

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

THIRD SECTION

DECISION

Applications nos. 15350/05 and 19452/05
Eugen IORGA against Romania
and Ioan MOLDOVAN against Romania

The European Court of Human Rights (Third Section), sitting on 9 April 2013 as a Committee composed of:

Alvina Gyulumyan, *President,*
Kristina Pardalos,
Johannes Silvis, *judges,*
Marialena Tsirli, *Deputy Section Registrar*,

Having regard to the above applications,

Having regard to the observations submitted by the Romanian Government and the observations in reply submitted by the applicants,

Having regard to the judgment *Albu and Others v. Romania*, no. 34796/09 and 63 other applications, 10 May 2012,

Having deliberated, decides as follows:

THE FACTS

The applicants, Mr Ioan Moldovan and Mr Eugen Iorga, are Romanian nationals who live in Cluj-Napoca. The applicants were represented before the Court by Ms Marcela Katona and Ms Eileen Brudașcă, lawyers practicing in Cluj County.

The Romanian Government ("the Government") were represented successively by their Agents, Mr Răzvan-Horațiu Radu and Ms Carmen Ciută, from the Ministry of Foreign Affairs.

A. The circumstances of the case

The applicants are adherents to the religion of Jehova's Witnesses. In 1974 and 1978 the Cluj Military County Court sentenced the applicants to four and two years' imprisonment respectively for their refusal to perform military service.

In 2003 and 2004 the applicants initiated proceedings on the basis of Law-Decree no. 118 of 1990 against the Cluj Labour and Social Security Agency, seeking the award of benefits available for politically persecuted persons. The applicants argued that their religious convictions qualified them as persons politically persecuted by the communist regime and therefore entitled them to the benefits provided for by Law-Decree no. 118 of 1990.

By final decisions of 26 January 2005 and of 16 February 2005, the Cluj Court of Appeal dismissed the applicants' actions on the ground that their conviction for refusal to perform military service was not based on political reasons and therefore, the provisions of Law-Decree no. 118 of 1990 did not apply in their case.

B. Relevant domestic law and practice

The relevant parts of Law-Decree no. 118 of 1990, in force at the material time, read as follows:

Article 1

"1. Shall be considered length of service and be taken into account for the determination of the pension and other benefits due, which are calculated according to the years of service, the period of time after 6 March 1945 during which a person, for political reasons:

(a) was detained on the basis of a final court decision [...] for political crimes [...]

3. Every year of detention [...] shall count as a year and a half of service [...]"

Article 3

"1. Starting in October 2000, individuals falling under the provisions of Article 1 § 1 (a) [...], shall be entitled to monthly compensation of 300 000 lei tax free (approx. 8.57 euros) for every year of detention... [...]"

Article 6

"1. Individuals falling under the provisions of Article 1 are exempt from payment of local taxes.

2. Individuals falling under the provisions of Article 1 shall also have the following benefits: (a) free medical treatment and medicine [...], (b) free use of public transport, (c) 12 free first class trips by train, (d) a free yearly ticket for treatment in a health resort, (e) exemption from payment of radio and TV subscriptions, (f) free telephone subscription, (g) free burial plot. [...]"

Article 7

"Individuals falling under the provisions of Article 1 are entitled to:

(a) priority for social housing;

(b) priority in obtaining credit facilities for the building, repair and maintenance of their own homes [...]"

The relevant part of Decision no. 32 of November 2009 rendered by the High Court of Cassation and Justice in an appeal in the interest of the law regarding the interpretation of Article 1 § 1 a) of Law-Decree no. 118 of 1990, published in the Official Gazette on 2 March 2010, reads as follows:

"The provisions of Article 1 § 1 a) of Law-Decree no. 118 of 1990 (...) are to be interpreted in the sense that persons convicted for crimes against the country's defense system, provided by Articles 344 and 354 of Criminal Code, and committed for reasons of conscience, can not benefit from the rights awarded to politically persecuted persons."

COMPLAINTS

The applicants complain under Articles 6 § 1 and 14 of the Convention and under Article 1 of Protocol No. 1 to the Convention that cases similar to theirs had reached a different outcome based on a divergent interpretation of the same legal provisions, in breach of the principle of legal certainty. They also complain that they had been deprived of the benefits provided under Law-Decree no. 118 of 1990 and that they had been discriminated against in comparison with other Jehovah's Witnesses who had been recognised as having "politically persecuted" status.

