

The Lawsuits Romania Loses at European Court of Human Rights - Judicial Vulnerability, Fiscal Consequences

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Abstract. *The lawsuits lost by Romania raise several questions. From a legal point of view, they prove that the application of legal provisions and the observance of fundamental rights in Romania often register slips, sanctioned by the EU institutions with attributions in this respect. Economically speaking, they involve amounts to be reimbursed, damages, and legal fees to be paid, so amounts that increase public expenditures and are difficult to anticipate. This article aims to highlight Romania's position in relation to the other member states of the European Union regarding the number of cases pending at the European Court of Human Rights and the compensation to be awarded. We will also exemplify what other expenses could have been made with the most significant amounts, which Romanian state had to pay in these lost trials. The results indicate that for Romania, the lawsuits submitted to the ECHR constitute a fiscal risk.*

Keywords: Romania; ECHR convictions; fiscal expenditure; jurisdiction; fiscal risk

JEL Classification: H50; K42

1. Introduction

The Convention for the Protection of Human Rights and Fundamental Freedoms is a legal document designed by the Council of Europe, which entered into force in 1953, recognizing and defending the rights and freedoms of citizens and other social entities. If one or more of the rights enshrined in the Convention are violated by a member state of the Council of Europe, citizens may apply to the European Court of Human Rights (abbreviated ECHR). This is the supranational institution with jurisdictional activity that ensures compliance with the provisions of the Convention. Starting with 1994, the year in which Romania ratified the European Convention on Human Rights, the entitled Romanian natural and legal persons were able to submit complaints to the ECHR.

The legitimacy of the activity of human rights courts is the subject of many often-contradictory discussions between specialists in the fields of social sciences. There are points of view that argue that the trial and the possible conviction issued by judges, by directing them against a state, is a mixture in the national legal system of that country (Hoffman, 2009). Moreover, they are also seen as a threat to the democratic principles that guide states (Follesdal, 2009). Other points of view, on the contrary, support the globalization of human rights standards and call for a deeper and coordinated action of these courts (Abramovich, 2009). Other authors argue that these disputes have as a starting point the misconception that there is competition between national and supranational courts and not a cooperative relationship (Çalı et al, 2013).

The question from which this article starts is whether or not the lawsuits that a state loses at the ECHR represent a fiscal risk for that state. From the IMF's point of view (Brixi and Schick, 2009), fiscal risk is a factor that requires increased financial

resources for a government in the future. Another definition with a similar content presents the fiscal risk as the government's exposure to short- and medium-term variability, in the general level of revenues, expenditures, fiscal balance (Vătămanu, 2019). Thus, fiscal risks are sources of additional expenditures for governments, which may affect the fiscal balance and which may endanger budget execution in the form provided (Porumboiu and Brezeanu, 2020). According to statistics compiled by the IMF, in addition to banking crises, natural disasters, state guarantees, state-owned enterprises, legal claims are also an international source of fiscal risk. From this point of view, the compensations that a state has to cover as a result of lost lawsuits can constitute a fiscal risk. That is why the Romanian Fiscal Council (2014) also recommends conducting analyses on the purpose and nature of litigation against the state.

2. Romania at the ECHR - Statistics and recommendations

The European Court of Human Rights provides a ruling to those who prove that Member States have violated the rights enshrined in the European Convention on Human Rights. The term just satisfaction refers to the compensation of material or moral damages, for mental or physical suffering, as well as to the coverage of costs and expenses related to the trial. Of course, the court seeks justice, but the cases that the Member State loses are an additional expense for the latter's budget. It is an expense that does not bring any benefit to the state, it does not materialize in an investment, but only burdens the budget. That is why the level of these costs must make the representatives of the judiciary aware so that a specific objective of their activity is to minimize this impact on the state budget.

Often, the idea of fiscal vulnerability is associated with an increase in the volume of expenditures or a decrease in the volume of revenues of a state, mainly due to economic and financial reasons. Although they certainly prevail, no other source of important expenses is to be overlooked, such as those that appear as a result of the lawsuits lost by the Romanian state. We will not go into details about the most frequently violated articles of the Convention, but we will review the lawsuits lost by the Romanian state that generated the most significant costs.

