



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

SECOND SECTION

**CASE OF BUZESCU v. ROMANIA**

*(Application no. 61302/00)*

JUDGMENT

STRASBOURG

24 May 2005

**FINAL**

*24/08/2005*

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

**In the case of Buzescu v. Romania,**

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

Mr J.-P. COSTA, *President*,  
Mr A.B. BAKA,  
Mr R. TÜRMEŢEN,  
Mr C. BÎRSAN,  
Mr K. JUNGWIERT,  
Mr M. UGREKHELIDZE,  
Mrs A. MULARONI, *judges*,  
and Mr S. NAISMITH, *Deputy Section Registrar*,

Having deliberated in private on 18 November 2003 and 26 April 2005,  
Delivers the following judgment, which was adopted on the last-mentioned date:

**PROCEDURE**

1. The case originated in an application (no. 61302/00) 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 Petru Buzescu (“the applicant”), on 25 July 2000.

2. The applicant was represented by Mr S. Grosz, a lawyer practising in London. The Romanian Government (“the Government”) were represented by their Agents: Mrs C. Tarcea, succeeded by Mr B. Aurescu and Mrs R. Rizoiu.

3. The applicant alleged, in particular, that the decision of 27 June 1996 of the Romanian Union of Lawyers (*Uniunea Avocaţilor din România* – “the UAR”), annulling his registration with the Constanţa Bar, and the subsequent proceedings in which that decision had been upheld, violated Article 6 § 1 of the Convention as regards the right to a fair hearing. He also complained that the aforementioned decision amounted to a control of the use of property incompatible with the requirements of Article 1 of Protocol No. 1 to the Convention.

4. The application was allocated to the Second Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

5. By a decision of 18 November 2003 the Court declared the application partly admissible.

6. The applicant and the Government each filed observations on the merits (Rule 59 § 1). The Chamber having decided, after consulting the

parties, that no hearing on the merits was required (Rule 59 § 3 *in fine*), the parties replied in writing to each other's observations.

7. On 1 November 2004 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Second Section (Rule 52 § 1).

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

#### A. Background of the case

8. The applicant was born in 1951 and lives in Bucharest.

9. In 1977 the applicant joined the Constanța Bar (Romania). He practised as a lawyer until 1981, when he left for the United States. As a result, the Romanian authorities deprived him of his Romanian citizenship and required him to notify the Constanța Bar that he had ceased his professional activities and to transfer to his colleagues the cases on which he was then working.

10. In a decision of 30 October 1981 the Constanța Bar acknowledged the applicant's request to cease his professional activities and decided to cancel the applicant's membership. According to the applicant, he did not request that his membership of the Bar be cancelled.

11. In 1985 the applicant became a member of the New York Bar and practised there as an attorney until 1991.

12. In August 1990 the applicant applied to the Bucharest Bar to be registered as a lawyer there. On 5 November 1990 the Chairman of the Romanian Union of Lawyers (*Uniunea Avocaților din România* – “the UAR”) sent him the following reply:

“Until a new law concerning lawyers is passed, we can only order the annulment of the Constanța Bar's decision to cancel your membership, so that you may resume your membership of that bar, but you will be deemed ineligible to practise until you return to this country. ... Indeed, the current law does not allow you to be a member of two bars, irrespective of the fact that one such bar is in this country and the other is abroad.”

13. The Chairman of the UAR confirmed his position in the course of subsequent meetings with the applicant in March 1991.

14. In March 1991, after his Romanian citizenship had been restored, the applicant returned to live in Romania. On 12 April 1991 he applied to the Constanța Bar for the annulment of the 1981 decision, on the ground that he

had never requested the cancellation of his Bar membership. He also applied for reinstatement as a lawyer and to be removed from the list of lawyers who were ineligible to practise as he had been a member of another Bar.

15. On 8 May 1991 the Constanța Bar annulled the 1981 decision to remove the applicant's name from the Bar roll but ordered his re-registration on the list of lawyers ineligible to practise, as he was still a member of another bar.

16. From 1991 onwards the applicant offered investment advice to several multinational corporate clients investing in Romania.

17. In 1994 he founded a company, Petru Buzescu SRL, subsequently renamed Buzescu & Co SRL, of which he was the sole shareholder and whose main field of activity was business and management consultancy.

18. On 19 May 1996 the Constanța Bar decided to remove the applicant's ineligible status and to register his name on the list of practising lawyers with effect from 10 May 1996.

19. From May 1996 until October 1999, given that he had been reinstated by the Constanța Bar, he paid monthly Bar fees and UAR fees amounting to 1,983,000 Romanian lei (approximately 225 euros ["EUR"], according to the average exchange rate for the relevant period).

#### **B. Annulment of the applicant's reinstatement as a lawyer**

20. On 14 May 1996, in accordance with the Legal Profession Act (Law no. 51/1995) and the Rules governing the Legal Profession, the applicant submitted an application to the Bucharest Bar for a transfer from the Constanța Bar. He did not receive any response.

21. On 27 June 1996 the UAR decided that, in accordance with Article 5 § 3 (j) of Legislative Decree no. 90/1990 concerning the organisation and practice of the legal profession, the applicant's reinstatement as a lawyer fell within its own field of competence and not that of the Bar. The UAR thus found that the Constanța Bar had acted *ultra vires* in taking its decision of 8 May 1991. Furthermore, it declared that the Constanța Bar's decision of 19 May 1996, annulling the applicant's ineligible status, was illegal, having regard to the fact that it had been based on the unlawful decision of 1991.

22. It appears that the UAR's decision of 27 June 1996 was never notified either to the applicant or to the Constanța Bar. The decision was not communicated to him until 10 February 1998, when he was involved in other proceedings before the Bucharest Court of Appeal.

23. On 3 September 1996, following a communication from the Embassy of the United States, G.D., head of a department of the Romanian Ministry of Foreign Affairs, sent a letter to the Chairman of the UAR pointing out that the applicant's re-registration with the Bar in 1991 was an act of reparation, that he was the legal adviser for Romania for a number of

important companies from the United States mentioned in the letter, and that the best possible ways of resolving his case should be considered in the interests of good relations between the two countries.

24. On 27 November 1996, having received no response to his application for a transfer, the applicant submitted a renewed application to the Bucharest Bar for leave to be transferred from the Constanța Bar.

25. As he did not receive any response, on 18 March 1997 the applicant brought an action before the Bucharest Regional Court, in accordance with the Administrative Litigation Act (Law no. 29/1990). He asked the court to establish that he had a right to be transferred from the Constanța Bar to the Bucharest Bar, to compel the latter to allow his application for a transfer and to issue a decision authorising him to practise as a lawyer in a private law firm.

26. Following an application by the Bucharest Bar for a change of venue (*declinare a competenței*), the Bucharest Regional Court referred the case to the Bucharest Court of Appeal.

27. During the proceedings, and following several hearings, the Bucharest Bar invited the applicant to attend a meeting organised by the Bar Council on 15 May 1997. The applicant was informed at this meeting that the Bucharest Bar was willing to consider his application for a transfer, provided that he clarified his status with the UAR. He was then told that the UAR had annulled his reinstatement as a member of the Constanța Bar. The applicant requested the Bucharest Bar to notify him in writing about its position in respect of his application for a transfer. On 4 June 1997 the Bucharest Bar sent the applicant a letter stating the position which it had expressed orally on 15 May 1997 and informing him of the UAR's decision of 27 June 1996.

### **C. Applications lodged by the applicant with the UAR**

28. At the suggestion of the Dean of the Bucharest Bar, the applicant requested the UAR on 9 June 1997 "to clarify and resolve" his situation and to advise him of the manner in which his request could be met.

29. In July 1997 the applicant applied to the Court of Appeal requesting it to invite the UAR to join as a defendant the proceedings he had brought against the Bucharest Bar. He pointed out that he would be seeking to compel the UAR to disclose its decision of 27 June 1996. After several hearings, on 10 February 1998 the UAR submitted a copy of its decision of 27 June 1996 to the court.

