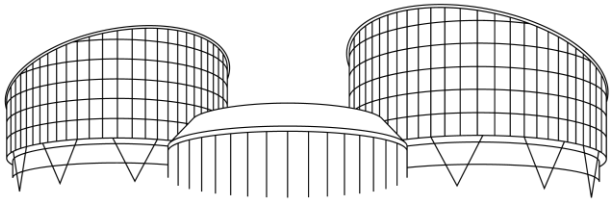

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

DECISION

Application no. 6863/09
T.N.B. and C.D.
against Romania

The European Court of Human Rights (Third Section), sitting on 4 January 2012 as a Chamber composed of:

Josep Casadevall, *President,*
Alvina Gyulumyan,
Egbert Myjer,
Ján Šikuta,
Ineta Ziemele,
Nona Tsotsoria,
Mihai Poalelungi, *judges,*

and Santiago Quesada, *Section Registrar,*

Having regard to the above application lodged on 11 April 2001,

Having regard to the decision taken by the President of the Chamber to appoint Mr Mihai Poalelungi to sit as ad hoc judge (Article 26 § 4 of the Convention and Rule 29 § 1 of the Rules of Court), as Mr Corneliu Bîrsan, the judge elected in respect of Romania, had withdrawn from the case (Rule 28 of the Rules of Court),

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

The applicants, Mr T.N.B. and Mrs C.D., are Romanian nationals who were born in 1977 and 1946 respectively and live in București. The first applicant is the son of the second applicant. The Romanian Government

("the Government") were represented by their Agent, Mr Răzvan-Horaţiu Radu, of the Ministry of Foreign Affairs.

A. The circumstances of the case

1. Application no. 40067/06 and the Court's judgment of 14 February 2008

1. On 15 May 2006 the applicants lodged an application with the Court (application no. 40067/06) against Romania under Article 34 of the Convention. They alleged that Articles 3, 6 § 1, 8, 13, 14 and Article 1 of Protocol No. 1 to the Convention had been violated as a result of the non-enforcement of a final judgment of 22 November 2005 obliging the local water supply company to conclude a contract for water supply with the second applicant, distinctive than the one concluded with the association of all landlords living in the same building.

2. In a judgment of 14 February 2008 the Court analysed all the complaints raised by the applicants only under Article 6 § 1 and held that there had been a violation of this article due to the non-enforcement of the final judgment in the applicants' favour. As to the application of Article 41, the Court ordered the Romanian Government to pay the applicants jointly 10,000 euros in respect of pecuniary and non-pecuniary damages.

3. The Court's judgment of 14 February 2008 became final on 14 May 2008 and was transmitted to the Committee of Ministers who is supervising its state of execution under the provisions of Article 46 § 2 of the Convention.

On 21 August 2008 the Romanian Government paid the damages as ordered by the Court.

At their 1100th meeting held on 30 November 2010, the Deputies decided to postpone the examination of this case at their next meeting in view of the fact that bilateral contacts were under way in order to assess new information received from the Government on the issue of the continuing non-enforcement of the domestic court judgment of 22 November 2005. The adoption of a resolution is still pending in this case.

2. The present application

4. The facts of the case, as submitted by the parties, may be summarised as follows.

5. Following the adoption of the Court's judgment of 14 February 2008, the water supply company sent several letters to the applicants expressing its willingness to conclude a contract with them. Hence, by letters sent on 21 February, 3 March, 14 April and 3 June 2008, the company informed the applicants that in order to conclude a distinctive water supply contract a new branching was necessary with the purpose to separate the supply to their apartment from the common supply of the entire building. On two occasions, on 28 February and 9 April 2008, representatives of the

water supply company came to the applicants' building in order to perform the necessary works but did not find them at home.

6. By a letter of 7 March 2008 addressed to the water supply company the applicants expressed their disagreement for the construction of a separate branching invoking both the domestic judgment as well as the Court's judgment which made no express order in this respect.

7. According to the parties' submissions, the judgment of 22 November 2005 remained non-enforced to date.

B. Relevant domestic law and practice

8. The relevant domestic law concerning the execution of final judgments, namely excerpts of the Civil Procedure Code and Law no. 188/2000 on the powers and functions of bailiffs, is summed up in the Court's judgment in the case of *Topciov v. Romania* ((dec.), no. 17369/02, 15 June 2006).

COMPLAINTS

9. The applicants complained under Articles 6 § 1 and 13 of the Convention that, despite the judgment adopted by the Court in their previous application no. 40067/06, the domestic court judgment of 22 November 2005 remained not enforced.

THE LAW

10. The applicants complained that the Government had failed to execute the Court's judgment of 14 February 2008 given in their previous application. In particular, the applicants claimed that the domestic court judgment of 22 November 2005 was still not enforced despite the Court's ruling finding a violation of Article 6 of the Convention.

11. The Court considers that in the particular circumstances of the present case this complaint falls to be examined under Article 46 of the Convention, which reads, in so far as relevant:

> "1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.
>
> 2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution.
>
> ...
>
> 4. If the Committee of Ministers considers that a High Contracting Party refuses to abide by a final judgment in a case to which it is a party, it may, after serving formal notice on that Party and by decision adopted by a majority vote of two thirds of the representatives entitled to sit on the Committee, refer to the Court the question whether that Party has failed to fulfil its obligation under paragraph 1.

