

SECRETARIAT / SECRÉTARIAT

SECRETARIAT OF THE COMMITTEE OF MINISTERS
SECRÉTARIAT DU COMITÉ DES MINISTRES



Contact: Zoe Bryanston-Cross
Tel: 03.90.21.59.62

Date: 29/08/2024

DH-DD(2024)975

Documents distributed 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.

Meeting: 1507th meeting (September 2024) (DH)

Item reference: Action Report (28/08/2024)

Communication from Romania concerning the case of Farcas and Others v. Romania (Application No. 30502/05)

Les documents distribués à la demande d'un/e Représentant/e le sont sous la seule responsabilité dudit/de ladite Représentant/e, sans préjuger de la position juridique ou politique du Comité des Ministres.

Réunion : 1507^e réunion (septembre 2024) (DH)

Référence du point : Bilan d'action (28/08/2024)

Communication de la Roumanie concernant l'affaire Farcas et autres c. Roumanie (requête n° 30502/05)
(anglais uniquement)

L/4714/28.08.2024

2401 R/AG/53

DGI

28 AOUT 2024

SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH

Action report

The case of *Farcaș and others v. Romania*

(application no. 30502/05, judgment of/ final on 5 June 2018)

Case summary

This case concerns the applicants' lack of access to a court in the context of appeals in insolvency proceedings which took place in 2008.

The European Court acknowledged that the existence of a special notice procedure, whereby a judgment was reputed to have been notified to the parties upon publication in the Bulletin of Insolvency Proceedings, served the legitimate aim of ensuring that insolvency proceedings were expeditious and efficient, insofar as the personal service of court documents could add substantially to the costs and length of proceedings. The domestic courts did not have at their disposal any alternative means and possibilities to adapt the service procedure to individual situations and to notify the parties about the course of the proceedings. The Court concluded that a fair balance had not been struck between the interests of the effective administration of justice and those of the applicants (violation of Article 6 § 1).

Individual measures

The Government reiterates that the sums awarded by the Court to the first and second applicant for non-pecuniary damages were paid within the time limit provided for in the Court's judgment **and consider that there are no other individual measures to be taken.**

General measures

Following the assessment, on 15.06.2021, of the information provided by the Agent of the government, the Department for the execution of judgments of the ECHR asked the national competent authorities to submit additional information, based on the findings in the judgment about the relevant developments in the domestic regulations/ practice envisaged to remedy the problem outlined in the judgment, respectively the special notice procedure in insolvency proceedings.

Regarding the insolvency proceedings applicable in this case, the National Trade Register Office (ONRC) has provided the following information:

The distribution of the Bulletin of Insolvency Procedures is regulated by the provisions of Article 12 (1) to (6) of Government Decision (GD) no. 460/2005 on the content, stages, conditions of financing, publication and distribution of the Bulletin of insolvency proceedings, with subsequent amendments and completions, specifying how to provide the

publication of the Bulletin of insolvency procedures, in electronic format, through the subscription system, for a fee, and at the request of interested persons, punctually, in paper format.

According to the provisions of GD no. 124/2007 for the approval of the sale price of the Bulletin of insolvency proceedings, ONRC, acting as supplier, provides the beneficiaries with access to the Insolvency Proceedings Bulletin service, in electronic format, on an order basis (*formular*), through the subscription system (annual, quarterly or monthly - with payment of legal fees), by concluding «*The supply contract of "Bulletin of Insolvency Procedures" in electronic format*». Thus, it is possible to view the newsletters published in the Bulletin of Insolvency Procedures during the contracted period, by logging in the user's account (using an email address established by the beneficiary and the related password, which is allocated exclusively to the beneficiaries for this purpose by ONRC), on the ONRC online service portal, <https://portal.onrc.ro>, section "*Online services BPI PJ*", subsection "*Online Insolvency Procedures Bulletin PJ*".

Charges are displayed on the Insolvency Procedures Bulletin website, www.bpi.ro, section "*Tarife BPI*", subsection "*Tarife de furnizare BPI*".