Mr Eugen Iorga further complains under Article 9 of the Convention that his freedom of thought, conscience and religion had been infringed as he had been sentenced in 1978 to four years' imprisonment for his refusal to perform military service. He also complains under Article 13 of the Convention, that he had been deprived of the right to an effective remedy, as he had not been recognised to be a "politically persecuted" person.

THE LAW

Given their similar factual and legal background, the Court decides that the applications should be joined.

A. Articles 6 § 1 and 14 of the Convention and Article 1 of Protocol No. 1 to the Convention

The applicants complained of the decisions of domestic courts in relation to their claims and alleged that they were in breach of Articles 6 § 1 and 14 of the Convention and of Article 1 of Protocol No. 1 to the Convention.

The Government contended that the domestic decisions reaching a different conclusion than that in the applicants' cases were isolated and could not be considered as having created a divergence of interpretation.

The applicants reiterated their submissions made upon lodging their applications with the Court and submitted five final decisions of domestic courts granting the benefits provided under Law-Decree no. 118 of 1990.

The Court recalls that in order to assess the conditions in which conflicting decisions of domestic courts ruling at last instance are in breach of the fair trial requirement enshrined in Article 6 § 1 of the Convention, the Court will first of all examine whether "profound and long-standing differences" exist in the case-law of the domestic courts (see, for instance, *Albu and Others v. Romania*, no. 34796/09 and 63 other applications, § 34, 10 May 2012).

Turning back to the present cases, the Court notes that from the information submitted by the parties it appears that throughout the country the majority of courts gave similar rulings to the effect that Jehovah's Witnesses had not been recognised as having "politically persecuted" status, and therefore had not been awarded with the benefits provided under Law-Decree no. 118 of 1990.

Also, the Court notes that on 16 November 2009 an appeal in the interests of the law was granted by the Romanian High Court of Cassation and Justice, which laid down binding guidelines for the uniform interpretation of the disputed legal provisions.

The solutions applied by the court of appeals in the present cases were similar to the interpretation given by the High Court of Cassation and Justice.

Therefore, the Court considers that the decisions invoked by the applicants could not prove their allegation, in particular the degree of the impugned divergence. In such circumstances, it cannot be said, that there had been "profound differences" in the relevant case-law (see *Albu and Others*, cited above, § 34 and *Frimu and others v. Romania,* no. 45312/11 (dec.), § 51, 13 November 2012).

Lastly, the Court observes that the applicants had the benefit of adversarial proceedings, in which they were able to adduce evidence and freely formulate their defence and in which their arguments were properly examined by the courts. Likewise, the courts' conclusions and their interpretation of the relevant law cannot be regarded as manifestly arbitrary or unreasonable.

It follows that the applicants' complaints under Articles 6 and 14 are manifestly ill-founded and must be rejected, pursuant to Article 35 §§ 3 and 4 of the Convention.

Furthermore, concerning the applicants' complaint about being deprived of the benefits provided under Law-Decree No. 118 of 1990, there is no indication that, by the time the applicants' actions were dismissed, there was a settled case-law supporting their claims. It follows that the applicants did not have a possession within the meaning of Article 1 of Protocol No. 1 (see *Albu and Others*, cited above, § 47).

The above complaint is therefore incompatible *ratione materiae* and must be rejected, in accordance with Article 35 §§ 3 and 4 of the Convention.

B. Remaining complaints

The first applicant, Mr Eugen Iorga, further complained under Articles 9 and 13 of the Convention. He alleged that his freedom of thought, conscience and religion had been infringed due to the fact he had been sentenced to four years' imprisonment for refusing, for religious reasons, to be recruited for mandatory military service. Also, he alleged that by not being recognised as having "politically persecuted" status, he had been deprived of the right to an effective remedy.

Having regard to all the material in its possession, and in so far as these complaints fall within its competence, the Court finds that there is no appearance of a violation of the rights and freedoms set out in these provisions in that respect. It follows that these complaints must be rejected, pursuant to Article 35 §§ 1, 3 (a) and 4 of the Convention.

For these reasons, the Court unanimously

Decides to join the applications;

Declares the applications inadmissible.

Marialena Tsirli	Alvina Gyulumyan
Deputy Registrar	President