30. On 18 February 1998 the applicant filed an application with the UAR requesting the annulment of that decision and confirmation of his status as a lawyer and a member of the Constanța Bar, by way of reparation for an abuse committed under the communist regime. He also referred to his letter of 9 June 1997 to the UAR, pointing out that no answer had been

given to his request that the UAR take the necessary decisions in order to clarify his situation.

31. On 14 March 1998 the UAR confirmed its decision of 27 June 1996, stating, *inter alia*, that the applicant had “committed fraud as he had practised as a lawyer all this time without legal authorisation”. No information was given to the applicant as to the manner in which his status could be clarified in order to practise as a legally registered lawyer. Similar statements concerning alleged fraud on the applicant’s part were made by the UAR during the proceedings before the Court of Appeal.

#### **D. Proceedings instituted by the applicant before the Bucharest Court of Appeal against the UAR’s decision of 27 June 1996**

32. On 30 March 1998 the applicant instituted proceedings against the UAR before the Bucharest Court of Appeal seeking the annulment of the decision of 27 June 1996. In his application, he submitted that: following the entry into force of the Legal Profession Act (Law no. 51/1995), the UAR had had no power to annul the Constanța Bar’s decision of 1991; that, under section 5 of Law no. 29/1990, its decision of 27 June 1996 was invalid since it had been delivered after the one-year period prescribed by that provision and since only the courts had had jurisdiction to annul in 1996 a decision taken in 1991; and that, as regards the merits of his application, which the court was expressly invited to examine, in the absence of specific regulations indicating where to apply to remedy an unlawful administrative decision deleting him from the Bar’s list of lawyers, he had acted in good faith, according to the principles of administrative law, when he had lodged his application with the Constanța Bar in 1991. The applicant pointed out that his administrative application of 18 February 1998 to the UAR had not constituted a remedy. That case was joined to the proceedings against the Bucharest Bar.

33. On 30 June 1998, during a hearing before the Court of Appeal, the applicant alleged that the decision of 30 October 1981 had been unlawful since he had not applied to have his registration as a lawyer cancelled and, consequently, the Constanța Bar had been entitled to adopt its decision of 8 May 1991 in order to redress the abuse committed in 1981.

The applicant submitted a number of questions to be answered by the UAR. The UAR replied to the question whether the fact that he had applied to the Constanța Bar in 1991 for the annulment of the 1981 decision was unlawful: it considered that the applicant could have lodged such an application with the Bar, but that the decision to be taken fell within the UAR’s exclusive field of competence. The UAR conceded that the legal basis of its decision of 27 June 1996 was Article 5 § 3 (j) of Legislative Decree no. 90/1990. As regards the monthly Bar and UAR fees paid by the applicant, the UAR replied that these were insignificant and that,

according to the letter of 3 September 1996 from the Ministry of Foreign Affairs, the applicant provided legal services to many companies, but he had not established an office for that purpose, nor had he paid the 10% fees to the lawyers' social-security fund, thus committing fraud and unlawfully practising the profession of lawyer.

At the same hearing, suspecting that the decision of 27 June 1996 had been fabricated at a later date, namely during the proceedings before the Court of Appeal, the applicant also requested that the UAR's original Register of Decisions be disclosed.

34. On 7 June 1998 the court acceded to the applicant's request. However, on 15 September 1998 it reversed its decision of 7 June 1998 and ruled that the UAR did not have to disclose the original register. The court declared that, in the absence of a criminal complaint alleging forgery lodged by the applicant against the UAR, it was satisfied that the decision purportedly given on 27 June 1996 had indeed been given on that date. The court's new position was due mainly to the production, by the UAR, of two photocopies, one being of an undated excerpt of the minutes of a meeting of 27 June 1996 describing the procedure leading to the impugned decision, and the other being of another page of those minutes with no link to the applicant's case. Both these pages bore the stamp of the UAR and the signature of its secretary with the words "certified copy". It is not clear from these documents how many pages the minutes of the meeting of 27 June 1996 amounted to in all, who signed the minutes or who voted during that meeting.

35. The applicant formally objected to that ruling, insisting that it was not his intention to prolong the procedure by lodging a criminal complaint and that the register could easily be disclosed, given that the UAR shared the same building as the court. The applicant's objection was dismissed.

36. On 27 October 1998, during a hearing before the Court of Appeal, the applicant replied to questions submitted by the UAR. He contended that he had not provided legal services since he had come back to Romania, that he had not practised as a lawyer with an established office and that, consequently, he had not paid the 10% of his income required by Law no. 51/1995.

37. On 6 April 1999 the Bucharest Court of Appeal dismissed the applicant's application, holding that, pursuant to Legislative Decree no. 90/1990, the Constanța Bar had acted *ultra vires* in taking its decision of 8 May 1991, and that, according to Rule 130 of the Rules governing the Legal Profession ("the Rules") issued by the UAR in 1995, the latter had been entitled to annul the decisions of local bars on grounds of illegality. As regards the fact that in 1991 the applicant had lodged an application with the Constanța Bar, considering himself entitled to be reinstated as a lawyer by the body that had unlawfully cancelled his membership with the Bar in

1981, the Court noted that the 1981 decision had been adopted on the basis of a request by the applicant himself.

**E. Proceedings before the Supreme Court of Justice concerning the UAR's decision of 27 June 1996**

38. The applicant lodged an appeal with the Supreme Court of Justice against the aforementioned decision of the Bucharest Court of Appeal, submitting that that court had not taken into account all the arguments and the evidence submitted. Accordingly, in his grounds of appeal he submitted that the court had erroneously found that he had been at fault for not lodging an application with the competent body in 1991 for re-registration as a lawyer, given that he had applied in 1991, on the basis of Law no. 29/1990, to the body that had taken the unlawful and politically motivated administrative decision of 8 May 1981, although he had not requested to be deleted from the Bar's list of lawyers. Considering that he should not have had to request to be readmitted to the legal profession because he had been excluded from the Bar by a decision without any legal basis, the applicant had lodged the application with the issuing body, namely the Constanța Bar, as there was no provision for specific proceedings to redress the effects of such unlawful administrative decisions. The applicant also submitted that, pursuant to the aforementioned Legal Profession Act (Law no. 51/1995), which repealed Legislative Decree no. 90/1990, the UAR had no longer been competent in 1996 to annul Bar decisions, and that Rule 130 of the Rules could not have supplemented that law. The applicant underlined that the UAR's decision of 27 June 1996 had been illegal because the UAR had been time-barred in 1996, according to Law no. 29/1990, and because the legal basis for the decision, namely Legislative Decree no. 90/1990, had been repealed by Law no. 51/1995.

In his grounds of appeal and also in his written observations to the Supreme Court, the applicant added that, according to the documents in the file, the UAR had known since 1992 that he had been registered as a lawyer by the Constanța Bar in 1991, and that, in accordance with Article 5 § 3 (d) of Legislative Decree no. 90/1990, the UAR had at that time not only had the power but also the duty to review and possibly annul the decision of 8 May 1991 by the Constanța Bar. The applicant referred to the UAR's reply to the questions of 30 June 1998 and concluded that, even supposing that the UAR should have been consulted in 1991 by the Constanța Bar on his re-registration as a lawyer, he was not to blame for lodging the application with that Bar or for the latter's or the UAR's failure to follow the proper procedure. The applicant requested the court to consider whether it was normal in these circumstances that he could not practise his profession in Romania, and asked it to annul the UAR's decision of 27 June 1996 and to allow his transfer to the Bucharest Bar.



39. In a final decision of 28 January 2000 the Supreme Court dismissed the applicant's appeal. It held that, in 1991, Legislative Decree no. 90/1990 had vested in the Council of the UAR the exclusive authority to determine applications relating to the admission or readmission of lawyers to the Bar, and that the provisions of section 58 (g) and (i) of Law no. 51/1995 should be interpreted as conserving these prerogatives.

