

## **Resolution CM/ResDH(2011)29<sup>1</sup>**

### **Execution of the judgments of the European Court of Human Rights in five cases against Romania concerning the failure of criminal courts to hear direct evidence from the applicants in proceedings in which they were convicted**

(see details of the cases in Appendix)

The Committee of Ministers, under the terms of Article 46, paragraph 2, of the Convention for the Protection of Human Rights and Fundamental Freedoms, which provides that the Committee supervises the execution of final judgments of the European Court of Human Rights (hereinafter “the Convention” and “the Court”);

Having regard to the judgments transmitted by the Court to the Committee once they had become final;

Recalling that the violations of the Convention found by the Court in these cases concern the unfairness of criminal proceedings against the applicants for various offences on account of the failure of the competent courts to hear direct evidence from the applicants (violations of Article 6, paragraph 1) (see details in Appendix);

Having invited the government of the respondent state to inform the Committee of the measures taken to comply with its obligation under Article 46, paragraph 1, of the Convention to abide by the judgments;

Having examined the information provided by the government in accordance with the Committee’s Rules for the application of Article 46, paragraph 2, of the Convention;

Having satisfied itself that the respondent state paid the applicants the just satisfaction provided in the judgments (see details in Appendix),

Recalling that a finding of violations by the Court requires, over and above the payment of just satisfaction awarded in the judgments, the adoption by the respondent state, where appropriate, of

- individual measures to put an end to the violations and erase their consequences so as to achieve as far as possible *restitutio in integrum*; and
- general measures preventing similar violations;

DECLARES, having examined the measures taken by the respondent state (see Appendix), that it has exercised its functions under Article 46, paragraph 2, of the Convention in these cases and

DECIDES to close the examination of these cases.

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<sup>1</sup> Adopted by the Committee of Ministers on 10 March 2011 at the 1108th Meeting of the Ministers’ Deputies

## Appendix to Resolution CM/ResDH(2011)29

### Information on the measures taken to comply with the judgments in five cases against Romania concerning the failure of criminal courts to hear evidence from the applicants in proceedings in which they were convicted

#### Introductory case summary

All these cases concern court's failure to hear direct evidence from the applicants, who were charged with various criminal offences (violations of Article 6, paragraph 1). In the cases of Constantinescu, Marin, Mircea and Mihaiu, the applicants were convicted by the appellate courts in 1994, 2001, May 2002 and June 2002 respectively, without being heard. All the applicants had been previously acquitted by the lower courts. The European Court found that appellate courts had full jurisdiction in the particular circumstances of these cases and were called upon "to make a full assessment of the question of the applicants' guilt or innocence". Against this background and having regard in particular to the applicants' acquittal by the lower courts, the European Court held that the appellate courts' failure to hear direct evidence from the applicants when they determined the criminal charges against them and found them guilty, deprived the applicants of the opportunity to defend themselves and hence of a fair trial.

In the case of Ilişescu and Chiforec, the applicants' conviction at first instance was upheld on appeal in 2001. The applicants were not heard at either stage of the proceedings. The European Court found that the failure to hear evidence from the applicants at first instance was in breach of the domestic law and that the last-instance court, which had full jurisdiction, failed to remedy such irregularity upon appeal. Thus, since there was no indication that the applicants had waived their right to defend themselves, these omissions affected the fairness of the proceedings.

#### I. Payments of just satisfaction and individual measures

##### a) Details of just satisfaction

Name and application number	Pecuniary damage	Non-pecuniary damage	Costs and expenses	Total
Constantinescu (28871/95), judgment of 27/06/2000	15 000 French francs		20 000 French francs (less 18,806,10 French francs granted as legal aid by the Council of Europe)	<b>16 193.90 French francs</b>
<b>Paid on 25/09/2000</b>				
Ilişescu and Chiforec (77364/01), judgment of 01/12/2005, final on 01/03/2006	-	3 000 EUR	162 EUR	<b>3 162 EUR</b>
<b>Paid on 26/05/2006</b>				
Mircea (41250/02), judgment of 29/03/2007, final on	-	3 000 EUR	2 000 EUR	<b>5 000 EUR</b>

