THEMIS COURT OF HUMAN RIGHTS
COUR THEMIS DES DROITS DE L'HOMME

CASE OF P. UMBA v. ROMANIA

(*Application no. 22691/15*)

JUDGEMENT

OMŠENIE

30 June 2016

In the case of P. Umba v. Romania,

The Themis Court of Human Rights, sitting as a Chamber composed of:

Mihai Ioana Andreea, *President*,

Lasconi Andra

Bene Ioan, *judges*

Having deliberated in private on 16 June 2016,

Delivers the following judgment,

which was adopted on that date

INSTEAD OF AN INTRODUCTION:

THE UNSEEN SIDE OF AN OVERBURDENED JUDICIARY

OR ON HOW WE ARE MAKING THE INDIVIDUAL BEAR THE SINS OF A SYSTEM

In today's modern world, saying that the judicial system of a country is overburdened by the number of cases it is entrusted to solve is no less a truism than saying the Earth is round or that it rotates around the Sun. Moreover, it is unanimously accepted that the overburdening of judicial systems has vile effects on the efficiency, performance and health of judicial officers.

Despite the fact that this subject appears to have been thoroughly dissected by a plethora of authors worldwide[1], with numerous causes being identified as the source of the overburdening plaguing the judiciary, such as repeated slashing of funding in this particular sector, insufficient number of judges etc. and despite the fact that remedies have been proposed[2], there is an unexplored side of the matter, that often goes overlooked: the effect of an overburdened system on the individual whose rights must be protected by the judiciary.

In an ironic twist, mirroring the way in which the cost of the recent economic recession, triggered by the misconduct of actors from the financial and banking sectors, was paid by the people who had lost homes, pensions and life-savings, the weight of our overburdened judiciary is being carried by the individuals it was built to protect. Moreover, because of the budget cuts and the lawsuits that directly stemmed from the recession, it is ultimately the individual who has to bear the full brunt of overburdened and sub-financed courts.

Based on the facts outlined above, it is our firmly held belief that making the individual pay for the faults of an overburdened judiciary is highly unethical. Therefore, we have lodged a complaint with the **Themis Court of European Rights** ("the Court") to assess whether the Romanian authorities' conduct represents a breach of the ethical standards imposed by the **European Judicial Training Network** ("the EJTN") and of the rights guaranteed to European citizens.

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[1] http://www.nineoclock.ro/pm-boc-promises-job-openings-in-overburdened-courts/ 19 April 2016, 12:04; http://blog.seattlepi.com/northwestlaw/2009/04/29/our-grossly-overburdened-court-system/ 23 April 2016, 15:36; http://thediplomat.com/2016/04/30-million-pending-cases-fixing-indias-overburdened-judiciary/ 23 April 2016, 16:11; http://www.economist.com/node/13707663 23 April 2016, 17:08

[2] Such as implementing new alternative conflict resolution procedures that could help ease the burden of the judiciary.

PROCEDURE

1. The case originated in an application (no. 22691/15) against Romania lodged with the Court under Article 34 of the **Themis Convention for the Protection of Human Rights and Fundamental Freedoms** (”the Convention”) by a Romanian national, Mr. P. Umba (”the applicant”), on 12 December 2015.

2. The applicant was represented by Mr. Rudel Popa, a lawyer practicing in Bucharest. The Romanian Government (”the Government”) were represented by their Agent, Mr. Ioan Costescu, from the Ministry of Foreign Affairs.

3. The applicant alleged that the domestic authorities violated the principle of independence and impartiality under Article 6§1 of the Convention. Also, he complained about the unreasonable time of the proceedings.

4. On 5 February 2016 the application was communicated to the Government.

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1974 and lives in Bucharest.

6. On 2 October 2008, the applicant filed a lawsuit against his neighbour, regarding the borders of his property, at the Court of First Instance of the 6th District in Bucharest.

7. During the procedures, the applicant noticed that the judge had a great amount of files – about 80 or 90 - on his desk and that he was not really paying attention to his particular case. He also noticed that the judge seemed exhausted, visibly irritated and that, on a number of occasions, he lost his temper and started yelling at the various lawyers present in court.

8. After the hearing, the applicant overheard the same judge talking with colleagues about his cases. The judge was complaining about the excessive, unbearable amount of cases and was asking them for templates from similar trials on which to base his ruling.

9. A final decision was given by the Court on 16 July 2015. The applicant noted that although the decision referred to his case, the names of the parties were not of those involved in the procedure. To make sure that the decision was correctly addressed to him, the applicant decided to seek assistance from the Clerk’s Office, where he learned that the mistakes were due to the fact that the judge had used a “template”, a previous ruling with the same legal arguments and that he had forgotten to change the names of the parties.

