives rise to a violation of Article 6 § 1 and that, therefore, it has jurisdiction to examine whether the domestic law has been complied with in this connection. However, having regard to the general principle that it is, in the first place, for the national courts themselves to interpret the provisions of domestic law, the Court has also found that it may not question their interpretation unless there has been a flagrant violation of domestic law (see, for example, *Lavents*, cited above, § 114).

104. In the Court's view, there is no indication in the instant case of any flagrant violation of domestic law in the decisions which determined the composition of the bench that delivered the decision of 23 July 2015 and the judgments of 17 August and 11 September 2015.

105. As to the allegation that the above-mentioned bench was biased, the Court notes that it does not appear from the available evidence that the applicant's initial challenges against Judge G.D.M. relied on the assertion that he had disclosed to Judge R.G. that he had had pre-conceived ideas about the case at any stage of the aforementioned proceedings.

106. It is true that the applicant raised this complaint before the national courts at a later stage of the proceedings (see paragraph 61 above), but the Court has serious doubts that the avenue chosen by the applicant provided her with any prospect of success.

107. The Court notes in this regard that the applicant acknowledged and herself argued that it would have been unlawful for a court to allow her appeal for annulment on the above-mentioned grounds at such a late stage of the proceedings, given that she was or should have been aware of Judge RG's allegations regarding Judge G.D.M. and could have challenged the latter judge at the ordinary stage of the proceedings (see paragraphs 26 and 61 above).

108. It follows that the applicant's complaint that the bench that delivered the decision of 23 July 2015 and the judgments of 17 August and 11 September 2015 had not been composed lawfully and had lacked impartiality is manifestly ill-founded and must be must be rejected, pursuant to Article 35 §§ 3 and 4 of the Convention.

109. As regards the applicant's allegations concerning the bench that delivered the judgment of 22 October 2015 (see paragraph 85, point (iii) above), the Court notes that the CAMB's decision of 29 September 2015 (see paragraph 68 above) was prompted by objective reasons relating to the administration of the court. Moreover, the applicant's repeated challenges against the CAMB's decision, including the administrative challenge (see paragraph 80 above), were dismissed by the authorities by reasoned decisions. In addition, it does not seem from the available evidence that the applicant challenged the CAMB's decision of 3 November 2015 (see paragraph 80 above) before the administrative courts.

110. Given these circumstances, the Court cannot agree with the applicant that the CAMB's decision of 29 September 2015 was arbitrary or

that there was any "flagrant violation" of domestic law regarding the nominal composition of the bench called upon to deliver the judgment of 22 October 2015.

111. As to Judge C.C.D.'s alleged bias, the Court notes that she had reviewed the lawfulness of the applicant's pre-trial detention at the early stages of the applicant's trial (see paragraph 6 above). However, it does not seem from the available evidence that Judge C.C.D.'s or Judge A.P.M.'s assessment concerning this matter was based on their perception of Judge L.D.S.' level of "morality", as indicated by the applicant. The Court reiterates that the mere fact that a trial judge or an appeal judge has also made pre-trial decisions in respect of the same case – including decisions concerning detention on remand – cannot be held as in itself justifying fears as to that judge's impartiality (see *Hauschildt v. Denmark*, 24 May 1989, § 50 *in fine*, Series A no. 154).

112. The Court also notes that the applicant never challenged the impartiality of Judge E.V.A.I. and that her challenge against Judge C.C.D. was dismissed on grounds that do not appear arbitrary or manifestly unreasonable. Therefore, the Court finds no reason to depart from the domestic court's finding concerning C.C.D.'s impartiality.

113. As far as A.P.M.'s withdrawal from the case is concerned, the Court notes that, unlike C.C.D., the former judge had examined the case as a liberties and detentions judge in the early stages of the proceedings against the applicant; as a result, it seems that she was prohibited by the relevant rules from also examining an appeal lodged in respect of the same case. However, the rules in question did not seem to preclude Judge A.P.M. from delivering interlocutory decisions in respect of the same case regarding procedural issues, such as the impartiality of other judges examining the case.