On the basis of Rule 130 of the Rules, the court rejected the applicant's submission that Law no. 51/1995 had removed the UAR's powers under Legislative Decree no. 90/1990 to annul Bar decisions, conceding nevertheless that in the text of this law such a power was not expressly maintained. As to the time within which the UAR had been entitled to annul the applicant's registration with the Constanța Bar in 1991, the Supreme Court held that, given the issuing body's lack of jurisdiction, the annulment could have been decided upon at any time. Finally, the Supreme Court pointed out that the annulment of the applicant's registration with the Constanța Bar on the ground of illegality did not remove his right to apply to the competent authority to decide on his application for re-registration as a member of the Bar.

#### **F. Facts subsequent to the application to the Court**

40. On 30 May 2001 the applicant applied to the Bucharest Bar for registration as a lawyer registered with a foreign Bar, but to date he has not received any reply in spite of the fact that, according to him, in the interim the Bucharest Bar has approved the registration of more than ten foreign lawyers.

41. On 14 February 2004 the Council of the UAR examined the applicant's request of 12 April 1991 to the Constanța Bar, the latter's decision of 8 May 1991 and the UAR's decision of 27 June 1996, annulling the applicant's registration with the Constanța Bar. The Council decided to repeal its decision of 27 June 1996, to restore the applicant's previous status as a lawyer eligible to practise and to notify this new decision to him and to the Constanța Bar.

42. On 23 February 2004 the Council of the Bucharest Bar granted the applicant's transfer to the Bucharest Bar, ordered his registration on that Bar's list of lawyers and decided to notify this decision to him and to the Constanța Bar.

43. In a letter of 26 May 2004 the applicant stated that on 23 April 2004 the UAR had notified him of its decision of 14 February 2004, and that to date he had not received any formal notification from the Bucharest Bar concerning its decision of 23 February 2004.

## II. RELEVANT DOMESTIC LAW AND PRACTICE

44. The relevant provisions of the Romanian Civil Code read as follows:

### **Article 1171**

“An official deed must be adopted in the form required by law, by a public official competent to act in the place where it was adopted.”

### **Article 1173**

“An official deed shall be authentic in respect of any person subject to its terms and clauses. The execution of an official deed ... shall be suspended where a criminal complaint is lodged against its author. Where such a complaint alleging forgery is made in the course of civil proceedings, the courts may, depending upon the circumstances, provisionally suspend the execution of the deed.”

45. The relevant provisions of the Administrative Litigation Act (Law no. 29/1990) read as follows:

### **Section 5**

“... the application to the court (to annul an administrative act) must be lodged within a year from the date on which the act is notified.”

### **Section 11**

“... If a claim is allowed, the court shall also rule on the damages claimed.”

### **Section 12**

“Where the claimant has applied for the annulment of the administrative act without claiming damages at the same time, as the amount of the damage sustained was not known at the time of the examination of the application for annulment, the time allowed for submitting a claim for damages shall run from the date on which he becomes aware of or should have become aware of the damage sustained.”

46. Article 5 § 3 of Legislative Decree no. 90/1990 concerning certain measures with regard to the organisation and practice of the legal profession provided:

“The Council of the UAR ... shall have the following powers...

(d) to review decisions taken by the standing committee of the UAR or by the Bar Council and, if it establishes that these decisions are illegal, to annul them; ...

(j) to rule on applications for admission or readmission to the Bar and for transfer and secondment of lawyers from one Bar to another; ...”

47. On 9 June 1995 the Legal Profession Act (Law no. 51/1995) entered into force, repealing Legislative Decree no. 90/1990. Its relevant provisions read as follows:

**Section 20**

“The Bar shall be required to draw up an annual roll of qualified and trainee lawyers, in alphabetical order, mentioning their first and last names, academic qualifications and date of admission to the Bar, the place where they practise, their professional capacity and the courts in which they are entitled to plead ...

The Bar shall transmit the annual list and the modifications thereto to the courts, the investigating authorities, the regional administrative authorities and the Romanian Union of Lawyers.”

**Section 48(2)**

“The Bar Council shall have the following powers: ...

(c) to prepare, amend and publish the annual roll of lawyers. It shall transmit this list, with any changes that are necessary, to all interested bodies; ...

(h) to acknowledge applications for transfers or secondment within the Bar;

(i) to monitor compliance with the conditions set out in this Act and the Rules as regards the manner of exercise of the profession, and to organise and keep details of such reviews...”

**Section 58**

“The Council of the UAR shall meet on a quarterly basis and ... shall have the following powers: ...

(b) to discuss, approve and modify the Rules governing the Legal Profession; ...

(g) to approve admission to the Bar in all the cases provided for by the law; ...

(i) to rule on complaints against decisions by the Bar Council concerning the refusal of transfer or secondment requests.”

48. On 6 March 2001 Law no. 51/1995 was amended, granting the following powers to the Council of the UAR in a new section 63 (i):

“The Council of the UAR shall have the following powers: ...

(i) to annul decisions by the Bar on grounds of illegality.”

49. Rule 130 of the Rules governing the Legal Profession, adopted by the UAR and published in the Official Gazette no. 237 of 17 October 1995, provides:

“Decisions adopted by the General Assembly or by the Bar Council may be annulled by the Council of the UAR solely on grounds of illegality or a breach of the provisions of the Rules, provided that the Bar’s autonomy is respected.

Decisions by the Dean of the Bar may be contested before the Bar Council.”

50. On 12 March 1997, in a final judgment (no. 450), the Supreme Court of Justice held in proceedings between a private party and the UAR that the latter was an administrative authority with a structure and powers provided for by law, and that the Administrative Litigation Act (Law no. 29/1990) applied to its decisions.

On 18 February 2003, in a final decision (no. 658), the Supreme Court of Justice held that the UAR was an administrative authority carrying out administrative acts, that it had a structure and powers established by law, and that it fulfilled a public service role.

On 4 March 2003, in a final decision (no. 866) in proceedings against the UAR concerning the right to be admitted to the legal profession without an examination, the Supreme Court of Justice held that “it [was] undisputed that the decision [of the UAR was] an administrative act issued by a public authority” and that Law no. 29/1990 was applicable to the case.

51. On 30 January 2003, in a final decision (no. 327), the Supreme Court of Justice set aside a decision of an appellate court on the ground that, *inter alia*, it had reversed without stating reasons a previous order concerning the admission of evidence.

## THE LAW

### I. ALLEGED VIOLATIONS OF ARTICLE 6 § 1 OF THE CONVENTION

52. The applicant complained that the UAR’s decision of 27 June 1996, annulling his registration with the Constanța Bar, and the subsequent administrative proceedings in which that decision had been upheld, had violated Article 6 § 1 of the Convention as regards the right to a fair hearing. He complained that the UAR’s decision had been adopted without any hearing and had not been notified to him and that, in the subsequent proceedings, the courts had failed to determine the full subject matter of the dispute, to deal with his main arguments, or to order disclosure of the UAR’s original Register of Decisions, in breach of Article 6 § 1 of the Convention, which, in so far as relevant, provides:

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

## A. Arguments of the parties

### 1. *The applicant*

53. The applicant submitted that the UAR's decision of 27 June 1996 had been adopted without any notice being given to him at that time about such proceedings and without a hearing, contrary to the requirements of the Rules and of Article 6 § 1 of the Convention. Instead, the decision had not been communicated to him until February 1998.