10. The applicant filed a complaint with the **Superior Council of Magistracy** (“the SCM”) to initiate a disciplinary action against the judge, whom he considered guilty of violating his right to a fair trial, because of the unreasonable duration of his proceedings and the fact that the judicial

officer in question did not even consider the specific circumstances of his case and just used a previous ruling, that he had found to be similar. The SCM dismissed the disciplinary action against the judge, concluding that he was not at fault regarding the excessive length of the proceedings. To reach this conclusion, the SCM noted that the judicial officer in question had over 80 cases a week and that he had rendered decisions in approximately 90 trials every month. Moreover, they took into consideration the fact that the Court of First Instance of the 6th District in Bucharest was understaffed and under-budgeted. For instance, the Clerk's Office, the main body responsible with typing and communicating the decisions rendered by the judges, was comprised of only two clerks, one of which was on sick leave.

11. Therefore, the judicial officer in this particular case was unable to conduct and finalize the legal proceedings within a reasonable time due to a multiple number of exterior factors which were interfering with his activity such as an excessive workload and a lack of personnel in charge of typing and communicating his decisions. All these aspects are objective circumstances that exempt the judge from liability.

II. RELEVANT DOMESTIC LAW

A. The Constitution

12. In accordance with art. 124 paragraph (3) of the Constitution of Romania, judges shall be independent and abide only to the law. Furthermore, in accordance with art. 133 paragraph (1) therein, the Superior Council of Magistracy shall guarantee the independence of justice.

13. The Constitution of Romania is in line with the requirements of the European Convention on Human Rights and it guarantees the right to a fair trial, article 21 paragraph (3) providing that all parties shall be entitled to a fair trial and a solution of their cases within a reasonable time.

B. Relevant legislation

14. The relevant parts of Law no. 304/2004 on judicial organisation, republished (hereinafter referred to as „Law no. 304/2004"), of Law no. 303/2004 regarding the statute of judges and prosecutors (hereinafter referred to as „Law no. 303/2004"), republished, and of the Deontological Code for judges and prosecutors (hereinafter referred to as the „Code") read as follows:

Law no. 304/2004:

Art. 10 All persons shall be entitled to a fair trial and to the solution of cases within a reasonable period of time, by an impartial and independent court of law, established by law.

Law no. 303/2004:

Art. 2 (3) Judges are independent, subject only to the law, and shall be impartial

(4) All persons, organisations, authorities, or institutions shall be bound to observe the judges' independence.

The Code:

Chapter II. Independence of justice

Art. 3 (1) Judges and prosecutors are bound to protect the independence of justice.

(2) Judges and prosecutors must exercise their profession with objectivity and impartiality, acting only by law, without any attention to exterior pressure and influence of any kind.

(3) Judges and prosecutors may address to the Superior Council of Magistracy for any action that could infringe upon their independence, impartiality or professional reputation.

C. European standards

15. Being part of the Council of Europe since 1993 and of the United Nations since 1955, there are a number of standards, legal and ethical, which Romania should observe as regards to the independence and impartiality of justice.

16. Apart from the European Convention on Human Rights, the most authoritative text on the independence of the judiciary at the European level is Recommendation (2010) 12 of the Committee of Ministers on the Independence, Efficiency and Role of Judges. Another Council of Europe text is the European Charter on the Statute of Judges, which was approved at a multilateral meeting organised by the Directorate of Legal Affairs of the Council of Europe in Strasbourg in July 1998.

17. Based on Article 10[3] of the Universal Declaration of Human Rights there are also a number of UN standards on the independence and impartiality of the judiciary, in particular the Basic Principles on the Independence of the Judiciary endorsed by the United Nations General Assembly in 1985 and the Bangalore Principles of Judicial Conduct of 2002. These standards often coincide with the Council of Europe standards but usually do not go beyond them[4]

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[3] Everyone is entitled in full equality to a fair, and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

[4] Report on the independence of the judicial system, Part I: the independence of judges, adopted by the Council of Europe, Venice Commission, 2010, p. 4, available at http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD%282010%29004-e, 24 April 2016, 17:14

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF LACK OF INDEPENDENCE OF THE TRIBUNAL AND OF THE EXCESSIVE LENGTH OF PROCEEDINGS DUE TO EXTREME CASE LOAD

18. The applicant alleged that the civil proceedings in front of the Romanian courts infringed his right to a fair trial, provided by art. 6 § 1 of the Convention, as the tribunal which "heard" his case was neither independent nor impartial because of an excessive workload. The applicant also contended that the length of the proceedings had been excessive.

A. Admissibility

19. The Court notes that the complaint raised by Mr. P. Umba under Article 6 § 1 of the Convention concerning the alleged lack of independence of the tribunal and of the excessive length of proceedings is not manifestly ill-founded within the meaning of Article 35 § 3 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' submissions

(a) the applicant

20. Mr. P. Umba submitted that, by facing an extreme workload, the domestic court failed to be independent and impartial and the length of the proceedings was excessive, which infringed his right to a fair trial. He added that he overheard the judge complaining about the huge amount of work the latter had to do and asking his colleagues for some templates on which to base his rulings, proving the judge was not independent.

(b) the Government

21. The Government argued that the excessive workload, which is unchallenged, could not be seen as an "undue pressure" in order to affect the judge's independence and that the length of the proceedings was due solely to the applicant's conduct who intentionally stalled the trial.

