



Criminal aspect of the right to a fair trial not applicable in a case concerning an objection to enforcement of a judgment convicting the applicant

In its decision in the case of [Dragnea v. Romania](#) (application no. 75317/17) the European Court of Human Rights has unanimously declared the application inadmissible. The decision is final.

The case concerned an objection to the enforcement of a judgment sentencing Mr Dragnea (former President of the Chamber of Deputies and former Chair of the Social Democratic Party) to two years' imprisonment, suspended, for abuse of authority during an election campaign.

In the proceedings before the High Court Mr Dragnea lodged an objection to enforcement of the judgment convicting him, on the grounds that two of the five judges of the bench had not signed the judgment and had retired from office before the reasoning of the judgment was finalised. The President of the High Court had substituted her signature for those of the two judges concerned, in accordance with the Code of Criminal Procedure.

In the European Court proceedings Mr Dragnea complained of the dismissal by the High Court of his objection to enforcement of the judgment. He relied on Article 6 (right to a fair trial) of the Convention.

The Court reiterated that the criminal limb of Article 6 of the Convention was applicable to criminal proceedings concerning remedies that were classified as extraordinary in domestic law where the domestic court was called upon to determine the criminal charge. It observed that in the present case the examination by the High Court of the applicant's objection had been confined to establishing whether the fact that two of the five judges of the bench had not signed the judgment convicting him constituted grounds precluding enforcement of the judgment. Hence, in its judgment of 24 April 2017 the High Court had not determined the "criminal charge" against the applicant, but had simply ruled that the ground relied on by Mr Dragnea in support of his objection did not act as a bar to enforcement of the final judgment of 22 April 2016 convicting him, for the purposes of the Code of Criminal Procedure. The applicant's complaint was therefore incompatible *ratione materiae* with Article 6 of the Convention and was rejected.

Principal facts

The applicant, Nicolae-Liviu Dragnea, is a Romanian national who was born in 1962 and lives in Turnu Magurele (Romania).

In May 2015 the applicant was sentenced by the High Court of Cassation and Justice ("the High Court") to one year's imprisonment, suspended, for abuse of authority. The applicant and the other parties appealed.

In April 2016 the High Court, sitting as a bench composed of five judges and one assistant judge, allowed the appeal lodged by the prosecution and dismissed the applicant's appeal. In its judgment of 22 April 2016 the court held that the applicant's conviction by the trial court was well founded and that a heavier sentence (of two years' imprisonment, suspended) should be imposed, in view of the context in which the applicant had committed the offence, and especially the fact that it had been committed during an election campaign. All the judges of the bench took part in delivery of the judgment and signed the original copy of the judgment, drawn up the same day. Subsequently, in May 2016 and July 2016 respectively, two of the judges (L.L.Z. and L.D.S.) retired from office before

the reasoning of the judgment, drafted by the assistant judge who had taken part in all the hearings, was finalised.

In February 2017 the text of the judgment was signed by three of the judges of the appellate bench, the assistant judge and the President of the High Court. The President signed in place of the two judges who had retired, in accordance with Article 406 § 4 of the Code of Criminal Procedure. Her signature appeared in the spaces left blank for the signatures of Judges L.D.S. and L.L.Z., accompanied each time by the following handwritten text: "Signed by the President of the High Court on behalf of Judge L.D.S./L.L.Z., retired judge".

In February 2017 the applicant lodged an objection to enforcement of the High Court judgment on the grounds that Judges L.D.S. and L.L.Z. had no longer been present when the judgment was signed and that, consequently, the reasoning of the judgment was no longer the result of agreement between all the members of the bench.

In a judgment of 24 April 2017 the High Court dismissed the applicant's objection to enforcement. It held that the fact that the two judges had not signed the judgment owing to their retirement was not a circumstance capable of preventing proper enforcement of the decision convicting the applicant. In the High Court's view, the judgment of 22 April 2016 had become final at the time of its delivery and there were no other grounds, including those relied on by the applicant in support of his objection, precluding its enforcement.

Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 18 October 2017.

Relying on Article 6 § 1 of the Convention (right to a fair trial), the applicant complained that he had not had a fair trial on account of the dismissal by the High Court of his objection to enforcement of the judgment delivered by that court on 22 April 2016.

The decision was given by a Committee of three judges, composed as follows:

Tim Eicke (the United Kingdom), *President*,
Faris Vehabović (Bosnia and Herzegovina),
Pere Pastor Vilanova (Andorra),

and also Ilse Freiwirth, *Deputy Registrar*.

Decision of the Court

The Court specified that the subject matter of the application was the proceedings leading to the High Court judgment of 24 April 2017 concerning the applicant's objection to enforcement, and not the proceedings that had ended with the final judgment of the High Court of 22 April 2016 concerning the applicant's conviction.

The Court added that its task was to examine whether the applicant's complaint was compatible *ratione materiae* with Article 6 § 1 of the Convention. It observed in that connection that the criminal limb of Article 6 of the Convention was applicable to criminal proceedings concerning remedies classified as extraordinary in domestic law where the domestic court was called upon to determine the criminal charge.

The Court noted that under Romanian criminal law an objection to enforcement did not have the legal character of an ordinary or extraordinary remedy enabling a case that had been finally decided to be reopened and a "criminal charge" or the "lawfulness" of a conviction to be determined afresh, but related only to incidents that might act as a bar to enforcement of a final judgment convicting the accused, and that it produced effects during the phase of enforcement of a final judgment.

In the present case the applicant had chosen to complain, by means of an objection to enforcement, of irregularities allegedly committed during the signing of the final judgment of 22 April 2016 convicting him. The Court noted that the High Court's examination of the applicant's objection had been confined to establishing whether the fact that two of the five judges of the bench had not signed the judgment convicting him constituted grounds precluding enforcement of the judgment.

Hence, even assuming that this had been an extraordinary remedy, in its judgment of 24 April 2017 the High Court had not determined the "criminal charge" against the applicant but had simply ruled that the ground he had relied on in support of his objection did not act as a bar to enforcement of the final judgment convicting him, for the purposes of the Code of Criminal Procedure.

In view of the foregoing considerations and the scope of the review carried out by the court examining the objection to enforcement, the Court found that this complaint was incompatible *ratione materiae* with Article 6 of the Convention within the meaning of Article 35 § 3 (a), and rejected it in accordance with Article 35 § 4 of the Convention.

The decision is available only in French.

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