

**SECRETARIAT GENERAL**

SECRETARIAT OF THE COMMITTEE OF MINISTERS  
SECRETARIAT DU COMITE DES MINISTRES



Contact: Clare Ovey  
Tel: 03 88 41 36 45

**Date:** 06/03/2018

**DH-DD(2018)231**

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: 1310<sup>th</sup> meeting (March 2018) (DH)

Communication from the applicant (02/03/2018) in the case of BUTI (Sacaleanu group) v. Romania (Application No. 11472/07).

Information made available under Rule 9.1 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements.

\* \* \* \* \*

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 : 1310<sup>e</sup> réunion (mars 2018) (DH)

Communication du requérant (02/03/2018) dans l'affaire BUTI (groupe Sacaleanu) c. Roumanie (Requête n° 11472/07) **[anglais uniquement]**

Informations mises à disposition en vertu de la Règle 9.1 des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.

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DGI

02 MARS 2018

SERVICE DE L'EXECUTION  
DES ARRETS DE LA CEDH

**To:** Department for the Execution of Judgments of the ECHR  
DGI – Directorate General of Human Rights and Rule of Law  
Council of Europe  
F-67075 STRASBOURG CEDEX

**From:** BIT S.A., a Romanian legal entity, with the registered office in Bucharest, 12 Ramuri Tei St., District 2, registered with the Trade Register Office under no. J40/475/1995, with the Tax Identification Number 957, duly represented by lawyer Pavel Daniel;

**Subject:** SC BIT SA v Romania (application No 2804/2012) – Judgement of 16 December 2014 (Buti and Others v. Romania)

**Dear Sirs,**

Thank you for your letter dated December 22<sup>nd</sup>, 2017. It is extremely encouraging for us to receive assurances that an European authority will examine the case until the Court's judgment has been fully executed.

Kindly be informed that in all the time elapsed between Judgement issuance and the date of the present letter we actively tried to obtain the rights confirmed by CEDO. In this respect we sent countless letters towards the Governmental Agent of Romania, asking about the measures undertaken for the Judgement enforcement. Such letters were registered under the nr: 5498/May 7<sup>th</sup>, 2015, nr. 6606/June 9<sup>th</sup>, 2015, nr. 5648/October 2015, etc. However, we did not receive any response to our requests. Moreover, we requested for a meeting, to find an amiable solution, but we did not receive any response from the Governmental Agent of Romania.

We also sent letters to the Romanian Finance Ministry, Justice Ministry, Foreign Affairs Ministry, but no action was undertaken by the Romanian State through its bodies.

Moreover, the approach of the Romanian State, through its bodies is fraudulent. BIT SA filed a claim in the court, in 2016, seeking to obtain the payment of the due amount (i.e. case file nr. 45048/3/2016\* in front of Bucharest Tribunal). The claim was filed against our initial debtor (i.e. the Authority for the State's Assets Administration) as defined in the national title (i.e. the decision nr. 1911/23.02.2010 rendered in the file nr. 36000/3/2008) whose non-execution generated the Judgement. The claim was also filed against the Romanian State, by its legal representative, the Ministry of Finance (hence, the Romanian State was co-defendant in the case-file). **In its statement of defence, filed in this case-file, the Romanian state specifically states in front of a Romanian court that:**

- a. **The ECHR Judgement creates no obligations for the Romanian State;**
- b. **BIT SA should continue to seek to enforce the national title;**

**c. The Governmental Agent of Romania did no actions or requests towards the Ministry of Finance aiming to the enforcement of the ECHR judgement until the date of the statement (i.e. September 4<sup>th</sup>, 2017):**

Please see attached an official translation, in relevant parts, of the statement of defence of the Romanian State.

Hence, we whereby inform you that, although from the date of delivery of the ECHR judgment referred to above until the date hereof more than 3 years have passed, the Romanian state has not complied with its obligation to provide the adequate means by which we might recover any outstanding amounts and no effective measures have been taken in this respect.

We believe that the aforementioned issues constitute a new violation of the ECHR Convention by the Romanian State, i.e. under article 46 of the Convention: "The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties." The mechanism of this article expresses the principle that states have an obligation to enforce ECHR judgments. This general obligation includes the following specific obligations: (i) the obligation to execute the national judgment, which has not been enforced, (ii) the obligation to cease the violation found by the ECHR judgment and to prevent similar violations in the future, (iii) the compensation for the damage. In order to implement these obligations the State should adopt a series of measures. The adoption of these measures is of great importance for the protection of human rights, for two reasons. Firstly, it ensures that individual rights under the Convention are indeed protected and, secondly, it prevents the registration of similar cases before the Court. Moreover, it is extremely important for the enforcement of any obligations under the ECHR judgment to be done immediately. The urgency of enforcing the ECHR judgment results from article 46 (1) in conjunction with article 1 of the Convention, and from the Vermeire v Belgium case. It should be recalled that in the case no. 2804/12 filed by the undersigned – the company BIT S.A., the ECHR judgment was delivered on 16 December 2014, but so far has not been enforced by the Romanian State although it is a "Contracting Party" to the Convention.

