

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

FOURTH SECTION

CASE OF CIOCODEICĂ v. ROMANIA

(Application no. 27413/09)

JUDGMENT

STRASBOURG

16 January 2018

FINAL

16/04/2018

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Ciocodeică v. Romania,

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

Ganna Yudkivska, *President,*
Vincent A. De Gaetano,
Paulo Pinto de Albuquerque,
Faris Vehabović,
Egidijus Kūris,
Iulia Motoc,
Marko Bošnjak, *judges,*

and Marialena Tsirli, *Section Registrar,*

Having deliberated in private on 29 November 2016 and on 12 December 2017,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 27413/09) 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, Ms Maria Ciocodeică ("the applicant"), on 30 April 2009.

2. The applicant, who had been granted legal aid, was represented by Mr A. Pintilie, a lawyer practising in Timişoara. The Romanian Government ("the Government") were represented by their Agent, Ms C. Brumar, of the Ministry of Foreign Affairs.

3. The applicant, relying on Articles 6 § 1 and 13 of the Convention as well as on Article 1 of Protocol No. 1 to the Convention, alleged that the State had failed to effectively assist her in enforcing the final judgment awarding her salary entitlements and that she did not have an effective remedy at her disposal by which to obtain the impugned enforcement.

4. On 18 November 2014 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1969 and lives in Timişoara.

A. Proceedings under the Labour Code

6. In 2004 the applicant lodged a civil action against her employer, a private company, C.G.H.T. ("the company"), seeking the revocation of its decision of 17 October 2003 to dismiss her, and claiming various salary entitlements.

7. On 29 April 2004 the Timiș County Court dismissed her action as ill-founded. The applicant appealed.

8. In a final judgment of 29 September 2004 ("the judgment"), the Timișoara Court of Appeal allowed the applicant's appeal. It ordered the company to revoke its dismissal decision and to pay the applicant pecuniary damages in the form of all her salary entitlements from 17 October 2003 until the pronouncement of the final judgment, updated and index-linked. The domestic court also awarded the applicant the costs and expenses incurred in the proceedings.

B. Enforcement proceedings

9. On 15 November 2004 the Timiș County Court validated the judgment (*învestire cu formulă executorie*), pursuant to Article 374 of the Romanian Code of Civil Procedure (hereinafter "the RCCP"), as in force at the time (see paragraph 37 below).

10. The applicant instituted enforcement proceedings on 21 January 2005, requesting the bailiffs' office M.S.R. & S.A.I. ("the bailiff") to enforce the judgment.

11. On 26 January 2005 the bailiff issued a notice of payment (*somație*) and served it on the company.

12. According to a report of 11 February 2005 issued by the bailiff, the bailiff and the applicant's lawyer visited the company's premises. As the company's legal representative was not present, the bailiff granted the company a further five days in which to execute the final judgment of their own accord.

13. However, the company refused to fulfil its obligations. Moreover, it lodged a complaint seeking to have the enforcement proceedings annulled, pursuant to Article 399 of the RCCP, as in force at the time (see paragraph 39 below). During those proceedings and at the company's request, on 24 February 2005 the Timișoara District Court ordered the suspension of the

enforcement proceedings until a final judgment was given; the suspension was made subject to payment of a deposit of 4,000,000 Romanian lei (ROL), namely approximately 90 euros (EUR).

14. In response, on 16 May 2005 the applicant brought urgent proceedings seeking to have the impugned suspension lifted. She argued that the matter was urgent because she needed to obtain the salary entitlements that would allow her to provide for herself and her infant.

15. In a judgment of 18 May 2005 the Timișoara District Court dismissed the applicant's request, holding that she had not proved the existence of any imminent damage, so as to justify the urgency of the request.

16. On 2 June 2005 the Timișoara District Court allowed the company's complaint against the enforcement proceedings. The court held that the procedural requirements had not been thoroughly complied with in so far as the bailiff had failed to serve the company with a copy of the enforceable judgment.

17. The applicant lodged an appeal on points of law against the court's judgment. On 6 October 2005 the Timiș County Court dismissed the applicant's appeal on points of law as ungrounded. The first-instance judgment thus became final.

18. The company lodged another request seeking to obtain the annulment of the restriction order (*anularea măsurii de poprire*) issued by the bailiff in respect of its bank accounts. On 21 April 2005 the Timișoara District Court allowed the request, in so far as the restriction order had been issued subsequent to the suspension of the enforcement proceedings ordered by the court (see paragraph 13 above).

19. In the meantime, on 29 June 2005, the bailiff issued another notice of payment. On 4 July 2005 it was posted, together with the enforceable judgment, at the company's main entrance.

20. On 2 November 2005 the bailiff received a letter from the applicant, in which she enquired whether the company had complied with the outstanding judgment. The bailiff replied in the negative on 4 November 2005.

21. In so far as this was the last exchange of information between the applicant and the bailiff concerning the impugned enforcement procedure, and in view of the obligations imposed by law on the creditor, who was required to play a constantly active role throughout the enforcement procedure, on 28 May 2007 the bailiff issued an official report, noting that, under Article 389 of the RCCP as in force at the time, the procedure had become time-barred ("*perimarea executării*"; see paragraph 38 below). It is not clear whether that report was communicated to the applicant or not.

C. Other proceedings brought by the applicant seeking to have the judgment enforced

1. Action lodged by the applicant in order to speed up the enforcement proceedings

22. On 5 May 2005 the applicant lodged a complaint before the Timișoara District Court seeking to obtain a court order for immediate enforcement of the judgment, pursuant to Article 580^3 of the RCCP as in force at the time (see paragraph 40 below).

23. In a decision of 18 August 2005 the Timișoara District Court allowed the applicant's complaint and ordered the company to pay a coercive fine of ROL 500,000 per day until it fulfilled its obligations.

24. An appeal by the company against that decision was allowed on 16 December 2005 by the Timiș County Court. The court held that the coercive fine had the nature of a civil penalty aimed at securing the enforcement of a personal obligation which could not be otherwise executed, as provided for by Article 580^3. However, the payment of the company's debt could be enforced with the assistance of a bailiff; therefore the applicant's complaint was ill-founded.

2. Complaint lodged by the applicant with the Ministry of Justice

25. On 12 July 2005 the applicant complained to the Minister of Justice about the outcome of the judgment of 2 June 2005 (see paragraph 16 above). The complaint was lodged under the provisions of Law no. 303/2004, defining the framework for judges' disciplinary and criminal responsibility and the specific authorities empowered to initiate such proceedings.

26. On 24 August 2005 the applicant's complaint was forwarded to the Timișoara Court of Appeal. On 5 September 2005 the Timișoara Court of Appeal noted that the impugned proceedings had been terminated by a judgment that was final and therefore not subject to appeal.

