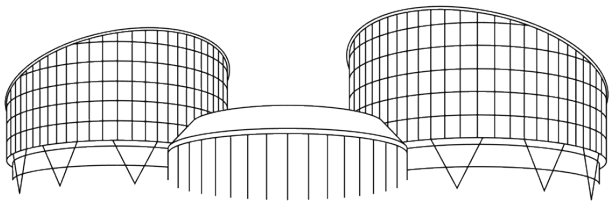

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF CHIŞ v. ROMANIA

(Application no. 3360/03)

JUDGMENT

STRASBOURG

14 September 2010

FINAL

21/02/2011

This judgment has become final under Article 44 § 2 (c) of the Convention. It may be subject to editorial revision.

In the case of Chiş v. Romania**,**

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

Josep Casadevall, *President,*
Corneliu Bîrsan,
Boštjan M. Zupančič,
Egbert Myjer,
Ineta Ziemele,
Luis López Guerra,
Ann Power, *judges,*
and Santiago Quesada, *Section Registrar,*

Having deliberated in private on 24 August 2010,

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

PROCEDURE

1. The case originated in an application (no. 3360/03) against Romania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Romanian national, Mr Radu Doru Chiş ("the applicant"), on 13 January 2003.

2. The Romanian Government ("the Government") were represented by their Agent, Mr Răzvan-Horaţiu Radu.

3. On 16 April 2009 the President of the Third Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1953 and lives in Bucharest.

5. The applicant worked as chief of the catering division of TAROM company (the Romanian Air Transport company), a State-owned company. In 1990, by a Government decision, the catering branch of TAROM became a new company, CASROM. In 1998 CASROM merged into the COMCHIM company, a private company. In 2004 that company changed its name into ROMAQUA.

A. Actions against TAROM/CASROM

6. On 8 February 1990 the applicant was dismissed from his job. He challenged that decision and on 9 November 1992 the Ilfov District Court ordered CASROM to reinstate the applicant in his previous job or in an equivalent post, and TAROM to pay him 154,043 Romanian lei (ROL) as overdue salary for the period February 1990 to September 1992, and also to pay him salary until effective reinstatement. That judgment became final on 28 May 1993.

1. Actions for enforcement against TAROM

7. On 6 June 1996 the applicant lodged an action against TAROM and CASROM for payment of salary until effective reinstatement and for bringing the amount of ROL 154,043 up-to-date in accordance with inflation. On 3 February 2005 the Bucharest Court of Appeal, by a final decision, ordered TAROM to pay the applicant that amount indexed to take account of inflation.

8. In March and April 2004, and then in April 2005, the bailiff sought to attach the company's financial assets in several banks in respect of the salaries due. Those seizures were endorsed by the courts.

9. On 28 April 2004 the Bucharest District Court declared that the judgment of 9 November 1992 could be enforced.

10. On 19 May 2004 TAROM lodged an objection to execution, alleging that the applicant's right to request enforcement of that judgment had become time-barred. The Bucharest County Court upheld that request by a final decision of 17 June 2005, declaring that the applicant's right to request enforcement of the judgment of 9 November 1992 was time-barred.

11. On 23 March 2007 the Bucharest County Court dismissed as time–barred an action by the applicant for payment of salaries from 1990 to 1999 and of other pecuniary rights related to his employee capacity. However, on 27 September 2007 the decision was quashed by the Bucharest Court of Appeal and the case sent for fresh consideration. No information on the outcome of the proceedings is available to the Court.

12. On 26 April 2007 the Bucharest County Court dismissed an action by the applicant for payment of salary and connected rights from 1999 onward, for lack of responsibility of TAROM. The court considered that the applicant should have taken action against COMCHIM/ROMAQUA. That judgment became final.

2. Actions for enforcement against CASROM/COMCHIM/ROMAQUA

(a) Action for comminatory damages

13. On 13 March 1995 the applicant sought comminatory damages from CASROM for non-compliance with the judgment of 9 November 1992.

14. On 13 June 1996 the Bucharest District Court set comminatory damages of ROL 50,000 per day until the applicant's effective reinstatement. The court held that CASROM had systematically refused to reinstate the applicant. That judgment became final on 9 June 1997.

15. On 5 December 1997 the applicant requested quantification and payment of comminatory damages.

16. On 11 January 1999 the Bucharest District Court upheld his request and set to ROL 69,250,000 the amount corresponding to damage for non-compliance between 5 October and 14 December 1998. On 6 October 1999 Bucharest County Court upheld that judgment.

On 16 November 1999 ROMAQUA paid that amount.

17. On 5 June 1999 the applicant sought again quantification and payment of comminatory damages.

18. On 20 December 2000 the Bucharest District Court ordered the debtor to pay ROL 54,627,890, of which ROL 10,467,750 was comminatory damages for 14 December 1998-15 November 1999 and ROL 44,160,140 was indexation of the damages set on 11 January 1999. On 26 April 2001 the Bucharest County Court declared the debtor's appeal null and void for non-payment of court fees.

