



## dispute resolution - legal changes published in February 2023

**The Decision of the European Court of Human Rights dated 16 November 2021 ruled in Nedelcu against Romania Case (Application no. 39.290/19) was published in the Official Gazette, Part I no. 88 dated February 01, 2023 and it is applicable from the same date.**

Through the filed application, the complainant claims that the State has failed to fulfil its positive obligation to protect her right to life and also that the national authorities have failed to carry out an effective investigation regarding the circumstances of the accident. The complainant, aged sixty-nine, was the victim of an accident occurred in a subway station in Bucharest, as a result of which she lost her left leg, requiring emergency surgery.

As a result of the event, the applicant filed a criminal complaint for culpable bodily injury against the public transport company that operated the subway network in Bucharest. The public prosecutor's office dismissed the complaint on the grounds that the company was not responsible, the fault belonging to the applicant. The Bucharest Court admitted the the complainant's appeal and ordered the continuation of the investigation, with the prosecutor's office closing the case for the second time on the same grounds.

The Bucharest Court held that the company was responsible, as it was its fault, but at the same time concluded that the company's criminal liability was time-barred and, therefore, the criminal prosecution stopped.

The European Court of Human Rights held that there was a violation of Article 2 of the Convention under material and procedural aspects, and, consequently, the respondent State shall pay to the applicant, within three months, the following amounts, which shall be converted into the currency of the respondent State, at the exchange rate applicable on the date of payment: **(i)** EUR 26,000 plus any other amount that may be due as a tax for this amount for non-pecuniary damages; **(ii)** EUR 2,700 plus any other amount that may be due as a tax, in respect of costs and expenses; **(iii)** that from the expiry of the above-mentioned period and until payment is made, such amounts 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.

**The Decision of the European Court of Human Rights dated 16 February 2021 ruled in Negulescu against Romania Case (Application no. 11.230/12) was published in the Official Gazette, Part I no. 94 dated February 02, 2023 and it is applicable from the same date.**

The case concerns allegations according to which the criminal proceedings against the applicant for a minor offence were unfair, to the extent that the court relied on the testimony of witnesses to whom the applicant could not ask questions.

The European Court of Human Rights held that **(i)** there was a violation of Articles 6 § 1 and 6 § 3 (d) of the Convention **(ii)** the respondent State shall pay to the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention the amount of EUR 1,000, which shall be converted into the currency of the respondent State at the exchange rate applicable at the date of payment, for non-material damages, plus any other amount that may be due as a tax for this amount; **(iii)** the respondent State shall pay to the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention the amount of EUR 100, which shall be converted into the currency of the respondent State at the exchange rate applicable at the date of payment, in respect of costs and expenses, plus any other amount that may be due as a tax for this amount; **(iv)** that from the expiry of the above-mentioned period and until payment is made, such amounts 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. 2/2023 regarding the examination of the request formulated by Bucharest Municipal Court – Civil Section V regarding the request that forms the object of Case File no. 19.409/299/2022 in order to issue a preliminary ruling for resolving a matter of law was published in the Official Gazette, Part I no. 141 of February 20, 2023 and it is applicable from the same date.**

The High Court admitted the request made by Bucharest Municipal Court – Fifth Civil Section in order to issue a preliminary ruling, in the interpretation and application of the provisions of art. 24 para. (1) to (3) and (4) of Law no. 554/2004 on Administrative Litigation, as subsequently amended and supplemented, established that:

- The provisions of art. 24 para. (1) to (3) of Law no. 554/2004, as subsequently amended and supplemented, shall be interpreted as meaning that the procedure for the enforcement of a final judgment delivered by a court of contentious administrative law is applicable even in the situation where the obligation established by such ruling is the issuance of an administrative unilateral act of an individual nature.

Moreover, the Court stated that art. 24 para. (3) and (4) of Law no. 554/2004 shall be interpreted in the sense that the procedure for fixing the final amount owed to the creditor as penalties is also applicable in the situation where, by the writ of execution, the court has established penalties applicable to the obliged party, for each day of delay, in accordance with art. 18 para. (5) of Law no. 554/2004.

**The Decision of the European Court of Human Rights dated 30 August 2022 ruled in Gal against Romania Case (Application no. 49.229/1519) was published in the Official Gazette, Part I no. 172 dated February 28, 2023 and it is applicable from the same date.**

Through the submitted application, the complainant claims that she was prosecuted for the crime of complicity to influence peddling and that she was found not guilty in the first instance as a result of the fact that there was a provocation for committing the crime. The judgement was overturned on the appeal requested by the public prosecutor's office and the court found the applicant guilty based solely on the statements of the whistleblowers from the case file.

In relation to these aspects, the European Court held that the national courts had not taken sufficient measures to ensure the hearing before the court and under contradictory conditions for one of the whistleblowers, who had moved to Ireland. Furthermore, the Court stated that the appeal court infringed the applicant's right to a fair trial by rejecting the applicant's request for the rehearing of two witnesses and to listen to the recordings made by those two witnesses, in public hearing, evidence that supported the defence's regarding the existence of provocation to commit the crime and which substantiated the acquittal solution in the first instance.

The European Court of Human Rights held that there was a violation of Articles 6 § 1 and 6 § 3 (d) of the Convention with regard to the applicant's impossibility to interrogate C.M., in person or through a representative and his conviction on appeal in the absence of the hearing of witnesses on which the appeal court relied and ordered that the respondent State shall pay to the applicant, within three months, the following amounts, which shall be converted into the currency of the respondent State, at the exchange rate applicable at the date of payment: (i) EUR 6,000 plus any other amount that may be due as a tax for this amount for non-material damages; (ii) EUR 3,000 plus any other amount that may be due as a tax, in respect of costs and expenses. These amounts 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, that from the expiry of the above-mentioned period and until payment is made.