



Family allowances: no discrimination against persons from the Roma ethnic group but excessive length of proceedings

In today's **Chamber judgment**¹ in the case of [Negrea and Others v. Romania](#) (application no. 53183/07) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 6 § 1 (right to a fair hearing within a reasonable time) of the European Convention on Human Rights, and

a violation of Article 13 (right to an effective remedy) taken together with Article 6 § 1.

The case concerned, among other things, allegations of indirect discrimination on the grounds of belonging to the Roma ethnic group, *vis-à-vis* the right to family allowances.

The Court considered, firstly, that proceedings which lasted seven years and nine months, a duration which could not be attributed to the complexity of the case or to the applicants' conduct, did not meet the "reasonable time" requirement. However, it noted that there was no tangible evidence in the case file to prove that individuals from the Roma ethnic group had been more affected than others, and held that there had been no discriminatory treatment on the part of the authorities. Lastly, it noted that at the relevant time there had been no effective remedy in Romania in order to complain about excessive length of proceedings.

Principal facts

The applicants, Victoria-Paula Negrea, Didica Moldovan, Adriana-Paula Lakatos née Boros, Rita-Cosmina Rostaş née Ciurar, Julieta-Lenuţa Lăcătuş and Dorina-Ramona Rostaş are Romanian nationals belonging to the Roma ethnic group who were born in 1971, 1974, 1980, 1985, 1986 and 1981 respectively and live in Frata.

The legal provisions in force at the relevant time (2001 to 2003) provided for the award of various social rights, such as a childbirth payment for mothers and for child allowance. At the time the applicants had been cohabiting with their partners. Each of them gave birth to a child out of wedlock, and all the children were recognised by their respective fathers. The applicants submitted that their local town clerk refused to register their allowance applications on the grounds that they had not contracted civil marriages with their children's fathers.

In July 2003 the applicants lodged a criminal complaint against the Frata town clerk and mayor with the Turda court of first instance on charges of abuse of authority. They stated their intention to join the proceedings as civil parties in order to claim compensation for the damage caused by the town clerk's and mayor's refusal to register their applications. At the close of the proceedings, the public prosecutor's office dealing with the case decided to discontinue it. The applicants applied to the National Anti-discrimination Board (CNCD) within the same month. The latter conducted an investigation, concluding that the application lodged by five of the applicants had been rejected on the grounds that they did not meet the conditions laid down by law, and that the sixth applicant's application had been rejected because the law did not apply to her particular situation.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day. Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

In the absence of a reply to their challenge to the CNCD's decision, the applicants filed an administrative appeal against the CNCD with the Cluj-Napoca Court of Appeal. In July 2005 the Court of Appeal dismissed the action on the grounds that the CNCD had conducted a full investigation, that the refusal to grant the allowance had been based on non-fulfilment of the legal conditions and that the refusal had been scrutinised by the administrative courts. The High Court of Cassation and Justice upheld the judgment delivered by the Court of Appeal.

Complaints, procedure and composition of the Court

Relying on Article 6 § 1 (right to a fair trial within a reasonable time) of the European Convention on Human Rights, the applicants complained about the length of proceedings. Relying on Article 14 (prohibition of discrimination) of the Convention read in conjunction with Article 8 (right to private and family life) and/or Article 1 of Protocol No. 1 (protection of property), they complained of discriminatory treatment in the exercise of their right to social welfare allowances.

The application was lodged with the European Court of Human Rights on 28 November 2007.

Judgment was given by a Chamber of seven judges, composed as follows:

Ganna **Yudkivska** (Ukraine), *President*,
Vincent A. **De Gaetano** (Malta),
Paulo **Pinto de Albuquerque** (Portugal),
Faris **Vehabović** (Bosnia and Herzegovina),
Egidijus **Kūris** (Lithuania),
Iulia **Motoc** (Romania),
Georges **Ravarani** (Luxembourg),

and also Marialena **Tsirli**, *Section Registrar*.

Decision of the Court

Article 6 § 1

The proceedings had begun for all of the applicants on 16 July 2003, the date on which they joined the proceedings as civil parties, and were ended by the decision of 14 April 2011; that is, a length of proceedings of seven years and about nine months for two levels of jurisdiction.

The Court considered that neither the complexity of the case nor the applicants' conduct could explain the length of the proceedings. The case had been sent back to the public prosecutor's office several times with a view to continued investigations, either on account of errors committed by that office or because the investigation had been incomplete.

The Court concluded that the length of the contested proceedings did not meet the "reasonable time" requirement and that there had been a violation of Article 6 § 1 of the Convention.

Article 14 taken together with Article 8 and/or Article 1 of Protocol No. 1

The Court noted firstly that it had not been established that an obligation to marry or to bring an action against the fathers of their children had in reality been imposed on the applicants.

The Court then noted that it had been established by the domestic courts that the town clerk's habitual practice of refusing to register incomplete files, while contrary to the law, had been applied to everyone irrespective of the ethnic origin of the individuals concerned. There was no tangible evidence in the case file to prove that individuals from the Roma ethnic group had been more affected than others.

The complaint of discrimination against persons from the Roma ethnic group in the exercise of their right to social welfare allowances was therefore ill-founded and had to be rejected.

Article 13

The Court reiterated that it had found in the case of [Vlad and Others](#), and in the [Brudan](#) judgment, that at the relevant time there had been no effective remedy available in order to complain about the excessive length of proceedings. New documents submitted by the Government corroborated this finding in respect of the date at which the events in the present case had occurred.

In consequence, the Court concluded that there had been a violation of Article 13 of the Convention taken together with Article 6 § 1.

Just satisfaction (Article 41)

The Court held that Romania was to pay the applicants' representative 4,800 euros in respect of costs and expenses.

The judgment is available only in French.

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Press contacts

echrpress@echr.coe.int | tel.: +33 3 90 21 42 08

Denis Lambert (tel: + 33 3 90 21 41 09)

Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)

Inci Ertekin (tel: + 33 3 90 21 55 30)

Patrick Lannin (tel: + 33 3 90 21 44 18)

Somi Nikol (tel: + 33 3 90 21 64 25)

The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.