



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

THIRD SECTION

Application no. 63945/09  
Aurel CAZACLIU and Others  
against Romania  
lodged on 9 November 2009

**STATEMENT OF FACTS**

1. The applicants, Mr Aurel Cazacliu, born on an unspecified date, and 75 others listed in the annex (see below), are Romanian nationals of Roma origin who live in Tulcea. They are represented before the Court by the European Roma Rights Centre, a non-governmental organisation based in Budapest.

**A. The circumstances of the case**

2. The facts of the case, as submitted by the applicants, may be summarised as follows.

*1. Background of the case*

3. The applicants described themselves as being of Roma origin.

4. For many years the applicants and other third parties lived, with the local authorities' permission, in an abandoned building located in the town of Tulcea that belonged to a State owned factory. Even if they did not have legal title to the building they managed it and paid charges for water and electricity.

5. On an unspecified date the building was sold by its former owner to a private investor, in particular company E.V. Prior to selling the building, the former owner had attempted to donate the building to the local authorities, but his offer was allegedly refused by them.

## *2. The applicants' relocation*

6. By decisions of 29 July 2004, 30 September 2004 and 20 July 2005 the Tulcea Local Council adopted three separate decisions concerning the allocation of social homes in Tulcea that relied on higher education as an important criterion set for examining potential applications. The decisions concerned social homes that appear to have been located in several areas of the town and on different streets.

7. On 25 January 2006 company E.V. brought eviction proceedings against some of the occupants of the building, including the third, ninth, tenth, fifteenth, twenty-second, twenty-fourth, twenty-eighth, thirty-ninth, forty-sixth, sixty-first, sixty-sixth, seventieth, seventy-first and seventy-second applicant. The rest of the applicants were not party to the eviction proceedings.

8. By a judgment of 27 March 2006 the Tulcea District Court allowed the company's action for eviction. It held that the company was the lawful owner of the building and had a right to enjoy its use. The occupants had no legal title to the building and therefore had to vacate it. The judgment was upheld by the Tulcea County Court on 17 August 2006 and by the final judgment of the Constanta Court of Appeal on 19 January 2007.

9. On an unspecified date the applicants who were party to the eviction proceedings contested the eviction order issued against them on the basis of the judgment of 27 March 2006.

10. By a judgment of 24 October 2006 the Tulcea District Court dismissed the proceedings seeking to contest the eviction order on the ground that the said order was lawful. There is no evidence in the file that any of the applicants appealed against the judgment.

11. In October 2006 the occupants of the building, including all the applicants were evicted. Among the applicants there were children, elderly and less able people.

12. The local authorities offered the applicants as a sole option for a shelter a former army barracks building disused in the 1970's known as "Pichet" located approximately four kilometres outside Tulcea. The area around the building was heavily industrialised and no other buildings used for living purposes existed in the said location. A large part of the applicants moved to the said building while the remaining applicants were forced to live on the street for two months. In December 2006 the part of the applicants that remained homeless after the eviction accepted the local authorities' offer to move, as a temporary solution, in mobile homes that were placed on a former rubbish dump.

## *3. Press statements made by public officials*

13. In press statements published, respectively, in the local newspapers "Obiectiv" and "Tulcea Express" on 14 Mai, 26 October 2006 and on an unspecified date the Mayor of Tulcea stated in respect of the applicants' situation that: "... morally there could be a duty, but as mayor I have a duty towards law abiding citizens, a duty towards the citizens who respect the community, a duty towards families with children who are gainfully employed. Some of them live there, but have no papers to prove that they are citizens of Tulcea". Also: "...Some citizens accused me of racism and

some of positive discrimination. I did not set out to become the king of the gypsies in this town, because this is not why I have been elected. I have done a lot to meet the problems of this social category, but it's enough...". And: "We are doing everything possible to provide them with some comfort at Pichet where sixteen families have been relocated. For the rest other options were found. We have no houses available. Where would they like me to find a living space for them, at kilometre zero (*kilometrul zero*)? Perhaps close to the market? Those who are not from Tulcea can return where they have come from".