114. In this context, the Court does not consider as objectively justified the applicant's doubts regarding the impartiality of the bench called upon to deliver the judgment of 22 October 2015.

115. It follows that the applicant's complaint that the bench that delivered the judgment of 22 October 2015 had not been composed lawfully and had lacked impartiality is manifestly ill-founded and must be rejected, pursuant to Article 35 §§ 3 and 4 of the Convention.

116. The Court will now turn to the applicant's remaining complaints about the alleged unfairness of the criminal proceedings against her. As to the applicant's complaints that her requests for the case to be transferred and that her objections of unconstitutionality were dismissed (see paragraph 85, point (iv) above), the Court notes that the domestic courts provided pertinent reasons for their decisions. Regarding the requests for the case to be transferred, they cited several reasons (not only Judge L.D.S.'s position as President of the Court of Cassation) when refusing those requests (see paragraphs 78-79 above). It appears that the courts discussed the impact that

Judge L.D.S.'s position as President of the Court of Cassation might have had on the proceedings merely because the applicant had raised this point and the courts had been called upon to address her allegations.

117. Given these circumstances, the Court is unable to identify any grounds for suggesting that the court's decisions to refuse the requests for the case to be transferred and to dismiss the unconstitutionality objections were tainted by arbitrary motives or that they affected the overall fairness of the proceedings.

118. It follows that this part of the applicant's complaints is manifestly ill-founded and must be rejected, pursuant to Article 35 §§ 3 and 4 of the Convention.

119. As to the applicant's complaint that the court that had delivered the judgment of 11 September 2015 had ignored some of her written submissions and had refused to examine the lawfulness of the available evidence (see paragraph 85, point (v)), the Court notes that the applicant's chosen lawyer had decided to curtail the submissions that had previously been lodged before the court on behalf of the applicant (see paragraph 76 above). Moreover, the court's decision not to review the lawfulness of the available evidence could not be considered as abusive, given that this matter had been determined at the pre-trial judge stage of the proceedings with *res judicata* effect.

120. It follows that this part of the applicant's complaints is manifestly ill-founded and must be rejected, pursuant to Article 35 §§ 3 and 4 of the Convention.

121. As to the applicant's complaints that her conviction had relied mainly on evidence obtained by an undercover agent, and that the court had ignored the evidence favouring her or had assessed it wrongly (see paragraph 85, point (vi) above), the Court reiterates the principles set out in its case-law concerning the use of undercover agents (see *Ramanauskas v. Lithuania (no. 2)*, no. 55146/14, §§ 52-62, 20 February 2018).

122. It notes that the available evidence does not suggest that the undercover agent provoked or enticed the applicant into committing the imputed offence. By the time that the agent became involved in the case, the applicant had already tried repeatedly to contact Judge L.D.S. with threatening messages.

123. The applicant has not advanced any arguments or evidence capable of contradicting the national courts' finding that the agent's messages had been aimed at clarifying the identity of the person threatening Judge L.D.S. and his or her exact demands and not at persuading him or her to commit an offence. Furthermore, the applicant had the opportunity to contest the lawfulness and relevance of the evidence gathered by the agent and presented before the courts and, in so far as she did so, her complaints in this regard were examined and dismissed by reasoned judgments that do not

appear to have been arbitrary or manifestly unreasonable (see paragraph 55 above).

124. Lastly, the Court notes that the applicant's remaining allegations concern the wrongful assessment of evidence by the national courts and are therefore of a fourth-instance nature.

125. It follows that this part of the applicant's complaints is manifestly ill-founded and must be rejected, pursuant to Article 35 §§ 3 and 4 of the Convention.

126. In view of the foregoing, the Court finds that the applicant's complaints concerning the interlocutory judgment of 23 July 2015 have been raised outside the six-month time-limit, and that her remaining complaints are manifestly ill-founded.

127. It follows that this part of the application must be rejected, pursuant to Article 35 §§ 1, 3 and 4 of the Convention.