On 21 May 2001 ROMAQUA paid that amount.

(b) Action for non-pecuniary damages

19. On 22 October 1999 the Bucharest County Court ordered COMCHIM to pay the applicant ROL 200,000,000 for non-pecuniary damage caused by the refusal to comply with the court orders.

20. On 13 March 2001 the Bucharest Court of Appeal upheld that judgment.

21. On 3 September 2002 COMCHIM paid the applicant ROL 395,900,000, representing the updated above-mentioned amount.

22. However, on 17 December 2002 the Supreme Court of Justice quashed the previous decisions and sent the case back to the County Court.

23. After retrial, on 24 November 2003 the County Court dismissed the action on the grounds that it had been objectively impossible for the debtor to comply with the obligation to reinstate the applicant because of the reorganisation of the company.

24. On 9 June 2004 the Bucharest Court of Appeal allowed an appeal by the applicant, quashed the previous judgment and ordered ROMAQUA to pay the applicant ROL 500,000,000 for non-pecuniary damages. It

considered that the "objective impossibility" had not been proved and that in any case it could not justify non-compliance. That judgment became final on 27 January 2006.

25. On 26 August 2004 Bucharest District Court attached ROMAQUA's financial assets in a bank. On 3 February 2005 the Bucharest Court of Appeal upheld that interlocutory judgment.

26. On 1 September 2004 ROMAQUA paid ROL 500,000,000.

27. On 27 September 2004 ROMAQUA objected to the execution, submitting that it had already paid ROL 395,900,000 and that the execution should have been continued only for the remaining until ROL 500,000,000. On 14 July 2005 the Bucharest County Court, by a final decision, upheld the objection and annulled the execution insofar as it concerned the payment of ROL 395,900,000 in the applicant's favour.

28. According to the applicant, ROMAQUA had not claimed the difference that it had paid.

3. Action for damages for length of the proceedings related to his dismissal, lodged against the Ministry of Justice

29. On 8 August 2002 the applicant lodged an action against the Ministry of Justice, seeking pecuniary and non-pecuniary damages for length of the proceedings related to his dismissal. On 4 November 2002 the Bucharest County Court dismissed his action, considering that the Ministry of Justice bore no responsibility for the alleged facts. That judgment became final on 18 March 2004.

4. Execution

30. On 11 June 1993 CASROM invoked the impossibility to reinstate the applicant in a post corresponding to his qualifications and offered him the post of night watchman, which was rejected by the latter.

31. On 6 June 1995 TAROM paid ROL 154,043 for salaries for the period February 1990 to September 1992, as ordered by the judgment of 9 November 1992, as well as ROL 217,563 for salaries until 30 June 1993.

32. On 17 March 1999 COMCHIM reinstated the applicant.

33. On 12 November 2004 TAROM paid ROL 4,235,986,868 for due and updated salaries.

34. On 20 June 2005 the bailiff also received for the applicant ROL 340,000,000 from TAROM, in compliance with the judgment of 9 November 1992, representing salaries from 15 February 1990 to 17 March 1999 indexed.

35. On 1 July 2009 the Bucharest District Court allowed a request by TAROM and ordered the applicant to return the amount of 457,598.68 new Romanian lei (RON). The court considered that TAROM had paid all the debt. The applicant appealed and the proceedings are still pending.

B. Action against the Financial Control Office (*Garda Financiară*)

36. In 1991 and then in 1992 the applicant passed two competitions for a post within the Financial Control Office. Following refusal by that institution to employ him, the applicant brought court proceedings.

37. On 14 December 1995 Bucharest District Court ordered the Financial Control Office to employ the applicant as from 20 October 1992 and to pay him ROL 2,000,000 for damages and ROL 100,000 for court fees. That judgment became final on 30 May 1997.

38. In 1999 the courts declared that the judgment had become enforceable and that it could be enforced. However, the applicant was not employed allegedly because he was a collaborator of the former State Security Department (*Securitate*). By a decision of 25 September 2007 the National Council for the Study of the Archives of the *Securitate* declared that the applicant had not been a collaborator.

39. On 25 February 2008 the applicant sought again employment with the Financial Control Office. On 27 March 2008 the bailiff enjoined that institution to employ the applicant. However, the Financial Control Office considered that the applicant's right to request enforcement was time-barred.

40. On 9 May 2008 the bailiff certified in an official record the institution's refusal to employ the applicant and considered necessary to apply a pecuniary penalty for delay in enforcement.

41. On 12 May 2008 the applicant brought proceedings against the Financial Control Office, seeking from the court to order that institution to employ him as from 20 October 1992, as ordered by the judgment of 14 December 1995, and to pay him damages.

