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

FOURTH SECTION

DECISION

Application no. 12476/21
Maria ANDREICĂ and Others against Romania
and 2 other applications
(see list appended)

The European Court of Human Rights (Fourth Section), sitting on 26 March 2024 as a Committee composed of:

Tim Eicke, *President*,
Armen Harutyunyan,
Ana Maria Guerra Martins, *judges*,
and Crina Kaufman, *Acting Deputy Section Registrar*,

Having regard to:

the 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 the applicants listed in the appended table ("the applicants"), on the various dates indicated therein;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. At the time of the lodging of the application, the applicants were employees of the Veterinary Health and Food Safety Directorate ("the VHFSD") in Vâlcea (first and second applications), and of the Bacău VHFSD (third application). The trade union having initiated the domestic proceedings in the name of the individual applicants of the first and the second applications is also applicant to the Court in those applications, as listed in the appended table.

2. Under Law no. 153/2017 regulating the public salaries framework and following the entry into force of Government decision no. 917/2017 on 1 January 2018, an expert report was produced which concluded that all the employees of the VHFSD were working in dangerous conditions. The VHFSD subsequently awarded some of its employees the allowances corresponding to dangerous working conditions; however, the applicants

were excluded, following which they initiated domestic proceedings. The individual applicant in the second application also claimed an additional salary increase of 12,5% in relation to her activity as inspector.

3. The applicants' claims were finally dismissed: on 14 July 2020 by the Pitești Court of Appeal (first application); on 6 May 2020 by the Pitești Court of Appeal (second application) and on 16 December 2021 by the Bacău Court of Appeal (third application). The courts of appeal found that pursuant to the relevant law, such allowances were to be awarded in exceptional cases limited to employees whose salaries had reached a specific level as set out in the Law.

4. The national Ombudsman lodged an appeal in the interests of the law seeking clarification of the matter in so far as there appeared to be a divergence in the interpretation of the relevant legal provisions by the domestic courts. In the Ombudsman's view, the difference in treatment between employees who had been working in similarly difficult conditions was unjustified. The existence of such discrimination had been confirmed by the National Council for Combating Discrimination in its decision of 6 November 2019.

5. In its judgment on the appeal in the interests of the law (judgment no. 27/2020 of 26 October 2020) the High Court of Cassation and Justice (HCCJ) established that the allowances were to be granted as prescribed by Law no. 153/2017, namely in connection with progressive levels of salaries. The HCCJ confirmed that the provisions were discriminatory but considered that in so far as that discrimination had been created by the law, the judiciary authorities were not in a position to remedy it by issuing individual decisions contradicting the legal provisions. Furthermore, the HCCJ noted that a draft law, aimed at granting allowances to all employees working in difficult conditions, was pending in the legislative procedure before Parliament. The draft law mentioned by the HCCJ in its decision was subsequently passed as Law no. 229 of 4 November 2020, the allowances being granted starting from the entry into force of the amended law, namely 1 December 2020.

6. The applicants complained, under Article 6 § 1 and Article 14 of the Convention, and Article 1 of Protocol No. 12 to the Convention, of discrimination due to the conflicting judicial practice of the domestic appellate courts, having regard to the fact that their claims for salary allowances arising from their working in "dangerous working conditions" had been dismissed while colleagues working in similar conditions had been successful in their claims. Finally, the applicants also complained, under Article 1 of Protocol no. 1 to the Convention, of being deprived of the salary allowances to which they were allegedly entitled.

THE COURT'S ASSESSMENT

7. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single decision.

8. The general principles applicable to cases concerning conflicting decisions in domestic judicial practice have been referred to by the Court in *Lupeni Greek Catholic Parish and Others v. Romania* [GC], no. 76943/11, § 116, 29 November 2016, and *Petrescu and Others v. Romania* (dec.), nos. 31390/18 and 9 others, §§ 55 and 68, 7 March 2023.

