

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

FOURTH SECTION

CASE OF ROMANESCU v. ROMANIA

(Application no. 78375/11)

JUDGMENT

STRASBOURG

16 May 2017

FINAL

16/08/2017

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.



In the case of Romanescu v. Romania,

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

Ganna Yudkivska, *President,*
Vincent A. De Gaetano,
Nona Tsotsoria,
Paulo Pinto de Albuquerque,
Krzysztof Wojtyczek,
Egidijus Kūris,
Gabriele Kucsko-Stadlmayer, *judges,*
and Marialena Tsirli, *Section Registrar,*

Having deliberated in private on 4 April 2017,

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

PROCEDURE

1. The case originated in an application (no. 78375/11) 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, Mr Marian Romanescu ("the applicant"), on 21 November 2011.

2. The applicant was represented by Mr D.V. Burticel, a lawyer practising in Bucharest. The Romanian Government ("the Government") were represented by their Agent, Ms C. Brumar, from the Ministry of Foreign Affairs.

3. On 11 July 2013 the complaints concerning the effectiveness of the criminal investigation, the length of the criminal proceedings and the lack of an effective domestic remedy were communicated to the Government and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

4. As Iulia Antoanella Motoc, the judge elected in respect of Romania, withdrew from sitting in the case (Rule 28 § 3 of the Rules of the Court), the President decided to appoint Krzysztof Wojtyczek to sit as an *ad hoc* judge (Rule 29 § 2 of the Rules of the Court).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1948 and lives in Bucharest.

A. Background to the case

6. As an officer in a sub-unit of the special anti-terrorist unit within the special forces for State security (hereinafter "the *Securitate*"), the applicant participated in the events which commenced in Bucharest on 21 December 1989 and led to the fall of the Ceausescu dictatorship on 22 December 1989.

7. The applicant was arrested by army forces and held in detention from 22 December until 23 December 1989. He was then held by the unit's commander from 25 December 1989 until 2 February 1990. During this period of time, he was subjected to ill-treatment and, as a result, he suffered depression and he was placed on the officers reserve list on the grounds of poor health (see paragraphs 8 - 13 below).

B. Criminal proceedings

8. On 29 April 1990 the applicant filed a criminal complaint with the military prosecutor, alleging that he had been ill-treated and illegally detained in the *Securitate* building and requesting the punishment of various officials, including the unit's commander, G.A. The military prosecutor questioned the defendants and a large number of witnesses during the criminal investigation and gathered medical evidence.

9. On 2 December 1993 the military prosecutor found that the unit's commander G.A. had been responsible for the applicant's deprivation of liberty and his injuries; however, criminal proceedings could not be initiated because the commander had died.

10. On 16 December 1993 the applicant asked the military prosecutor to extend the investigation to other officials he alleged were involved, including doctor P.I. and various *Securitate* officers.

11. On 2 March 1995 the military prosecutor decided not to initiate criminal proceedings against the doctor P.I. on the ground that the constituent elements of the alleged offence were not present. Following the applicant's appeal, this decision was set aside by a decision of 25 September 1996 and the investigation continued.

12. On 21 October 1997 the military prosecutor found doctor P.I. liable to pay an administrative fine; however, the type of offence he committed had been pardoned by a decree of July 1997. The military prosecutor discontinued the investigation in respect of the dead defendant, G.A. The criminal case related to the other defendants, the *Securitate* officers, was severed into separate proceedings.

13. On 20 February 1998 and 16 February 1999 the military prosecutor decided not to initiate criminal proceedings against some of the defendants as the applicant's complaint had become partly statute-barred. The investigation into crimes allegedly committed by three of the defendants was severed and jurisdiction was relinquished to the prosecuting authorities

at the High Court of Cassation and Justice in order to be joined to the main criminal investigation into the events of December 1989.

14. On 27 June 2005 and 23 August 2007 the applicant was heard as a witness and as a civil party in the main criminal investigation.

15. The most important procedural steps taken in the main criminal investigation are summarised in *Association "21 December 1989" and Others v. Romania* (nos. 33810/07 and 18817/08, §§ 12-41, 24 May 2011), and *Alecu and Others v. Romania* (nos. 56838/08 and 80 others, §§ 10-13, 27 January 2015). Subsequent developments are as follows.

16. Following the entry into force of the new Code of Criminal Procedure in February 2014, jurisdiction over the case was relinquished in favour of the military prosecutor's office.

17. On 14 October 2015 the prosecutor's office closed the main investigation, finding that the complaints were partly statute-barred and partly ill-founded. The parties have not submitted any information on whether there was an appeal against that decision.

II. RELEVANT DOMESTIC LAW

18. The legal provisions in relation to criminal proceedings in connection with the events of December 1989 and concerning the statutory limitation of criminal liability are detailed in *Association "21 December 1989" and Others,* cited above, §§ 95-100; *Elena Apostol and Others v. Romania*, no. 24093/14 and 16 others, §§ 17-23, 23 February 2016; *Ecaterina Mirea and Others v. Romania*, no. 43626/13 and 69 others, §§ 16-20, 12 April 2016; and *Mocanu and Others v. Romania* [GC], nos. 10865/09, 45886/07 and 32431/08, §§ 193-196, ECHR 2014 (extracts).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

19. The applicant complained of the lack of an effective, impartial and thorough investigation capable of leading to the punishment of those responsible for the harm he suffered during the events of December 1989 in Bucharest.

He invoked Article 3 of the Convention, which reads as follows:

Article 3

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

A. Admissibility

20. The Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

21. The Government pointed out the steps taken by the national authorities in order to complete the investigation and made reference to case *Association "21 December 1989" and Others* (nos. 33810/07 and 18817/08, 24 May 2011).