22. Moreover, the Government showed that there is an excessive workload of the courts, even though many different measures were adopted, to try to discharge them. There had been a major legislative reform as a result of the coming into force of the new penal and civil Codes.

23. The Government highlighted the fact that in 2010, before the legislative reform, the courts registered a total number of 2.916.776 cases, a 22% increase from 2009. In that same time frame, 2.117.514 cases, approximately 73% of the total workload, had been finalized by the courts.

24. After the legislative reform, which began in 2011, when the civil Code came into force, the total number of cases started to steadily drop. For instance, the Government noted that in 2015 the number of newly registered cases was 2.036.078, 323.029 less than in 2011. Moreover, the percentage of solved cases registered a slight but noticeable increase from 73% in 2011 to 73.59 % in 2015. Therefore, the Government noted that the legal reform had brought improvements and was successful in reducing the number of cases per year per judge, but that the process is a slow and painstaking one.

25. The Government noted that it was highly interested in the protection of the rights guaranteed by the Convention, especially the right to a fair trial. Every measure that had been adopted was aimed at increasing the efficiency of the courts and at offering a proper protection of the rights of the individual, but that given the current economic and political climate of the continent and of the world, it would take time before they could reap the full benefits of the various changes.

26. The Government presented a report[5] in which the Judicial Inspection pointed out some of the main causes which lead to the excessive duration of the procedures: the high amount of complaints registered, insufficient personnel, the endorsement and the evaluation of evidence in multiple stages, excessive time required for the completion of expert reports, which forced the courts to establish multiple hearings.

27. In order to solve the issue of unreasonable duration regarding proceedings, the legislator offered, through the provisions of the civil procedure Code, a practical remedy for the parties involved in the trial: the complaint regarding the delays of the proceedings. Under such provisions, either party or the prosecutor attending the trial can file a complaint so that the judge would take the proper legal means to assure that the proceedings would have a reasonable duration.

28. The Government noted the fact that even though the economic recession of 2008 meant that brutal budget cuts had to be made across the board in order to avoid a financial collapse, such as reducing the salaries of all state-employed personnel by a quarter, they tried, as much as possible, to maintain the budget levels of the judiciary.

29. Moreover, the Government noted that another measure adopted by the authorities concerned the alternative dispute resolution procedures, such as mediation, to ease the workload of the courts. Through the dispositions of Law no. 192/2006 the litigating parties were obligated to

[5] Report from the *Annual Conference of the Workgroup on Optimum Court Workload*, Bucharest, 2010

attend a brief regarding the benefits of mediation. Unfortunately, the Romanian Constitutional Court ruled that the provisions were incompatible with the country's fundamental law, as it unjustifiably prevented the individual's access to legal proceedings.

30. The Government also noted that the new civil procedure Code introduced yet another measure which was meant to ease the burden of the Romanian courts: enforcing rulings regarding civil matters was a prerogative of the judicial executor. Therefore, when the party wanted to opt for the compulsory enforcement procedure, they wouldn't have to address the courts. Unfortunately, yet again the Romanian Constitutional Court intervened in December 2015 and declared the provisions of the article 666 of the civil procedure code unconstitutional, given the fact that the judicial executor was going to exert activities conferred only to judicial officers.

31. The Government also showed that many other European countries are facing the problem of the excessive workload of the courts, a fact noted by the Court in Pélissiler and Sassi v. France, Grand Chamber, 25444/94, 25.03.1999, Rutkowski and others v. Poland, 72287/10, 07.07.2015, Vassilios Athanasiou and others v. Greece, 50973/08, 21.12.2010, Lukenda v. Slovenia, 23032/02, 06.10.2005, Rumpf v. Germany, 46344/06, 02.09.2010 and Finger v. Bulgaria, 37346/05, 10.05.2011. Therefore, the Government noted that this is not a local problem but a European-wide issue and it should not be sanctioned because the current socio-economic climate makes it impossible for the nations of the Europe to abide by the "reasonable time in proceedings" principle.

2. The Court's assessment

(a) General principles

(i) Independence

32. The term "independent", in both criminal and civil cases, refers to independence vis-à-vis the other powers, the executive and the Parliament[6], and also vis-à-vis the parties[7].

33. However, the Court considers that there could be a number of other situations, outside the "classic" ones referred to in the above paragraph, in which the independence of a tribunal could be in jeopardy. For all these situations, the Court has had to take into consideration, *inter alia*,

[6] *Beaumartin v. France*, 24.11.1994, § 38.
[7] *Sramek v.Austria*, 22.10.1984, § 42.

the following criteria, in determining whether a body can be considered to be independent[8]: the manner of appointment of its members and the duration of their term of office, the existence of guarantees against outside pressures and whether the body presents an appearance of independence.

34. With respect to the existence of guarantees against outside pressures, the Court held[9] that judicial independence demands that individual judges be free from undue influence outside the judiciary and from within. Internal judicial independence requires that they be free from directives or pressures from fellow judges or those who have administrative responsibilities in the court such as the president of the court or the president of a division in the court.