The price of the Bulletin of insolvency procedures, on a subscription basis, on electronic support is as follows: 949,95 lei for an annual subscription, 237,49 lei for a quarterly (three month) subscription and 79,16 lei for a monthly subscription.

Furthermore, for the price of 30 lei, specific information (*certificat constatator*) can also be obtained, such as whether or not a procedural document is registered and published in the Insolvency Proceedings Bulletin or not or the issue of a historical report on a debtor (from the opening of the insolvency procedure until the date of the request for the report or for certain periods).¹

General information on the situation of a person subject to insolvency proceedings and information for the fulfilment of the necessary formalities can be accessed on the Internet, via the web page <http://portal.onrc.ro> (see also www.onrc.ro or www.bpi.ro), where information on persons published in the Bulletin of Insolvency Proceedings are available, **free of charge**. The persons who are subject to the insolvency law, the persons for whom the insolvency proceedings have been closed, as well as the persons for whom there is an insolvency file pending, without opening the insolvency proceedings, can be identified. The relevant public services, available both online and offline, are *BPI Publication online forms BPI PJ, Online Forms providing information BPI PJ, Bulletin of Insolvency Proceedings online PJ, Persons published in BPI PJ, BPI, BPI PJ Number Summary, PJ Statistics, BPI offline forms PJ*².

Also, in order to obtain useful information and details from the files pending before the courts, the interested person can access the web page <http://portal.just.ro>, through which relevant information can also be obtained on the portal of the courts being.

In relation to the situations mentioned above, ONRC in carrying out the duties of publishing the Insolvency Proceedings Bulletin, has made public services available to interested persons regarding the provision of the Bulletin of Insolvency Procedures and its information, through means and tools both online and offline, in order to apply the legal provisions in the field of insolvency.

¹ http://www.bpi.ro/?page_id=47

² In original: *Formulare online publicare BPI PJ, Formulare online furnizare informații BPI PJ, Buletinul Procedurilor de Insolvență online PJ, Persoane publicate în BPI PJ, Sumar număr BPI PJ, Statistici PJ, Formulare offline BPI PJ.*

It should be noted that the provisions governing the insolvency procedure were subject to constitutional review.

In accordance with the provisions of the Government Decision no. 460/2005 and of the Regulation (EU) 2015/848 on insolvency procedures, ONRC provides access to interested persons, **free of charge**, to the information on procedural documents published in the Bulletin of Insolvency Procedures, in section “Online services BPI PJ”, subsection “Persons published in BPI PJ”, by using the selection criteria (e.g. person published in BPI, no. of bulletin, file no, unique registration code, register order number, publication interval) within the online services portal ONRC <https://portal.onrc.ro>. The following mandatory information are included:

- “(…) (a) the opening date of insolvency proceedings;*
- (b) the court which opened insolvency proceedings and the reference number of the case, if any;*
- (c) the category of insolvency proceedings referred to in Annex A which have been opened and, where applicable, any relevant sub-category of such proceedings opened in accordance with national law;*
- (d) whether the power to open proceedings is based on Article 3 (1), (2) or (4);*
- (e) whether the debtor is a company or a legal person, the name, registration number, registered office or correspondence address of the debtor, if different;*
- (f) whether the debtor is a natural person, whether or not they are engaged in an independent economic activity or in a professional activity, name, registration number, if any, and the address of the debtor's correspondence or, if the address is protected, the date and place of birth of the debtor;*
- (g) the name, mailing address or e-mail address of the insolvency practitioner appointed in the proceedings, if a practitioner has been appointed;*
- (h) the time limit for lodging applications for the admission of claims, if any, or a reference to the criteria for calculating that time limit;*
- (i) the date of closure of the main insolvency proceedings, if such a date has been fixed;*
- (j) the court and, where applicable, the time limit for lodging an appeal following the ruling opening insolvency proceedings in accordance with Article 5, or a reference to the criteria for calculating this term.”*

It should be noted that at subsection “Summary number BPI PJ” within the online service portal ONRC <https://portal.onrc.ro>, ONRC provides to interested persons the possibility to check the summary of the published Bulletin numbers, depending on the criterion of the year of publication – where the following information can be viewed: debtor name, unique registration code, registry code, name, number and date of the document/procedural documents published in the Bulletin of Insolvency Procedures.

