

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

1959 · 50 · 2009

THIRD SECTION

CASE OF TĂNASE AND OTHERS v. ROMANIA

(Application no. 62954/00)

JUDGMENT
(striking out)

STRASBOURG

26 May 2009

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Tănase and Others v. Romania,

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

Josep Casadevall, *President*,

Elisabet Fura-Sandström,

Corneliu Bîrsan,

Boštjan M. Zupančič,

Alvina Gyulumyan,

Egbert Myjer,

Luis López Guerra, *judges*,

and Santiago Quesada, *Section Registrar*,

Having deliberated in private on 5 May 2009,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 62954/00) against Romania lodged on 28 August 2000 with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by 24 Romanian nationals of Roma origin. The applicants are as follows: Constantin Catalan (the first applicant), born in 1936; Victor Păun (the second applicant), born in 1952; Ion Rupitã (the third applicant), born in 1957; Paul Catalan (the fourth applicant); Sidef Niculae (the fifth applicant), born in 1966; Petre Panciu (the sixth applicant), born in 1940; Stoica Rãducãnu (the seventh applicant), born in 1952; Emilian Niculae (the eighth applicant), born in 1963; Cãlin Ion (the ninth applicant), born in 1928; Alexandru Nicolae (the tenth applicant), born in 1941; Dumitru Catalan (the eleventh applicant), born in 1957; Ion Nicolae (the twelfth applicant), born in 1956; Gheorghe Staicu (the thirteenth applicant), born in 1949; Arestitã Ion (the fourteenth applicant), born in 1942; Ștefan Catalan (the fifteenth applicant), born in 1963; Botonicã Dumitru (the sixteenth applicant), born in 1980; and Claudia Florea (the seventeenth applicant), born in 1973.

The following applicants filed the application on behalf of their deceased parents or spouses respectively: Greco Catalan, born in 1969, represents Marin Catalan, deceased in 2000 (the eighteenth applicant); Irina Catalan, born in 1980, represents Ion Catalan, deceased in 2001 (the nineteenth applicant); Tudor Ion, born in 1971, represents Ion Ion, deceased in 2001, (the twentieth applicant); Ioana Constantin, born in 1938, represents Lucian Niculae, deceased in 2000 (the twenty-first applicant).

The following applicants died while the proceedings were ongoing; their heirs expressed the wish to continue the proceedings on their behalf: Vasile

Tănase (the twenty-second applicant, heir: Elena Tănase, born in 1968); Nicolae Ion (the twenty-third applicant, born in 1974, heir: Ion Garibaldi); Gheorghe Dumitru (who was representing Iarca Mitea, the twenty-fourth applicant, deceased before the proceedings, heir: Dumitru Jupiter).

2. The applicants were represented by Ms Sarah Perkins, director of the International Human Rights Program from the faculty of Law, University of Toronto. The Romanian Government (“the Government”) were represented by their Agent, Mr Răzvan-Horațiu Radu, of the Ministry of Foreign Affairs.

3. In a partial decision of 9 December 2003, the Court decided to adjourn the examination of the complaints raised under Articles 3, 6 § 1, 8, 13 and 14 of the Convention and Article 1 of Protocol No. 1 to the Convention concerning the applicants’ living conditions after the destruction of their properties in a mob attack; alleged inhuman or degrading treatment; the right to respect for home and private and family life; the length and the alleged lack of fairness of the civil proceedings; the right to an effective remedy; and freedom from discrimination in the enjoyment of Convention rights and freedoms, insofar as the complaints relate to the period after 20 June 1994, the date on which Romania ratified the Convention. It also declared the remainder of the application inadmissible as incompatible *ratione temporis* with the provisions of the Convention.

4. On 17 August 2004 the President of the Chamber granted leave, under Rule 44 § 2 of the Rules of Court, for the European Roma Rights Centre (ERRC) to intervene as a third party in the Court’s proceedings (Article 36 § 2 of the Convention).

5. On 19 May 2005, after obtaining the parties’ observations, the Court declared the remainder of the application admissible.

6. Both parties filed proposals with the Registry in the context of friendly settlement negotiations (Article 38 § 1 (b) of the Convention). No settlement was reached.