9. The Court finds that the mechanism provided by the domestic law for overcoming inconsistencies in domestic judicial practice has been used effectively by the national Ombudsman, who brought an appeal in the interests of the law. Following that appeal, in its judgment no. 27/2020 of 26 October 2020, the HCCJ established that the allowances were to be granted in accordance with Law no. 153/2017, that is, in connection with progressive levels of salaries. In accordance with the domestic law, the HCCJ's interpretation of the legal provisions in question is binding on all the domestic courts only after the publication of the HCCJ's extensive decision in the Official Gazette. A decision delivered on an appeal in the interests of the law cannot alter the outcome of cases already decided.

10. What is important is that the national mechanism for overcoming these inconsistencies was used within a relatively short time (approximately three years, from January 2018, when the legislation on which the applicants based their claims entered into force until late 2020, when the HCCJ's decision establishing that the allowances were to be granted in the manner prescribed by Law no. 153/2017 was adopted), with the result that the divergence was accommodated (see *Petrescu and others*, cited above, § 60). Although the judgments dismissing the applicants' claims in the first two applications were given before the HCCJ had had the opportunity to give a uniform interpretation of the legal texts in issue, achieving consistency in the interpretation of the law may take time, and periods of conflicting case-law may therefore be tolerated without undermining legal certainty.

11. All the applicants had the benefit of adversarial proceedings, in which they were able to adduce evidence, and their arguments were properly examined by the courts. The latter's conclusions and their interpretation of the relevant law cannot be regarded as manifestly arbitrary or unreasonable.

12. As regards, in particular, the individual applicants' complaint under Article 1 of Protocol no. 1 to the Convention, the Court notes that, in the present cases, their alleged pecuniary entitlements, deriving from the claimed recognition of having worked in dangerous conditions, cannot be regarded as having a sufficient basis in domestic case-law, since at the relevant time the courts gave varying and even conflicting interpretations of the relevant legal provisions, resulting in a divergent, unsettled case-law on the matter (*Petrescu and Others,* cited above, § 69). As a consequence, it cannot be argued that these applicants had a possession within the meaning of Article 1 of Protocol No. 1 at the time when the contested decisions were given. Likewise, given the existence of legal uncertainty, incompatible with the concept of "settled case-law", regarding the outcome of the proceedings

brought by the individual applicants, the Court considers that the latter cannot be said to have had a "legitimate expectation" either (see, *mutatis mutandis*, *Albu and Others v. Romania*, nos. 34796/09 and 63 others, § 47, 10 May 2012; and *Petrescu and Others,* cited above, § 71).

13. It follows that the individual applicants did not have a possession within the meaning of Article 1 of Protocol No. 1, their related complaints being therefore inadmissible as being incompatible *ratione materiae*, in accordance with Article 35 §§ 3 and 4 of the Convention.

14. The Court further notes that, as regards the trade union applicant in the second application, its complaints under Article 14 of the Convention, Article 1 of Protocol no. 1 to the Convention and Article 1 of Protocol no. 12 are incompatible *ratione personae*, since they concern rights of the individual employees (*Kalfagiannis and Pospert v. Greece* (dec.), no. 74435/14, §§ 49-51, 9 June 2020).

15. Finally, the Court considers that, in the light of all the material in its possession and in so far as the matters complained of are within its competence, the remaining complaints of the individual applicants either do not meet the admissibility criteria set out in Articles 34 and 35 of the Convention or do not disclose any appearance of a violation of the rights and freedoms enshrined in the Convention or the Protocols thereto.

It follows that this part of the applications must be rejected in accordance with Article 35 § 4 of the Convention.

For these reasons, the Court, unanimously,

Decides to join the applications;

Declares the applications inadmissible.

Done in English and notified in writing on 18 April 2024.

Crina Kaufman Acting Deputy Registrar	Tim Eicke President

Appendix
List of cases:

No.	Application no.	Case name	Lodged on	Applicant Year of Birth Place of Residence Nationality	Represented by
1.	12476/21	Andreică and Others v. Romania	20/02/2021	**Maria ANDREICĂ** 1959 Râmnicu Vâlcea Romanian **Daniela-Lenuța BADEA** 1967 Râmnicu Vâlcea Romanian **Ștefan-Gabriel BADEA** 1965 Râmnicu Vâlcea Romanian **Nicolae BOCIU** 1959 Drăgășani Romanian **Valerica BOGDAN** 1961 Râmnicu Vâlcea Romanian **Florin BUTAN** 1969 Râmnicu Vâlcea Romanian **Constantin DAIA** 1961	Iulian Dragomir RUSU