D. Criminal proceedings lodged by the applicant

27. In 2005 the applicant complained to different State authorities that the company's representatives had failed to execute the judgment. She relied on Articles 277, 278 and 280 of the Labour Code and Article 83 of Law no. 168/1999 regarding the resolution of labour disputes (see paragraphs 43-44 below).

28. On 5 December 2006 a criminal investigation was initiated against M.D., the company's administrator, for refusal to execute the judgment.

On 4 February 2008 the prosecutor's office at the Timișoara District Court decided to discontinue the proceedings against M.D. and fined him

RON 1,000, namely approximately EUR 250. The prosecutor investigating the case found that M.D.'s actions could not be classified as an offence.

29. A complaint lodged by the applicant against that decision was dismissed on 8 April 2008 by the senior prosecutor at the Timişoara District Court.

30. On 2 June 2008 both the applicant and M.D. appealed against the prosecutors' decisions before the Timişoara District Court. The court dismissed both appeals on 17 October 2008. It held that the applicant's appeal had been lodged outside the time-limit. With regard to M.D.'s appeal, it reiterated that even though he had not executed the judgment, his actions could not be classified as an offence and, therefore, the administrative fine had been fair.

31. In a final judgment of 28 January 2009 the Timiş County Court dismissed appeals on points of law lodged by the applicant and M.D.

E. Closing down of the company

32. On 5 August 2014 the company's two shareholders decided that the company should be liquidated (*dizolvare*), in accordance with the provisions of Law no. 31/1990 on trading companies. At their request, the Companies Registration Office (*Oficiul Registrului Comerţului*) decided on 7 August 2014 to publish the shareholders' decision in the Romanian Official Journal. The decision was published on 26 August 2014, in accordance with the provisions of Emergency Government Ordinance no. 116/2009 regulating the registration of specific acts in the companies register (see paragraph 48 below).

33. It was noted in an accounting report drawn up on 30 August 2014 that the company's only creditors were the two shareholders.

34. On 10 October 2014 one of the shareholders asked the Companies Registration Office to strike the company off the register. The request was granted on the same day, and the Companies Registration Office decided that the decision would be published in the Romanian Official Journal.

35. No appeal was lodged against the decisions taken by the Companies Registration Office in respect of the company.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Relevant domestic law

36. Relevant excerpts from the domestic law on the enforcement of final judgments, namely the old and new versions of the RCCP, are to be found in the case of *Foundation Hostel for Students of the Reformed Church and*

Stanomirescu v. Romania (nos. 2699/03 and 43597/07, §§ 38-40, 7 January 2014).

37. Article 374 of the RCCP, as in force at the relevant time, set out the procedure for the execution of outstanding judgments and the validation of enforceable title deeds (*"învestire cu formulă executorie* ") by the courts. Under the new RCCP, in force since 15 February 2013, this procedure is mandatory only for title deeds, and no longer for court judgments (Article 640^1 of the Code, as amended on 19 October 2014).

38. Article 389 of the RCCP, as in force at the relevant time, stated in relation to the time-limit for enforcement:

> "If a period of six months has passed since the time of the last act of enforcement and the creditor has remained passive, the enforcement becomes time-barred (*se perimă*) and any interested party may ask for its annulment ...".

The corresponding articles in the current version of the RCCP read as follows:

Article 697

> "If the creditor has deliberately let more than six months pass without complying with the bailiff's written request asking him or her to take certain steps necessary for the enforcement procedure, the enforcement becomes time-barred (*se perimă*) ..."

Article 698

> "At the request of the bailiff or the interested party, the judge shall acknowledge in a decision given following the urgent summoning of the parties that the enforcement has become time-barred ..."

Under Article 388 of the old version of the RCCP, the bailiff had to note in an official report the fact that the enforcement had become time-barred and the report was sent to the interested parties. Like any act of enforcement carried out by the bailiff, the official report could be challenged by lodging an objection (see below).

39. In the event that the bailiff fails or refuses to act diligently in order to assist a creditor in the enforcement of the outstanding judgment, the creditor is entitled to lodge a complaint concerning enforcement.

The time-limits prescribed for such a procedure are shorter than for regular procedures, in view of its urgent character. Only one appeal lies against a judgment given under such a procedure.

If the courts find that the bailiff refused to act without justification, they may fine the bailiff as well as award damages, if so requested by the aggrieved party.

Article 399 of the RCCP concerning the objection procedure, as in force at the time, stated as follows:

Article 399

"(1) Parties with an interest in or having suffered harm as a result of enforcement proceedings or any act of enforcement may lodge an objection. Similarly ... a complaint may be lodged when it is necessary to clarify the meaning, scope or terms of implementation of the writ of enforcement, or where the authority responsible for enforcement refuses to commence the enforcement or to perform an act of enforcement as provided for by law.

(2) Failure to comply with the legal provisions regulating the enforcement itself or the acts of enforcement shall lead to the annulment of the unlawful act".

The corresponding articles of the new RCCP read in their relevant parts as follows:

Article 665

"(1) As soon as the bailiff receives an enforcement request, he or she must decide whether to register the request and open an enforcement file, or to refuse the request in a reasoned decision.

(2) The bailiff's decision shall be notified immediately to the creditor. If the bailiff refuses to commence the enforcement procedure, the creditor may appeal before a court against the respective decision within fifteen days of the date of notification."

Article 712

"(1) Parties with an interest in, or having suffered harm as a result of, enforcement proceedings may lodge an objection against it, against any official report drawn up by the bailiff, or against any act of enforcement. Likewise, a complaint may be lodged if the bailiff refuses to carry out the enforcement or to perform any act of enforcement as prescribed by law."

Article 720

"... (3) If the objection is dismissed, upon request, the claimant may be liable to pay damages for the delay caused to the proceedings, and if the objection was lodged in bad faith, the claimant shall be liable additionally to a judicial fine of between 1,000 and 7,000 Romanian lei (RON) ...

(7) If [by allowing the objection to enforcement] the court finds that there was an unjustified refusal by the bailiff either to receive or to register the request to enforce, or to perform an enforcement act, or to take any other measure prescribed by law, the bailiff may be liable to a judicial fine of between RON 1,000 and RON 7,000, as well as, if so requested by the interested party, to pay compensation for the damage caused."

40. Articles 580^2-580^3 of the old version of the RCCP entitled a creditor to seek before the courts authorisation to enforce the obligation provided for in the writ of enforcement himself or herself, or to have it enforced by a third party, if the debtor refused to comply and the "obligation to act" did not require his or her personal intervention. For the latter situation, the law provided that the debtor could be compelled to comply with the enforcement writ by the imposition of a civil-law "coercive fine":

Article 580[2]

"Should a debtor refuse to comply with the obligation to act provided for in the writ of enforcement within ten days of receiving the order to do so, the court, by a final interlocutory decision, after summoning the parties, may authorise the creditor to enforce the obligation himself or to have it enforced by third parties at the debtor's expense."