54. He maintained that the shortcomings of the procedure for the adoption of the UAR's decision of 27 June 1996 had not been remedied by the subsequent court proceedings. The applicant contended that the courts had not ruled on the substantive merits of his case, notwithstanding the fact that he had constantly set out his arguments. The applicant had asked the UAR and, subsequently, the courts to rule not only on the annulment of the UAR decision, but also on his reinstatement as a member of the Bar, since his exclusion in 1981 had been an abuse committed under the communist regime; on the UAR's failure to notify him of the decision of 27 June 1996; and on the applicability to his case of the Administrative Litigation Act (Law no. 29/1990). That law would allegedly have rendered the UAR's decision time-barred and would have made the Constanța Bar competent in 1991 to annul its own decision of 1981. He submitted that he had acted in good faith and had relied on Law no. 29/1990 when he had applied in 1991 to the Constanța Bar, and not to the UAR, in order to annul its 1981 decision removing him from the Bar roll, and that even the UAR had acknowledged, in its response to the applicant's questions of 30 March 1998, that he had the right to file such an application with the Bar.

55. As regards the refusal of the Court of Appeal to order the disclosure of the UAR's original Register of Decisions, the applicant further contended that the court could have ordered the production of the original register in the administrative proceedings, instead of proposing the alternative of criminal proceedings for forgery, which would have delayed the determination of his administrative complaints. The applicant stressed that the court had reversed its previous discovery order after the UAR had produced a few loose-leaf photocopies of the minutes of the decision of 27 June 1996. Relying on the case of *Timurtaş v. Turkey*, the applicant submitted that these photocopies, carrying an illegible signature, had reinforced his doubts as to the authenticity of the UAR's decision of 27 June 1996.

### 2. *The Government*

56. The Government submitted that the prior intervention of professional bodies, such as the UAR, was consistent with the requirements of Article 6 § 1 of the Convention as long as the applicant subsequently had

access to a court offering all the guarantees of a fair hearing. Conceding that the procedure leading to the adoption of the UAR's decision of 27 June 1996 had not complied with the requirements of Article 6 § 1, the Government contended that these deficiencies had subsequently been corrected by the courts.

57. Concerning the allegation that the courts had failed to decide on some points in the case, the Government noted that the courts had in fact ruled on all its aspects. They further submitted that, with the exception of the annulment of the UAR's decision of 27 June 1996 and the approval of the applicant's request for a transfer to the Bucharest Bar, the other issues raised by the applicant were mere arguments on which the courts were not obliged to rule extensively.

58. Concerning the refusal of the Court of Appeal to order the disclosure of the UAR's original Register of Decisions, the Government pointed to the courts' margin of appreciation on the admissibility of evidence, and noted that the Court of Appeal had reversed its decision on disclosure after the UAR had produced the verbatim record of the minutes of the meeting of 27 June 1996. Such a record of the minutes of a UAR meeting carried the signatures of all the members attending that meeting and was to be considered an official deed within the meaning of Article 1171 of the Romanian Civil Code. This classification implied that the provisions of Articles 1173 and 1174 of that Code applied, with the consequence that such a decision enjoyed a presumption of authenticity that could be rebutted by lodging a criminal complaint alleging forgery. The Government added that the Court of Appeal had informed the applicant that he could contest the authenticity of the UAR's decision of 27 June 1996 by lodging such a criminal complaint, which he had not done.

## **B. The Court's assessment**

59. The Court will proceed with an examination of each of the applicant's complaints, before reaching its final conclusion based on their overall analysis.

### *1. The UAR's decision of 27 June 1996*

60. The Court reiterates that Article 6 § 1 does not oblige the Contracting States to submit disputes over civil rights and obligations to a fully compliant procedure at every stage. Prior intervention of administrative or professional bodies, with or without judicial prerogatives, that do not satisfy all requirements may be justified if these bodies are subject to the subsequent control of a judicial body that has full jurisdiction guaranteeing the rights under Article 6 § 1 (see *Le Compte, Van Leuven and De Meyere v. Belgium*, judgment of 23 June 1986, Series A no. 43, p. 23,

§ 51, and *Albert and Le Compte v. Belgium*, judgment of 10 February 1983, Series A no. 58, p. 16, § 29).

61. The Court first observes that no specific procedure is provided for in the Rules for the annulment by the UAR of the registration of a lawyer with a Bar. Nevertheless, it notes that the parties agreed that the procedure leading to the adoption of the UAR's decision of 27 June 1996 had not complied with the requirements of Article 6 § 1, the Government contending that these deficiencies had subsequently been corrected by the courts.

62. The Court further notes that in the instant case, contrary to the aforementioned *Albert and Le Compte* judgment, the subject matter with which the UAR dealt on 27 June 1996 was subsequently submitted to the domestic courts for a full judicial review. Those proceedings were public and offered the applicant, by means of oral and written submissions, the possibility to defend his points of view. As to the applicant's complaint that notification of the UAR's decision of 27 June 1996 was delayed until February 1998, the Court observes that the applicant did not suffer any irreparable prejudice, given that in March 1998 he was still able to lodge an application with the courts against that decision, no time-limit being invoked by the UAR or by the courts.

*2. The domestic courts' failure to determine a part of the subject matter of the case*

63. The Court reiterates that the effect of Article 6 § 1 is, *inter alia*, to place a "tribunal" under a duty to conduct a proper examination of the submissions, arguments and evidence, without prejudice to its assessment or to whether they are relevant for its decision, given that the Court is not called upon to examine whether arguments are adequately met. Nevertheless, although Article 6 § 1 obliges courts to give reasons for their decisions, it cannot be understood as requiring a detailed answer to every argument (see *Van de Hurk v. the Netherlands*, judgment of 19 April 1994, Series A no. 288, p. 20, §§ 59 and 61; *Burg v. France* (dec.), no. 34763/02, ECHR 2003-II). The extent to which this duty to give reasons applies may vary according to the nature of the decision and must be determined in the light of the circumstances of the case (see *Ruiz Torija v. Spain* and *Hiro Balani v. Spain*, judgments of 9 December 1994, Series A nos. 303-A and B, p. 12, § 29, and pp. 29–30, § 27, respectively).

64. The Court observes that the applicant requested the courts to annul the UAR's decision of 27 June 1996, arguing that, pursuant to Law no. 51/1995, the UAR was no longer competent in 1996 to annul his registration with the Constanța Bar in 1991; that, pursuant to Law no. 29/1990, it was also time-barred from taking such a decision and it was within the courts' jurisdiction to annul in 1996 a decision taken in 1991; and that, as regards the merits of the case, which the courts were

expressly requested to examine, he had acted in good faith when he had lodged an application with the aforementioned Bar in order to annul its unlawful decision of 1981, and could not be blamed for the Bar's failure to submit his application to the UAR or for the UAR's failure to review the validity of the Bar's decision. The applicant also pointed out that his administrative application of 18 February 1998 to the UAR had not constituted a remedy.

65. The Court notes that both the Court of Appeal and the Supreme Court rejected his application, on the ground that in 1991 the UAR, in accordance with Legislative Decree no. 90/1990, had been the only competent body for readmission to the Bar; that the applicant could not claim to be ignorant of these provisions; that, consequently, his readmission to the Constanța Bar in 1991 had clearly been void; and that its annulment in 1996 had not been time-barred, for it could have been decided at any moment. On the basis of the Rules, the courts rejected the applicant's submission that Law no. 51/1995 had removed the UAR's powers to annul Bar decisions.

66. The Court notes, nevertheless, that the domestic courts based their decisions, as regards the UAR's power to annul the Constanța Bar's decision of 1991, on a combined reading of section 58 (g) and (i) of Law no. 51/1995 and, especially, of Rule 130 of the Rules governing the Legal Profession, the latter having been issued by the UAR itself in 1995. However, it appears that it was not until 6 March 2001, following an amendment to Law no. 51/1995, that such a power was again expressly provided for by section 63 (i) of Law no. 51/1995. Being aware of its limited power to review the interpretation of national law by the domestic courts, the Court finds, nevertheless, that such an amendment would have been meaningless if, between 1995 and 2001, the UAR had had the power to annul Bar decisions on grounds of illegality under the original provisions of that law.