7. On 8 December 2008 the Government requested the Court to strike the case out of its list and enclosed the text of a declaration with a view to resolving the issues raised by the application. On 19 December 2008 the applicants’ representative filed written observations on the Government’s request.

THE FACTS

8. The applicants are Romanian nationals of Roma origin who, during the events which gave rise to the present case, lived in the village of Bolintin Deal, Giurgiu County.

A. The origin of the case and the situation of the community

9. Following the killing, on the night of 6/7 April 1991, of a non-Roma from Bolintin-Deal by a Roma villager, a crowd of more than two thousand non-Roma inhabitants from the same village and from the neighbouring village, together with the priest and the mayor, burned and otherwise destroyed the applicants' houses and their contents.

As a consequence, the entire Roma community fled their houses and were left homeless for a month.

10. When, on 7 May 1991 the evacuated Roma villagers tried to negotiate their return, the non-Roma community gathered together again and burned four more houses belonging to Roma. The applicants, who were helped by the police to flee the village in a windowless military van, lost all their belongings while being evacuated. The attacks against the applicants continued on the following days and the Roma inhabitants were denied access to the village, the orthodox church and the cemetery.

11. It appears that the applicants have not returned to Bolintin Deal. They have had to change their addresses several times and now have no legal documents attesting their actual residence. Some of them have been contacted by the mayor of Bolintin Deal with offers to purchase their land and, in desperate need of money, have accepted the offers.

B. Investigation into the events

12. In April 1991 the applicants filed a criminal complaint with the Giurgiu County Prosecutor's Office. An investigation was started and the applicants joined the proceedings as civil parties, seeking compensation for their destroyed houses and belongings.

13. On 17 October 1996 the criminal trial commenced, in conjunction with a civil action for damages. The Bucharest District Court gave its judgment on 18 May 1998. It convicted thirteen individuals of unlawful entry into a person's home and destruction of property and gave them each a three to six months' suspended prison sentence.

The District Court awarded the applicants compensation for their houses; it based its ruling on an expert report of 1994 and rejected the applicants' request to take the inflation rate into account. It then halved the amount of the compensation, on the ground of the mitigating circumstances of provocation. The District Court did not afford any redress for the movable property, as it considered that its existence, and subsequent destruction during the incidents, had not been proven.

14. The appeals lodged by the applicants were rejected and the judgment upheld, first by the Bucharest County Court on 4 January 1999 and then by the Bucharest Court of Appeal in a final decision of 27 May 1999.

15. The applicants were referred to as “gypsies” (in Romanian “*țigani*”) on several occasions in the court decisions above.

THE LAW

16. On 8 December 2008 the Court received a declaration from the Government with a view to resolving the issue raised by the application. The Government further requested the Court to strike out the application in accordance with Article 37 of the Convention.

The declaration provided as follows:

“1. The Government sincerely regret the circumstances which led to the destruction of the applicants’ home and possessions, which left them living in improper conditions, rendered difficult the exercise of their right to respect for home, private and family life. The Government also regret that remedies for the enforcement of rights in the Convention generally lacked at the time when the applicants were seeking justice in domestic courts, and that certain remarks were made by some authorities as to the applicants’ Roma origin.

It is therefore accepted that such events constitute violations of Articles 3, 6, 8, 13 and 14 of the Convention and of Article 1 of Protocol No. 1 to the Convention.

2. I, Mr Răzvan-Horațiu Radu, agent of the Government of Romania before the European Court of Human Rights, declare that the Government of Romania offer to pay *ex gratia* to the applicants the amount of EUR 565,193.75. The individual awards are set out in the annex to this declaration.

The Government undertake to pay the amount of EUR 5,000 in costs and expenses incurred by the applicants’ representative, the International Human Rights Clinic. This amount shall be paid in euros into a bank account named by the IHRC.

These sums shall be free of any tax that may be applicable and shall be payable within three months from the date of the notification of the striking-out judgment of the Court pursuant to Article 37 of the European Convention on Human Rights.

From the expiry of the above-mentioned period, simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points. This payment will constitute the final settlement of the case, including the applicants’ civil claims before the domestic courts.

