



dispute resolution - legal changes published in May 2022

The Decision of the European Court of Human Rights dated November 2, 2021, ruled in Tartousi against Romania Case (Application no. 35.366/15) was published in the Official Gazette, Part I no. 457 dated May 6, 2022 and it is applicable from the same date.

The application is based on applicant's complaints regarding the violation of the right to a fair trial, in terms of art. 6 § 1 and 3 letter d) of the Convention, due to his impossibility to obtain a testimonial evidence from the prosecution witness and because of the fact that the court's final ruling was not signed in appeal by one of the judges from the court panel, who has been retired. In fact, the applicant has been accused of helping Omar Hayssam, judged in other criminal file for terrorism, to flee the country. The latter would have left Romania on board of a ship pertaining to the company managed by Tartousi.

In this case file, The Hight Court of Cassation and Justice of Romania rejected the defendant's request for the witness hearing, considering that such hearing did not represent a necessary evidence, since other evidence has already been administered. The European Court noticed that the witness's statement was a fundamental evidence throughout the criminal prosecution and that the evidence has been obtained through rogatory commission by the Lebanese authorities.

Consequently, The European Court of Human Rights unanimously decided that there has been a violation of Article 6 § 1 and 3 letter d) of the Convention.

The Decision of the European Court of Human Rights dated 16 November 2021 ruled in Marin against Romania Case (Application no. 31.611/18) was published in the Official Gazette, Part I no. 525 dated May 27, 2022 and it is applicable from the same date.

The application has as subject matter the procedural obligations of the state, provided by art. 2 of the Convention, because of the death by drowning of the applicant's son. In fact, the applicant claims that his son did not die in the night of May 21, 2014 as a consequence of an accidental landslide into the river channel in the immediate proximity of a micro-hydroelectric plant, but as a consequence of a crime that the Romanian authorities had superficially investigated, finally ruling that the case should be closed.

The Court considered that the criminal investigation bodies did not deal with the case file aspects that remained unclear at the end of the criminal investigation. Therefore, it cannot be considered that the Romanian authorities had established in a sufficiently clear way the circumstances that lead to the death of the applicant's son.

Consequently, The European Court of Human Rights held as follows: (i) that there has been a violation of Article 2 of the Convention from a procedural point of view; (ii) that the respondent State shall pay to the applicant, within three months, the amount of EUR 20,000 for non-pecuniary damage, which shall be converted into the currency of the respondent State, at the exchange rate applicable at the date of payment plus any other amount that may be due as a tax for this amount; (iii) that from the expiry of the above-mentioned period and until payment, these amount must be increased with simple interest, at a rate equal to the marginal lending rate of the European Central Bank during the default period, plus three percentage points.



Decision of the High Court of Cassation and Justice no. 11/2022 regarding the examination of the request formulated by Cluj Court of Appeal – Criminal and minors Section regarding the request that forms the object of Case File no. 3.007/1/2021 in order to issue a preliminary ruling for resolving a matter of law was published in the Official Gazette, Part I no. 430 of May 3, 2022 and it is applicable from the same date.

The High Court admitted the request made by Cluj Court of Appeal – Criminal and minors Section in order to issue a preliminary ruling, respectively: if the person's action of driving a vehicle on a public road, who at the time of sampling biological samples had an alcohol level over 0,80 g/l of pure alcohol in the blood and who is under the influence of psychoactive substances, meets the elements of a crime with an alternative content, stipulated by art. 336 para. (1) and (2) of the Criminal Code or meets the elements of two crimes with alternative content, provided by art. 336 para. (1) and art. 336 para. (2) of the Criminal Code, with the application of art. 38 para. (2) of the Criminal Code.

Therefore, the Court held that the person's action of driving a vehicle on a public road, having an alcohol level over 0,80 g/l of pure alcohol in the blood and being under the influence of psychoactive substances, meets the elements of the crime provided by art. 336 para. (1) and para. (2) of the Criminal Code, respectively a single crime.