67. The Court observes that even if the courts addressed a part of the applicant's arguments, they did not answer his main arguments, namely that he had acted in good faith, in accordance with the principles of administrative law and with Law no. 29/1990, when he had lodged an application with the Constanța Bar in 1991, in order to annul the unlawful decision which it had given in 1981 in the exceptional circumstances in which he had left the country; and that in any case he could not be blamed for the Bar's failure to submit his application to the UAR or for the UAR's failure to review the validity of the Bar's decision.

In addition, the Court notes that even if the applicant lodged his application in order to seek the annulment of the UAR's decision of 27 June 1996, he expressly requested the courts to consider the merits of his case and their consequences for the issue of his application. The applicant also



pointed out that his administrative application of 18 February 1998 to the UAR had not constituted a remedy for the clarification of his situation.

### 3. *The disclosure of the UAR's original Register of Decisions*

68. The Court reiterates that while Article 6 § 1 of the Convention guarantees the right to a fair hearing, it does not lay down any rules on the admissibility of evidence or the way it should be assessed, which are therefore primarily matters for regulation by national law and the national courts (see, *mutatis mutandis*, *Schenk v. Switzerland*, judgment of 12 July 1988, Series A no. 140, p. 29, § 46, and *Garcia Ruiz v. Spain*, no. 30544/96, § 28, ECHR 1999-I). The Court nevertheless has to ascertain whether the proceedings, including the way in which the evidence was taken, were fair as required by Article 6 § 1. Fairness must be assessed with regard to the proceedings as a whole (see *Pélissier and Sassi v. France*, no. 25444/94, §§ 45 and 46, ECHR 1999-II).

69. In the instant case, the Court observes that, by an order of 15 September 1998, the Court of Appeal reversed its decision of 7 June 1998 on disclosure, and ruled that the UAR did not have to disclose the original Register of Decisions. The court decided that, as the applicant had refused to file a criminal complaint against the UAR alleging forgery, such evidence was unnecessary for the case, and that the evidence already produced by the UAR was sufficient for it to conclude that the decision purportedly taken on 27 June 1996 had indeed been taken on that date. The applicant's objection to that decision was dismissed by the court.

70. The Court notes that the evidence produced by the UAR that made the court reverse its previous decision consisted of two photocopies, one being of an undated excerpt of the minutes of a meeting of 27 June 1996 describing the procedure leading to the impugned decision, and the other being of another page of those minutes with no link to the applicant's case. Both these pages bore the stamp of the UAR and the signature of its secretary with the words "certified copy".

71. The Court agrees with the applicant, who relies on the case of *Timurtaş v. Turkey* (no. 23531/94, § 66, ECHR 2000-VI), that a photocopied document should be subjected to close scrutiny before it can be accepted as a true copy of an original. This is particularly true in a case in which there are already a number of elements, particularly the fact that the applicant was not informed of the procedure leading to the UAR's decision of 27 June 1996 and that that decision was not notified to him until February 1998, which cast doubt on the fairness of the proceedings as a whole. It should be added that the photocopies produced by the UAR before the Court of Appeal and submitted to the Court by the Government did not carry the necessary signatures of the members of the Council of the UAR, but represented a simplified form of the original decision, signed by the secretary of the UAR with the words "certified copy".

72. The Court notes that the Government have submitted in their observations that the UAR's decision of 27 June 1996 is to be considered an official deed (*inscris oficial*), within the meaning of Article 1171 of the Romanian Civil Code, with the consequence that such a decision enjoys a presumption of authenticity that can be rebutted by lodging a criminal complaint alleging forgery. The applicant refused to lodge such a complaint, which would have considerably delayed the proceedings, as he considered it irrelevant to the outcome of his case.

73. The Court observes that, according to the interpretation of Romanian procedural law, a court may reverse, by a reasoned decision, a previous order concerning the admission of evidence. Nevertheless, in the absence of the relevant minutes (*incheieri de sedinta*) of the proceedings before the domestic courts, as requested by the Court from the respondent Government when the case was communicated, and taking into account the copies produced by the UAR during these proceedings, the Court finds that there are considerable doubts as to the manner in which the Court of Appeal reversed its order concerning the disclosure of the UAR's original Register of Decisions. The Court also considers that filing a criminal complaint alleging forgery would have imposed a disproportionate burden on the applicant, given the circumstances of the case.

#### 4. Conclusion

74. In the light of the above observations and taking into account the proceedings as a whole, the Court concludes that the requirements of fairness have not been met. Accordingly, the Court finds that there has been a violation of Article 6 § 1 of the Convention.

## II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

75. The applicant complained that the UAR's decision of 27 June 1996, confirmed by the subsequent court proceedings, represented an interference with his right to the peaceful enjoyment of his possessions that amounted to a control of the use of property incompatible with the requirements of Article 1 of Protocol No. 1 to the Convention, which reads as follows:

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

## A. Responsibility of the respondent State

### 1. Arguments of the parties

76. Referring to the case of *Costello-Roberts v. the United Kingdom*, (judgment of 25 March 1993, Series A no. 247-C), the applicant submitted that a State could not absolve itself from its obligations under the Convention by delegating those obligations to private bodies or individuals. In particular, the Court had recognised that the State's responsibility could be engaged through the activities of professional associations to which it had entrusted powers of professional regulation. According to the applicant, the UAR was an independent regulatory body constituted by statute and had the task under that statute of regulating the Romanian Bar (section 58 (b) of Law no. 51/1995). It was a public-law body, subject to the jurisdiction of administrative courts by virtue of Law no. 29/1990. Its decisions were ranked as official deeds within the meaning of Article 1171 of the Civil Code and it had been designated by the domestic case-law as an administrative authority with a structure and powers provided for by law. The applicant concluded that the State's responsibility was therefore engaged in relation to the UAR's decisions of which he complained.

77. The Government considered that the State could not be held liable under Article 1 of Protocol No. 1 for the negative consequences of a dispute between two private parties. They concluded that decisions by professional bodies, freely elected by lawyers in accordance with their profession's internal rules, could not engage the State's liability.

### 2. The Court's assessment

78. The Court reiterates the criteria set out in its case-law (see, for instance, the aforementioned *Costello-Roberts v. the United Kingdom*, p. 58, § 27; *Van der Mussele v. Belgium*, judgment of 23 November 1983, Series A no. 70, pp. 14-15, § 29), and points out that the UAR is legally constituted by Law no. 51/1995 and invested with administrative as well as rule-making prerogatives. The UAR pursues an aim of general interest in relation to the legal profession by exercising a form of public control over, for instance, registration with the Bar, and its decisions are subject to the jurisdiction of the administrative courts (see, *mutatis mutandis*, *Bota v. Romania* (dec.), no. 24057/03, 12 October 2004). The Court also takes note, as a subsidiary argument, of the classification of the UAR in the domestic case-law as a public authority that performs administrative acts and fulfils a public service role. It therefore concludes that State responsibility is engaged as a result of the administrative decisions of the UAR of which the applicant complains.

## **B. Applicability: whether the applicant had a “possession”**

### *1. Arguments of the parties*

79. The applicant maintained that the economic interests associated with his business represented a “possession” within the meaning of Article 1 of Protocol No. 1. Thus, since 1991 he had set himself up as a consultant and member of the New York Bar offering investment advice to a number of multinational corporate clients who were investing in Romania. He had been registered with the Constanța Bar, but his practice had been in Bucharest, where he had established a number of contacts with foreign investors, his entry in the Martindale-Hubbel Law Directory, which listed some of his clients, offering proof in that regard. The applicant submitted that the UAR itself had alleged, in its decision of 14 March 1998 and in replying to the questions of 30 June 1998, that he had committed fraud as he had practised as a lawyer all that time without lawful authorisation. The applicant submitted that the clients of his company, Petru Buzescu SRL, were his clients both factually, because it was he and his reputation that attracted them, and as a matter of law, because he was the sole proprietor of that company.