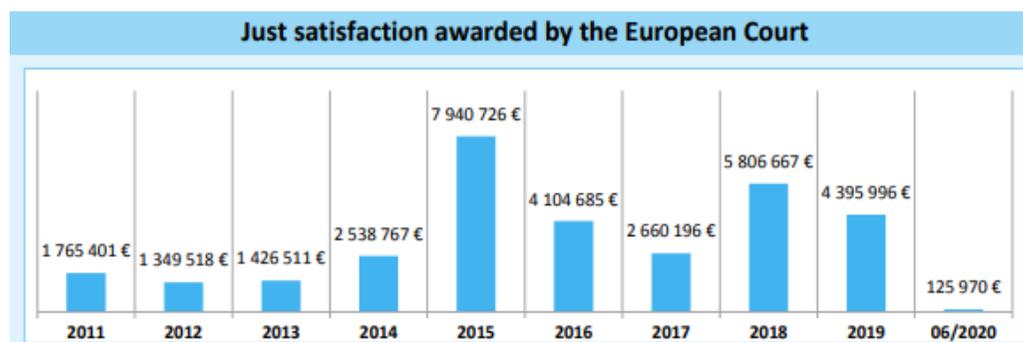


Figure 1 – Value of just satisfaction awarded in lawsuits Romania lost at ECHR

Source: Department for the Execution of Judgments
of the European Court of Human Rights

Romania's representation at the ECHR is made by the Ministry of Foreign Affairs, through the Government Agent for the ECHR. If the Romanian state is convicted and obliged to pay amounts representing equitable satisfaction, the Ministry of Public Finance is informed through the Government Agent, which communicates the ECHR decision in that case. Therefore, the Ministry of Public Finance is the institution

that deals with the implementation of ECHR decisions, within three months. Given that the average time until a resolution is given in a case is 3-4 months, it means that there is a rapid evolution of cases and compensations to be covered.

With reference to 2019, Romania is one of the states with the largest number of lawsuits filed with the ECHR. As the following chart shows, only the Russian Federation, Turkey and Ukraine add up to several requests, with Romania ranking fourth. The large number of claims related to the number of inhabitants illustrates a possible increase in the number of lawsuits lost by the Romanian state, and, subsequently, in the expenses with the compensations to be covered by the Romanian state.

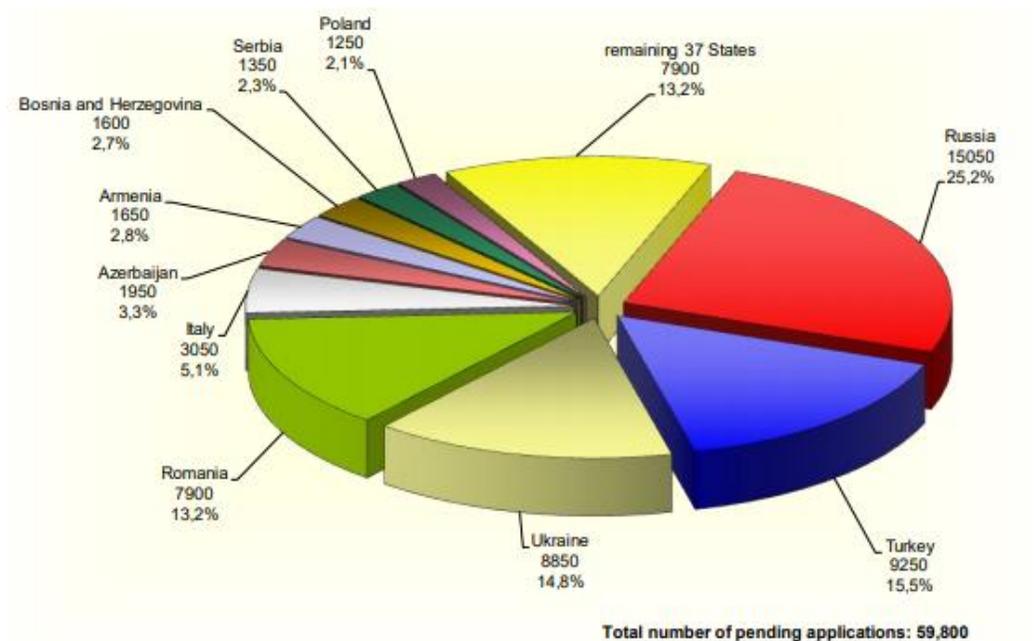


Figure 2 – 2019 pending applications at ECHR, by state

Source: ECHR – Statistical report 2019

What also emerges from the graph is the fact that, of all the member states of the European Union, Romania is the state with the most requests. This denotes a judiciary vulnerability, generated by possible gaps, legislative or procedural errors in the legal system and a partial inability to comply exactly with the provisions of the European Convention on Human Rights. The effects are not only legal, but also economic: directly through the expenses that the Romanian state is obliged to bear; indirectly, through the lack of trust in the legal and judicial system that this situation generates among investors. Moreover, it is no longer a secret that the lack of predictability of legislative provisions in Romania is a factor that can remove foreign investment.

