



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

THIRD SECTION

CASE OF GERGELY v. ROMANIA

(Application no. 57885/00)

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 Gergely 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. 57885/00) against Romania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Romanian national of Roma origin, Mrs Iren Gergely (“the applicant”), on 14 July 1999.

2. The applicant was represented before the Court by the European Roma Rights Centre (ERRC), an association based in Budapest (Hungary).

The Romanian Government (“the Government”) were represented by their Agent, Mrs B. Rămașcanu, from the Ministry of Foreign Affairs.

3. The applicant complained that the destruction of her 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 living conditions, the investigation into the alleged inhuman or degrading treatment and the right to respect for private and family life and home, the lack of access to a civil court, the right to an effective remedy, and the alleged discrimination on the basis of the applicant's ethnicity in so far as they related to the period after 20 June 1994, the 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 adjourned complaints 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 applicant's representative filed written observations on the Government's request.

THE FACTS

8. The applicant was born in 1965 and used to live in the hamlet Cașinul Nou, the district of Plăieșii de Jos, Harghita County.

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

1. The applicant's submission on the facts

10. On the evening of 11 August 1990, following a period of increased hostility between the Roma and non-Roma inhabitants of Cașinul Nou, and amid accusations that local Roma had been stealing, between approximately 60 and 400 non-Roma villagers gathered in front of the village church and planned to chase out the entire Roma population. Subsequently, they burned and otherwise destroyed several houses and other property, including the applicant's house and its entire contents. As a consequence, approximately 150 persons were left homeless, while many others, including the applicant and her four young children, faced the threat of being lynched.

Leaving behind all her belongings, the applicant and her family ran away and hid in a nearby field from where they saw the villagers setting fire to the Roma houses.

11. Immediately after the events the Roma residents of Cașinul Nou lodged a criminal complaint with the Harghita County Prosecutor's Office. In addition to outlining the facts of the case, the complainants identified a number of individuals as being allegedly responsible for the attack.

12. On 27 November 1990 the Harghita County Prosecutor's Office decided to discontinue the investigation of the case on the ground that, given the large number of persons involved in the attack, it had been impossible to identify the culprits. On the applicant's lawyers repeated interventions and complaints, the investigations were reopened several

times but subsequently discontinued. Lastly, on 5 October 1998 the Prosecutor's Office at the Târgu-Mureş Court of Appeal informed the applicant's lawyer that criminal charges were now time-barred. The prosecutor found that the offences had been committed "due to the serious, provocative acts of the victims", described as follows:

"...in August 1990 several Gypsies [*tigani*] from the hamlet Caşinul Nou behaved in a manner contrary to good morals. They severely disturbed public order, which aggravated the conflict with the... [non-Roma] population. These... [conflicts] culminated ... when the Gypsies consumed alcohol in the local pub, and then ... without any apparent reason started beating up peaceful passers-by. In this context the other... [non-Roma] inhabitants decided to chase the Gypsies out of the hamlet. In order to compel them to leave and not return to the hamlet, they decided to burn [the Roma's] houses down."

13. In a final decision of 13 January 1999, the Prosecutor's Office at the Supreme Court of Justice, after having examined the merits of the case, upheld that decision.

14. 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. However, it appears from the file that the applicant has yet to receive compensation for the belongings and furniture she had lost during the events.

2. The Government's submission on the facts

15. The Government maintained that it was impossible for them to verify the facts of the case since the criminal file of the investigation into the August 1990 events had been destroyed. Where a decision not to prosecute was taken on the ground that proceedings were time-barred, the regulations applicable at the material time allowed the files to be destroyed. However, the Government expressed their intention to provide any supplementary information in the case should the criminal file relating to the investigations into the events be pieced together or relevant documents be recovered.

THE LAW

16. 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 applicant's home and possessions, which left her living in improper conditions, rendered difficult her possibility of filing a civil action for damages, as well as the exercise of her 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 applicant was seeking justice in domestic courts, and that certain remarks were made by some authorities as to the applicant's 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 Rămașcanu, 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, Irene Gergely, the amount of EUR 36,500 (thirty six thousand five hundred euros).

The Government undertake to pay the amount of EUR 1,615 (one thousand six hundred and fifteen euros) in costs and expenses incurred by the applicant's 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 applicant's 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 Cașinul Nou 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 Cașinul Nou community;
- support positive changes in the public opinion of the Cașinul Nou 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."

17. The applicant's 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 on the basis of a unilateral declaration, as set out by the Court in the *Tahsin Acar* judgment, were not met in the 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 in 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 in issue. A new judgment on the merits would therefore be necessary at least to expose the flaws of the Romanian judicial system and its systematic failure to provide redress for Roma victims. In addition, it would carry 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).

18. They also recalled that the Government had made no admission as to the State's responsibility for the August 1990 events and had made no commitment to reopening the investigations into the events.

19. 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.

20. In addition, in their capacity as 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 to which they had committed themselves following the *Moldovan* judgments. Moreover, in their view, the Court was not equipped to assess whether the same

measures would work in the present case. They recalled that monetary compensation should not outweigh the victim's quest for justice.

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

22. The Court reiterates 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 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).

23. 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.”

24. Accordingly, the Court notes that although the violations complained of 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.

25. 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 16 above).

26. Therefore, notwithstanding the complexity of the issues under consideration 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 applicant's 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 17 above), the Court points out that they fall outside the scope of this case; so does the initial complaint concerning the events of August 1990 (see the partial decision of 9 December 2003, cited at paragraph 4 above). Consequently, the applicant's request that the Government make an admission as to alleged violations of the Convention in this respect cannot be addressed by the Court (see paragraph 18 above).

27. Furthermore, the implementation of the measures proposed in the *Moldovan* case has already started under the supervision of the Committee of Ministers. The Court will not therefore address the applicant's representative's submissions concerning the alleged ineffectiveness of those measures and of their implementation (see paragraph 20 above) as their examination currently falls entirely to the Committee of Ministers in the execution proceedings.

28. The Court does not share the applicant's concerns as to its capacity to transpose the general measures from the *Moldovan* case to the present case (see paragraph 20 above). The Court is satisfied that these measures, as reiterated in the declaration above (see paragraph 16 above), will provide an effective reparation of the alleged violations in the present case, in so far as they offer tools for redressing the flaws the Court had identified in the system with a view to improving the situation of the Roma communities all over the country.

29. In addition, the Court considers that, along with the general measures, the individual measures proposed by the Government offer redress to the applicant in the present case (see paragraph 20 above).

30. Lastly, in so far as the applicant's procedural arguments are concerned (see paragraph 21 above), it is to be noted that neither the Court nor the Government made any reference to the content of the friendly settlement negotiations. The unilateral declaration currently under review was made publicly by the Government with a view to being used if the Court deemed necessary.

31. 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)).

32. 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*).

33. 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