The applicant pointed out that it was in order to represent his clients, such as multinational companies, in court that he had sought to transfer to the Bucharest Bar in 1996, but although he was fully qualified, the UAR had unlawfully removed his right to practise. Thus, he had been unable after 1996 to establish himself as a lawyer, to provide his clients with the full range of services of a Romanian lawyer and, consequently, to “exploit” and even to develop his goodwill, the result being the loss of many clients.

80. The Government submitted that, before the administrative proceedings concerning the UAR’s decision of 27 June 1996, the applicant had not possessed any goodwill as a lawyer, an established practice or any other economic interest justifying protection under Article 1 of Protocol No. 1. They argued that the applicant’s goodwill was in fact linked to the activities of his company founded in 1994, through which the applicant provided services in law or law-related fields, except for representation in court. The Government relied on the applicant’s evidence on 27 October 1998 before the Court of Appeal and argued that this case was different from the *Van Marle and Others v. the Netherlands* and *H. v. Belgium* cases, as he had not practised as a lawyer with an established office and had not paid fees to the lawyers’ social-security fund.

### *2. The Court’s assessment*

81. Referring to its previous case law, the Court notes that, in so far as it concerns a loss of future income, the applicant’s complaint falls outside the scope of Article 1 of Protocol No. 1, which concerns only existing

possessions or legitimate expectations as to ownership (see *Ian Edgar (Liverpool) Ltd. v. the United Kingdom* (dec.), no. 37683/97, ECHR 2000-I). The applicability of Article 1 of Protocol No. 1 however extends to law practices and their goodwill, as these are entities of a certain worth that have in many respects the nature of private rights, and thus constitute assets, being possessions within the meaning of the first sentence of this provision (see *Van Marle and Others v. the Netherlands*, judgment of 26 June 1986, Series A no. 101, p. 13, § 41, and *Döring v. Germany* (dec.), no. 37595/97, ECHR 1999-VIII; see also *Wendenburg and Others v. Germany* (dec.), no. 71630/01, ECHR 2003-II).

82. The Court notes that a number of documents produced by the applicant, especially the UAR's letter of 14 March 1998, its evidence of 30 June 1998 before the Bucharest Court of Appeal and the Ministry of Foreign Affairs' letter of 3 September 1996, prove that after 1991 the applicant had developed a significant level of goodwill in relation to the legal services he provided. It observes that the applicant paid monthly Bar and UAR fees, but no fees to the lawyers' social-security fund for his assignments, being accused by the UAR on 30 June 1998 of illegally practising the profession of lawyer. The Court does not find it relevant in this context that the applicant did not have an established law office, and considers it inappropriate to distinguish how he built up his clientele, as it appears that his status as a member of the New York Bar, his activity within his company Petru Buzescu SRL, and his position as a lawyer registered with a Romanian Bar were all contributory factors. The Court finds that the applicant's existing clientele was connected to his legal practice and that he was able to "exploit" it as a lawyer. In that respect, the Court agrees with the applicant that in order to "exploit" his existing clientele, he had to provide his clients with the full range of services of a Romanian lawyer, including their representation in court, for which purpose he sought to be transferred to the Bucharest Bar.

83. The Court concludes that the applicant could claim to have had a "possession", within the meaning of Article 1 of Protocol No. 1, at the time of the UAR's decision of 27 June 1996, as regards the goodwill he had built up in Romania between 1991 and 1996.

### **C. Compliance with Article 1 of Protocol No. 1**

#### *1. Arguments of the parties*

84. The applicant maintained that the UAR's decision of 27 June 1996, upheld by the courts, amounted to a control of the use of his possessions, within the meaning of the aforementioned Article. He considered the UAR's decision of 27 June 1996 illegal, submitting that its legal basis had been removed by Law no. 51/1995; that the UAR was no longer competent,

according to the provisions of the aforementioned law at that time, to annul his registration with the Constanța Bar in 1991; that the Rules adopted by the UAR, on which the domestic courts had based their decisions, could not be relied on in addition to the law; and that the annulment of his registration had become time-barred by 1996.

85. The applicant submitted that the UAR could not have pursued a purportedly legitimate aim, given the fact that the decision of 27 June 1996 had been adopted five years after the UAR had had the opportunity to raise the nullity of his registration when the Constanța Bar had submitted its regular reports, and that the decision had been adopted in private and had not been communicated to him until February 1998. The applicant further disputed that a fair balance had been struck in his case. He submitted that on 9 June 1997 he had asked the UAR, apparently the competent body for approving his registration as a lawyer, to clarify and resolve his situation, but he had not received any answer to that request, nor to his second application of 18 February 1998. The same had occurred when he had applied on 30 May 2001 for registration with the Bucharest Bar as a lawyer registered with a foreign Bar. The applicant submitted in conclusion that the UAR could have maintained a fair balance by notifying him of its decision of 27 June 1996 in due time or by registering him as a lawyer, in order to remedy the alleged illegality of his registration with the Constanța Bar.

86. The Government reiterated the criteria set out by the Court for a measure to be qualified as State interference with the use of property, and stressed the State's considerable margin of appreciation. Concerning the legality of the UAR's decision of 27 June 1996, they submitted that the task of interpreting and applying domestic law lay primarily with the national courts, although the Court could intervene in cases of manifest abuse, a description which did not apply to the applicant's case. As to the legitimate aim of the measure, the Government asserted that the UAR's decision had been designed to promote the general interest, having been intended to ensure that all the decisions concerning admission to and exclusion from the legal profession were made by the same competent body under the relevant legislation.

87. As to the need to maintain a fair balance, the Government relied on the case-law of the Court, in particular on the judgment in the case of *Pine Valley Developments Ltd v. Ireland*, in which the Court had held that where the property right of a claimant was based on illegal measures, decisions by the national authorities putting an end to the illegal use of property did not call for compensation. They concluded that the UAR's decision of 27 June 1996 had not been disproportionate in any respect, since it had been the only way to remedy the illegality of the Constanța Bar's decision to register the applicant.

## 2. The Court's assessment

88. The Court finds that, in the instant case, the annulment of the applicant's registration with the Constanța Bar led to a loss of that part of his clientele which was interested in his ability to provide the full range of services of a Romanian lawyer, and hence to a loss of income. Consequently, there was an interference with his right to the peaceful enjoyment of his possessions.

This was a measure entailing control of the use of his property, which falls to be considered under the second paragraph of Article 1 of Protocol No. 1 (see, *mutatis mutandis*, *Tre Traktörer AB v. Sweden*, judgment of 7 July 1989, Series A no. 159, p. 22, § 55, and *Döring v. Germany* (dec.), no. 37595/97, ECHR 1999-VIII).

89. In order to be compatible with the general rule set forth in the first sentence of the first paragraph of Article 1, in the light of which the second paragraph is to be construed, such an interference must strike a "fair balance" between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights (see *Sporrong and Lönnroth v. Sweden*, judgment of 23 September 1982, Series A no. 52, p. 26, § 69). Furthermore, the issue of whether a fair balance has been struck "becomes relevant only once it has been established that the interference in question satisfied the requirement of lawfulness and was not arbitrary" (see *Iatridis v. Greece* [GC], no. 31107/96, § 58, ECHR 1999-II, and *Beyeler v. Italy* [GC], no. 33202/96, § 107, ECHR 2000-I).

90. As to the lawfulness of the interference, the Court notes that the domestic courts decided that Rule 130 of the Rules adopted by the UAR, which were published in the Official Gazette of Romania, did not supplement Law no. 51/1995, and that a combined reading of these provisions constituted a legal basis for the UAR's decision of 27 June 1996. Furthermore, the courts held that, as his readmission to the Constanța Bar in 1991 had been clearly void, its annulment in 1996 was not time-barred.