5. If the Court finds a violation of paragraph 1, it shall refer the case to the Committee of Ministers for consideration of the measures to be taken. If the Court finds no violation of paragraph 1, it shall refer the case to the Committee of Ministers, which shall close its examination of the case."

12. The Government firstly submitted three preliminary exceptions, namely that the present application is substantially the same as a matter that has already been examined by the Court, that it is an abuse of the right of individual application and that the first applicant lacks victim status. Further on, the Government submitted that there was an objective impossibility for the enforcement of the judgment of 22 November 2005 due to the applicants' conduct.

With respect to the Government's preliminary objections, the Court finds that it is not necessary to examine them as the complaint is in any event inadmissible for the following reasons.

13. The Court reiterates that findings of a violation in its judgments are essentially declaratory (see *Lyons and Others v. the United Kingdom* (dec.), no. 15227/03, ECHR 2003-IX; *Krčmář and Others v. the Czech Republic* (dec.), no. 69190/01, 30 March 2004; and *Marckx v. Belgium*, 13 June 1979, § 58, Series A no. 31) and that, by Article 46 of the Convention, the High Contracting Parties undertook to abide by the final judgments of the Court in any case to which they were parties, execution being supervised by the Committee of Ministers (see, *mutatis mutandis*, *Papamichalopoulos and Others v. Greece* (Article 50), 31 October 1995, § 34, Series A no. 330-B).

14. The Court has often emphasised that it does not have jurisdiction to verify whether a Contracting Party has complied with the obligations imposed on it by one of the Court's judgments. It has therefore refused to examine complaints concerning the failure by States to execute its judgments, declaring such complaints inadmissible *ratione materiae* (see *Moldovan and Others v. Romania* (dec.), no. 8229/04, 15 February 2011; *Dowsett v. the United Kingdom* (no. 2) (dec.), no. 8559/08, 4 January 2011; *Öcalan v. Turkey* (dec.), no. 5980/07, 6 July 2010; *Haase v. Germany*, no. 11057/02, ECHR 2004-III; *Komanický v. Slovakia* (dec.), no. 13677/03, 1 March 2005; *Lyons and Others*, cited above; *Krčmář and Others*, cited above; and *Franz Fischer v. Austria* (dec.), no. 27569/02, ECHR 2003-VI).

15. This is not to say, however, that measures taken by a respondent State in the post-judgment phase to afford redress to an applicant for the violation or violations found fall outside the jurisdiction of the Court. On the contrary, the Court has acknowledged a certain degree of competence to examine such complaints where it has considered that a "new issue" was raised in the follow-up application. In particular, the Court has stated that the Committee of Ministers' role in this sphere does not mean that measures taken by a respondent State to remedy a violation found by the Court cannot raise a new issue undecided by the judgment (see *Verein gegen Tierfabriken Schweiz (VgT) v. Switzerland* (no. 2) [GC], no. 32772/02, § 62, ECHR 2009-...; *Haase*, cited above; *Hakkar v. France* (dec.), no. 43580/04, 7 April 2009; *Mehemi v. France (no. 2)*, no. 53470/99,

§ 43, ECHR 2003-IV; and *Olsson v. Sweden (no. 2)*, 27 November 1992, Series A no. 250) and, as such, form the subject of a new application that may be dealt with by the Court. For example, the Court may entertain a complaint that a retrial at domestic level by way of implementation of one of its judgments gave rise to a new breach of the Convention (see *Lyons and Others*, cited above, and also *Hertel v. Switzerland* (dec.), no. 3440/99, ECHR 2002-I). Further, the Court may take account of what has been done at national level in cases where it has reserved the issue of just satisfaction (see *Schuler-Zgraggen v. Switzerland* (Article 50), 31 January 1995, Series A no. 305-A, and *Barberà, Messegué and Jabardo v. Spain* (Article 50), 13 June 1994, Series A no. 285-C).

16. However, these considerations do not apply in the instant case. The applicants' complaint under Article 46 is plainly that the Government have failed to execute the Court's judgment concerning their previous application and did not put forward any "new issue" before the Court.

17. Furthermore, it must be noted that the Committee of Ministers has not ended its supervision of the execution of the Court's judgment and the adoption of a resolution is still pending (see paragraph 3 above). In this respect the Court recalls that subject to monitoring by the Committee of Ministers, the respondent State remains free to choose the means by which it will discharge its legal obligation under Article 46 of the Convention, provided that such means are compatible with the conclusions set out in the Court's judgment (see *Scozzari et Giunta v. Italy* [GC], nos. 39221/98 and 41963/98, § 249, CEDH 2000-VIII).

18. Having regard to all the above, the Court finds that the application must be rejected as incompatible *ratione materiae* with the provisions of the Convention in accordance with Article 35 § 3 and must be rejected in accordance with Article 35 § 4.

For these reasons, the Court unanimously

Declares the application inadmissible.

Santiago Quesada
Registrar

Josep Casadevall
President