No.	Application no.	Case name	Lodged on	Applicant Year of Birth Place of Residence Nationality	Represented by
				Râmnicu Vâlcea Romanian **Nicolae-Cristian DICU** 1978 Râmnicu Vâlcea Romanian **Florin-Marius DOBROTĂ** 1969 Râmnicu Vâlcea Romanian **Marian DOGARU** 1980 Râmnicu Vâlcea Romanian **Ofelia Simona FLOREA** 1967 Râmnicu Vâlcea Romanian **Maria-Irina GEORGESCU** 1983 Foleștii de Sus Romanian **Carmen GHENCEA** 1966 Râmnicu Vâlcea Romanian	

No.	Application no.	Case name	Lodged on	Applicant Year of Birth Place of Residence Nationality	Represented by
				Elena-Ionela GHIORDUN 1959 Băile Govora Romanian **Florea IONIȚĂ** 1961 Râmnicu Vâlcea Romanian **Casian-Sorinel LASCU** 1972 Râmnicu Vâlcea Romanian **Dana-Maria MANDOC** 1979 Râmnicu Vâlcea Romanian **Ion MARINESCU** 1973 Râmnicu Vâlcea Romanian **Aurora MURG** 1963 Râmnicu Vâlcea Romanian **Silviu-Constantin NEGRICEA** 1980 Armășești Romanian	

No.	Application no.	Case name	Lodged on	Applicant Year of Birth Place of Residence Nationality	Represented by
				Aurel Marius ȘODOLESCU 1963 Horezu Romanian **Ana-Maria POPA** 1980 Râmnicu Vâlcea Romanian **Aurel ȘTEFAN** 1954 Dealu Aluniș Romanian **Cristina TEODORESCU** 1973 Râmnicu Vâlcea Romanian **Ion TEODORESCU** 1968 Râmnicu Vâlcea Romanian **Rozana-Ermina TIRITEANU** 1962 Râmnicu Vâlcea Romanian **Laurențiu TRUȘCULETE** 1977 Grădiștea Romanian	

No.	Application no.	Case name	Lodged on	Applicant Year of Birth Place of Residence Nationality	Represented by
				Ion-Dan TUDOR 1969 Foleștii de Sus Romanian **Minodora VĂDUVA** 1959 Râmnicu Vâlcea Romanian **Margarita-Fabiola VARGA** 1976 Râmnicu Vâlcea Romanian **Ionela-Ileana VASILE** 1970 Băile Govora Romanian **Radu-Gabriel VASUT** 1976 Râmnicu Vâlcea Romanian **Iuliana VLĂDESCU** 1980 Râmnicu Vâlcea Romanian **Georgiana ZIDĂRESCU** 1980 Râmnicu Vâlcea Romanian	

No.	Application no.	Case name	Lodged on	Applicant Year of Birth Place of Residence Nationality	Represented by
				SINDICATUL SINVET 2004 RâmnicuVâlcea Romanian	
2.	27466/21	Ghellman and Sindicatul SINVET v. Romania	20/05/2021	**Raluca-Alisa GHELLMAN** 1979 Râmnicu Vâlcea Romanian **SINDICATUL SINVET** 2004 RâmnicuVâlcea Romanian	Iulian Dragomir RUSU
3.	40130/22	Streja and Others v. Romania	10/08/2022	**Gabriel STREJA** 1962 Bacău Romanian **Aurelia BÂZNĂ** 1961 Bacău Romanian **Cristina-Violeta CĂLUIANU** 1967 Bacău Romanian **Liliana CHIRIAC** 1969 Berești-Bistriţa Romanian **Sabina DOBREANU**	Iulian Dragomir RUSU

No.	Application no.	Case name	Lodged on	Applicant Year of Birth Place of Residence Nationality	Represented by
				1977 Bacău Romanian **Minodora NĂSTASĂ** 1965 Bacău Romanian **Iuliana SION** 1965 Bacău Romanian **Adriana STREJA** 1965 Bacău Romanian	