35. The Member States should at least build a legal framework which guarantees the independence of the judiciary, including organizational autonomy and proper funding, in order to counter act and handle any outside pressure such as an excessive workload[10].

36. Moreover, the Court notes that in order to preserve the independence of the judiciary, the Member States should also pay close attention to building trust amongst citizens with respect to the courts' decision. One important step towards acquiring such trust is ensuring a proper and efficient method of judges' accountability for their misconduct and unethical behaviours that could jeopardize their independence and impartiality.

37. In order to determine whether a tribunal can be considered to be independent as required by Article 6 § 1, the Court has previously held that appearances may also be of importance[11].

38. Furthermore, as to the appearance of independence, the Court held that the standpoint of a party is important but not decisive; what is decisive is whether the fear of the party concerned can be held to be "objectively justified"[12].

39. Therefore, if the Court considers that an "objective observer" would see no cause for concern with respect to the independence of the body in question, in the circumstances of a specific case, than there should be no breach of Article 6 § 1 from this angle.

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[8] *Langborger v. Sweden*, 22.06.2989, § 32; *Kleyn and Others v. the Netherlands* [GC], 06.05.2003, § 190.

[9] *Parlov-Tkalčić v. Croatia*, 22.12.2009, § 86; *Agrokompleks v. Ukraine*, 25.07.2013, § 137.

[10] *Independence and Accountability of the Judiciary*, ENCJ Report 2013-2014, p. 20-25, available at http://www.encj.eu/images/stories/pdf/workinggroups/independence/encj_report_independence_accountability_2014_disclaimer.pdf, 25 April 2016, 13.45.

[11] *Sramek v. Austria*, 22.10.1984, § 42.

[12] *Sacilor-Lormines v. France*, 12.05.2005, § 63.

40. The criteria described above is meant to be applied every time a case, brought before the Court, raises the issue of lack of independence of a certain Contracting Party's body. In this regard, there is no scale of probability, meaning that there are no specific circumstances falling, *ab initio*, under the "undue pressure" concept as there are no specific circumstances falling outside such concept.

41. Therefore, the Court must analyze the circumstances of every specific case in order to determine if its standards were not observed, irrespective of the peculiarity of the alleged breach, including ethical misconduct of judicial officers.

(ii) Impartiality

42. The concepts of independence and impartiality are closely linked because a lack of independence translates itself in a lack of impartiality as an outside undue pressure causes a biased approach of a case.

43. The Court held that[13] the impartiality of a tribunal falling within the scope of art. 6 § 1 represents the absence of any prejudice or bias. The existence of impartiality must be determined on the basis of the following assessment criteria: the subjective test, focusing on the personal conviction and behaviour of a particular judge, namely if the latter had a personal prejudice or bias in a given case, and the objective test, namely if the fear of a lack of impartiality of the tribunal can be objectively justified or if the tribunal itself offered sufficient guarantees of impartiality.

44. With respect to the subjective approach to impartiality, the Court already held that "the personal impartiality of a judge must be presumed until there is proof to the contrary[14]", such proof being, for example, displayed hostility[15].

45. Regarding the objective test, the Court must determine if there are ascertainable facts which may raise doubts of judge impartiality, such as hierarchical or other links between the judge and other actors in the proceedings or any other external perceivable interference that may lead an objective observer into having doubts about the tribunal's impartiality.

46. As in the case of independence, the appearance of impartiality may be of a certain importance as "justice must not only be done, it must also be seen to be done"[16].

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[13] *Micallef v. Malta*, 15.10.2009, [GC]§ 93.
[14] *Le Compte, Van Leuven and De Meyere v.Belgium*, 18.10.1982, § 58.
[15] *Buscemi v. Italy*, 16.09.1999, § 67-68.
[16] *Micallef v. Malta*, 15.10.2009, [GC], § 98.

47. Nonetheless, the Court must decide in each individual case, based on the above mentioned assessment criteria, if the tribunal was impartial as provided by art. 6 § 1.

48. Furthermore, the Contracting State must make sure that indirect factors, such as an excessive workload, unreasonable working hours or substantial budget cuts are reduced to a minimum as to not affect the impartiality of the judge, who could be forced into delivering "template justice", meaning that due to these exterior constraints, he might form a judgement just after the first hearing, or into other unethical behaviours, such as improper attitude towards the parties or lawyers, including limiting their pleadings. The victim of these shortcomings would ultimately be the individual, because a judge that delivers his verdict based on a superficial understanding of the case is not one that can guarantee the right to a fair trial.

(iii) Reasonable time

49. The right to a "hearing in reasonable time" underlines the importance of justice with no delays, otherwise its effectiveness and credibility might be jeopardized[17].

50. In order to assess the reasonableness of the lengths of the proceedings, civil or criminal, the Court has developed in its jurisprudence[18] the following criteria: the complexity of the case, the conduct of the applicant and of the relevant authorities and what was at stake for the applicant in the dispute.

51. With respect to the conduct of the relevant authorities, the Court already stated that Article 6 § 1 obliges the Contracting States to organise their legal systems so as to enable the courts to comply with its various requirements and that the State is responsible for all its authorities[19].