According to the provisions of art. 42 para. (1) – (2) of Law no. 85/2014 the summoning of the parties, as well as the communication of any procedural documents, summonses and notifications is carried out through the Bulletin of Insolvency Procedures, this legal norm being the general framework for the publication of procedural documents issued in the context of insolvency procedures.

Related to the provisions mentioned above, the legislator expressly provided, through the provisions of art. 42 para. (3) – (4) and (7) – (8) combined with the provisions of art. 71 para.

(2) and of art. 99 – 100, as well as the provisions of art. 43 para. (1) – (4), (6) and of art. 46 para. (1) from Law no. 85/2014, the following exceptions:

"With the exception of the provisions of para. (1), the communication of procedural documents prior to the opening of the procedure and the notification of the opening of the procedure shall be carried out according to the provisions of the Code of Civil Procedure. Creditors who were not notified according to the provisions of art. 99 para. (3) are considered as being within the deadline for submitting applications for the admission of claims, by applying for admission to the credit list (masa credala) and will take over the procedure in the stage in which it was at the time of their enrollment in the credit list (masa credala).

*As an exception to the provisions of para. (1), the first citation and communication of the procedural documents to the persons against whom an action is brought, based on the provisions of this law, after the opening of the insolvency procedure, **will be carried out according to the provisions of the Code of Civil Procedure and through the BPI.** The courts will submit the procedural documents in question, ex officio, for publication in the BPI.*

(...) Notifications, except for the case where the task of notification belongs to other bodies that apply the procedure and the summons provided by this law, shall fall under the responsibility of the judicial administrator or the judicial liquidator, as the case may be.

Creditors who have registered claims admission requests are presumed to be aware of the terms provided for in art. 100 times in art. 146 or 147, as the case may be, and will no longer be cited.

(...) By concluding the opening of the procedure, the syndic judge will order the judicial administrator or the liquidator, as the case may be, to make the notifications provided for in art. 100.

(...) Following the opening of the procedure, the judicial administrator will send a notification to all the creditors mentioned in the list submitted by the debtor according to the provisions of art. 67 para. (1) lit. c) or, as the case may be, according to the provisions of art. 74, the debtor and the office of the trade register or, as the case may be, the register of agricultural companies or other registers where the debtor is registered/registered, for making the mention.

(...) The notification provided for in para. (1) is carried out according to the provisions of the Civil Procedure Code and will be published, at the same time, at the expense of the debtor's estate, in a widely circulated newspaper and in the BPI.

Moreover, the provisions of art. 229 of the Civil Procedure Code regulates the institution of the Acknowledged Term (*termen in cunostinta*), so that:

"(1) The party who filed the request in person or through an attorney and took notice of the term, as well as the party who was present at a court term, personally or through a legal or conventional representative, even if not empowered with the right to know term, will not be cited throughout the trial at that court, considering that she knows the subsequent trial terms. These provisions are also applicable to the party who, personally or through a legal or conventional representative or through the official or the person in charge of receiving correspondence, was handed the summons for a court term, considering that, in this case, he also knows the terms of subsequent judgment to the one for whom the summons was served.

(2) The provisions of para. (1) does not apply:

1. in the case of the resumption of the trial, after it was suspended;

- 2. in case the process is put back on the roll;*
- 3. when the party is called to the interrogation, apart from the case where he was present at his consent, when the deadline for taking it was also established;*
- 4. when, for valid reasons, the court ordered that the party be summoned at each term;*
- 5. if the court of appeal or appeal sets a deadline for the retrial of the merits of the case after the annulment of the decision of the first court or after the annulment with remand."*

Conclusion

The Government therefore respectfully ask the Committee of Ministers to declare that Romania has fulfilled its obligations under Article 46, paragraph 1, of the Convention and respectfully requests the closure of the examination of this case.