



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

FORMER THIRD SECTION

CASE OF ALECU AND OTHERS v. ROMANIA

(Application no. 56838/08 and 80 other applications)

JUDGMENT
(Revision)

STRASBOURG

15 November 2016

FINAL

15/02/2017

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Alecu and Others v. Romania (request for revision of the judgment of 27 January 2015),

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

Kristina Pardalos, *President*,

Luis López Guerra,

Valeriu Grițco,

Branko Lubarda,

Carlo Ranzoni,

Mărtiņš Mits,

Armen Harutyunyan, *judges*,

and Stephen Phillips, *Section Registrar*,

Having deliberated in private on 18 October 2016,

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

PROCEDURE

1. The case originated in eighty-one applications against Romania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by Romanian nationals. Their names and other details, as well as the date of lodging of each application, are specified in the Appendix of the judgment delivered on 27 January 2015.

2. In that judgment, the Court held that there had been a violation of Articles 2 and 3 of the Convention under their procedural head, on account of the ineffectiveness of the criminal investigation into the December 1989 armed crackdown on anti-communist demonstrations in Bucharest and other cities, when either the applicants had been injured or their close relatives had been killed by gunfire. The Court also decided to award the applicants either 7,500 euros (EUR) or EUR 15,000 for non-pecuniary damage, and dismissed the remainder of the claims for just satisfaction.

3. On 4 August 2015 the Government informed the Court that on 1st July 2015 they had learned that Mr Mihai Uivary, Mrs Lidia Kelemen, Mr Gheorghe Daniluc and Mr Niculae Dinu had died. Their personal details, representatives, heirs and the dates their respective applications were lodged are set out in the appended table. The Government accordingly requested revision of the judgment within the meaning of Rule 80 of the Rules of Court.

4. On 14 October 2015 the Court considered the request for revision and decided to give the applicants’ representatives three weeks in which to submit any observations. Those observations were received on 8 January 2016.

5. In so far as Ms Iulia Antoanella Motoc, the judge elected in respect of Romania, withdrew from sitting in the case (Rule 28 § 3 of the Rules of the Court), the President decided to appoint Mr Luis López Guerra to sit as an *ad hoc* judge (Rule 29).

THE LAW

THE REQUEST FOR REVISION

6. The Government requested revision of the judgment of 27 January 2015, which they had been unable to execute because Mr Mihai Uivary, Mrs Lidia Kelemen, Mr Gheorghe Daniluc and Mr Niculae Dinu had died before the judgment had been adopted (see appended table). They argued that the heirs should have informed the Court about the death of their close relatives and their intention to pursue the proceedings. The heirs should therefore not receive the sums awarded to the deceased.

7. The applicants' representatives stated that the applicants' heirs had submitted requests for the execution of the Court's judgment, and therefore they had expressed their intention to continue with the proceedings.

8. The Court considers that the judgment of 27 January 2015 should be revised under Rule 80, the relevant part of which provides:

"A party may, in the event of the discovery of a fact which might by its nature have a decisive influence and which, when a judgment was delivered, was unknown to the Court and could not reasonably have been known to that party, request the Court ... to revise that judgment."

9. The Court notes that, according to the documents submitted by the Government, the applicants died before the adoption of the judgment, and the heirs of the first three applicants expressed their intention to receive the amounts awarded as just satisfaction at the execution stage of the judgment. The Court further notes that no information was provided concerning any heirs wishing to pursue the application lodged by the fourth applicant.

10. In some cases, the Court has decided to allow an applicant's request for revision lodged during the execution of a judgment (see *Dzhabrailovy v. Russia* (revision), no. 68860/10, §§ 9-10, 4 February 2016, and *Dyller v. Poland* (revision), no. 39842/05, § 8, 15 February 2011). In other cases, the Court has decided to strike out of its list cases where the applicant has died during the proceedings and no relatives have expressed the wish to pursue the proceedings (see *Gabay v. Turkey* (revision), no. 70829/01, §§ 8-9, 27 June 2006).

11. In the present case, the Court notes that, even if the heirs of the first three applicants did not inform the Court about the demise of their close relatives, they expressed their intention to pursue the applications in the

applicants' stead by intervening in the procedure for the execution of the judgment, a fact undisputed by the Government. These circumstances justify the revision of the judgment and the awards of compensation for non-pecuniary damage in the amount of EUR 7,500 to Mrs Georgeta Uivary, as the heir of Mr Mihai Uivary, and EUR 15,000 to Mrs Ileana Iakab, as the heir of Mrs Lidia Kelemen.

12. As regards Mr Gheorghe Daniluc, the Court notes that the award of compensation for non-pecuniary damage in the amount of EUR 15,000 was granted to the applicant and his heir, Mrs Maria Daniluc, applicant in her own name, jointly. In this respect, the Court confirms the award in favour of the remaining applicant, in the amount previously awarded under this head, namely EUR 15,000 (see *Association of Victims of Romanian Judges and Others v. Romania* (revision), no. 47732/06, § 12, 22 March 2016).

13. With regard to Mr Niculae Dinu, the Court decides to strike the application out of its list.

14. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to revise its judgment of 27 January 2015 in respect of applications nos. 481/09, 707/09, 10458/09 and 10472/09;
2. *Decides* to strike application no. 707/09 lodged by Mr Niculae Dinu out of its list;
3. *Holds*,
 - (a) that the respondent State is to pay to each of the heirs of Mr Mihai Uivary, Mrs Lidia Kelemen and Mr Gheorghe Daniluc, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the amounts indicated in the appended table in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable;
 - (b) that from the expiry of the above-mentioned three months until settlement 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.

Done in English, and notified in writing on 15 November 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips
Registrar

Kristina Pardalos
President

APPENDIX

No.	Application no and date of lodging	Applicant name Date of birth Place of residence	Date of death	Applicant's heirs	Represented by	Amount to be paid by the respondent State under Article 41 of the Convention
1.	<u>481/09</u> 22/12/2008	Mihai UIVARY 28/06/1956 Albota (Argeş)	13/11/2012	Georgeta UIVARY	Ionuț MATEI	EUR 7,500 (seven thousand five hundred euros)
2.	<u>707/09</u> 22/12/2008	Niculae DINU 6/07/1944 Ploiești	12/12/2014		Antonie POPESCU	
3.	<u>10458/09</u> 28/01/2009	Gheorghe DANILUC 20/01/1940 Cărpiniș, Timiș	6/03/2009	Maria DANILUC	Antonie POPESCU	EUR 15,000 (fifteen thousand euros)
4.	<u>10472/09</u> 28/01/2009	Lidia KELEMEN 2/09/1942 Timișoara	7/06/2012	Ileana IAKAB	Ionuț MATEI	EUR 15,000 (fifteen thousand euros)