22. The Court reiterates that where an individual raises an arguable claim that he has been seriously ill-treated by the police or other such agents of the State unlawfully and in breach of Article 3, that provision, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within their jurisdiction the rights and freedoms defined in ... [the] Convention", requires by implication that there should be an effective official investigation. This investigation should be capable of leading to the identification and punishment of those responsible. If this were not the case, the general legal prohibition of torture and inhuman and degrading treatment and punishment, despite its fundamental importance, would be ineffective in practice and it would be possible in some cases for agents of the State to abuse the rights of those within their control with virtual impunity (see *Assenov and Others v. Bulgaria*, 28 October 1998, § 102, *Reports of Judgments and Decisions* 1998-VIII, and *Mocanu and Others v. Romania* [GC], nos. 10865/09, 45886/07 and 32431/08, §§ 317-19, ECHR 2014 (extracts)).

23. Turning to the circumstances of the present case, the Court first observes while it is true that in 1990 the applicant lodged a criminal complaint with the prosecutor's office about ill-treatment during the events of December 1989 (see paragraph 8 above), according to its findings with respect to its jurisdiction *ratione temporis* in the case of *Mocanu and Others* (cited above, §§ 205-211), only the period after 20 June 1994, when the Convention entered into force in respect of Romania, can be taken into consideration in examining the complaint under the procedural limb of Article 3. The Court further notes that on an unspecified date after 1994, the applicant's case was joined to the main criminal investigation opened *ex officio* with regard to the armed suppression of the demonstrations of December 1989 in Bucharest and other cities, with a view to establishing the circumstances of the death or injury of a large number of people (see paragraph 13 above). From that moment onwards, the applicant's case followed the procedural path of the main investigation, as described by the

Court in the cases of *Association "21 December 1989" and Others v. Romania* (cited above) and *Alecu and Others v. Romania* (nos. 56838/08 and 80 others, 27 January 2015).

24. The Court recalls that in those two cases, as well as in the cases of *Elena Apostol and Others v. Romania* (no. 24093/14 and 16 other cases, 23 February 2016) and *Ecaterina Mirea and Others v. Romania* (no. 43626/13 and 69 others, 12 April 2016), it found the same main investigation to be procedurally defective, notably by reason of its excessive length and long periods of inactivity, as well as because of the lack of involvement of the victims or their relatives, respectively, in the proceedings and of the lack of information to the public about the progress of the inquiry.

25. Noting that similar shortcomings are discernible in the present case, the Court sees no reason to depart from its previous findings and holds that there has been a violation of Article 3 of the Convention under its procedural limb.

II. ALLEGED VIOLATION OF ARTICLES 6 AND 13 OF THE CONVENTION

26. The applicant complained of the length of the criminal proceedings related to his complaint about the events of December 1989. He also complained that he did not have at his disposal an effective remedy in respect of the determination of his claims. He relied on Articles 6 § 1 and 13 of the Convention.

27. The Government disagreed with the applicant's arguments.

28. Having regard to the finding relating to Article 3 (see paragraph 25 above), the Court considers that it is not necessary to examine separately the admissibility and merits of the applicant's complaints under Articles 6 § 1 and 13 of the Convention (see, *mutatis mutandis*, *Association "21 December 1989" and Others*, cited above, § 181, and *Alecu and Others*, cited above, § 45).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

29. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

30. The applicant claimed 25,000 euros (EUR) in respect of non-pecuniary damage.

31. The Government contested that claim as excessive.

32. The Court considers that the violation under the procedural limb of Article 3 has caused the applicant substantial non-pecuniary damage, such as distress and frustration. Ruling on an equitable basis, it awards him EUR 7,500, under this head, plus any tax that may be chargeable.

B. Costs and expenses

33. The applicant also claimed EUR 1,000 for the costs and expenses incurred before the Court.

34. The Government argued that the applicant had failed to provide any documents to justify the claim.

35. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the fact that the applicant has not submitted any documents under this head, the Court rejects the claim for costs and expenses.

C. Default interest

36. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT

1. *Declares*, by a majority, the complaint concerning Article 3 of the Convention admissible;

2. *Holds*, by six votes to one, that there has been a violation of Article 3 of the Convention under its procedural limb;

3. *Holds*, unanimously, that there is no need to examine the admissibility and merits of the complaints under Articles 6 § 1 and 13 of the Convention;

4. *Holds*, by six votes to one,
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 7,500 (seven thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State, at the rate applicable at the date of settlement;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses,* unanimously, the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 16 May 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Marialena Tsirli	Ganna Yudkivska
Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Krzysztof Wojtyczek is annexed to this judgment.

G.Y.
M.T.

DISSENTING OPINION OF JUDGE WOJTYCZEK

1. I expressed my opinion on the temporal scope of the application of the Convention in my separate opinions appended to the judgments in the cases of *Janowiec and Others v. Russia* ([GC] (nos. 55508/07 and 29520/09, ECHR 2013) and *Mocanu and Others v. Romania* ([GC], nos. 10865/09, 45886/07 and 32431/08, ECHR 2014 (extracts)). In those two separate opinions I explained in detail why, in my view, the Convention does not impose on the High Contracting Parties the obligation to investigate events which pre-dated the entry into force of that instrument in respect of individual States.

2. The events, which the applicant said had not been properly investigated, took place before the entry into force of the Convention in respect of Romania. Finding a violation of the Convention in the instant case amounts to retroactively imposing treaty obligations on the High Contracting Party without a legal basis.