52. Moreover, the Court has held that an excessive workload cannot be taken into consideration as a solid argument to justify an unreasonable length of proceedings[20].

53. Nevertheless, in exceptional cases, the Court held[21] that a temporary backlog of business does not involve liability on the part of the State provided the latter has taken reasonably prompt remedial action to deal with an exceptional situation of this kind and that such a situation isn't

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[17] *Scordino v. Italy* (no. 1), 29.03.2006, [GC], § 224.
[18] *Comingersoll S.A. v. Portugal*, 06.05.2000, [GC]; *Frydlender v. France*, 27.06.2000, [GC], § 43; *Sürmeli v. Germany*, 08.06.2006, [GC], § 128.
[19] *Martins Moreira v. Portugal*, 26.10.1998, § 60.
[20] *Vocaturo v. Italy*, 24.05.1991, § 17; *Cappello v. Italy*, 27.02.1991, § 17.
[21] *Buchholz v. Germany*, 06.05.1981, § 51.

prolonged to become a matter of structural organisation. In the latter case, the State must ensure the adoption of effective measures in order to surpass the blockage[22].

54. Be that as it may, the Court reminds the Contracting States that even in the case of a temporary blockage, they are never allowed to use these circumstances, exceptional or otherwise, as an excuse or a justification for denying the individual his right to a fair trial in a reasonable amount of time. The contracting States have the legal and ethical obligation to not pass on to the individual the burden of various socio-economic shortcomings, when it comes to the right to a fair trial.

A. Applicability of the principles in the present case

i. Lack of independence and impartiality

55. The Court notes that Romania is confronted with an excessive workload which leaves judges with very little time to solve a case, including the time needed for a thorough reading and "hearing" of the case and also for legal research, if needed. This fact is not challenged by the Government.

56. In addition, the Court notes that the Romanian Superior Council of Magistracy admitted the shortcomings of the domestic judicial system, dismissing the applicant's complaint against the judge on the grounds that exterior factors, such as a lack of personnel and an excessive amount of workload, made it impossible for the proceedings to be finalized within a reasonable time.

57. The Court appreciates the effort of the Government towards relieving the courts of their excessive workload and notes that there have been numerous legislative endeavours adopted to this end.

58. However, the Court also notes that the situation is still far from being resolved as the number of ongoing cases is unreasonably high and the weight of an overloaded, bursting at the seams judicial system is being carried by the individuals whose rights it was made to uphold.

59. This is the case of the applicant who was confronted directly with the Romanian justice system's shortcomings on the occasion of his hearing in front of the Sixth Sector Court in Bucharest.

60. The applicant showed that during the hearing of his case in front of the judge, the latter seemed to be behaving erratically because of his extreme workload and started yelling at the parties' lawyers. After the session, the applicant overheard the same judge talking with his

[22] *Zimmermann and Steiner v. Switzerland*, 13.07.1983, § 29; *Guincho v. Portugal*, 10.07.1984, § 40.

colleagues about his cases. The judge was complaining about the huge amount of work he had to do and was asking them to help him with templates on which to base his ruling upon.

61. The applicant's claims are not contested by the Government.

62. The Court notes that the matters pointed out by the applicant represent unethical behaviours, often overlooked, which, in turn, can have a negative echo on the right to a fair trial as provided by Article 6 of the Convention. These behaviours include judicial decision making as team work, "template" mechanism of reasoning, limiting the pleadings of the parties, shouting at the lawyers.

63. Although the Court does not deny the adverse effects of an overburdened legal system on the judicial officers, it also notes the fact that the price of these stress-related mishaps is ultimately paid by the individuals seeking a fair trial.

64. For instance, even some of the most "benign" shortcuts developed by the overburdened judges, such as relying on the advice of their peers must be approached with caution because it can have debilitating effects on the individuals involved in the trial. Most often than not, the litigating parties do not receive a judgement based on the facts of their case, but on the apparent similarities between two situation that might not have much in common, from a legal perspective.

65. In accordance with the Bangalore Principles, point 1.4., in performing judicial duties, a judge shall be independent from the influence of colleagues in respect to the decisions he is obligated to make.

66. Given the overburdened nature of the Romanian legal system, judicial officers tend to discuss far more than just hypothetical situation with colleagues and end up "sharing" the same decision making mechanism as their peers. We can call it "on demand peer pressure" which leads to biased judges and thus to a lack of independence and impartiality of the court in question.

67. As was previously stated by the Court, independence represents the lack of any exterior, undue influence. It is the metaphorical "blindfold of Lady Justice" that ensures justice can be delivered.

68. Moreover, when analysing the concept of "undue external influence", it is important to take into consideration if there is indeed an external influence, meaning that such influence cannot be controlled by the judicial officer, and that such influence is "undue" or more than is reasonable.

69. The team work decision making is the consequence of an "undue external influence", namely the excessive workload, and, in light of the requirements and ethical standards of magistracy, it is definitely unreasonable.