Article 580[3]

"Should the obligation 'to act' require the debtor's personal intervention, he may be compelled to comply with the obligation by means of a civil-law coercive fine. Following an application by the creditor and after summoning the parties, the court may order the debtor, in a final interlocutory decision, to pay the State a fine of between 200,000 and 500,000 Romanian lei (ROL) for each day until the obligation provided for in the writ of enforcement has been fulfilled.

The creditor may request the court to award him damages against the debtor in order to make good the loss incurred by the failure to fulfil the obligation ..."

Articles 904-906 of the current Code reiterate, essentially, the same principles as those stipulated in the corresponding Articles 580[2] and 580[3] of the previous Code, except that the civil fine was replaced by penalties, payable directly to the creditor by order of the judge, if more than ten days have passed since the debtor was instructed to execute the outstanding judgment.

41. Articles 187-191 of the current Code reiterate and refine the principles set out in the previous Code (Articles 108[1]-108[5]) concerning the sanctions applied by the court at the request of the bailiff or the aggrieved party to another party or an authority for submitting a request in bad faith, for not providing the information requested by the court or for failing to comply with the provisions regulating the enforcement procedure. The fine thus imposed on the responsible party or authority may be supplemented by an obligation to pay damages to the party aggrieved by the delay in the enforcement procedure caused thereby.

42. Article 660 of the Code provides for the general framework of cooperation between the enforcement authority and the domestic authorities, whether State or private entities, responsible for assisting the bailiff and the creditor in the enforcement of an outstanding judgment (see also paragraph 69 below).

43. The relevant parts of the Labour Code, as in force at the material time, read as follows:

Article 277

"Failure to comply with a final judgment concerning the payment of salary entitlements within fifteen days of the date when the interested party requested his or her employer to execute it shall constitute an offence punishable by a term of imprisonment of three to six months or by a fine."

44. The relevant part of Law no. 168/1999 regarding the resolution of labour disputes, as in force at the relevant time, read as follows:

Article 83

"Failure to comply with a final judgment concerning the payment of salary entitlements within fifteen days of the date when the interested party requested the company to execute it shall constitute an offence punishable by a term of imprisonment of three to six months or by a fine."

45. The relevant parts on the general tort liability conditions from the new Civil Code, in force since 1 October 2011, reiterate generally the text of Articles 998-99 of the previous Civil Code; they now read as follows:

Article 1349

"(1) Everyone shall respect the code of conduct which the law or local custom imposes and shall not breach, by action or inaction, the rights or legitimate interests of others.

(2) Anyone who knowingly breaches this duty shall be liable for all damage and shall make amends for it in full.

(3) In the cases provided for by the law, a person may also be liable for damage caused by the actions of another [...]"

Article 1357

"(1) Anyone who causes damage to another as a result of an unlawful deed committed negligently shall be liable to make reparation for it.

(2) The person who causes the damage shall be held liable [in any event] for very slight negligence (*culpa levissima – "cea mai ușoară culpă"*).

46. The relevant parts of Law no. 188/2000 regulating the activities of bailiffs read as follows:

Article 45

"(1) A bailiff is liable under civil law if his/her failure to fulfil his or her professional obligations have caused prejudice.

(2) Civil liability insurance for the bailiff's activity is provided by an insurance fund for the bailiff profession ..."

Article 47

"The bailiff's disciplinary liability may arise in the following circumstances: ...

e) systematic delay and negligence in accomplishing professional tasks ..."

Article 48

"(1) The disciplinary procedure is initiated against a bailiff either by the Ministry of Justice or by the Board of the Regional Chamber of Bailiffs. The matter is examined by the Disciplinary Board of that Chamber; the Disciplinary Board is made up of three members, elected for a three-year mandate by the General Assembly of the Chamber.

(2) A preliminary investigation conducted by general inspectors from the Ministry of Justice or from the Board of the Regional Chamber of Bailiffs is mandatory if suspension from office or exclusion from office is envisaged ...

(5) The parties may appeal against the decision taken by the Disciplinary Board within fifteen days of notification of the decision. The Superior Disciplinary Board of the National Union of Bailiffs shall examine the appeal in a panel of five members, its decision being final. This decision is amenable to appeal before the Court of Appeal."

Article 49

"The disciplinary sanctions that may be applied depending on the seriousness of the offence committed are:

a) a reprimand (*mustrare*);

b) a warning (*avertisment*);

c) a fine of between 500 and 3,000 Romanian lei (RON), payable to the Regional Chamber of Bailiffs. Failure to pay the fine within thirty days of the decision becoming final will result in the bailiff's *ex officio* suspension from office until the fine is paid ...

d) the bailiff's suspension from office for between one and six months;

e) exclusion from office.

Article 56

"(1) If the parties express a wish to continue with the enforcement proceedings, reasons must be given for any refusal by the bailiff to perform his or her duties ... not later than five days from the date of the refusal.

(2) In the event of an unjustified refusal to perform the duties described under paragraph (1), the interested party may lodge a complaint within five days of the time he or she was made aware of the refusal, before the court with jurisdiction over the area in which the bailiff's office is located.

(3) All parties shall be summoned for the hearing of the complaint.

(4) The court's judgment is amenable to a single appeal.

(5) The bailiff shall comply with the final judgment ..."

Article 60

"(1) All acts performed by the bailiff shall be subject to judicial review before the courts, in accordance with the law.

(2) The bailiff's professional activity shall be subject to professional supervision in accordance with the provisions of this law."

Article 61

"Parties with an interest in, or having suffered harm as a result of, enforcement proceedings may lodge a complaint in accordance with the provisions of the Code of Civil Procedure."

Article 62

"(1) Professional supervision shall be carried out by the Ministry of Justice, through the general inspectors, and by the National Union of Bailiffs through its Board ...."

47. The relevant parts of Article 271 of the former Criminal Code read as follows:

Article 271 – Non-compliance with court judgments

"(1) Obstructing the enforcement of a court judgment by issuing threats towards the enforcement authority is punishable by six months to three years' imprisonment, and if acts of violence have been committed the punishment is from one to five years ..."

Article 287 of the new Criminal Code, in force since 1 February 2014, provides as follows:

"(1) Non-compliance with a court judgment committed by:

(a) obstruction of enforcement by opposing the enforcement authority;

(b) refusal by the bailiff to enforce a court judgment compelling him or her to perform a specific act;

(c) refusal to assist the enforcement authorities by the persons that have such an obligation under the law...

is punishable by three months to two years' imprisonment or by a fine ..."

48. Law no. 31/1990 on trading companies, as well as Emergency Government Ordinance no. 116/2009, which regulates the registration of specific acts in the companies register, set out, *inter alia*, the procedures for liquidation of a private company and its striking off the register. They state that the creditors and any other interested party may oppose the decisions taken by the shareholders and by the Companies Registration Office before the courts, in accordance with the law.