3. The Government undertake to issue appropriate instructions and to adopt all necessary measures to ensure that the individual rights guaranteed by Articles 3, 6, 8, 13, and 14 of the Convention and Article 1 of Protocol No. 1 to the Convention are respected in the future.

The Government undertake to adopt the following general measures:

- enhancing the educational programs for preventing and fighting discrimination against Roma within the school curricula in Bolintin Deal, Giurgiu County;
- drawing up programs for public information and for removing the stereotypes, prejudices and practices towards the Roma community in the Giurgiu public institutions competent for the Bolintin Deal community;
- initiating programmes of legal education together with the members of the Roma communities;
- supporting positive changes in the public opinion of the Bolintin Deal community concerning Roma, on the basis of tolerance and the principle of social solidarity;
- stimulating Roma participation in the economic, social, educational, cultural and political life of the local community in Giurgiu County, by promoting mutual assistance and community development projects;
- implementing programs to rehabilitate housing and the environment in the community;
- identifying, preventing and actively solving conflicts likely to generate family, community or inter-ethnic violence.

Furthermore, the Government undertake to prevent similar problems arising in the future by carrying out adequate and effective investigations and by adopting social, economic, educational and political policies in the future to improve the conditions of the Roma community, in accordance with the existing strategy of the Government in this respect.

In particular, they shall undertake general measures as required by the specific needs of the Bolintin Deal community in order to facilitate the general settlement of the case, also taking into account the steps which have already been taken with this aim.

4. The Government consider that the supervision by the Committee of Ministers of the Council of Europe of the execution of the Court judgments concerning Romania in this and similar cases is an appropriate mechanism for ensuring that improvements will continue to be made in this context.

5. Finally, the Government undertake not to request the referral of the case to the Grand Chamber pursuant to Article 43 § 1 of the Convention after the delivery of the Court's judgment."

17. The Government made reference to the progress made, through the United Nations Development Programme for Romania, in the execution of the judgments adopted by the Court in previous Romanian cases that raised similar issues to the present case: *Moldovan v. Romania* (nos. 41138/98 and 64320/01, 5 July 2005); *Kalanyos and Others v. Romania* (no. 57884/00, 26 April 2007); and *Gergely v. Romania* (no. 57885/00, ECHR 2007-... (extracts)).

18. The applicants considered that the Government had based the monetary awards on an inadequate evaluation of their losses and had

proposed insufficient non-monetary measures. In particular, they stressed that in so far as the Government were not willing to redress the violation of the applicants' property rights, it would be impossible for the latter to return to the Bolintin Deal community, which, in turn, would render the general measures proposed by the Government irrelevant. The applicants further averred that as they continued to live in appalling conditions, they were unable to benefit from the existing employment, educational and health programmes. The Government should, in their view, take substantial and targeted measures in order to recognise the systemic discrimination and seek to counteract it.

19. The applicants denounced the Government's alleged attempts, made through the National Agency for the Roma, to pressure them into accepting a settlement, which only further degraded the applicants' human dignity.

20. The Court reiterates that Article 37 of the Convention provides that it may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to one of the conclusions specified under (a), (b) or (c) of paragraph 1 of that Article. Article 37 § 1 (c) enables the Court in particular to strike a case out of its list if:

“for any other reason established by the Court, it is no longer justified to continue the examination of the application”.

21. It also reiterates that in certain circumstances it may strike out an application under Article 37 § 1(c) on the basis of a unilateral declaration by a respondent Government even if the applicant wishes the examination of the case to be continued.

22. To this end, the Court will examine carefully the Government's declaration in the light of the principles emerging from its case-law, in particular *Tahsin Acar v. Turkey* ([GC], no. 26307/95, §§ 75-77, ECHR 2003-VI); *Meriakri v. Moldova* ((striking out), no. 53487/99, 1 March 2005); *WAZA Spółka z o.o. v. Poland* ((dec.) no. 11602/02, 26 June 2007); *Kalanyos and Others* (cited above, §§ 34-36); *Gergely* (cited above, § 22); and *Lazăr v. Romania* ((dec.), no. 30159/03, 25 November 2008).