70. Also, the Court notes that an excessive workload is perceived by judges themselves of a threat to their independence and impartiality as recent European studies show[23].

71. Furthermore, a court of law with an excessive workload fails to pass the assessment criteria underlined in the Court's jurisprudence because, on one hand, there aren't enough guarantees against such external pressure and, on the other hand, an "objective observer" would be concerned with respect to the independence of the body in question and, as a consequence, with respect to its impartiality, as every applicant would want for the court to take its time when judging her case.

72. This is also the applicant's case. The judge was overheard talking to his colleagues about his cases, including the applicant's case, not in theoretical terms, but in very specific and detailed terms. The Court can reasonably assume that, due to his excessive workload, the judge was trying to find a "shortcut" in order to solve faster the applicant's case by directly asking his colleagues who may have faced similar cases and can give him the right solution or, at least, the most frequently used.

73. Such attitude represents a breach of independence as the judge in question is influenced by his colleagues and no longer judges by himself. For the same reasons, the lack of independence means also a lack of impartiality that can be easily and reasonably perceived by an objective observer.

74. Another unethical behaviour that can infringe the right to a fair trial is the template mechanism of reasoning, meaning that judges, confronted with an excessive amount of work, build their solution's grounds on templates, specific for each type of case.

75. The Court notes the importance of reasoning in the economy of the right to a fair trial provided by art. 6 § 1 as being the proof that the judge "heard" and analyzed the case. However, this obligation cannot be understood as requiring a detailed answer to every argument, but to

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[23] *Independence and Accountability of the Judiciary*, ENCJ Report 2014-2015, p. 7, available at http://www.encj.eu/images/stories/pdf/workinggroups/independence/encj_report_independence_accountability_2014_2015_adopted_ga_corr_2016.pdf, 21 April 2016, 15:06.

include the necessary amount of information, within the circumstances of a case, in order to enable the parties to make effective use of any existing right of appeal[24].

76. Thus, as long as the reasoning shows that the case "was heard", the use of template reasoning does not constitute *per se* a violation of article 6 of the Convention.

77. However, in the present case, the Court has serious doubts that the judge actually "heard" the applicant's case considering that the reasons where most likely built on the templates given by the judge's colleagues. A proof in this respect is the fact that the ruling was addressed to another person than the applicant and that the latter overheard the judge asking his colleagues for some templates of reasoning.

78. The Court stresses one again that impartiality and independence are fundamental qualities required of a judge, both under article 6 of the Convention and under the Bangalore Principles of Judicial Conduct, that must exist as a matter of fact and as a matter of reasonable perception. If partiality is reasonably perceived, that perception is likely to leave a sense of grievance and of injustice, thereby destroying confidence in the judicial system[25].

79. In the present case, the applicant would reasonably see a case of concern with respect to the judge's independence and impartiality as long as the reasoning was "borrowed" from a fellow judge.

80. Furthermore, the Court is seriously concerned about the judge's attitude during the hearing, by limiting the pleadings of the parties and shouting at the lawyers, as it can call into question the fairness of the trial, especially with respect to the adversarial principle. Such attitude endangers citizens' trust in the judicial system.

81. Given the above, the Court concludes that the State failed to ensure efficient organizational or legal guarantees against the undue external pressure coming from an excessive workload of the courts.

82. The Court also notes that the State failed to ensure an efficient accountability procedure in order to sanction the judge's misconduct. The applicant's complaint with the Romanian Superior Council of Magistracy was dismissed on the grounds that the excessive workload was the sole

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[24] *Hirvisaari v. Finland*, 27.09.2001, § 30.

[25] *Commentary on the Bangalore Principles of Judicial Conduct*, p. 57, available at https://www.unodc.org/documents/corruption/publications_unodc_commentary-e.pdf, 22 April 2016, 15:35.

cause of misconduct. Under such circumstances, the Court points out with great concern that the trust in the Romanian judiciary could be seriously undermined.

83. Consequently, there has been a violation of article 6 § 1 of the Convention.

ii. Reasonable time

84. Concerning the ”reasonable time” in the present case, the Court notes that its long duration – 8 years – cannot be justified by the authorities. Even though cases regarding property rights are usually complex, the present cause could have been settled in shorter time, given the fact that the authorities had managed a small amount of evidence.

85. The Court notes that it was not the conduct of the applicant who caused the procedures to last so long; the national authorities are responsible of the management of the cases through the agents of the State, who must make sure that the rights guaranteed by the Convention are not theoretical and illusory, but concrete and effective.

86. The Court cannot accept the Government's defence regarding the legislative reform which caused an institutional blockage. The applicant filed his claim in 2008 – 3 years before the adoption of the civil Code and civil procedure Code and the Court ruled a final decision on 2015 – 4 years after the reform. As was underlined above, (point 39), the circumstances of the present case cannot be qualified as exceptional circumstances to justify the unreasonable time of this particular case.

87. Furthermore, the Court deems it unethical for the State to justify its lack of proper measures by citing circumstances such as legislative changes and budget cuts brought on by the economic recession. By following this train of thought, the Romanian authorities have basically declared that they are unable to ensure the right to a fair trial within a reasonable amount of time and have placed the burden of said inability unjustly on the shoulders of the individual. The Court finds such behaviour highly unethical and in stark contradiction with the values and rights derived from the Convention.