B. Relevant domestic case-law and administrative practice

49. The Government submitted a significant number of domestic judgments proving, in their view, that at present the system of legal remedies in Romania, in cases concerning non-compliance with an enforcement order against private parties, is efficient and accompanied by sufficient safeguards, especially since the entry into force of the new RCCP in 2013. The Government mentioned that the case-law based on that new piece of legislation – applicable exclusively to enforcement proceedings started after 15 February 2013 under the transitionary provisions of the Code – was developing in the right direction.

50. The Government referred to numerous and various circumstances in which the domestic courts had found, based on the provisions of the RCCP (the previous version as well as the current one) regulating complaints

concerning enforcement (see paragraph 39 above), as well as on Article 56 § 2 of Law no. 188/2000 (see paragraph 46 above), that the bailiff's refusal to act lacked justification. They submitted more than thirty judgments delivered by various courts across the country, mainly between 2009 and 2014, holding the bailiff responsible for initiating or pursuing the enforcement procedure. In some cases, the courts indicated to the bailiffs the concrete acts they should perform in order to secure the enforcement of the outstanding judgment.

51. On the question whether complaints concerning belated acts of enforcement by the bailiffs or delays in enforcement were allowed by the domestic courts, or whether any pecuniary sanctions were imposed by the domestic courts on the bailiff on account of his or her failure to act in due time, the Government submitted several legal opinions formulated by various domestic courts across the country. They all expressed the view that if given the opportunity by the creditor to examine such a request, the courts would be entitled to apply Articles 712 and 720 § 7 of the RCCP, as well as Articles 45 and 56 of Law no. 188/2000 (see paragraphs 39 and 46 above). They considered such an approach to be not only reasonable, but also salutary, particularly since the adoption by the Court of the judgment in the case of *Flaviu and Dalia Şerban v. Romania* (no. 36446/04, 14 September 2010). In that judgment, the Court concluded that a complaint concerning enforcement was not an effective remedy, in so far as the Government had not provided examples from domestic practice in respect of complaints about belated acts of enforcement by the bailiff being declared admissible. The only relevant examples provided showed that the domestic courts considered such complaints ill-founded or even incompatible *ratione materiae* (see §§ 40-44 and 60 of the judgment).

52. With reference to the application of Articles 998-999 of the former Civil Code, Articles 1349 and 1357 of the current Civil Code respectively (see paragraph 45 above), the opinion expressed by the courts in situations where the bailiff's failure to carry out an enforcement act had caused damage to the creditor, was that those provisions may become relevant if all the conditions for tort liability are substantiated by the creditor.

The case-law submitted by the Government in this respect consisted of three judgments delivered in 2012, in which the courts had obliged the bailiff to pay damages to the creditor for the harm suffered.

53. The Government also provided several judgments given by various domestic courts across the country in respect of disciplinary actions brought against bailiffs. The examples proved, in the Government's view, that the disciplinary system was capable of putting sufficient pressure on the bailiff to ensure that the enforcement procedure was initiated and/or continued. The data provided revealed that between 2003 and 2011, the Ministry of Justice had brought ninety-five disciplinary actions against certain bailiffs, four of which sought the bailiffs' exclusion from office. Sixteen disciplinary actions

were lodged in 2012, thirty-two in 2013 and forty-five in 2014. The majority of those actions were finalised with one of the four disciplinary sanctions prescribed by the law being applied by the courts.

54. Concerning the criminal liability of bailiffs, the Government contended that by a court decision of 2012, one bailiff had been convicted for abuse of office and hence excluded from office. The Government further informed the Court that the domestic courts had not yet been confronted with a case in which a bailiff had been charged, under Article 287 § 1 (b) of the New Criminal Code, in force since 1 February 2014 (see paragraph 47 above), with non-compliance with a domestic judgment.

55. The Government further submitted several judgments delivered between 2014 and 2015, in which, based on Article 660 § 2 of the RCCP (see paragraph 42 above), the courts had fined various public institutions on account of their failure to properly assist the bailiff in his or her attempts to enforce outstanding judgments.

56. In connection with existing remedies for obliging debtors to comply with outstanding judgments, the Government provided consistent domestic case-law, proving that the courts across the country generally allowed creditors' requests submitted pursuant to Articles 580^3 of the former RCCP (Article 906 of the current RCCP), imposing on the debtor financial penalties per day of delay, whether payable to the State as a fine (under the old Code), or to the creditor directly (under the new Code; see paragraph 40 above). The relevant case-law dates mainly from 2010-15.

57. In certain situations and as provided for by the former RCCP, the domestic courts have obliged the debtor to pay both a civil fine to the State per day of delay in executing the judgment, as well as damages to the creditor, if damage has been substantiated. The five decisions submitted by the Government are from 2009, 2010, 2011 and 2012.

58. Concerning the application of Article 271 of the former Criminal Code (see paragraph 47 above), the Government submitted a dozen judgments given between 2008 and 2012, in which the domestic courts convicted debtors who had failed to comply with their obligation to execute outstanding judgments, and sentenced them either to a criminal fine or to a term of imprisonment. In a few cases, the courts also obliged the debtors to pay the creditor compensation for pecuniary damage.

C. Relevant Council of Europe documents

59. In Resolution 1787(2011) adopted on 26 January 2011, the Parliamentary Assembly of the Council of Europe noted the continuing existence in several States of major structural problems which were causing large numbers of repetitive findings of violations of the Convention and represented a serious danger to the rule of law in the States concerned. The Assembly listed among those deficiencies some major shortcomings in

judicial organisation and procedures in Romania, including the chronic non-enforcement of domestic judicial decisions in general (see paragraph 7.6 of the Resolution).

60. Nevertheless, concerning the specific group of Romanian non-enforcement cases dealing with the State's failure to assist the creditor to enforce his or her outstanding judgment given against a private debtor, on 22 November 2017 the Committee of Ministers of the Council of Europe adopted Resolution CM/ResDH(2017)392 in which, after having examined in particular the action report provided by the Romanian Government indicating the general measures adopted in order to give effect to the judgments, decided to close the examination thereof, having satisfied itself that all the measures required by Article 46, paragraph 1, have been adopted.

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 6 § 1 AND 13 OF THE CONVENTION AND OF ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

61. The applicant complained of the respondent State's failure to assist her in enforcing the final court decision rendered in her favour against the debtor and of the lack of an effective remedy in that connection. She relied on Articles 6 and 13 of the Convention and Article 1 of Protocol No. 1, which, in so far as relevant, read as follows:

Article 6 § 1

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

Article 1 of Protocol No. 1

"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."

Article 13

"Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

A. Admissibility

62. The Court finds that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention, nor are they inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The Government

63. The Government contended that the applicant had failed to act diligently and to make use of all avenues available to her in the domestic legal system for the enforcement of final judgments. More specifically, on the one hand the applicant had not pursued the enforcement procedure, which had consequently become time-barred; and on the other hand, she had failed to challenge the decisions taken by the Companies Registration Office in respect of the company's dissolution and striking off the companies' register, which had therefore remained final.