14. In a press statement published on 17 October 2006 in the local newspaper "Obiectiv" the Tulcea Prefect stated that "...Of course, the Roma are confronted with many problems, but they are not frequent visitors of the job markets. Be that as it may, many non-Roma are in a similar situation with the Roma population and lack homes, but they do not knock at the Prefect Office's door and they try to rent, to work and so on. I think that your organisation should also be more involved this way and educate them to work".

#### *4. Court proceedings*

15. On an unspecified date in 2007 the applicants brought a general tort law action on the basis of Articles 998-999 of the Romanian Civil Code against the Tulcea Local Council seeking damage for their living conditions and the discriminatory behaviour of the local authorities. The proceedings are still pending before domestic courts.

16. On 3 October 2007 the Romanian Helsinki Committee brought anti-discrimination proceedings with civil claims, on behalf of the applicants, against the Tulcea Local Council. They argued that the relocation of the applicants in a building deemed unfit for living outside of town and in mobile homes on a former rubbish dump, as well as the level of education condition set by the local authorities for awarding social housing breached the domestic legislation on anti-discrimination. In addition, the local authorities used offensive and racist language against the applicants on account of their ethnicity both in the press as well as in the public meetings organised to solve their claims (see paragraphs 13 and 14, above).

17. On an unspecified date in 2007 the sixth, fifteenth, sixteenth, twentieth, forty-sixth, sixtieth, sixty-sixth, seventieth and seventy-first applicants, all of them living in the Pichet building, brought proceedings against the Tulcea Local Council seeking an injunction for the local authorities to carry out the urgent maintenance work required by their building.

18. By a final judgment of 1 October 2008 the Constanța Court of Appeal allowed the action brought by the applicants living in Pichet building. It held that the Tulcea Local Council had signed lease contracts for the building with the applicants. Therefore, as a lessor it had an obligation to provide adequate living condition, to repair and maintain the building safe for the entire duration of the contract. However, according to the available testimonies and the investigation carried out on site by the court itself, at the time when the applicants moved to the building the housing conditions were inadequate for living and the building was insalubrious. The building was connected to the town's electric grid only in April 2007

and the sewage system was never fully functional. The sanitary facilities were completely unhygienic and were blocked. The applicants were forced to carry water from outside of the building. Both the general state of the building and the living and common areas were deplorable. In spite of building materials brought on site by the Local Council after the applicants moved there, the building continued to remain unfit for living in breach of the contract that the local authorities had signed with the applicants. Consequently, it ordered the Local Council to repair the building and maintain it up to an acceptable living standard for the entire duration of the lease contract. According to the applicants the judgment remains unenforced to date.

19. By judgment of 20 May 2008 the Tulcea District Court dismissed the action brought by the Romanian Helsinki Committee on behalf of the applicants on 3 October 2007. It held that the actions of the local authorities were not motivated by racial discrimination but by the lack of social houses that affected both Roma and non-Roma population. Moreover, the allegedly offensive statements were not discriminatory, as the domestic anti-discrimination legislation could not restrict freedom of speech. Furthermore, the conditions set by the local authorities for awarding social housing could not be considered discriminatory because in the court's opinion it would be unconceivable that people with no education have priority to social houses over educated individuals or that the interpretation of the legal text would generate positive discrimination. The local authorities were free to set certain criteria for awarding social housing and they could not be held responsible for the fact that the Roma were less educated than the rest of the population. The local authorities had a duty to safeguard the rights and well-being of all the members of the community and the relocation of the applicants to the area indicated by them would have caused a state of conflict in that area that the authorities were bound to avoid. The Romanian Helsinki Committee appealed against the judgment on the applicants' behalf. It argued *inter alia* that the first-instance court failed to examine the evidence to the file like the discriminatory statements made by the local authorities, relied on inexistent evidence as it failed to investigate the availability of social houses in Tulcea and did not examine if the applicants' relocation and living conditions were discriminatory.

