



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

FORMER THIRD SECTION

CASE OF BOȘNIGEANU AND OTHERS v. ROMANIA

(Application no. 56861/08 and 33 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 Boșnigeanu and Others v. Romania (request for revision of the judgment of 4 November 2014),

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

Kristina Pardalos, *President*,

Luis López Guerra,

Helen Keller,

Helena Jäderblom,

Valeriu Grițco,

Dimitry Dedov,

Branko Lubarda, *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 thirty-four 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 on which each application was lodged, are specified in the Appendix to the judgment delivered on 4 November 2014.

2. In a judgment delivered on 4 November 2014, the Court held that there had been a violation of Article 6 § 1 of the Convention on account of the length of the criminal proceedings, which the applicants had joined as civil parties in order to claim compensation for damage caused by the ill-treatment inflicted on them during the events of December 1989. The Court also decided to award each applicant 1,350 euros (EUR) for non-pecuniary damage and dismissed the remainder of the claims for just satisfaction.

3. On 11 May 2015 the Government informed the Court that on 24 March and 6 April 2015 they had learned that Mr Alexandru Clinea, Mr Ion Cutuca and Mr Dan Dragnea had died. Their personal details, the names of their representative and their heirs, and the dates on which their respective applications were lodged are set out in the appended table. The Government accordingly requested a revision of the judgment under Rule 80 of the Rules of Court.

4. On 7 July 2015 the Court considered the request for revision and decided to give the applicants’ representative three weeks in which to submit any observations. Those observations were received on 17 September 2015.

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 4 November 2014, which they had been unable to execute because Mr Alexandru Clincea, Mr Ion Cutuca and Mr Dan Dragnea had died before the judgment had been adopted. They argued that the heirs should have informed the Court about the death of their close relatives and whether they intended to pursue the proceedings. If they had not done so, the applications should be struck out of the Court's list; however, should any heirs manifest their intention to pursue the applications, they should receive the sums awarded to the deceased.

7. The applicants' representative did not indicate any heirs of Mr Alexandru Clincea or Mr Ion Cutuca. He stated that Mr Dan Dragnea's heir had submitted a request for the execution of the Court's judgment and had thereby expressed his intention to continue the procedure.

8. The Court considers that the judgment of 4 November 2014 should be revised pursuant to Rule 80 of the Rules of Court, the relevant parts of which provide:

“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 that only the heir of the third applicant expressed his intention, at the stage of execution of the judgment, to receive the amount awarded as just satisfaction. The Court further notes that no information has been provided concerning any heirs wishing to pursue the applications lodged by the first two applicants.

10. In some cases the Court has decided to allow applicants' requests for revision lodged during the execution of the judgment (see *Dzhabrailov 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 died

during the proceedings and no relatives 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 the heir of the third applicant has expressed his intention to pursue the application 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 award of non-pecuniary damage in the amount of EUR 1,350 to Mr Cosmin-Mihai Dragnea, as heir of Mr Dan Dragnea.

12. As regards Mr Alexandru Clinea and Mr Ion Cutuca, the Court decides to strike their applications out of its list.

13. 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 4 November 2014 in respect of applications nos. 56874/08, 56880/08 and 10459/09;

accordingly,

2. *Decides* to strike application no. 56874/08 lodged by Mr Alexandru Clinea and application no. 56880/08 lodged by Mr Ion Cutuca out of its list;

3. *Holds*,

(a) that the respondent State is to pay the heir of Mr Dan Dragnea, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 1,350 (one thousand three hundred and fifty euros) 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 amount 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 introduction	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>56874/08</u> 10/11/2008	Alexandru CLINCEA 14/01/1924 București	10/06/2011		Antonie POPESCU	
2.	<u>56880/08</u> 10/11/2008	Ion CUTUCA 14/01/1937 București	03/11/2010		Antonie POPESCU	
3.	<u>10459/09</u> 28/01/2009	Dan DRAGNEA 10/06/1952 București	28/12/2013	Cosmin- Mihai DRAGNEA	Antonie POPESCU	EUR 1,350 (one thousand three hundred and fifty euros)