The execution of ECHR judgments is supervised by the Committee of Ministers under article 46 (2) of the Convention. In the aforementioned case, an "enhanced supervision" is established. Since June of 2010, the Protocol 14 has come into force, under which the powers of the Committee of Ministers in terms of the execution of ECHR judgments have been extended. This Protocol has also been ratified by Romania. One of the amendments refers to the right of the Committee of Ministers to address the Court if it deems that the particular State refuses to enforce the ECHR judgment. This amendment is referred to as the infringement proceedings in case of refusal to abide by a judgment.

Given the above we opine that firmer measures should be imposed to the Romanian State. As such, we would kindly ask you to establish clear deadlines for the State to respond as to the measures taken for the Judgement enforcement. Also, the



Romanian authorities' responses should make clear references to the name and the dates of the documents/steps/measures they undertook.

We would also like to request for a more often examination procedure to be established. One every year creates no pressure for the Romanian authorities.

Please be so kind and let us know if updated information concerning the due payment had been provided to you by the Romanian Government.

Should you require additional information or clarifications, please do not hesitate to contact us at:

- ✓ Fax number: + 40 21 665 50 68;  
+ 40 21 665 70 86;
- ✓ Email address:
- ✓ Address: 4B Iordache Golescu, 1<sup>st</sup> District, Code 011303, Bucharest, ROMANIA.

*Yours faithfully,*

**Date:**  
.....22.02.2018.....

**BIT S.A.**  
duly represented by attorney Pavel Daniel



DGI

02 MARS 2018

SERVICE DE L'EXECUTION  
DES ARRETS DE LA CEDH

ROMANIA  
BUCHAREST TRIBUNAL  
319L Splaiul Independentei, block B, district 6  
Bucharest  
6<sup>th</sup> Civil Section

**Addressee:**  
**BIT SA,**  
**WITH THE CHOSEN**  
**HEADQUARTERS IN:**  
District 1, Bucharest,  
4B IORDACHE GOLESCU  
Street

**FILE NO. 45048/3/2016\***

Area of the law: Litigations with the professionals  
Trial stage of the above mentioned file: on the merits  
Object of file: claims without summoning – for solving the  
public aid demand  
Panel: C26-on the merits

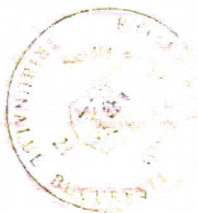
## Communication of Address

Released on the 4<sup>th</sup> of September 2017

Dear Sir/Madam,

Regarding the file with the above mentioned identification data, as Petitioner, respectfully receive our statement of defence and the fact that within 10 days since the receipt of this address, you must file an answer to this statement of defence. Kindly file the documents solicited and the proving acts in one copy for the law court and one copy for each party, as per art. 150 NCPC

Stamped & sealed



GHEORGHE SILVIA C. MIHA  
Traducător Autorizat  
Nr. 7979

## MINISTRY OF PUBLIC FINANCES

### General Legal Department

17 Apolodor Street  
District 5, Bucharest  
Phone: +021 319 97 52  
Fax: +021 319 97 35  
e-mail: [legale@mfir.ro](mailto:legale@mfir.ro)

TRIBUNAL of BUCHAREST  
6<sup>TH</sup> CIVIL SECTION

No.53214/16.08.2017

File no. 45048/3/2016\*

### TO THE PRESIDING JUDGE,


The Romanian State represented by the Ministry of Public Finances, headquartered in Bucharest, 17 Apolodor Street, district 5, by virtue of art. 205 Civil Procedural Code, hereby formulates this present:

### STATEMENT OF DEFENSE

With regard to the writ of summons formulated by SC BIT SA by means of which we hereby solicit the law court to allow the plea invoked and to reject the writ of summons as being formulated against a person lacking passive trial capacity to stand trial and in subsidiary, to reject the writ of summons as being inadmissible and groundless due to the following

### REASONS:

Regarding the writ of summons formulated by the petitioner SC.BIT SA, we hereby understand to invoke the following aspects: <excerpt>

  
GHEORGHE SILVIA  
Traducător Autorizat  
Nr. 7979



The Romanian state represented by the Ministry of Public Finances was not a party in the Civil Sentence no. 1911/23.02.2010 and delivered by Bucharest Tribunal in file no. 36000/3/2008 and therefore it cannot be held liable for the non-fulfilment of this court decree, but the party that is held to fulfil the court decree is the defendant – namely the Management Authority for the State Assets (*Romanian abbreviation: AAAS*), institution with its own legal personality which can stand trial having its own trial capacity, thus being obliged to observe the provisions of the law.

