CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

THIRD SECTION

CASE OF KALANYOS AND OTHERS v. ROMANIA

(Application no. 57884/00)

JUDGMENT

STRASBOURG

26 April 2007

FINAL

26/07/2007

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 Kalanyos and Others v. Romania,

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

Mr B.M. ZUPANČIČ, *President*,
Mr C. BÎRSAN,
Mrs E. FURA-SANDSTRÖM,
Mrs A. GYULUMYAN,
Mr E. MYJER,
Mr DAVID THÓR BJÖRGVINSSON,
Mrs I. BERRO-LEFÈVRE, *judges*,
and Mr S. QUESADA, *Section Registrar*,

Having deliberated in private on 29 March 2007,

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

PROCEDURE

1. The case originated in an application (no. 57884/00) against Romania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by three Romanian nationals of Roma origin, Mr Sandor Kalanyos, Tamas Kalanyos and Istvan Rozsa ("the applicants"), on 19 July 1999.

2. The applicants were represented by the European Roma Rights Center (ERRC), an association based in Budapest (Hungary). The Romanian Government ("the Government") were represented by their Agent, Mrs B. Rămăşcanu, from the Ministry of Foreign Affaires.

3. The applicants complained that the destruction of their property, the ensuing consequences and the subsequent proceedings before the domestic authorities had violated Articles 3, 6 § 1, 8, 13 and 14 of the Convention, which guaranteed, *inter alia*, the prohibition of inhuman and degrading treatment, the right to access to a court for a fair determination of civil rights and obligations, the right to respect for private and family life and home, the right to an effective remedy and freedom from discrimination in the enjoyment of Convention rights and freedoms.

4. In a partial decision of 9 December 2003, the Court decided to adjourn the examination of the complaints concerning the applicants' living conditions, the alleged inhuman or degrading treatment and the right to respect for home, and private and family life, the alleged lack of access to a civil court, the alleged discrimination on the basis of the applicants' ethnicity, and the right to an effective remedy, insofar as they relate to the period after 20 June 1994, date on which Romania ratified the Convention. It also declared inadmissible as incompatible *ratione temporis* with the provisions of the Convention the remainder of the application.

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 2006, 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 26 January 2007, the applicants' representative filed written observations on the Government's request.

THE FACTS

8. The applicants were born in 1941, 1942 and 1972 respectively and used to live in the hamlet of Plăieşii de Sus, in the district of Plăieşii de Jos, Harghita County.

9. The facts of the case, as submitted by the parties, may be summarised as follows.

10. On 6 June 1991 a fight started in Plăieşii de Sus between four Roma and a nightwatchman. Following the events, a crowd made up of non-Roma villagers assaulted and beat up two Roma men in a revenge attack, fatally injuring one of them.

11. On 8 June 1991 a public notice was displayed on the outer limit of the Roma settlement informing the inhabitants that on 9 June 1991 their houses would be set on fire. The Roma informed the police and village officials. However, the local authorities failed to intervene, preferring instead to “advise” the Roma to leave their homes for their own safety.

12. On 9 June 1991 the Roma villagers, including the second applicant, fled their homes and sought refuge in a nearby stable belonging to the local farming cooperative while an organised group of non-Roma villagers destroyed all the Roma houses, including those belonging to the applicants.

13. During the following year, the Roma villagers, including the applicants and their families, were forced to live in nearby stables in dreadful conditions, without heating or running water. The applicants only managed to survive with the help of their friends and family.

14. The Harghita County Police Department, under the supervision of the Miercurea Ciuc District Prosecutor's Office started an investigation into the events. Some of the Roma from the hamlet who were questioned by the investigation team were able to give the names of possible suspects.

The final report concluded that the destruction by arson was caused by the fight on 6 June 1991 and the fact that the Roma were in the habit of putting their animals to graze on land belonging to non-Roma villagers.

15. The local authorities are said to have expressed the opinion that the Roma themselves, or the "Gypsies" as they put it, "are to blame for what happened" as "they steal for a living and are aggressive towards other people".

16. On 27 June 1996 the Prosecutor's Office of the Harghita County Court closed the investigation on the ground that the prosecution of the offences was statute-barred. Its decision was upheld, upon the applicants' complaint, in a decision of 9 October 1998 of the Prosecutor's Office at the Supreme Court of Justice.