23. The Court notes that although the violations complained about are of a very serious and sensitive nature (see paragraph 3 above), they have already been exhaustively addressed by the Court in the case of *Moldovan*, which raised issues similar to the present case. Furthermore, the Court accepted unilateral declarations by the Government in *Kalnyos and Others* and *Gergely*, cases which also raised issues similar to those addressed in *Moldovan* and in the present case.

24. Moreover, the Government admitted in their declaration that the facts of this case constituted violations of Articles 3, 6, 8, 13 and 14 of the Convention and of Article 1 of Protocol No. 1 to the Convention and

proposed several individual and general measures with a view to redressing the situation (see paragraph 19 above).

The general measures proposed are similar to the ones undertaken by the Government in the *Moldovan, Kalnyos and Others* and *Gergely* cases. The implementation of the measures proposed in those cases has already started, under the supervision of the Committee of Ministers.

25. The Court is satisfied that these measures, as reiterated in the declaration above, will provide an effective reparation of the alleged violations in the present case, in so far as they offer tools for the redress of the faults the Court has identified in the system with a view to improving the situation of Roma communities all over the country. Unlike the applicants, it does not consider that more specific measures are required at this stage of the proceedings (see paragraph 18 above).

26. In addition, the Court considers that, along with the general measures, the individual measures proposed by the Government offer redress to the individual applicants in the present case.

27. In so far as the applicants complain about an alleged unwillingness of the authorities to secure their property rights and their return to the village the Court points out that nothing in the case file indicates that the authorities would hinder the applicants' return to their village. The Court also notes that some of the applicants have in fact already sold their lands.

28. Lastly, in the absence of any evidence of threats and intimidation of the applicants by the Government, it can but acknowledge the efforts of the authorities to settle the situation at the national level and takes this as an indication that the Agency for the Roma is taking an active part in the projects aimed at the Roma communities, in accordance with its mandate.

29. Having regard to the nature of the admissions contained in the Government's declaration, as well as the amount of compensation proposed the Court considers that it is no longer justified to continue the examination of the application (Article 37 § 1(c)).

30. In light of the above considerations, and in particular given the clear case-law on the topic, the Court is satisfied that respect for human rights as defined in the Convention and the Protocols thereto does not require it to continue the examination of the application (Article 37 § 1 *in fine*).

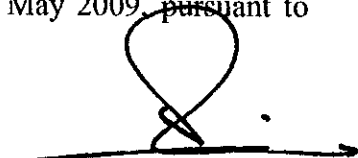
Accordingly, it should be struck out of the list.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Takes note* of the terms of the respondent Government's declaration and of the modalities for ensuring compliance with the undertakings referred to therein (Rule 43 § 3 of the Rules of Court);
2. *Decides* to strike the case out of its list of cases;
3. *Takes note* of the Government's undertaking not to request a rehearing of the case before the Grand Chamber.

Done in English, and notified in writing on 26 May 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.


Santiago Quesada
Registrar


Josep Casadevall
President

Annex to the Government's unilateral declaration

	Applicant's name	Amount (EUR)
1	Vasile TANASE	19,848.00
2	Constantin CATALAN	21,938.76
3	Victor PAUN	22,123.80
4	Ion RUPITA	22,782.77
5	Paul CATALAN	24,806.78
6	Nicolae ION	31,121.46
7	Sidef NICOLAE	22,216.31
8	Petre PANCIU	31,538.40
9	Stoica RADUCANU	25,985.37
10	Emilian NICOLAE	21,181.34
11	Calin ION	25,985.37
12	Alexandru NICOLAE	19,848.00
13	Dumitru CATALAN	21,938.76
14	Ion NICOLAE	21,291.14
15	Gheorghe STAICU	24,339.33
16	Ion ARISTIA	21,661.21
17	Stefan CATALAN	27,785.99
18	Dumitru BOTONICA	19,892.03
19	Claudia FLOREA	21,448.58
20	Iarca MITEA	24,251.68
21	Greco CATALAN	21,198.63
22	Irina CATALAN	23,419.03
23	Tudor ION	24,339.33
24	Ioana CONSTANTIN	24,251.68
	TOTAL	565,193.75