64. With regard to the applicant's complaint under Article 13, the Government argued that she had at her disposal effective remedies that she had failed to use. They referred to the possibility of lodging a complaint under Article 399 et seq. of the former RCCP, corresponding to Article 712 et seq. of the current RCCP, lodging a complaint against the bailiff and taking disciplinary action against the bailiff under Articles 56, 60-62 of Law no. 188/2000 and, lastly, to lodging an action in tort under Articles 998-99 of the old version of the Civil Code (Article 1357 of the new Civil Code).

65. On a more general note, the Government pointed out that in connection with the issue of non-enforcement of final domestic judgments against private parties in Romania, the Court had never indicated the existence of systemic deficiencies in the respective mechanism. Indeed, an overview of the relevant judgments and decisions given against Romania in this respect showed that where the Court had found a violation, it had relied essentially on the particularities of each case, rather than on identifying systemic deficiencies in the national mechanism. Moreover, the majority of violations found by the Court against Romania in that respect had occurred before significant amendments had been introduced to the relevant legislation, concerning both the bailiffs' tasks and enforcement itself.

66. In any event, in connection with the alleged lack of effective remedies in that regard, the Government submitted that the available domestic mechanism relating to the enforcement of final judgments given against a private party was nowadays fully satisfactory, offering both preventive as well as reparatory relief to creditors, as presented below.

67. Firstly, enforcement was carried out by bailiffs, appointed by the Minister of Justice following admission exams; bailiffs' tasks were coordinated and controlled by the Ministry of Justice and the National Union of Bailiffs; acts issued by bailiffs were subject to judicial control by the domestic courts; bailiffs, as well as judges, were constantly trained in relation to the Court's requirements concerning the enforcement mechanism; the relevant European Court's judgments were published and disseminated on a regular basis.

68. Concerning creditors' access to services provided by bailiffs, the Government emphasised that the minimum and maximum corresponding fees had been set out in legislation by the Minister of Justice, following consultation with the Council of the National Union of Bailiffs.

Charges related to enforcement were to be paid in advance by the creditor. However, following legislative amendments adopted in 2008, public legal aid was available to those eligible for, *inter alia*, enforcement proceedings; legal aid may cover the fees to be paid to bailiffs and expenses relating to enforcement, in the form of exemptions, reductions, payment in instalments or payment deferrals. The jurisdiction to determine applications for legal aid lay with the courts.

69. Secondly, the Government pointed out that the only obligation on the creditor was to submit a request to the bailiff together with the outstanding judgment. All further actions were to be performed *ex officio* by the bailiff in a prompt manner. Articles 659-60 of the RCCP provided that in carrying out their tasks, bailiffs had the support of various domestic authorities relevant to enforcement, such as the police and the gendarmerie, but also banks, fiscal authorities, the Land Registry, the Companies Registration Office and any institutions requested by the bailiff to provide relevant information. If those authorities failed to provide the required support, they could be fined by the courts at the request of the bailiff and/or of the interested party, who could also claim damages on account of any delay in enforcement caused thereby (see paragraph 42 above).

At the same time, if those authorities refused to cooperate, the Public Ministry was entitled to intervene so as to provide the bailiff with the necessary information, particularly with reference to the debtor's bank accounts, company shares or any other financial assets that could be seized under the enforcement order.

70. The Government further identified two generic issues that may render it more difficult for creditors to have judgments against a private party enforced. These concerned issues related to deficiencies in bailiffs'

performance of their tasks concerning enforcement, and issues related to debtors' refusal to comply with their obligations.

(i) Insufficient assistance provided by bailiffs

71. In connection with the first category of issues, arising when the assistance provided by bailiffs for enforcement of outstanding judgments was unsatisfactory or inappropriate, the Government referred to the following preventive or reparatory remedies: a complaint under Article 399 of the RCCP (version in force until 15 February 2013), Article 712 of the version currently in force; a complaint against the bailiff, as prescribed by Article 56 of Law no. 188/2000, allowing the creditor to ask the courts to impose a sanction on the bailiff for his or her unjustified refusal to act or to continue enforcement; disciplinary action against the bailiff, pursuant to Articles 47, 48 and 60 of Law no. 188/2000, the bailiff being liable for systematic delays and negligence in performing acts of enforcement; an action in tort, covered by the provisions of Articles 998-99 of the old version of the Civil Code (Article 1357 of the new Civil Code); and liability for damage, as provided for by Article 45 of Law no. 188/2000.

72. The Government considered that the first two remedies mentioned above were accessible to all creditors and were effective not only in theory, but also in practice, as proved by the domestic case-law submitted in support of their observations (see paragraph 50 above).

73. They further argued that tort claims were similarly accessible and admissible, provided that the conditions for tort responsibility were met and substantiated (see paragraph 52 above).

74. The Government argued that under Article 45 of Law no. 188/2000, bailiffs were liable for all damage caused by non-fulfilment of their professional duties as provided for under civil law. Furthermore, the same article provided for a civil liability insurance fund for the bailiff profession.

75. The Government submitted that by decision of the Congress of the National Union of Bailiffs, published in the Official Gazette on 24 June 2014, the Statute of the Insurance Fund for the Bailiff Profession had been adopted. The statute provided essentially for a mechanism establishing the conditions for the civil liability of bailiffs. It imposed an obligation on bailiffs to conclude with the fund a civil insurance contract for the duration of their professional activity. Article 19 of the statute provided that any damages claimed were estimated on the basis of an agreement concluded between the aggrieved party, the insured party and the fund, and/or on the basis of a final judgment by the courts. The maximum amount that could be granted based on the insurance contract was RON 5,000. So far, no such payment had been made by the fund, in the absence of any such court judgment.

(ii) Refusal of the debtor to comply with an enforcement judgment

76. In connection with obstacles encountered by a creditor in the enforcement of his or her outstanding judgment caused by a debtor's refusal to comply with it, the Government pointed out that the following remedies had both preventive and reparatory effects.

(α) civil remedies

77. The Government referred to the provisions of Articles 580^3 of the former RCCP, stating that if the obligation imposed in an outstanding judgment required action on the part of the debtor himself or herself, the creditor could seek before the courts that a civil fine be applied per day of non-compliance. The fine was payable to the State treasury. However, the creditor was also entitled to seek compensation for damage caused by a debtor's failure to execute the outstanding judgment in a timely manner.

78. In connection with the remedy for cases where the obligation imposed in the outstanding judgment may be executed also by other parties on behalf of the debtor, the Government referred to the provisions of Articles 574 and 580^2 of the old version of the RCCP, and of Article 904 of the current RCCP (see paragraph 40 above). Those articles essentially provided that if the debtor failed to comply with the judgment, the creditor could seek authorisation from the courts to act on behalf of the debtor, or for a third party to act on the debtor's behalf, and at the debtor's expense, in order to enforce the judgment.