91. The Court notes that Law no. 51/1995 in fact removed the UAR's powers, expressly provided for in Legislative Decree no. 90/1990, to annul Bar decisions. It was not until 6 March 2001, following an amendment of Law no. 51/1995, that such a power was again expressly provided for in section 63 (i) of Law no. 51/1995. The Court considers that such an amendment would have been meaningless if the UAR had, between 1995 and 2001, in accordance with the original provisions of that law, had the legal power to annul Bar decisions on grounds of illegality.

92. The Court reiterates that its power to review compliance with domestic law is limited. It is in the first place for the national authorities to interpret and apply the domestic law (see *Tre Traktörer AB v. Sweden*, cited above, p. 23, § 58). Notwithstanding this, the principle of lawfulness presupposes that the applicable provisions of domestic law are sufficiently accessible, precise and foreseeable in their application. In that regard, the

Court is required to verify that the manner in which domestic law is interpreted and applied – even where the requirements have been complied with – does not entail consequences at variance with Convention standards (see *Beyeler v. Italy*, cited above, §§ 109-110).

From that perspective, assuming that the UAR's decision of 27 June 1996 was not arbitrary and therefore incompatible with the principle of lawfulness, the Court finds that the element of uncertainty and imprecision in Law no. 51/1995 as regards the UAR's power to annul Bar decisions, and the considerable latitude the authorities afford in that regard, by means of the UAR's Rules, are material considerations to be taken into account in determining whether the measure complained of struck a fair balance (see, *mutatis mutandis*, *Beyeler v. Italy*, cited above, § 110).

93. As to the legitimate aim of the interference, the Court considers that the interference pursued an aim that was in the general interest, since it appeared to be legitimate for the UAR to review applications for (re)admission to bars. The purpose of such a review was therefore to protect the public by ensuring the competence of those carrying on the legal profession. The excessive delay in delivering the decision of 27 June 1996 and notifying it to the applicant could not be considered in itself to have stripped the UAR's decision of its legitimate aim.

94. As to the proportionality of the interference, the Court notes that, as the applicant's registration with the Constanța Bar took place in 1991 and as, according to Article 5 § 3 (j) of Legislative Decree no. 90/1990, the UAR at the time had a legal obligation to review admissions to bars, which it did not do in the applicant's case until 1996, the interference complained of was serious, depriving the applicant, five years after his readmission to the Bar, of his right to practise as a lawyer. The UAR could have taken the necessary measures, in answer to the applicant's requests of 9 June 1997 and 18 February 1998, to readmit him to the profession, or at least have indicated to him the procedure to be followed in order to be readmitted, as it was purportedly the only competent body to rule on that issue.

95. As regards the domestic courts, the Court notes that they ruled exclusively on the question of the legality of the UAR's decision of 27 June 1996 on the basis of the doctrine of *ultra vires*, and that the Supreme Court pointed out that the annulment of the applicant's registration with the Constanța Bar on grounds of illegality did not remove his right to apply to the competent authority to decide on his application for re-registration as a member of the Bar, not noticing that the applicant had already applied in vain to the UAR in order to clarify and resolve his situation.

96. The Court reiterates that there must be a reasonable relationship of proportionality between the means employed and the aims pursued (see *Tre Traktörer AB v. Sweden*, cited above, p. 23, § 59). It does not dispute the purpose or usefulness of the doctrine of *ultra vires*, which provides an



important safeguard against abuse of power by local or statutory authorities acting beyond the competence given to them under domestic law. Nonetheless, it is not persuaded that the application of the doctrine in the present case complied with the principle of proportionality (see, *mutatis mutandis*, *Stretch v. the United Kingdom*, no. 44277/98, § 38, 24 June 2003).

97. In the instant case, the Court notes, first, that the applicant submitted before the domestic courts that he could not be blamed for the Constanța Bar's failure to submit his application to the UAR in 1991, or for the UAR's failure to review the validity of the Bar's decision, and that he had expressly requested them to consider the merits of his case and their consequences for the outcome of his application. It observes, secondly, that the applicant had already requested the UAR, in particular on 9 July 1997, "to clarify and resolve" his situation and to advise him of the manner in which his request could be resolved, but he did not receive any answer. Moreover, after the litigation with the UAR, on 30 May 2001 the applicant filed an application with the Bucharest Bar in order to be admitted to practise as a lawyer simultaneously registered with a foreign Bar at that time, but to date he has not received any reply. It was not until February 2004 that the UAR and the Bucharest Bar decided to consider the applicant's case and to restore his status as a lawyer.

98. In the light of the circumstances of the case, the Court finds that the annulment of the applicant's registration with the Constanța Bar, and the domestic courts' conclusion that he could have lodged a fresh application with the UAR for readmission to the Bar as a Romanian lawyer, do not represent a proportionate measure in conformity with the requirements of Article 1 of Protocol No. 1 to the Convention, given that that body annulled his registration as a lawyer after a delay of five years and has constantly refused to resolve his situation since then. There has therefore been a violation of that provision.

### III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

99. 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

### 1. *Pecuniary damage*

#### (a) The parties' submissions

100. The applicant submitted that, given his inability to register as a member of the Bucharest Bar because of the UAR's decision of 27 June 1996, he had lost substantial assignments and had been unable to develop his existing practice or build on the network of contacts which he had established, the result being a loss of business opportunities. He also contended that, because he was not a registered Romanian lawyer, he was deprived of revenue which would have accrued if he had been allowed to practise as a lawyer. The applicant gave some examples of requests for legal assistance he had had to turn down and of clients who had decided to drop their assignments with him for that reason in July 1995, June 1998, October 2000 or February 2002.

The applicant maintained that it would be too formal an approach to make a distinction between him and his company, whose sole shareholder and proprietor he was, as regards his existing practice, and pointed out that he carried on business through his own companies for the very reason that he was not entitled to present himself as a lawyer.

101. In reply to the Government's arguments, the applicant submitted that he had decided in 1996 to practise as a lawyer in Bucharest, because only Law no. 51/1995 recognised the right of members of foreign bars to practise legally in Romania, thus expressly invalidating the statement of the chairman of the UAR as expressed in his letter of 5 November 1990.

102. The applicant pointed out that the UAR's and the Bucharest Bar's decisions of February 2004 restoring his previous status as a lawyer would become effective only after they were notified to him and contended that neither the UAR nor the Government had offered any apology for the delay in reaching those decisions.

The applicant finally stated that he was unable to quantify his pecuniary loss and invited the Court to make an award on an equitable basis.

103. The Government pointed out that the applicant was referring in fact to the clientele of his company and that, as he had not actually practised as an established lawyer before the UAR's decision of 27 June 1996, his clientele in that capacity was only a potential one, which he could have built up. In these circumstances, the Government considered that the existence and development of the applicant's clientele were extremely uncertain and that the loss of clients after 1996 was not proved. Submitting an accountant's expert report, they submitted that the applicant's company had not suffered financial loss as a result of the applicant's losing his status as a lawyer.

The Government concluded that, in any event, in the assessment of the damage suffered by the applicant, consideration should be given to the UAR's and the Bucharest Bar's decisions of February 2004, after whose notification the applicant would be able to practise as a lawyer registered with the Bucharest Bar.

**(b) The Court's assessment**

104. As regards the applicant's claims for pecuniary loss, the Court's case-law establishes that there must be a clear causal connection between the damage claimed by the applicant and the violation of the Convention and that this may, in the appropriate case, include compensation in respect of loss of earnings (see, among other authorities, *Barberà, Messegue and Jabardo v. Spain* (Article 50), judgment of 13 June 1994, Series A no. 285-C, pp. 57-58, §§ 16-20, and *Stretch v. the United Kingdom*, cited above, § 47).