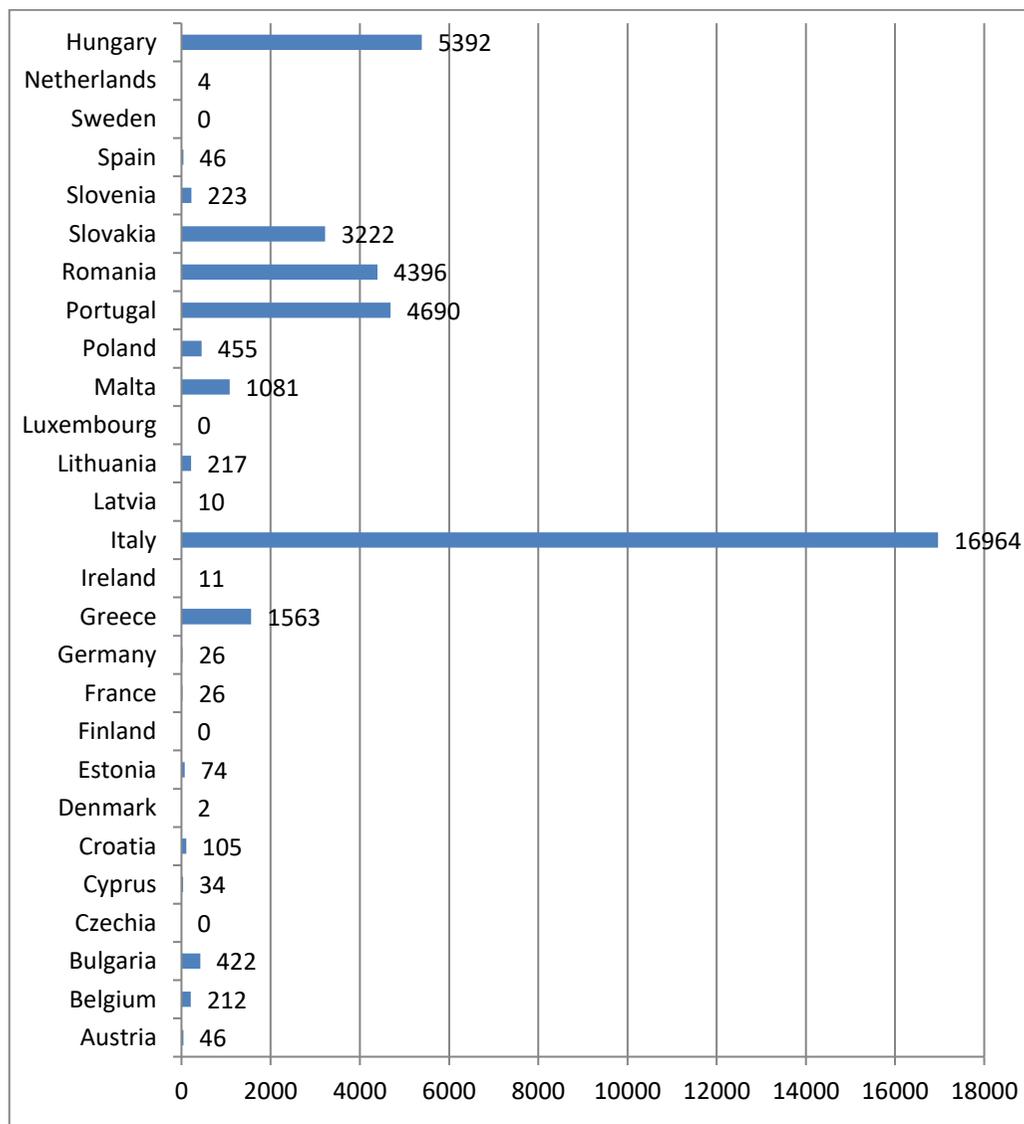


Figure 3 – ECHR just satisfaction awarded in 2019, by European Union+ Member State (in thousands of euro)

Source: ECHR – Statistical report 2019

In order to understand the impact of the expenses occasioned by the lost processes in 2015, the year in which these compensations had the highest level in Romania, we will use the economic example of the opportunity cost.