79. At the same time, the Government contended that the domestic mechanism ensured that potential objections to the enforcement order raised by debtors in bad faith were punishable by a civil fine; the suspension of enforcement proceedings was subject to the payment of a deposit in an amount prescribed by law (under the new RCCP) in accordance with the value of the enforceable obligation. Under the new legislation, namely Article 720 § 3 of the RCCP (see paragraph 39 above), the creditor could also ask for compensation for any damage incurred due to the delay in enforcement caused by an objection lodged in bad faith.

80. The Government maintained that the relevant domestic case-law submitted supported the idea that both under the old and especially under the new legislation, those remedies were efficient (see paragraphs 56-57 above).

(β) criminal complaint

81. The Government pointed out that the domestic case-law submitted in respect of Article 271 of the former Criminal Code (see paragraph 58 above), under which the refusal to comply with the provisions of an outstanding judgment was punishable by imprisonment, proved that this remedy was readily available to creditors, who could easily lodge such a complaint, and that its effects were efficient.

Article 287 of the current Criminal Code, under which both the debtor's refusal to execute and the bailiff's refusal to act in order to enforce an outstanding judgment were punishable, had not yet resulted in any relevant case-law.

(b) The applicant

82. The applicant argued that the bailiff had not acted with sufficient diligence so as to ensure that the outstanding judgment given in her favour was enforced. She contended that the bailiff should have tried more than once to visit the company's premises in order to pressure it to comply with its obligations; furthermore, the bailiff should have asked the Companies Registration Office for information concerning the company's bank account, which would have enabled him to issue a restriction order.

83. The applicant concluded that generally, the non-enforcement of final judgments was also due to certain deficiencies in the domestic enforcement mechanism; she mentioned in particular the lack of severity of sanctions imposed on non-diligent bailiffs, as well as of the pecuniary penalties imposed on those debtors who refused in bad faith to comply with their obligations.

2. The Court's assessment

(a) General principles

84. The Court reiterates that execution of a final judgment given by any court must be regarded as an integral part of the "trial" for the purposes of Article 6 of the Convention (see *Hornsby v. Greece*, 19 March 1997, § 40, *Reports of Judgments and Decisions* 1997-II). The State has a positive obligation to organise a system for enforcement of judgments that is effective both in law and in practice and ensures their enforcement without any undue delays (see *Ruianu v. Romania*, no. 34647/97, § 66, 17 June 2003). When the authorities are obliged to act in order to enforce a judgment and they fail to do so, their inactivity can engage the State's responsibility on the ground of Article 6 § 1 of the Convention (see *Scollo v. Italy*, 28 September 1995, § 44, Series A no. 315-C and *Bushati and Others v. Albania*, no. 6397/04, §79, 8 December 2009).

85. The right of "access to court" does not impose an obligation on a State to execute every judgment of a civil character without having regard to the particular circumstances of a case (see *Sanglier v. France*, no. 50342/99, § 39, 27 May 2003). The State's responsibility for enforcement of a judgment against a private person extends no further than the involvement of State bodies in the enforcement procedures (see *Fuklev v. Ukraine*, no. 71186/01, § 67 and §§ 90-11, 7 June 2005). The Court's only task is to examine whether the measures taken by the authorities were adequate and sufficient. In cases such as the present one, where the debtor is a private person, the State has to

act diligently in order to assist a creditor in execution of a judgment (see *Fociac v. Romania*, no. 2577/02, § 70, 3 February 2005 and *Bushati and Others*, cited above, § 80).

86. The Court further reiterates its case-law to the effect that the impossibility for an applicant to obtain the enforcement of a judgment making an award in his or her favour constitutes an interference with the right to the peaceful enjoyment of possessions, as set out in the first sentence of the first paragraph of Article 1 of Protocol No. 1 (see, among other authorities, *Burdov v. Russia*, no. 59498/00, § 40, ECHR 2002-III, and *Jasiūnienė v. Lithuania*, no. 41510/98, § 45, 6 March 2003). The positive obligations entailed by that Article in cases involving litigation between private individuals or companies require States to ensure that the procedures enshrined in the legislation for the enforcement of final judgments and for bankruptcy proceedings are complied with (see *Fuklev,* cited above, § 91 and *Kotov v. Russia* [GC], no. 54522/00, § 90, 3 April 2012).

87. In respect of Article 13, the Court requires that the States provide a domestic remedy to deal with the substance of an "arguable complaint" under the Convention and to grant appropriate relief, although the Contracting States are afforded some discretion as to the manner in which they conform to their Convention obligations under this provision (see *Kudła v. Poland* [GC], no. 30210/96, § 152, ECHR 2000-XI, and *Z and Others v. the United Kingdom* [GC], no. 29392/95, § 108, ECHR 2001-V).

88. The scope of the Contracting States' obligations under Article 13 varies depending on the nature of the applicant's complaint; the "effectiveness" of a "remedy" within the meaning of Article 13 does not depend on the certainty of a favourable outcome for the applicant. At the same time, the remedy required by Article 13 must be "effective" in practice as well as in law, in the sense either of preventing the alleged violation or its continuation, or of providing adequate redress for any violation that has already occurred. Even if a single remedy does not by itself entirely satisfy the requirements of Article 13, the aggregate of remedies provided for under domestic law may do so (see *Kudła*, cited above, §§ 157-58, and *Burdov v. Russia (no. 2)*, no. 33509/04, §§ 96-97, ECHR 2009, with further references).

(b) Application of the general principles

(i) Previous similar cases

89. The Court has already examined complaints similar to those in the present case, brought by applicants who alleged that the Romanian State had failed to effectively assist them in obtaining enforcement of the final domestic judgments given in their favour against private parties.

90. In a narrow majority of such cases, the Court found a violation of Article 6 of the Convention, holding that the State authorities (mainly the

bailiff service) had failed to act diligently and in due time in order to assist the applicants in having their judgments enforced; in most cases, the Court held that there was no need to examine on the merits the additional complaint raised under Article 1 of Protocol No. 1 (see *Ruianu,* cited above; *Ghibusi v. Romania*, no. 7893/02, 23 June 2005; *Kocsis v. Romania,* no. 10395/02, 20 December 2007; *Schrepler v. Romania,* no. 22626/02, 15 March 2007; *Constantin Oprea v. Romania*, no. 24724/03, 8 November 2007; *T.N.B. and C.D. v. Romania*, no. 40067/06, 14 February 2008; *Ion-Cetină and Ion v. Romania*, no. 73706/01, 14 February 2008; *Neamtiu v. Romania,* no. 67007/01, 14 February 2008; *Vasile v. Romania*, no. 40162/02, 29 April 2008; *Elena Negulescu v. Romania*, no. 25111/02, 1 July 2008; *Ciocan and Others v. Romania*, no. 6580/03, 9 December 2008; *Chelu v. Romania*, no. 40274/04, 12 January 2010; *I.D. v. Romania*, no. 3271/04, 23 March 2010; *Papuc v. Romania* no. 44476/04, 27 May 2010; *S.C. Prodcomexim SRL v. Romania (no. 2)*, no. 31760/06, 6 July 2010; *Ion Popescu v. Romania*, no. 6332/04, 27 July 2010; *Flaviu and Dalia Serban v. Romania,* no. 36446/04, 14 September 2010; and *Bogdan Vodă Greek-Catholic Parish v. Romania*, no. 26270/04, 19 November 2013). The outstanding judgments in those cases mainly referred to payment of or compliance with various contractual obligations; reinstatement proceedings and consequent payment of damage by the private employer; and vacating immovable property.