105. A precise calculation of the sums necessary to make complete reparation (*restitutio in integrum*) in respect of the pecuniary losses suffered by applicants may be prevented by the inherently uncertain character of the damage flowing from the violation (see *Young, James and Webster v. the United Kingdom* (Article 50), judgment of 18 October 1982, Series A no. 55, p. 7, § 11). An award may still be made notwithstanding the large number of imponderables involved in the assessment of future losses, though the greater the lapse of time involved the more uncertain the link becomes between the breach and the damage. The question to be decided in such cases is the level of just satisfaction, in respect of both past and future pecuniary loss, which it is necessary to award to each applicant, the matter to be determined by the Court at its discretion, having regard to what is equitable (see *Lustig-Prean and Beckett v. the United Kingdom* (just satisfaction), nos. 31417/96 and 32377/96, §§ 22-23, 25 July 2000, and *Stretch v. the United Kingdom*, cited above, §§ 47-48).

106. The Court has found above that, in the circumstances of this case, there has been an unjustified interference with the applicant's possessions, owing to the disproportionate consequences of the invalidation of his status as a lawyer by the UAR's decision of 27 June 1996. With regard to the UAR's and the Bucharest Bar's decisions in February 2004, it notes that, according to the applicant's submissions, which have not been contested by the Government, the Bucharest Bar's decision has not yet been notified to the applicant so that he may register as a lawyer with that Bar.

107. Referring to its conclusion concerning the existence of an interference (see paragraph 88 above), the Court considers that the applicant incurred some pecuniary damage as a consequence of the loss of his status as a lawyer, but finds it difficult to ascertain the precise impact of this on the applicant's goodwill, having regard to the fact that he continued to provide certain types of legal services to the clientele of his company.

Therefore, taking into account the number of imponderables involved in the assessment of the applicant's loss, the Court decides on an equitable basis to award him 7,000 euros (EUR) for pecuniary damage.

## *2. Non-pecuniary damage*

### **(a) The parties' submissions**

108. The applicant submitted that he had suffered distress, anguish and frustration at being unable to practise his profession as a lawyer, and at what he saw as continued victimisation for his stand against the communist authorities in 1981. He referred in particular to the secret withdrawal of his Bar membership, to the failure of the UAR to respond to his requests and to the failure of the domestic courts to deal properly with his claims, alleging that he had experienced a feeling of helplessness on account of the manifest denial by all possible means of his right to practise.

109. The Government disputed that the applicant had suffered non-pecuniary damage as regards the loss of his status as a Romanian lawyer, mainly on the ground that he had continued to be a member of the New York Bar.

### **(b) The Court's assessment**

110. The Court finds that the applicant suffered distress and frustration in relation to the proceedings concerning the UAR's decision of 27 June 1996 and to the loss of his status as a Romanian lawyer, which is not sufficiently compensated by the finding of a violation of the Convention. Therefore, on an equitable basis, it awards him EUR 5,000 for non-pecuniary damage.

## **B. Costs and expenses**

### *1. The parties' submissions*

111. As regards the domestic proceedings, which he considered to be directly linked to the violations of his rights under the Convention, the applicant firstly claimed 11,966 United States dollars (USD) for the fees charged by his lawyer S.L., corresponding, *inter alia*, to the time spent reviewing issues, documentation, drafting and filing the legal action and appeals, and attending hearings before the domestic courts. In addition, the applicant claimed EUR 20,063 for his fees chargeable in connection with the domestic proceedings, corresponding to 80.15 hours of work at an hourly rate of EUR 250, entailing conferences and telephone conferences with his lawyer S.L., reviewing issues, documentation and drafting legal applications and appeals.

112. With regard to the proceedings before the Court, the applicant claimed 22,120 pounds sterling (GBP) for 91.5 hours' work by his lawyer, a partner of a law firm in London, a bill and a detailed breakdown of his costs being submitted to the Court. The hourly rates charged by his lawyer's office were GBP 200 for a partner, rising to GBP 220 in 2002 and to GBP 250 in 2004, and GBP 80 for a trainee lawyer, rising to GBP 90 in 2002. According to the detailed time-sheet, his lawyer's office spent around 42 hours on the preparation and the drafting of his application to the Court, around 33 hours on the preparation of the observations and the supplementary observations on the admissibility and the merits, and around 15 hours on the drafting of the observations concerning Article 41. In addition, the applicant claimed EUR 27,375 for his fees, chargeable at an hourly rate of EUR 250, in connection with the 189.5 hours he himself had spent on the preparation of his application to the Court and of his subsequent observations. Claiming that he had incurred further costs in the preparation of his reply to the Government's observations on the merits, the applicant also submitted to the Court a copy of an invoice for the amount of USD 800 charged by the Romanian lawyer S.L. in connection with the proceedings before the Court.

113. As regards the domestic proceedings, the Government underlined that the fees claimed by the applicant for his own and his lawyer's work were exorbitant, unreasonable and unjustified for proceedings that were not extremely complex. In addition, they considered that the amount claimed by the applicant for his own work could possibly be taken into account under the head of pecuniary damage.

With regard to the proceedings before the Court, the Government agreed to the reimbursement of the costs and expenses actually and necessarily incurred by the applicant, if they were supported by evidence and reasonable as to their quantum, but disputed, without giving any details, that his claims under this head complied with the above requirements.

## *2. The Court's assessment*

114. The Court reiterates that only such costs and expenses as were actually and necessarily incurred in connection with the violation or violations found, and are reasonable as to quantum, are recoverable under Article 41 (see, for example, *Şahin v. Germany* [GC], no. 30943/96, § 105, ECHR 2003-VIII). It follows that, in accordance with its case-law, it cannot make an award under this head in respect of the hours the applicant himself spent working on the case, as this time does not represent monetary costs actually incurred by him (see *Robins v. the United Kingdom*, judgment of 23 September 1997, *Reports* 1997-V, p. 1812, § 44, and *Narinen v. Finland*, no. 45027/98, § 50, 1 June 2004). The Court finds that the specific circumstances of the instant case, namely the applicant's status as a lawyer, do not change this approach.

115. With regard to the domestic proceedings, the Court agrees with the Government that the applicant's claims concerning the fees of S.L. are excessive and unjustified, given that the invoice it has received in relation to that lawyer concerns the proceedings before the Court and that no evidence of his lawyer's attendance at the domestic courts' hearings or of his workload has been submitted, except for a copy of his written submissions before the Supreme Court, signed by him. Seeing that the applicant has nevertheless incurred some costs and expenses in connection with his defence in the domestic proceedings, as is reflected by the aforementioned considerations, and that those proceedings were relevant to the complaints which led it to find a violation, the Court finds it reasonable to award the applicant, on an equitable basis, EUR 300 under this head.

116. As regards the costs of the proceedings before the Court, it observes that the Government have not explained why they considered that these costs were not actually and necessarily incurred by the applicant, regard being had to the copy of the invoice, the bill and the detailed breakdown of costs submitted by the applicant's lawyers. Nevertheless, the Court, taking into account the complexity of the instant case and the evidence in its possession, finds some weight in the Government's submission and considers that the legal costs and expenses for which the applicant claimed reimbursement cannot all be considered to have been necessarily incurred or to be reasonable as to quantum. In these circumstances, and deciding on an equitable basis, the Court awards the applicant EUR 11,700 for the legal costs and expenses incurred in connection with the Convention proceedings.

117. In sum, a total amount of EUR 12,000 is awarded in respect of costs and expenses, plus any tax that may be chargeable on that amount.

### **C. Default interest**

118. 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. *Holds* that there has been a violation of Article 6 § 1 of the Convention as regards the fairness of the proceedings concerning the UAR's decision of 27 June 1996;
2. *Holds* that there has been a violation of Article 1 of Protocol No. 1;

3. *Holds*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts:

(i) EUR 7,000 (seven thousand euros) in respect of pecuniary damage, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement;

(ii) EUR 5,000 (five thousand euros) in respect of non-pecuniary damage, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement;

(iii) EUR 12,000 (twelve thousand euros) in respect of costs and expenses;

(iv) any tax that may be chargeable on the above amounts;

(b) 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 24 May 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. NAISMITH  
Deputy Registrar

J.-P. COSTA  
President