

**SECRETARIAT GENERAL**  
**SECRETARIAT OF THE COMMITTEE OF MINISTERS**  
**SECRÉTARIAT DU COMITE DES MINISTRES**

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*Item reference: Action plan / Action report*

Please find enclosed a communication from Romania concerning the case of Bozgan against Romania (Application No. 35097/02).

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*Référence du point : Plan d'action / Bilan d'action*

Veuillez trouver, ci-joint, une communication de la Roumanie relative à l'affaire Bozgan contre Roumanie (requête n° 35097/02) (**Anglais uniquement**).

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\* In the application of Article 21.b of the rules of procedure of the Committee of Ministers, it is understood that distribution of documents at the request of a Representative shall be under the sole responsibility of the said Representative, without prejudice to the legal or political position of the Committee of Ministers (CM/Del/Dec(2001)772/1.4). / Dans le cadre de l'application de l'article 21.b du Règlement intérieur du Comité des Ministres, il est entendu que la distribution de documents à la demande d'un représentant se fait sous la seule responsabilité dudit représentant, sans préjuger de la position juridique ou politique du Comité des Ministres CM/Del/Dec(2001)772/1.4).

## **Action report**

### **Case of Bozgan v. Romania**

(Application No. 35097/02, judgment of 11 October 2007, final on 11 January 2008)

#### **I. Summary of the case**

The case concerns a breach of the applicant's freedom of association due to the refusal by the Romanian courts, in 2002, to register an association the applicant intended to form (the "Anti-Mafia National Guard") on the basis of a mere suspicion that the association intended to set up parallel structures to the public prosecutors' office and thus pursued unlawful and anti-constitutional objectives (violation of Article 11).

The European Court noted that the Romanian courts' decisions appeared arbitrary since the articles of association indicated that it would pursue its activities within the framework of the existing legislation and would not substitute itself for state authorities (§23). In addition, before requesting registration, the association undertook no activity which might indicate that it had any anti-constitutional aims (§24). Lastly, the applicable law conferred on the Romanian courts the power to order the dissolution of an association if its aims were contrary to the law or at variance with those set forth in its articles of association. Consequently, the refusal to register the association even before it started its activities appeared disproportionate and thus not necessary in a democratic society.

#### **II. Individual measures**

##### **A. Just satisfaction**

The European Court considered that the finding of a violation constituted in itself sufficient redress for any damage sustained by the applicant.

##### **B. Individual measures**

The Government would point out that the applicant can introduce at any time a new request for registration of said association. Alternatively, the applicant could request the publication of the judgment in the *Official Journal* and lodge an application for reopening of the impugned proceedings under Article 322, paragraph 9 of the Code of Civil Procedure, within one year as of the publication.

#### **III. General measures**

In its judgment, the European Court challenged the approach taken by the domestic courts when rejecting the applicant's request for registration of said association, which it qualified as "arbitrary" (see §23 of the judgment). There is no indication that the violation stems from a deficient legal framework in the relevant field. On the contrary, as noted by the European Court, the Government Regulation No. 26/2000 on associations and foundations requires the courts to notify the applicants when the legal requirements for the registration of an association are not met and to provide them adequate time to remedy such irregularities; it is only when such irregularities are not rectified in due time that the courts can reject the request for registration, and they are required to do so by a reasoned decision (Sections 9, §1 and 10, §2 of the Regulation).

The Government considers this case to be of an isolated nature. Nevertheless, the Government took measures to ensure the publication and dissemination of the judgment of the European Courts. Thus the judgment was translated into Romanian and was sent to the Superior Council of

Magistracy for dissemination to all domestic courts. The translation of the judgment was also published on the website of the Superior Council of the Magistracy ([www.csm1909.ro](http://www.csm1909.ro)).

Furthermore, it should be recalled that the Convention and the European Court's case-law are the focus of specific programmes for the initial and continuing training of the Romanian magistrates (judges and prosecutors alike) organised by the National Magistracy Institute.

#### **IV. Conclusions**

The Government considers that no other individual or general measures are to be taken in the present cases and that Romania complied with the obligations imposed under Article 46, paragraph 1 of the Convention. The Government therefore invites the Committee of Ministers to close the examination of this case.