



## Unjustified case-law discrepancy in decision of High Court of Cassation and Justice

In today's **Chamber judgment**<sup>1</sup> in the case of **S.C. Uzinexport S.A. v. Romania** (application no. 43807/06) the European Court of Human Rights held, unanimously, that there had been:

**a violation of Article 6 § 1 (right to a fair hearing)** of the European Convention on Human Rights.

The case concerned the dismissal of a claim by a company seeking to obtain default interest for late payment in respect of a sum owed to it by the State.

The Court took the view that there was no reason for the High Court of Cassation and Justice to have found the company's claim out of time, when faced with sufficiently clear case law and legal standards which contradicted such a finding. Observing that the role of a supreme court was to resolve any divergences in case-law that were inherent in any judicial system, it concluded that the High Court's decision in the applicant's case was arbitrary and incompatible with the principle of legal certainty.

### Principal facts

The applicant, S.C. Uzinexport S.A., is a Romanian company with its registered office in Bucharest.

The applicant company's capital was held by the State until 1997, when it was privatised and its capital transferred to private investors. The company then complained of a loss resulting from the fact that in 1990 the Ministry of Finance had assigned part of its receivables for a sum that was lower than that initially agreed.

The company brought two sets of proceedings for damages against the Ministry of Finance, which was ordered, in judgments of 31 May 1999 and 1 February 2000, to pay it a total of 20 million US dollars in damages. In February 2005 the applicant company also sought interest from the Ministry of Finance as a result of the delayed enforcement of those judgments.

As regards the enforcement of the 31 May 1999 judgment, the High Court of Cassation and Justice found that the applicant company was entitled to default interest. However in a final judgment of 23 May 2006, it dismissed the request concerning the enforcement of the judgment of 1 February 2000. It took the view that the right to interest was ancillary to the debt established by that judgment, finding that the right to claim interest was subject to the same time limit as the capital, namely three years from the date on which the judgment in respect of the debt had become final.

### Complaints, procedure and composition of the Court

Relying on Article 6 § 1 (right to a fair hearing), the applicant company complained of a breach of the principle of legal certainty on account of the dismissal of its claim by the final judgment of 23 May 2006 of the High Court of Cassation and Justice. It also complained about that dismissal under Article 1 of Protocol No. 1 (protection of property).

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day. Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: [www.coe.int/t/dghl/monitoring/execution](http://www.coe.int/t/dghl/monitoring/execution).

The application was lodged with the European Court of Human Rights on 19 October 2006.

Judgment was given by a Chamber of seven judges, composed as follows:

Josep Casadevall (Andorra), *President*,  
Luis López Guerra (Spain),  
Ján Šikuta (Slovakia),  
Dragoljub Popović (Serbia),  
Johannes Silvis (the Netherlands),  
Valeriu Grițco (the Republic of Moldova),  
Iulia Antoanella Motoc (Romania),

and also Stephen Phillips, *Section Registrar*.

## Decision of the Court

### Article 6 § 1

The Court observed that the High Court's judgment of 23 May 2006, which had dismissed the applicant company's claim as time-barred, appeared to be particularly incompatible with the case-law of the High Court itself and the settled case-law of the lower courts, according to which payments of default interest were successive acts of performance in respect of which the limitation period was therefore different from that of the principal claim. Moreover, in a similar dispute, the High Court had granted such a claim.

While the possibility of divergence in case-law was an inherent consequence of any judicial system based on a network of trial and appeal courts with authority over the area of their territorial jurisdiction, the role of a supreme court was precisely to resolve such conflicts. Thus, where the highest court delivered contradictory decisions without good reason, it became a source of legal uncertainty itself and was capable of undermining the public's confidence in the judicial system.

The Court noted that neither the High Court nor the Government had argued that the judgment of 23 May 2006 constituted a development of case-law or that it was based on different facts allowing for an alternative approach.

The Court therefore took the view that there was no reason for the High Court of Cassation and Justice to have found the applicant company's claim out of time and that its judgment was arbitrary and incompatible with the principle of legal certainty. It held that there had been a violation of Article 6 § 1.

### Article 1 of Protocol No. 1

Having regard to the finding of a violation of Article 6 § 1, the Court found that it did not need to examine whether there had also been a violation of Article 1 of Protocol No. 1.

### Just satisfaction (Article 41)

The Court held that Romania was to pay the applicant company 94,933 euros in respect of costs and expenses.

*The judgment is available only in French.*

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