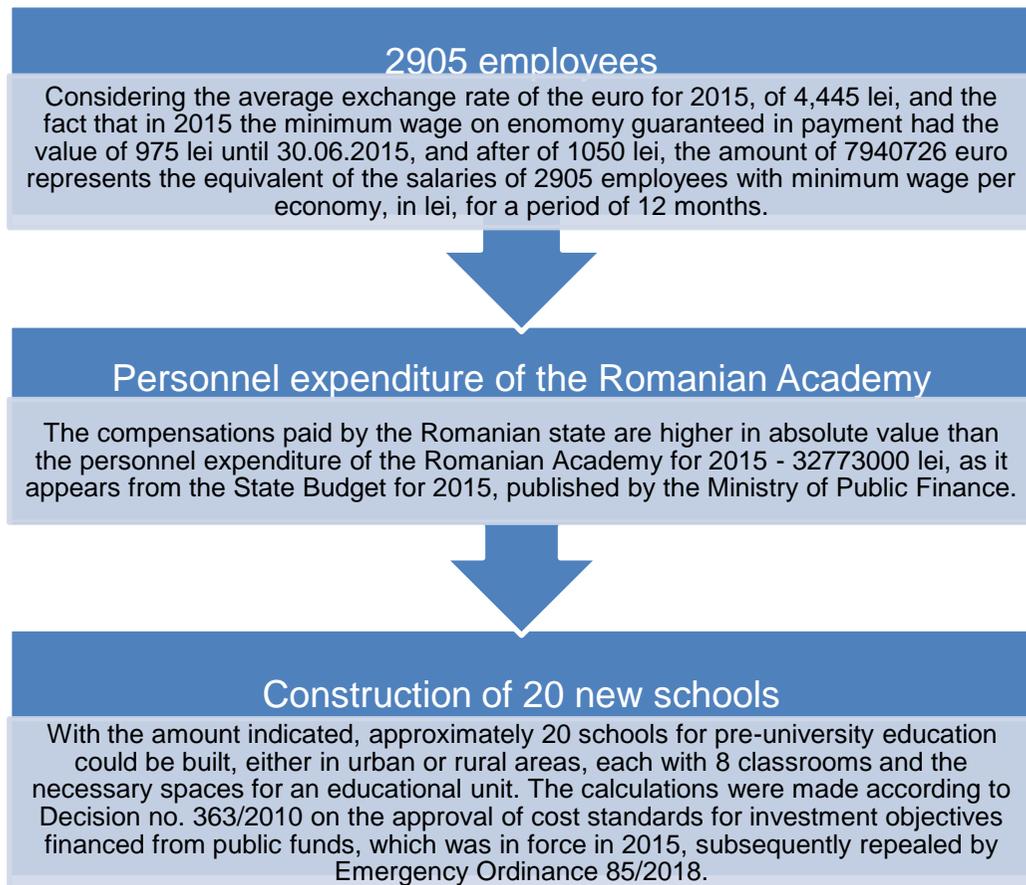


Figure 4 - Expenditures similar to the amount that Romania paid as just satisfaction in 2015

Source: author's estimation

The total amount of compensation established by the ECHR in charge of Romania, calculated annually, to which is added a large number of complaints of non-compliance with human rights (2019) suggests that in the coming years new lawsuits will be lost by Romania to the ECHR and new compensation will must be granted to Romanian petitioners.

The vulnerabilities of the Romanian judiciary are able to generate expenses that are difficult to anticipate for public policy makers, and which cannot be avoided, at least immediately. A coordinated strategy to reduce these costs requires time and collaboration between different Ministries. First of all, in order to intervene directly at the source of these vulnerabilities, it is mandatory to correct the way in which civil rights and freedoms are put into practice in Romania. This is done on the basis of the articles of the Convention which are most frequently violated and the articles which have led to the most significant compensation. Later, if all the trials carried out in the Romanian courts comply exactly with the articles of the Convention, the number of notifications to the ECHR will decrease significantly.

The combined effort of the authorities is imperative, as the compensations are, in the end, an expense that could be redirected and a factor that makes Romania less attractive for those who want to invest.

3. Conclusions

The large number of complaints compared to other EU member states shows that the Romanian jurisdictional system is not exactly efficient. The ECHR's acceptance of a significant number of complaints indicates a greater exposure of Romania, an increasing probability of losing lawsuits in the next period.

The amounts corresponding to the lawsuits lost in 2019 place Romania on the fourth position at EU level. The compensations that the state is obliged to pay come from the state budget. A significant number of lawsuits are making it difficult to estimate the amounts the state will incur in the coming years.

The result is a vulnerability of the Romanian judicial system, with consequences not only for citizens whose rights and freedoms are not respected exactly, but also with macroeconomic effects:

- The confidence in the legislative and legal system of citizens and potential investors decreases.
- The compensations granted represent an expense for the state that does not generate added value.
- The expenses are made to the detriment of other projects.
- Romania's prestige in the EU institutions suffers.

These considerations indicate that the notifications submitted to the ECHR by Romanian petitioners indirectly constitute a fiscal risk. Therefore, it is necessary a collaboration between the Ministry of Justice, the Ministry of Foreign Affairs and the Ministry of Public Finance which, through a series of measures, reduce the number of cases reaching the ECHR and their economic-fiscal impact, while respecting the rights and freedoms of Romanian legal subjects.

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