II. COMPLAINT UNDER ARTICLE 4 OF PROTOCOL NO. 7 TO THE CONVENTION

128. The applicant complained that she had been charged and tried twice in respect of the same facts. She relied on Article 4 of Protocol No. 7 to the Convention, which, in so far as relevant, reads:

> "1. No one shall be liable to be tried or punished again in criminal proceedings under the jurisdiction of the same State for an offence for which he has already been finally acquitted or convicted in accordance with the law and penal procedure of that State.
>
> 2. The provisions of the preceding paragraph shall not prevent the reopening of the case in accordance with the law and penal procedure of the State concerned, if there is evidence of new or newly discovered facts, or if there has been a fundamental defect in the previous proceedings, which could affect the outcome of the case.
>
> ..."

129. The Court reiterates the principles set out in its case-law concerning the duplication of criminal proceedings (see *Mihalache v. Romania* [GC], no. 54012/10, §§ 47-49, 8 July 2019). It also reiterates that even the duplication of criminal proceedings concerning the same facts may be compatible with Article 4 of Protocol No. 7, if the second set of proceedings involves the reopening of a case where this satisfies the requirements linked to the exception provided for in Article 4 § 2 of Protocol No. 7 (ibid., § 127).

130. In the present case, even assuming that there had been a duplication of criminal proceedings concerning the same facts, the Court observes that the final judgment of 20 May 2015 acquitting the applicant was quashed on the ground of a serious procedural defect – namely, Judge R.G.'s lack of impartiality. Also, the case was re-examined by the court which delivered

the final judgment. The subject matter of the new proceedings had consisted of the same criminal charge and the validity of its previous adjudication.

131. Having regard to the above findings, the Court has no doubt that the judgment of 17 August 2015 granting the DNA's appeal for annulment (see paragraph 33 above) in the instant case constituted a reopening of the case owing to a fundamental defect in the previous proceedings, within the meaning of Article 4 § 2 of Protocol No. 7.

132. As to the allegations that the courts had allowed the appeal for annulment on grounds that had either been raised out of time or only by Judge L.D.S., or that had been unfair, given the available evidence, the Court notes that all the grounds and arguments cited by the court on 17 August 2015 in its judgment appear to have been also raised by the DNA – not only by Judge L.D.S. (see paragraphs 15-25 above). Indeed, some of the DNA's arguments supporting its appeal for annulment were raised on 17 August 2015 and not on 29 May 2015. However, the Court notes that these arguments concerned the manner in which Judge R.G. had reasoned the judgment of 20 May 2015 (which she had drafted), and the applicant did not argue or prove that the judgment in question had been available to the parties on 29 May.

133. Moreover, it does not seem from the available evidence that the applicant asked the court that delivered the judgment of 17 August 2015 to reject the DNA's arguments of the same day as having been lodged out of time. Furthermore, the Court notes that in allowing the DNA's appeal for annulment, the domestic court examined the parties' submissions and the available evidence and provided reasons for its judgment that the Court does not view as arbitrary or manifestly unreasonable. Therefore, the Court is not convinced of the unfairness of the grounds referred to by the court in allowing the DNA's appeal for annulment.

134. It follows that this part of the application is manifestly ill-founded, within the meaning of Article 35 § 3 and must be rejected, pursuant to Article 35 § 4 of the Convention.

III. REMAINING COMPLAINTS

135. Relying on Articles 14, 17, 18 of the Convention and on Article 1 of Protocol No. 12 to the Convention, taken alone or in conjunction with Article 6 of the Convention and Article 4 of Protocol No. 7 to the Convention, the applicant alleged that she had also been a victim of other breaches of her Convention rights (see paragraph 87 above).

136. The Court has examined these complaints, as submitted by the applicant. However, having regard to all the material in its possession, and in so far as they fall within its jurisdiction, 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 this part of the application

must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 4 February 2021.

Ilse Freiwirth
Deputy Registrar

Gabriele Kucsko-Stadlmayer
President