20. By a judgment of 15 October 2008 the Tulcea County Court dismissed the appeal against the judgment of 20 May 2008. It held that the relocation of the applicants was not motivated by racial discrimination as the decision for relocation was taken on the basis of regulations provided for by law. In addition the local authorities' public statements were irrelevant as the Roma families were provided with houses on the basis of clearly established criteria. The Romanian Helsinki Committee appealed on points of law (*recurs*) against the judgment on the applicants' behalf. It argued that the second-instance court failed to provide reasons for its decision, to fully examine the applicants' claims concerning their relocation to polluted areas and to administer evidence that would support its reasoning. Moreover, the court shifted the burden of proof in respect of the discrimination claim to the applicants while it was for the authorities to show there had been no discrimination. In addition the applicants referred *inter alia* to offensive

statements made by local official while examining the applicants' living situation.

21. By a final judgment of 18 May 2009 (available on 3 July 2009) the Constanța Court of Appeal dismissed the appeal on points of law against the judgment of 15 October 2008. It held that the applicants had not been subjected to discriminatory treatment by the local authorities considering that the relocation of part of the applicants to Pichet building was the only housing solution available at the time. Also the area where the Pichet building was located was connected to the town by public transport even if the busses did not run as often as the applicants might wish; consequently children could attend school particularly since it was well known that there were inhabited areas in the country that were not served by any transport connection not even for children attending school. In addition, according to press reports on the investigation carried out by the Tulcea Environmental Agency the area where the Pichet building was located was not a health hazard for humans. In respect of the mobile houses located on the rubbish dump the court noted that they were connected to the town's electric grid and that they had been moved there in order for the applicants to have access to water and the nearby sewage system. Moreover, the applicants have not proved the alleged offensive and racist statements made by local official. Furthermore, the education criteria set by the local authorities for allocating social houses concerned the social houses located on a particular street and the applicants did not prove that it was a blanket rule applied for allocation of all social houses in the city. In addition the said condition had been imposed by a Tulcea Local Council decision dating back to 2004 that had not been challenged by the applicants before the domestic courts.

##### *5. The correspondence between the local authorities*

22. On 27 July 2005 the Tulcea Local Council informed the Tulcea Prefect's Office that they did not agree with the relocation of some of the applicants on one of the streets of the town because the inhabitants in that area were against having them as neighbours.

23. On 2 April 2008 the Tulcea Local Council informed the Tulcea Prefect's Office that the busses connecting the Pichet area to the town's high school had been discontinued on 15 October 2007 because no person was using them. Two buses continued to connect the industrial area located nearby the town and their number could be increased under the condition that the individuals living in the Pichet area bought monthly transport passes in advance.

24. On 5 April, 9 May, 24 July, 1, 9 and 24 September 2008 the Tulcea Prefect's Office informed the Mayor of Tulcea that according to individual complaints lodged by the applicants and non-governmental organisations and following inspections carried out at the Pichet building and the mobile homes located on the rubbish dump by representatives of the Tulcea County Agency for Roma and the Tulcea Public Health Agency, it appeared that the applicants' homes were poorly maintained and invaded by rodents, the sewage system was inexistent or not working, the sanitary facilities were not working, there was no access to water and the garbage had not been collected for a long time. Consequently, it asked the Mayor's Office to remedy the situation.

25. On 22 April 2008 the Romanian Ministry of Education informed the Tulcea Prefect's Office that they did not have the required funding to exempt the children living in Pichet area who wanted to attend school from paying for transport passes. They further submitted that generally students benefited from a legally provided discount of 50% for transport passes.