17. The latter also found that the offences had been committed "as a result of serious acts of provocation by the victims" and considered that, given the large number of persons involved, it had been impossible to identify the perpetrators of the attack.

18. On 9 September 1991 the mayor of Plăieşii de Jos purchased a dismantled wooden stable in order to provide the Roma with materials for the reconstruction of their homes. The purchase price of 110,400 Romanian lei ("ROL") was funded by the County of Mureş, following a decision by the Prefect on 13 September 1991. The local authorities also gave the applicants permission to gather wood from a nearby forest. The destroyed houses were rebuilt by the applicants with the help of friends and relatives between 1991 and 1993.

THE LAW

19. On 8 December 2006, the Court received the following declaration from the Government:

> "1. The Government sincerely regret the failure of the criminal investigation to clarify fully the circumstances which led to the destruction of the applicants' homes and possessions, which left them living in improper conditions, rendered difficult their possibility of filing a civil action for damages, as well as 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 Article 3 (prohibition of torture), Article 6 (right to a fair trial), Article 8 (right to respect for private and family life), Article 13 (right to an effective remedy) and Article 14 (prohibition of discrimination) of the Convention.
>
> 2. I, Mrs. Beatrice Rămăşcanu, 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 applicant Sandor Kalanyos the amount of EUR 33,000 (thirty three thousand euros), to the applicant Tamas Kalanyos the amount of

EUR 33,500 (thirty three thousand five hundred euros) and to the applicant Istvan Rozsa the amount of EUR 30,000 (thirty thousand euros).

The Government undertake to pay the amount of EUR 2,406 (two thousand four hundred and six euros) in costs and expenses incurred by the applicants' representative, the European Roma Rights Centre. This amount shall be paid in euros to a bank account named by the ERRC.

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, 14 of the Convention are respected in the future.

The Government undertake to adopt the following general measures aimed at fighting the discrimination against the Roma in the Harghita County:

- ensure the eradication of racial discrimination within the Romanian judicial system;

- enhance the educational programs for preventing and fighting discrimination against Roma within the school curricula in the Plăieşii de Jos community, Harghita County;

- draw up programs for public information and for removing the stereotypes, prejudices and practices towards the Roma community in the Harghita public institutions competent for the Plăieşii de Jos community;

- support positive changes in the public opinion of the Plăieşii de Jos community concerning Roma, on the basis of tolerance and the principle of social solidarity;

- stimulate Roma participation in the economic, social, educational, cultural and political life of the local community in Harghita County, by promoting mutual assistance and community development projects;

- implement programs to rehabilitate housing and the environment in the community, in particular by earmarking sufficient financial resources for the compensation;

- identify, prevent and actively solve conflicts likely to generate family, community or inter-ethnic violence.

4. The Government consider that the supervision by the Committee of Ministers of the Council of Europe of the execution of 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 reference of the case to the Grand Chamber pursuant to Article 43 § 1 of the Convention after the delivery of the Court's judgment."

20. The applicants' representative requested the Court to dismiss the Government's proposal and to continue the examination of the merits of the case. In their view, the criteria for striking out a case by means of a unilateral declaration, as they were set out by the Court in the *Tahsin Acar* judgment are not met in present case *(*see *Tahsin Acar v. Turkey* (Preliminary issue) [GC], no. 26307/95, §§ 75-77, ECHR 2003-VI). In particular, they considered that although the Court had already adopted a judgment on the merits of a similar case, that of *Moldovan v. Romania ((no. 2)*, nos. 41138/98 and 64320/01, ECHR 2005-VII (extracts)), one single judgment of this nature could not suffice, bearing in mind the complexity of the matters at hand. Therefore, a new judgment on the merits would be necessary at least to expose the flaws of the Romanian judicial system and its systematic failure to provide redress for the Roma victims. In addition, it would hold a great symbolic value in particular as regards the new forms of discrimination against the Roma population (with regard to access to education, health, employment or other public services).

21. They also recalled that the Government had made no admission as to the State's responsibility for the June 1991 events and had made no commitment to reopening the investigations into the events.

22. Furthermore, they considered that the impact of the measures taken by the Government in order to comply with the two *Moldovan* judgments (*no. 2,* cited above and *Moldovan and Others v. Romania* (friendly settlement), nos. 41138/98 and 64320/01, § 39, 5 July 2005) could not yet be assessed, as the execution of those judgments had just started under the supervision of the Committee of Ministers and was therefore still pending.