42. On 16 June 2008 the Bucharest District Court rejected his request to be employed as *res judicata*. It further held that his right to request enforcement of that judgment was time-barred.

43. On 22 September 2008 the Bucharest County Court allowed an appeal by the applicant, quashed the previous judgment and send the case back for a fresh consideration. On 23 June 2009 the Bucharest Court of Appeal upheld that judgment by a final decision.

44. The proceedings are still pending.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

45. The applicant complained that the judgments of 9 November 1992 and 14 December 1995 had not been fully and timeously enforced and had thus infringed his rights guaranteed by Article 6 § 1 of the Convention, which, in so far as relevant, reads as follows:

> "In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing within a reasonable time ... by [a] ... tribunal..."

A. Admissibility

46. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. Nor is it inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

47. The Government considered that the judgment of 9 November 1992 had been fully enforced. As for the applicant's action against the Financial Control Office, they submitted that between 1991 and 2004 that institution had no legal personality and employment with it was performed by a minister's order. The Government submitted that the applicant's action to be employed by the Financial Control Office was still pending and concluded that there was no legal basis to enforce the judgment of 14 December 1995.

48. The applicant disagreed, insisting on the long delay in enforcement. He also considered that the judgments in his favour had not been fully enforced.

49. The Court reiterates that execution of a final judgment given by any court must be regarded as an integral part of the "trial" for the purposes of Article 6 of the Convention. (*Hornsby v. Greece*, 19 March 1997, § 40, *Reports of Judgments and Decisions* 1997-II, and *Immobiliare Saffi v. Italy* [GC], no. 22774/93, § 63, ECHR 1999-V). When the authorities are obliged to act in order to enforce a judgment and they fail to do so, their inactivity can engage the State's responsibility on the ground of Article 6 § 1 of the Convention (*Scollo v. Italy*, 28 September 1995, § 44, Series A no. 315-C). Where administrative authorities refuse or fail to comply, or even delay doing so, the guarantees under Article 6 enjoyed by a litigant during the judicial phase of the proceedings are rendered devoid of purpose (*Hornsby*, cited above, § 41).

50. The Court notes in the present case that by a judgment of 9 November 1992 the Ilfov District Court ordered two State-owned companies to reinstate the applicant in his previous job or in an equivalent post, and to pay him salary. That judgment became final on 28 May 1993. The applicant was reinstated on 17 March 1999. The due salaries were paid on 6 June 1995, on 12 November 2004 and then on 20 June 2005. The Government did not point out any circumstances justifying the delays in enforcement. The Court finds it unacceptable that a judgment against State-owned companies not be honoured for such a long period of time.

51. The Court further notes that by a judgment of 14 December 1995 the Bucharest District Court ordered a public institution to employ the applicant as from 20 October 1992 and to pay him damages. Although the authorities had an obligation to enforce court judgments, the judgment of 14 December 1995 remains unenforced to date. That judgment is nevertheless still valid, no proceedings having been instituted under Romanian law for its modification or annulment before the domestic courts. Apart from enforcement, it is only by such an annulment or substitution by the courts with an equivalent obligation that a situation of continuous non-enforcement may come to an end (see *Sabin Popescu v. Romania*, no. 48102/99, § 54, 2 March 2004).

52. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the ones in the present case (see, among others, *Sacaleanu v. Romania*, no. 73970/01, 6 September 2005; *Strungariu v. Romania*, no. 23878/02, 29 September 2005, and *Miclici v. Romania*, no. 23657/03, 20 December 2007).

53. Having examined the material submitted to it, the Court notes that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. The authorities have not deployed all necessary efforts to enforce fully and in due time the judgments in the applicant's favour. There has accordingly been a violation of Article 6 § 1 of the Convention.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

54. The applicant complained under Article 6 § 1 that different outcomes were unfair, that the domestic courts had failed to assess the facts correctly and had misinterpreted the domestic law.

55. The applicant also considered that the protraction of the various proceedings had infringed his Article 8 rights and alleged an infringement of his freedom of speech by the Financial Control Office. The applicant also considered the outcome of his action against the Ministry of Justice as being a violation of his right to an effective remedy under Article 13.

56. The applicant further relied on internal legislation and on some other international conventions in respect of an alleged violation of his right to work.

57. Having carefully considered the applicant's submissions in the light of all the material in its possession, the Court finds that, in so far as the matters complained of are within its competence, they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention.