26. On 3 June and 4 July 2008, respectively, the Tulcea Local Council informed the Tulcea Prefect's Office that a water supply source had been build in the area of the mobile homes located on the rubbish dump and that the part of the sanitary facilities of the Pichet building were repaired but they continued to break down as a result of uncivilized use.

27. On 24 September 2008 the Tulcea Prefect's Office informed the Tulcea Local Council that all the buses connecting the Pichet building and the industrialized area nearby with the town had been cancelled and many of the children living there could not travel to school anymore. It also asked the Local Council to attempt to reinstate the bus routes serving the area in question.

## **B. Relevant domestic law**

Article 43 of the Law on housing no. 114/1996 provides that:

“The social houses are distributed by the local councils based on conditions which they annually revise under the present law and the following categories of persons may benefit from social housing according to a priority order decided by the local councils: newly weds under 35, young people over 18 formerly institutionalised, disabled persons ... and other categories of entitled individuals and families.”

Article 48 of the same law provides the following in its relevant parts:

“There is no right to social housing for the persons or families who:

(...)

d) have already received a social house from the state.”

Articles 998 and 999 of the Civil Code provide that any person who has suffered damage can seek redress by bringing a civil action against the person who has intentionally or negligently caused it.

## **COMPLAINTS**

1. Invoking Articles 3 and 8 of the Convention, the applicants complain that the authorities, without taking into consideration their vulnerable situation, evicted them from their homes and offered them social housing in an isolated, run down and abandoned building and in mobile homes located on a rubbish dump where they are forced to live in inhuman conditions, without water or sanitary facility, in polluted areas unfit for human habitation, with children having no access to schools, all of which amount to inhuman and degrading treatment as well as a breach of their right to home as well as to private and family life. The applicants also complain that the local authorities failed to provide them with adequate housing.

2. Relying in substance on Article 6 of the Convention the applicants complain of a breach of their right to a fair trial in so far as the authorities failed to enforce the final judgment of 1 October 2008 ordering the local authorities to undertake urgent repairs in respect of the Pichet building. In addition the domestic courts examining the complaint brought by the Romanian Helsinki Committee on their behalf failed to examine the substance of the complaints, ignored the offensive and racist statements made by the authorities, failed to consider all the details of the complaint or to shift the burden of proof on the authorities once a *prima facie* discrimination case had been established.

3. Invoking Article 13 of the Convention the applicants complain of a lack of an effective remedy on account of the breaches complained of under Article 6 of the Convention (above).

4. Invoking Article 2 of Protocol No. 1 to the Convention the applicants complain that because of the remote location of the Pichet building the children living there were unable to go to school and were expelled or they had to abandon school.

5. Relying on Article 14 taken in conjunction with Articles 3, 6, 8 and 2 of Protocol No. 1 and invoking also Article 1 of Protocol No. 12 to the Convention the applicants complain of being discriminated by the local and by the judicial bodies on account of the authorities' biased attitude towards their ethnic origin when examining their claims in respect of social housing, when allocating the said homes to them, by establishing higher education as a decisive criteria for access to social homes and by preventing the children in the Pichet building from attending school.

### **QUESTIONS TO THE PARTIES**

1. Was there a violation of Article 3 and/or of Article 8 of the Convention on account of the applicants' living conditions in the accommodation provided by the authorities as social housing?

2. Did the applicants have a fair hearing in the determination of their civil rights and obligations, in all the relevant court proceedings, in accordance with Article 6 of the Convention?

3. Have the children in the Pichet building been denied the right to education, guaranteed by Article 2 of Protocol No. 1?

4. Have the applicants suffered discrimination in the enjoyment of their Convention rights contrary to Article 14 taken in conjunction with Articles 3, 6, 8 and 2 of Protocol No.1 to the Convention?