88. The Court also notes that by becoming a High Contracting Party to the European Convention on Human Rights, the respondent State assumed the obligation to secure to everyone within its jurisdiction the rights and freedoms defined in Section 1 of the Convention. In fact, the States have a general obligation resolve the problems that have led to the Court finding a violation of the Convention. This should therefore be the primary goal of the respondent State, otherwise the price of the authorities’ inaction is being unjustly paid by the individual whose rights are being sacrificed.

89. Should violations of Convention rights still occur, the respondent States must set up mechanisms within their respective legal systems for the effective redress of violations of those rights

90. Moreover, the Court stresses the fact that that the unreasonable length of proceedings is a problem which has affected Romanian judicial proceedings for a long period of time, being a systemic problem rather than an exceptional situation. The Court found a breach of the right to a fair trial, on this matter, in a high number of cases against Romania throughout a long period of time, to name just a few: Maria Atanasiu vs Romania (12.01.2011), Sega vs. Romania (13.06.2012), Draganescu vs. Romania (30.09.2008), Guta vs. Romania (16.11.2006).

91. Consequently, there has been a violation of Article 6 § 1 of the Convention with respect to the unreasonable length of proceedings.

II. APPLICATION OF ARTICLE 46 OF THE CONVENTION

92. Article 46 of the Convention, in so far as relevant, reads that "the High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties."

93. Rule 61 of the Rules of Court, which entered into force on 21 February 2011, defines the principal features of the pilot-judgment procedure. It reads, in so far as relevant, that the "Court may initiate a pilot-judgment procedure and adopt a pilot judgment where the facts of an application reveal in the Contracting Party concerned the existence of a structural or systemic problem or other similar dysfunction which has given rise or may give rise to similar applications." Furthermore, "The Court shall in its pilot judgment identify both the nature of the structural or systemic problem or other dysfunction as established as well as the type of remedial measures which the Contracting Party concerned is required to take at the domestic level by virtue of the operative provisions of the judgment"

94. The Court notes that the excessive length of proceedings caused by systemic problems is by far the most common issue raised in applications to the Court, not only against Romania, but also against other European countries, analyzed for example in the following pilot judgments: Pélissiler and Sassi v. France, Grand Chamber, 25444/94, 25.03.1999, Rutkowski and others v. Poland, 72287/10, 07.07.2015, Vassilios Athanasiou and others v. Greece, 50973/08, 21.12.2010, Lukenda v. Slovenia, 23032/02, 06.10.2005, Rumpf v. Germany, 46344/06, 02.09.2010 and Finger v. Bulgaria, 37346/05, 10.05.2011.

95. Furthermore, such systemic problems, which include an excessive workload of the judiciary, are a threat to the effectiveness of the human rights protection system based upon the

Convention, the Court underlines once again the importance of the prompt response of the State in question, on a legislative level, in order to comply with its Convention obligations and to resolve the problems that had to the Court finding of violation thereto.

96. Moreover, the Court notes that, apart from the cases mentioned above, it has identified systemic issues with severely overburdened judiciaries in Italy, Germany and France, based on the data these three States have supplied. For instance, the Italian Government outlined that, at the end of 2012, although a number of 4346215 cases had been resolved, there were other 4650566 pending. The German government also revealed that, even though a number of 3888915 cases had been resolved in the same period, there were a 4974366 cases pending at the end of 2012, which do not include a number of 1426805 legal matters related to labour courts, registry office cases, custody and other domains. Lastly, the French Government indicated that a number of 2189186 cases had been resolved in 2012, but there were 1650754 disputes pending.

97. Based on these facts, the Court considers that even though the application originally concerned only Romanian authorities, the issues of overburdened judiciaries, of the inability to adopt efficient measures by the Contracting States to ensure the individual does not bear the weight of the system's shortcomings are of European concern.

98. Consequently, the Court will recommend measures applicable to all European states that abide by the Convention in order to remedy the ethical conundrum of making the individual pay for the failings of the authorities in the Contracting States.

III. MEASURES RECOMMENDED BY THE COURT AS PER ARTICLE 99 OF THE CONVENTION

99. Given the fact that the Court has been entrusted by the **European Judicial Training Network**, under article 99 of the Convention, with the task of ensuring the Contracting States abide to only the highest of ethical standards, it considers it necessary regarding this particular matter to recommend appropriate measures in order to ensure that this widespread issue is swiftly and efficiently resolved.

100. The Court notes that judicial systems around the world are increasingly facing an overwhelming number of cases, coupled with budget cuts and funding shortfalls. However, the Court notes that, paradoxically, the burden of these shortfalls mostly fall on the shoulders of the individuals the laws were made to protect. Therefore, it is imperative that the measures proposed for relieving the overburdened judicial system must also be cost-saving in nature. Budget problems are particularly acute in developing countries, where courts need to increase efficiency

and access to justice while also managing resource limitations. International development agencies and donors expect measurable progress to justify continued funding of judicial reform projects. Yet, as rule of law efforts in developing countries improve public perception of courts and streamline court administration, more cases may be filed. Greater use of the courts puts greater strain on court resources, triggering the need to implement cost-saving measures while maintaining effective court administration.