58. It follows that this part of the application must be declared inadmissible as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

59. Article 41 of the Convention provides:

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

A. Damage

60. The applicant sought employment with the Financial Control Office. In respect of pecuniary damage, he claimed the following amounts:

– 310,463 euros (EUR) as a result of non-enforcement of the judgment of 14 December 1995, representing the updated amount of 2,000,000 old Romanian lei ordered by that judgment and salary as from 1 November 1992, on the basis of a EUR 1,500 monthly salary, as allegedly earned by people employed with the Financial Control Office;

– EUR 42,807 as pay rise due by TAROM;

– EUR 67,707 as social security contributions;

– EUR 134,070 in respect of loss of profit or any benefit, on the basis of the interest established by the National Bank of Romania;

– EUR 29,386 representing difference in comminatory damages due by CASROM/COMCHIM/ROMAQUA.

The applicant also claimed EUR 150,000 in respect of non-pecuniary damage.

61. The Government contested any causal link between the violation alleged and the pecuniary damage claimed and submitted that the amounts established by the judgments in the applicant's favour had been fully and timeously paid. Furthermore, they considered that the finding of a violation would constitute in itself sufficient just satisfaction for any non-pecuniary

damage which the applicant might have suffered. In any event, they considered that the amount claimed in that connection was too high.

62. As regards the judgment of 14 December 1995, the Court considers that, in so far as it remains in force, the State's outstanding obligation to enforce it cannot be disputed. Accordingly, the applicant is still entitled to enforcement of that judgment. The Court reiterates that the most appropriate form of redress in respect of a violation of Article 6 is to ensure that the applicant as far as possible is put in the position he would have been in had the requirements of Article 6 not been disregarded (see *Piersack v. Belgium* (Article 50), 26 October 1984, § 12, Series A no. 85). The Court finds that this principle also applies in the present case, having regard to the violation found. It therefore considers that the Government must secure, by appropriate means, the enforcement of the judgment of 14 December 1995, namely the employment of the applicant with the Financial Control Office and to pay him damages, in the conditions provided by that judgment.

63. The Court further points out that its judgments are essentially declaratory in nature. In general, it is primarily for the State concerned to choose the means to be used in its domestic legal order in order to discharge its legal obligation under Article 46 of the Convention (see *Shofman v. Russia*, no. 74826/01, § 53, 24 November 2005, with further references). By finding a violation of Article 6 § 1 of the Convention in the present case, the Court has established the Government's obligation to take appropriate measures to remedy the applicant's individual situation, that is, to ensure compliance with the applicant's enforceable claim under the judgment of 14 December 1995 (compare with *Fadeyeva v. Russia*, no. 55723/00, § 142, ECHR 2005-...). Whether this involves employing the applicant in the job provided by that judgment or in an equivalent job or, if this is not possible, granting him reasonable compensation for non-enforcement, or a combination of these and other measures, is a decision that falls to the respondent State (see *Tarverdiyev v. Azerbaijan*, no. 33343/03, § 66, 26 July 2007, and *Ursan v. Romania*, no. 35852/04, § 46, 6 April 2010). The Court, however, emphasises that any measures adopted must be compatible with the conclusions set out in the Court's judgment (see *Assanidze v. Georgia* [GC], no. 71503/01, § 202, ECHR 2004-II, with further references).

64. As regards the pecuniary damage claimed by the applicant, the Court observes that in the present case it has found a violation of Article 6 § 1 of the Convention in that the judgments in the applicant's favour have not been enforced fully and in due time. Moreover, the applicant has received salary as ordered by the judgment of 9 November 1992. In any event, the question of whether the applicant would have been able to obtain the amounts alleged in respect of pecuniary damage, had the national authorities properly enforced the judgments in his favour, is a matter of speculation in the circumstances of the case (see *Sacaleanu*, § 72, and *Strungariu*, § 54, cited above). The Court therefore rejects the pecuniary claim.

65. The Court considers that the serious interference with the applicant's right of access to a court caused moral prejudice to the applicant. Making an assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards him EUR 4,800 in respect of non-pecuniary damage.

B. Costs and expenses

66. The applicant also claimed EUR 5,825 for the costs and expenses, broken down as follows: EUR 2,873 for lawyers' fees in domestic proceedings, EUR 925 for expert reports, EUR 236 for law materials for individual study, EUR 744 for judicial fines imposed on him for his requests to challenge judges, EUR 347 for translations and EUR 700 for postal fees. He submitted invoices and copy of legal assistance contracts.

67. The Government contested these claims. In particular, they submitted that the legal assistance contracts had not included information on the number of working hours. However, they agreed with the costs covering the bailiff's fees, translation of Government's observations and correspondence with the Court.

68. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 1,100 covering costs under all heads.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning Article 6 § 1 of the Convention in respect of enforcement of final decisions admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

3. *Holds*

(a) that the respondent State shall ensure, by appropriate means, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the enforcement of the judgment of 14 December 1995 of the Bucharest District Court;

(b) that the respondent State is to pay the applicant, within the same three months, the following amounts, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement:

(i) EUR 4,800 (four thousand eight hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 1,100 (one thousand one hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(c) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 14 September 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President