23. In addition, in their capacity of representative of the applicants both in the present case and in the *Moldovan* case, they informed the Court that the Government had not yet initiated several of the actions they had committed themselves to following the *Moldovan* judgments. Moreover, in their view, the Court is not equipped to assess whether the same measures would work in the present case. They recalled that monetary compensation should not outweigh the victims' quest for justice.

24. On a more general note, the applicants' representative estimated that the Government's declaration of 8 December 2006 could not be used in the contentious proceedings before the Court, as it emerged in the context of friendly settlement negotiations between the parties which, according to Rule 62 § 2 of the Rules of the Court, were strictly confidential.

25. The Court recalls that under certain circumstances, it may be appropriate to strike out an application under Article 37 § 1 (c) of the Convention on the basis of a unilateral declaration by the respondent Government even if the applicant wishes the examination of the case to be continued. The Court will have to examine carefully the qualified declaration made by the Government in the light of the principles emerging from its case-law, in particular the *Tahsin Acar* judgment (as cited above, §§ 75-77); *Meriakri v. Moldova* ((striking out), no. 53487/99, 1 March 2005); *Swedish Transport Workers Union v. Sweden* ((striking out), no. 53507/99, 18 July 2006) and *Van Houten v. the Netherlands* ((striking out), no. 25149/03, ECHR 2005-IX).

26. The relevant provisions of Article 37 read as follows:

> "1. The Court may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to the conclusion that...
>
> (c) for any other reason established by the Court, it is no longer justified to continue the examination of the application.
>
> However, the Court shall continue the examination of the application if respect for human rights as defined in the Convention and the Protocols thereto so requires.
>
> 2. The Court may decide to restore an application to its list of cases if it considers that the circumstances justify such a course."

27. Accordingly, 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.

28. Moreover, the Government admitted in their declaration made in the present case that the facts of this case constituted violations of Articles 3, 6, 8, 13 and 14 and proposed several individual and general measures with a view to redressing the situation (see paragraph 19 above).

29. Therefore, notwithstanding the complexity of the issues at hand, and bearing in mind the existence of a final judgment on the merits in the *Moldovan* case and the admission as to the violations made by the Government in the present case, the Court, unlike the applicants' representative, is not convinced of the usefulness of another judgment on the merits. It recalls that the flaws of the judicial system had been addressed both in the general measures set out in the friendly settlement judgment adopted in the case of *Moldovan*, cited above, and in the unilateral declaration signed by the Government in the present case. As for the alleged new forms of discrimination against Roma (see paragraph 20 above), the Court recalls that they fall outside the scope of this case. So does the initial complaint concerning the events of June 1991 (see the partial decision of 9 December 2003, cited at paragraph 4 above); consequently, the applicants' request that the Government make an admission as to alleged

violations of the Convention in this respect could not be addressed by the Court (see paragraph 21 above).

30. Furthermore, the implementation of the measures proposed in the *Moldovan* case has already started under the supervision of the Committee of Ministers. Therefore, the Court shall not address the applicants' representative's submissions concerning the alleged ineffectiveness of those measures and of their implementation (see paragraph 23 above), as their examination falls at this moment entirely to the Committee of Ministers within the execution proceedings.

31. The Court does not share the applicants' concerns as to its capacity to transpose the general measures from the *Moldovan* case to the present case (see paragraph 23 above). The Court is satisfied that these measures, as reiterated in the declaration above (see paragraph 19 of this judgment), 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 had identified in the system with a view to improving the situation of the Roma communities all over the country.

32. 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 (see paragraph 23 above).

33. Lastly, in so far as the applicants' procedural arguments are concerned (see paragraph 24 above), it is to be noted that neither the Court nor the Government made any reference to the content of the friendly settlement negotiation. The unilateral declaration currently under review was publicly made by the Government with a view to being used, if the Court deemed necessary.

34. Therefore, having regard to the nature of the admissions contained in the declaration as well as the scope and extent of the various undertakings referred to therein, together with 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)).

35. Moreover, 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*).

36. Accordingly, the case 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 April 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago QUESADA
Registrar

Boštjan M. ZUPANČIČ
President