In one case, the Court similarly found a violation of Article 10 of the Convention, on account of the national authorities' failure to take effective and necessary measures to assist the applicants, who were journalists, to enforce their final and enforceable decision against a private party (see *Frăsilă and Ciocîrlan v. Romania*, no. 25329/03, § 71, 10 May 2012).

91. However, in other cases dealing with enforcement proceedings in which the debtor was a private party, the Court found either that the State's obligations prescribed by Article 6 § 1 and Article 1 of Protocol No. 1 had been complied with, or that the applicants themselves had not manifested sufficient diligence in pursuing their complaints (see *Fociac*, cited above; *Topciov v. Romania* (dec.), no. 17369/02, 15 June 2006; *SC Magna Holding SRL v. Romania*, no. 10055/03, 13 July 2006; *Cubanit v. Romania* (dec.), no. 31510/02, 4 January 2007; *Cerăceanu v. Romania (no. 1)*, no. 31250/02, 4 March 2008; *Mircea Popescu v. Romania*, (dec.), no. 35017/02, 4 November 2008; *Rădvan v. Romania* (dec.), no. 26846/04, 2 June 2009; *T.N.B. v. Romania*, (dec.), no. 18522/05, 29 September 2009; *Poenaru v. Romania* (dec.), no. 31752/04, 15 December 2009; *Maghiran v. Romania*, (dec.), no. 29402/07, 19 January 2010; *Voda v. Romania*, (dec.), no. 35812/02, 19 January 2010; and *Ciobanu and Others v. Romania*, (dec.), nos. 898/06; 39374/07; 1161/08; 36461/08, 6 September 2011).

92. In particular, in connection with the possibility of lodging a complaint concerning enforcement, in earlier cases the Court has rejected, for lack of persuasive examples, the arguments put forward by the Government with

regard to the effectiveness of the remedy provided for by Article 399 of the former RCCP in respect of complaints that the bailiff had failed to act (see *Elena Negulescu v. Romania*, cited above, § 43) and that the bailiff had acted belatedly (see *Flaviu and Dalia Şerban*, cited above, § 60).

93. The Court also found in several cases against Romania that the failure to enforce an outstanding judgment was not necessarily due (only) to the bailiff's inactivity but to a lack of preparation, response and support from the other competent authorities, such as the police, the gendarmerie, prosecutor's offices or the finance office (see, for instance, *Bogdan Vodă Greek-Catholic Parish*, §§ 47 and 50; *Flaviu and Dalia Şerban*, § 61; *Constantin Oprea*, § 40; and *S.C. Prodcomexim SRL*, § 43, all cited above). Similarly, the Court has previously found that the domestic authorities had failed to provide appropriate assistance to creditors having difficulties in complying with the obligation to pay enforcement fees in advance, in order to secure them effective access to the enforcement procedure (see *Elena Negulescu*, cited above, § 44).

94. The Court further held that the possibility of bringing proceedings to obtain a coercive fine or an award of damages against the other party under Article 580^3 of the old RCCP did not constitute effective remedies, in so far as they represented indirect means of enforcing a final decision and were therefore incapable of providing direct redress for the alleged violation (see, *inter alia*, *Ghibusi*, §§ 27-28, and *Frăsilă and Ciocîrlan*, § 70, both cited above).

95. The Court has also held that disciplinary action against a bailiff could not be considered as a remedy directly accessible to the applicants and capable of securing the enforcement of a final decision. Such action could be brought only by the governing board of the Union of Bailiffs and could only lead to suspension of the bailiff from his duties or to another disciplinary sanction. It could not assist in securing the enforcement of the judgment (ibid., § 68; *Constantin Oprea*, cited above, § 41).

(ii) Overview of the current mechanism for the enforcement of judgments given against private debtors

96. The Court takes cognisance of the Government's submissions in the present case that in view of the Court's findings in previous cases dealing with the issue of enforcement of final judgments given against private parties (see paragraphs 90-91 above), no conclusion could be drawn as to the existence of a systemic problem in Romania (see paragraph 65 above).

97. Without entering into that issue, the Court notes that the current mechanism for the enforcement of judgments given against private debtors includes a number of new and important safeguards, especially in relation to creditors' access to enforcement proceedings and to the manner in which such proceedings are conducted by the enforcement authorities in general (see paragraphs 67-69 above).

98. The Court indeed observes that, having taken as a starting point the conclusions stated in its judgments against Romania on account of the State authorities' failure to appropriately assist the creditors of private parties, the respondent State implemented a series of significant legislative amendments, mainly concerning the enforcement procedure regulated by the new RCCP, which entered into force on 15 February 2013, the public legal aid system, amended in 2008, and the legal framework regulating bailiffs' activity, including the implementation in 2014 of the bailiffs' indemnity fund, all aiming to improve the enforcement mechanism in general. The domestic case-law provided by the Government, as well as the legal opinions expressed by a consistent number of domestic courts across the country concerning the sufficiency and the efficiency of the means made available to the creditor of private parties in his or her attempts to have an outstanding judgment enforced (see paragraphs 49-58 above) are reliable evidence as to the improvement of the enforcement mechanism overall.

99. In this connection, the Court notes that the new legislative provisions expressly prescribe that the State or other relevant authorities must support bailiffs in providing necessary information or assistance in the enforcement procedure, when required. If they fail to do so, they may be fined or have to pay compensation for the damage caused by the delayed enforcement (see paragraphs 41, 42 and 46 above and, by contrast, the case-law cited in paragraph 92 above).

100. At the same time, enforcement proceedings are more easily accessible to the creditor following the improvements brought to the public legal aid system in 2008. The Court notes in this connection that even if the creditor is still required under Romanian law to bear the costs of the preliminary enforcement proceedings, the domestic system allows for a thorough judicial assessment of the creditor's financial situation so as to ensure that he or she has effective access to those proceedings (see paragraphs 68-69 above and, by contrast, *Elena Negulescu*, cited above, § 44).

101. Furthermore, the Court notes that under the current legislation, enforcement proceedings are to be conducted within stricter and shorter time-limits, while the fines that may be imposed by the courts on uncompliant authorities have increased in amount. At the same time, the law provides safeguards against abuse or bad faith on the part of the debtor or the bailiff, who are discouraged from circumventing the existing procedures by excessive use of suspension of the enforcement proceedings or of unfounded objections to enforcement (see both the preventive and the compensatory avenues described in paragraphs 56-57, 69 and 79 above; see also, by contrast, paragraphs 93-94 above).