## **APPENDIX**

### **Application no. 63945/09** **Cazacliu and Others v. Romania**

#### **LIST OF APPLICANTS**

1. AMARIOAREI Adrian Florentin – born on an unspecified date
2. AMARIOAREI Gabriela Alexandra – born on unspecified date
3. AMARIOAREI Preda – born in 1977
4. ANTON Adriana – born in 1997
5. ANTON Bianca – born in 2000
6. ANTON Eugenia – born in 1966
7. ANTON Ionuț – born in 1994
8. ANTON Liliana – born in 1985
9. ANTON Ștefan – born in 1966
10. BALASOIU Pamimonte – born in 1978
11. BRINDUSOIU Nelu Ionel – born on an unspecified date
12. CADAR Mihaela – born in 1977
13. CARAMAN Daniel – born in 1993
14. CARAMAN Georgiana – born in 1996
15. CARAMAN Viorel – born in 1970
16. CEACARU Lenuța – born in 1953
17. CEORAN Daniel – born in 1989
18. CEORAN Mihai Dumitru – born in 1992
19. CEORAN Vasile – born in 1987
20. CIOBOTARU Violeta – born in 1958
21. CIOBOTARU Cristache – born in 1981
22. CONSTANTIN Anișoara – born in 1970
23. CONSTANTIN Viorica – born on an unspecified date
24. CONSTANTIN Jenica – born on an unspecified date
25. COSTIN Valentin Ionuț – born in 1998
26. CRISTIAN Adriana Vasilica – born in 1991
27. DAINEANU Daniel Ionuț – born in 2002
28. DAINEANU Decebal Florin – born in 1983



29. DONCIU Adrian – born in 2003
30. DONCIU Alexandru – born in 2003
31. DONCIU Florentina – born in 1984
32. DUMITRU Angela Alina – born in 1983
33. DUMITRU Florentina Camelia – born in 2004
34. DUMITRU Ion – born in 1981
35. DUMITRU Valentina – born in 2000
36. DUMITRU Daniel – born in 1972
37. FEODOROV George – born in 2006
38. FEODOROV Ionuț Florin – born in 2004
39. FEODOROV Marcel – born in 1975
40. GHEORGHE Dumitrița – born in 1965
41. GUZGANU Daniel – born in 1987
42. HANTZ Daniela – born in 1977
43. HANTZ Ionuț – born in 2003
44. ION Marian – born in 1970
45. MIHAI Andra Cristiana – born on an unspecified date
46. MIHAI Angelica – born in 1962
47. MIHAI Mălina – born on an unspecified date
48. MIHAI Narcis – born on an unspecified date
49. PETREA Ciucur – born in 1966
50. PETREA Ilie Fabian – born in 1998
51. PETREA Vasile Remus - born on an unspecified date
52. POSTICA Fănică Daniela – born in 1998
53. POSTICA Nicoleta – born in 1981
54. POSTICA Octavian Dănuț – born in 2001
55. RADU Aurelia Maria – born in 1992
56. RADU Marioara – born in 1971
57. RĂDUCANU Cristian – born in 1990
58. RĂDUCANU Daniela – born in 2002
59. RĂDUCANU Fanica – born in 1986
60. RĂDUCANU Florica – born in 1962
61. RĂDUCANU Gheorghe – born in 1961
62. RĂDUCANU Irina – born in 1983

- 63. RĂDUCANU Irina – born in 2001
- 64. RĂDUCANU Nicu – born in 1988
- 65. RĂDUCANU Vasile – born in 2000
- 66. ROSTAȘ Laurențiu – born in 1981
- 67. ROSTAȘ Mariana – born in 1978
- 68. STAN Monica – born in 1984
- 69. TARANU Elisabeta – born in 1996
- 70. TARANU Georgeta – born in 1969
- 71. TARANU Maria – born in 2001
- 72. TUDOR Gheorghe – born in 1997
- 73. TUDOR Nita – born on an unspecified date
- 74. TUDOR Marian – born on an unspecified date
- 75. VASILE Doina – born in 1992