101. The measures proposed by the Court fall into one of three categories: **i) judicial personnel training**, **ii) case management and iii) increasing public awareness**.

i) Judicial personnel training

102. Improving judicial personnel training would lower operating costs and increase efficiency by reducing the number of mistakes made during the course of proceedings. Moreover, adequate training is vital to ensuring that members of the judiciary become veritable champions of judiciary progress and reform. Lack of knowledge on behalf of judicial personnel can have debilitating effects on proceedings, both increasing the costs and the length due to mistakes being made.

103. Implementing performance indicators is yet another viable method for increasing the efficiency of the courts, while at the same time reducing costs, due to the fact that it raises the accountability of judicial personnel. European courts can use the information gathered in order to identify underperforming personnel and the circumstances that give rise to such inefficiencies.

104. The main issue regarding implementing performance indicators is that they can compromise the independence and quality of judicial decision making. To combat this, it is imperative that States willing to pursue this recommendation develop a culture of internal judicial review.

105. In the case of States facing corruption issues, for the successful implementation of any measure or reform it is paramount that this phenomenon be eliminated from within the judiciary. Corrupt judicial personnel significantly increase the costs associated with legal proceedings by lengthening the time required to finalize a trial and by increasing the number of appeals from the parties that unjustly lost. Moreover, when the judicial personnel that was bribed is discovered it starts a chain reaction that leads to more trials and understaffing by way of the fact that the person in question can no longer perform his duties. Therefore, to ensure that the individuals seeking justice do not bear the consequences of such unlawful actions, the malady of corruption must be eradicated.

ii) Case management

106. Creating specialized courts to handle different types of cases can achieve significant cost savings and boost efficiency because judicial officers can resolve disputes in less time due to, generally, not requiring extensive briefing in their area of expertise. In the absence of specialized courts, parties must plead their case to generalist judges, which can raise costs and lengthen proceedings. Examples of specialized courts include juvenile, family, business and administrative courts.

107. Although, initially, implementing specialized courts may entail high costs, the Court considers that due to the improved efficiency and quality of justice, it will garner substantial savings over time.

108. Oral proceedings can be another useful way to cut down on time and costs because it allows the arguments of the litigating parties can be made and responded to more quickly. However, in order to effectively conduct oral proceedings, the States must provide the judiciary with adequate facilities and means to record evidentiary material.

109. The Court notes that States should consider implementing alternate dispute resolution procedures, such as arbitration and mediation. These mechanism can substantially reduce the courts' workload and are more often than not less expensive than trials. Moreover, they can allow for greater access to justice, mainly by disadvantaged groups, because they are far less intimidating than formal courts.

110. Despite the aforementioned benefits, the risks of implementing alternate dispute resolution procedures include an unpredictability of decisions, problems regarding the enforcement of rulings and the potential lack of impartiality on behalf of the mediators or arbiters, which is why it is imperative that the States curtail these issues by undertaking effective legal measures.

111. The implementation of administrative procedures that can handle issues arising from fines, taxes and other small claims, under a certain threshold, would greatly alleviate the overburdened courts across Europe. Such mechanisms would not only expedite proceedings in the aforementioned domains but it would also ensure that Courts have more resources for criminal proceedings and high-stakes civil cases.

iii) Increasing public awareness

112. Although the Court notes that it is unethical for the individual to bear the shortfalls of an overburdened judiciary, it is also of utmost importance that they strive to cooperate with the judicial system and not work against it. Therefore, the Court recommends that the European

government take adequate steps in providing informative and educational programs for its citizens, so that they are made fully aware of the various issues affecting the legal system and how imperative it is for them to have an optimal conduct in order for them to be part of the solution and not part of the problem. These programs could focus on the importance of filing documents as soon as possible and exercising their rights in an orderly manner so as to not lengthen the procedures before the courts. Moreover, citizens should be taught the importance of avoiding filing frivolous lawsuits and of fully collaborating with the judicial system in order to improve the efficiency of all legal endeavours.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. Declares the application admissible;
2. Holds that there has been a violation of Article 6 § 1 of the Convention on account of the unreasonable length of proceedings in the applicant's case;
3. Holds that the above violations of Article 6 § 1 originated in a practice that was incompatible with the Convention, consisting in the unreasonable length of civil proceedings in courts across Europe;
4. Hold that the Contracting States have, unlawfully and unethically, placed the burden of their legal systems' shortcomings on the shoulders of the individuals whore rights should be protected;
5. Holds that the Contracting States must, through appropriate legal or other measures, secure the national courts' compliance with the relevant principles under Article 6 § 1 of the Convention.

Done in English, and notified in writing on 30 June 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lasconi Andra,	Bene Ioan	Mihai Ioana Andreea
Judge	Judge	President