102. The Court further considers that the disciplinary mechanism, even if not directly available to the creditor, in so far as it is actively and promptly pursued by the relevant authorities, may provide a complementary safeguard ensuring that bailiffs comply promptly and diligently with their professional

obligations prescribed by law (see paragraph 53 above). In addition, the passing into statute of a civil liability insurance fund for the bailiff profession constitutes, prima facie, an indispensable and efficient way of providing relief to the aggrieved creditor (see paragraph 75 above).

103. Accordingly, the Government can be deemed to have fulfilled their duty to review the situation which the Court had indicated as problematic in its judgments in which it had found a violation on account of deficiencies in the enforcement mechanism concerning outstanding judgments given against private parties. Furthermore, the Government have provided sufficient evidence in terms of domestic case-law to prove that effective remedies were introduced and/or became more easily available to creditors in their attempts to have their judgments enforced (see paragraphs 50-58 and 67-69 above).

(iii) The applicant's individual case

104. With this in mind, the Court considers it appropriate in the circumstances of the present case to commence its examination of the issues related to the alleged violation of Article 13 of the Convention (see, *mutatis mutandis*, *Liseytseva and Maslov v. Russia*, nos. 39483/05 and 40527/10, § 155, 9 October 2014).

(α) Alleged violation of Article 13

105. The Court considers, without prejudging the merits of Article 6 § 1 of the Convention and of Article 1 of Protocol No. 1 to the Convention in relation to the enforcement of final judgments given against private parties, that the applicant's complaints related thereto are prima facie "arguable". She was therefore entitled to an effective remedy in that regard.

106. The Court firstly notes that once the applicant had asked a bailiff to enforce the judgment on 21 January 2005, the bailiff reacted promptly by issuing, on 26 January 2005, a notice of payment and serving it on the debtor company. Further steps were taken by the bailiff, such as the report prepared at the company's premises in February 2005 and the restriction order issued in respect of the debtor's bank accounts (see paragraphs 11-12 and 18 above).

107. While it is true that the bailiff's acts were subsequently invalidated by the courts because he had not complied with all the procedural requirements (see paragraphs 16 and 18 above), the applicant did not at any point lodge a complaint against the bailiff on account of alleged lack of diligence or professional fault, as allowed by Article 399 et seq. of the former RCCP, and by Articles 56, 60-62 of the Law no. 188/2000 (see paragraphs 39 and 46 above), or, ultimately, by Articles 998-99 regulating the general tort liability conditions (see paragraph 45 above; see also paragraph 71 above).

108. Furthermore, even though the bailiff issued another notice of payment on 29 June 2005, the debtor refused to comply. The last exchange of information with the applicant took place in November of the same year, when the bailiff informed the applicant of that refusal. Under the national law,

the applicant, as a creditor, was expected to remain active throughout the enforcement procedure and to prove that she was still interested in pursuing it on a regular basis – at least once every six months. In the present case, the applicant apparently failed to comply with such an obligation, which led the bailiff to note, two years after the last exchange of information of 2005, that no further action had been taken by the applicant, as required by law. The bailiff acknowledged, therefore, that the enforcement proceedings had become time-barred, pursuant to Article 389 of the RCCP in force at the time (see paragraphs 19-21 above).

Moreover, the Court notes in this respect that the applicant failed to provide any explanation as to either her substantive inactivity or her procedural inactivity, in view of the fact that she did not challenge in any manner the conclusions of the bailiff that because of her passiveness, the enforcement had become time-barred in accordance with Article 399 et seq. of the RCCP in force at the time (see paragraph 39 above).

109. The Court further notes that the applicant lodged several other applications with the domestic courts, whether civil or criminal, seeking to have the outstanding judgment enforced. However, her action seeking to speed up the enforcement proceedings was dismissed as ill-founded, in so far as the requirements of the invoked legal text had not been met (see paragraphs 22-24 above). Her complaint against the company's administrator was examined by the criminal courts, which eventually imposed an administrative fine on him for failure to comply with the outstanding judgment (see paragraphs 27-31 above).

110. While considering that the avenues pursued by the applicant have indeed proved to be fairly ineffective in her case, the Court cannot disregard the fact that the applicant herself has failed to make proper use of the more appropriate remedies relevant to her case, such as diligently pursuing the enforcement procedure with the assistance of the bailiff, or, if dissatisfied with the bailiff's performance or lack of diligence, raising this issue before the courts by lodging a complaint under Article 399 of the RCCP in force at the time. In this context, the Court considers it particularly relevant to mention the legal opinion expressed by various domestic courts across the country (see paragraph 50 above), stating that if they received a claim from a creditor for damages on account of belated acts of enforcement by a bailiff, such a claim, if found substantiated, would constitute an effective remedy.

111. The Court considers it of further relevance that, as argued by the Government (see paragraph 63 *in fine*, above), the applicant could have intervened, in her capacity as creditor of the company, in the procedure which eventually led to the latter being struck off the companies register. In this respect, the Court notes that the applicant did not lodge any request or appeal in connection with the respective proceedings (see paragraph 35 above). Her failure to make appropriate use of the relevant remedies at her disposal under the Law on trading companies as well as under Emergency Government

Ordinance no. 116/2009 (see paragraph 48 above) was decisive in the domestic court's validation of the accounting report drawn up on 30 August 2014 when the company was liquidated, stating that the company had no other creditors except for its two shareholders (see paragraph 33 above). That issue may also raise potential questions as to the persistence of the debt owed to the applicant at that time.

112. In the light of the above, the Court considers that at the material time, there were legal remedies available to the applicant; however, it is not persuaded that the applicant has properly and diligently pursued the aforementioned legal remedies or their aggregate.

113. The Court accordingly holds that there has been no violation of Article 13 of the Convention.

(β) Alleged violation of Article 6 of the Convention and of Article 1 of Protocol No. 1 to the Convention

114. The Court notes that under the above-mentioned Articles, the applicant claimed that in spite of her numerous attempts to obtain the claim awarded to her in a final judgment, it remained unenforced. In the meantime, the debtor ceased to exist.

115. Having regard to the particular circumstances of the case and in the light of its conclusions in respect of Article 13 of the Convention (see paragraphs 110-112 above), the Court considers that the applicant has not put forward any fact or argument capable of persuading it to conclude that the State authorities failed to do what could reasonably have been expected of them in order to enforce the impugned court decision.

116. There has accordingly been no violation of Article 6 of the Convention or of Article 1 of Protocol No. 1 to the Convention.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been no violation of Article 13 of the Convention;

3. *Holds* that there has been no violation of Article 6 of the Convention or of Article 1 of Protocol No. 1 to the Convention.

Done in English, and notified in writing on 16 January 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Marialena Tsirli Registrar	Ganna Yudkivska President