We have also shown that the petitioner SC BIT SA can solicit the enforcement of this court decree only to the defendant and not to a third party such as the Romanian State represented by the Ministry of Public Finances, action which involves the existence of a legal relationship between the Ministry of Public Finances – the Romanian State and SC BIT SA, case which establishes the impossibility to indicate either the origin of such legal relationship or of the obligations allegedly breached by the Ministry of Public Finances.

Therefore, it can be seen that the debtor of the obligation established by means of Civil Sentence no.1911/23.02.2010 delivered by Bucharest Tribunal in file no.36000/3/2008 is in fact the Management Authority for the State Assets, which also has the capacity of public institution involved in the privatization process.

With regard to the aspects above, we solicit the law court to reject the writ of summons as groundless, because at no time did the law stipulate that the Romanian State would guarantee the public institutions involved, namely the Management Authority for the State Assets in this case, for the obligations incumbent to it as provided by art.32 ind.4 of Government Emergency Decree no. 88/1997.

On the other hand, by means of the decree given on 16.12.2014, in the case SC BIT SA against Romania connected to the Buti & others case against Romania, the European court vested with a motion formulated by the petitioner, has established the breach of art. 6 in the Convention and art. 1 in the additional Protocol to the Convention, regarding the non-fulfilment or delayed fulfilment of



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the final court decrees.

With regard to these aspects, the decree of the European Court of Human Rights did not decide any obligation incumbent to the Romanian State, taking into account that the petitioner is already in the possession of a court decree that consecrates its right irrevocably acknowledged by a national law court, **the petitioner using this title in the future as per the national procedural regulations.**

Moreover, we consider that, from the verifications run so far, we did not find in our records any solicitation whatsoever filed by the Ministry of Foreign Affairs – Government Agent for the European Court of Human Rights, regarding the enforcement of the decree delivered by the European Court of Human Rights in the case SC BIT SA against Romania, connected to Buti & others case against Romania.

It can be seen that we are not dealing with a refusal of the authorities to fulfil the payment obligation established by means of writ of execution, proved by the fact that the creditor's company has recovered most part of the debt. Moreover, the Civil Code regulates the moratory and compensatory damages, which shall ensure entire repair of the creditor's prejudice caused by delays in making the payment.

Currently, the foreclosure procedure continues, fact resulting from the information which we hold, meaning that in this case the procedure through which the petitioner SC BIT SA, holder of the right acknowledged by means of Civil Sentence no. 1911/23.02.2010 delivered by Bucharest Tribunal in file no.36000/3/2008, compels its debtor to fulfil them in a forced manner.

Whereas the foreclosure procedure is in progress, the claims formulated by the petitioner SC BIT SA towards the Romanian State represented by the Ministry of Public Finances are groundless and inadmissible beyond any reasonable doubt.

Moreover, the person to which the petitioner claims the fulfilment of an obligation must be the debtor of such obligation, but in this case the Romanian State through the Ministry of Public Finances neither had nor has the capacity of



/ tc

debtor of the petitioner SC BIT SA so that it cannot oblige it to pay compensations for the non-fulfilment of a court decree.

Now therefore, from the aspects detailed above, it results that there is no legal or contractual relationship between the Romanian State through the Ministry of Public Finances and SC BIT SA, so that the writ of summons of the Romanian State through the Ministry of Public Finances formulated by the petitioner is **groundless**.

***Taking into account the above, we solicit the law court to allow the Romanian State's through the Ministry of Public Finances lack of passive capacity to stand trial and therefore to reject the motion formulated by SC BIT SA as being formulated against a person lacking passive capacity to stand trial, and in subsidiary, to reject the writ of summons as groundless.***

The Romanian State through the Ministry of Public Finances reserves its right to supplement this statement of defence according to the documents that shall be filed in this case.

In law, our claims are supported by the normative documents which we mentioned in the statement of defense.

Yours truly,

Ciprian Sebastian Badea

General Manager

<signed & sealed>

16.08.2017

The undersigned Gheorghe Silvia Simina, certified translator by the Romanian Ministry of Justice no. 7979/2002, **DO HEREBY CERTIFY** that this is a full, true and faithful translation of this document translated by me, in accordance with the Romanian version.



GHEORGHE SILVIA SIMINA  
Traducător Autorizat  
Nr. 7979