29/06/2007				
<b>Paid on 04/10/2007</b> <b>(applicant waived interests in view of small amount)</b>				
Mihaiu (42512/02), judgment of 04/11/2008, final on 04/02/2009	-	-	-	-
<b>No just satisfaction requested</b>				
Marin (30699/02), judgment of 03/02/2009, final on 03/05/2009	-	1 500 EUR	100 EUR	<b>1 600 EUR</b>
<b>Paid on 27/07/2009</b>				

## b) Individual measures

**1) Constantinescu:** Following an extraordinary appeal, the applicant was acquitted by the Supreme Court of Justice on 4 February 2000. The European Court awarded him just satisfaction in respect of pecuniary and non-pecuniary damage as well as costs and expenses.

**2) Ilişescu and Chiforec:** The European Court awarded the applicants just satisfaction in respect of non-pecuniary damage and costs and expenses. On 12 June 2006, the Government Agent informed the applicants of the possibility to apply for reopening of the proceedings within a year of the publication of the European Court's judgment in the *Official Journal*, as prescribed by law at the material time. On 18 September 2006, the Government Agent further informed the applicants that the judgment had been published on 15 September 2006. On 8 November 2007, the applicants lodged applications to reopen the proceedings under Article 408<sup>1</sup> of the Code of Criminal Procedure, which the High Court of Cassation and Justice dismissed as lodged out of time.

**3) Mircea:** The European Court awarded the applicant just satisfaction in respect of non-pecuniary damage and costs and expenses. The Court found that due to the applicant's poor medical condition, the domestic courts had granted her several suspensions of the execution of her two-year prison term (§ 27 of the judgment). Based on the European Court's judgment, the applicant lodged an application to reopen the proceedings under Article 408<sup>1</sup> of the Code of Criminal Procedure. The High Court of Cassation and Justice allowed the reopening and the applicant was acquitted upon re-trial.

**4) Mihaiu:** The applicant made no claim in respect of just satisfaction. It was open to the applicant to request the reopening of the criminal proceedings, in conformity with Article 408<sup>1</sup> of the Code of Criminal Procedure. According to the information at the authorities' disposal, no such request had been made.

**5) Marin:** The European Court awarded the applicant just satisfaction in respect of non-pecuniary damage and costs and expenses. It was open to the applicant to request the reopening of the criminal proceedings, in conformity with Article 408<sup>1</sup> of the Code of Criminal Procedure. According to the information at the authorities' disposal, no such request had been made.

In the circumstances presented above, no further individual measure seems necessary in these cases.

## II. General measures

The provisions of the Code of Criminal Procedure regulating the examination of accused persons were amended by Law No. 356/2006, which entered into force on 7 September 2006. Under the provisions currently in force, the appellate courts are compelled to hear direct evidence from the accused when they were not heard by the first-instance court or when the first-instance court did not convict them. When three levels of jurisdictions are available, the courts of last instance are compelled to hear the accused when they were not heard by the first-instance and the second-instance court or neither the first-instance nor the second-instance court convicted them.

At the same time, domestic courts' attention was drawn to the wider requirement deriving from the European Court's judgments in these cases, namely their obligation to hear evidence from the accused whenever under the domestic law they have full jurisdiction and are called upon fully to assess the question of the accused persons' guilt or innocence. Thus, the translations of the judgments in the cases of Constantinescu and Ilişescu and Chiforec were published in the *Official Journal* in May 2001 and September 2006 respectively. Moreover, the judgments in the cases of Ilişescu and Chiforec and Mircea were sent to the Superior Council of Magistracy, with a view to their dissemination to all domestic courts and a recommendation that they should be discussed during the seminars for the continuing education of judges. In addition, a course on the European Court's case-law was introduced in the programme for the training of judges. Relying on these measures, the government considers that, in view of the direct effect of the European Convention and of the case-law of the European Court in Romanian law, all the requirements of Article 6, paragraph 1, resulting from these judgments will be taken into account in the future, preventing new, similar violations.

### **III. Conclusions of the respondent state**

The government considers that no further individual measure is required in these cases, that the general measure taken will prevent similar violations and that Romania has thus complied with its obligations under Article 46, paragraph 1, of the Convention.