



Right to stand in 2012 parliamentary elections: the candidate of a foundation representing the Italian minority suffered discrimination

In today's **Chamber** judgment¹ in the case of **Cegolea v. Romania** (application no. 25560/13) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 14 (prohibition of discrimination) of the European Convention on Human Rights read in conjunction with Article 3 of Protocol No. 1 to the Convention (right to free elections).

In this case Ms Cegolea alleged that she had been subjected to discrimination with regard to her right to stand in the parliamentary elections of 9 December 2012 on behalf of a foundation representing the Italian minority in Romania.

In view of all the considerations set out below, and in particular the lack of judicial scrutiny to protect against arbitrariness, the Court held that the difference in treatment to which Ms Cegolea had been subjected compared with the national minority organisations already represented in Parliament had been insufficiently justified in relation to the legitimate aim pursued (to ensure that organisations were properly representative and to encourage only serious candidates to stand).

Principal facts

The applicant, Gabriela Cegolea, is a Romanian and Italian national. She was born in 1948 and lives in Cernica (Romania).

In 2012 the foundation *Vox Mentis*, of which Ms Cegolea is president, applied for charitable status. This was a requirement under the Electoral Act (Law no. 35/2008) in order for Ms Cegolea to be allowed to stand as a candidate in the parliamentary elections of 9 December 2012 on behalf of the foundation as an organisation representing the Italian minority.

In May 2012 the Government's Secretariat General registered the application and forwarded it to the Department for Inter-ethnic Relations ("the DRI") and to the Ministry of Culture and National Heritage ("the Ministry") for their opinion. The following month the DRI refused the foundation's application for charitable status. Ms Cegolea appealed against that decision, without success.

In July 2012 Law no. 145/2012 amending Government Order no. 26/2000 on associations and foundations entered into force. The amendments related mainly to the provisions concerning the granting of charitable status.

In October 2012 Ms Cegolea sought to register as a candidate for the foundation in the parliamentary elections. Two days later the Central Electoral Bureau informed her that her candidature had not been registered because the foundation did not have charitable status. Ms Cegolea appealed against that decision to the County Court, alleging, among other things, that she had been discriminated against and that the legislation was unconstitutional. The County Court dismissed her appeal on the grounds that the foundation lacked charitable status. However, it

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.

allowed her request to apply to the Constitutional Court, which declared her plea of unconstitutionality inadmissible. A few days later the deadline for registering as a candidate in the parliamentary elections of 9 December 2012 expired.

In January 2013 Ms Cegolea was informed of the Ministry's reply. The latter explained that when the application had been submitted and examined the foundation had satisfied the statutory criteria for the granting of charitable status. However, after the entry into force on 1 August 2012 of Law no. 145/2012 amending Order no. 26/2000, new criteria had been established which the foundation did not satisfy.

Complaints, procedure and composition of the Court

Relying on Article 3 of Protocol No. 1 to the Convention (right to free elections) read in conjunction with Article 14 (prohibition of discrimination), Ms Cegolea alleged that her candidature had been subject to additional conditions compared with those imposed on the candidate already representing the Italian minority in the Romanian Parliament, who had simply had to renew his candidature for the December 2012 elections without any further conditions being attached. Ms Cegolea argued that she had therefore been placed at a disadvantage.

The application was lodged with the European Court of Human Rights on 8 April 2013.

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

Jon Fridrik **Kjølbro** (Denmark), *President*,
Faris **Vehabović** (Bosnia and Herzegovina),
Iulia Antoanella **Motoc** (Romania),
Branko **Lubarda** (Serbia),
Carlo **Ranzoni** (Liechtenstein),
Stéphanie **Mourou-Vikström** (Monaco),
Georges **Ravarani** (Luxembourg),

and also Andrea **Tamietti**, *Section Registrar*.

Decision of the Court

[Article 14 \(prohibition of discrimination\) read in conjunction with Article 3 of Protocol No. 1 \(right to free elections\)](#)

Ms Cegolea had been subjected to a difference in treatment in the exercise of her electoral rights since, unlike organisations already represented in Parliament, the foundation of which she was a member and on whose behalf she wished to stand had to obtain charitable status in order for her to be a candidate. The aim of the difference in treatment had been to ensure that organisations were properly representative and to encourage only serious candidates to stand. Ms Cegolea had not been taken by surprise by a new condition being imposed and had thus been able to organise her foundation's activity in order to apply for charitable status ahead of the elections of 9 December 2012.

Nevertheless, the Court observed the following.

The criteria to be met in order to apply for charitable status had been amended less than five months before the elections of 9 December 2012 and after the foundation had made its application. Order no. 26/2000 had therefore had a direct impact on the national legislation.

Ms Cegolea's application had been submitted to two separate authorities, namely the DRI and the Ministry, and had been dealt with differently by the two authorities.

Order no. 26/2000 laid down time-limits of 60 and 90 days respectively within which the competent administrative authority and the Ministry had to deal with applications for charitable status. The Government had not made clear whether those time-limits were indicative or binding. However, this was an important question since Ms Cegolea had to obtain that status before the deadline for submission of her candidature. Furthermore, while the DRI had replied before the deadline, the Ministry had done so after the elections had taken place.

The authorities to which Ms Cegolea's application had been submitted had taken differing positions on the criteria to be satisfied by the foundation. The DRI had justified its refusal on the grounds that the foundation's activities did not concern inter-ethnic relations and that Ms Cegolea did not satisfy the statutory criteria. The Ministry took the view that the foundation had satisfied all the statutory conditions when the application had been submitted and examined, but that it no longer did so owing to the introduction of a new set of criteria under Law no. 145/2012.

The administrative authorities' replies to Ms Cegolea had differed as to the interpretation of the statutory provisions and the timeframe for their application. Furthermore, the legal status of those replies was not clear from the domestic legislation and practice.

In a judgment of 3 October 2007 the Romanian High Court of Cassation and Justice had dismissed an action brought by an association challenging the executive's refusal to grant it charitable status although it satisfied the statutory criteria. The High Court had found that the granting of such status fell within the discretion of the executive even where the requesting association or foundation fulfilled the statutory criteria. The Court considered that in an electoral context in which, in order to stand for election, Ms Cegolea had to demonstrate that the foundation had obtained charitable status, such discretion on the part of the executive was open to question. Moreover, the procedure by which Ms Cegolea could have contested the executive's refusal to grant the foundation such status did not confer genuine powers of review on the domestic courts and had therefore not been attended by sufficient safeguards against arbitrariness.

Consequently, in view of all these considerations, and in particular the lack of judicial scrutiny to protect against arbitrariness, and while taking account of the wide discretion enjoyed by the State in this regard, the Court held that the difference in treatment to which Ms Cegolea had been subjected compared with national minority organisations already represented in Parliament had been insufficiently justified in relation to the legitimate aim pursued. There had therefore been a violation of Article 14 of the Convention read in conjunction with Article 3 of Protocol No. 1 to the Convention.

Just satisfaction (Article 41)

The Court held that the finding of a violation constituted in itself sufficient just satisfaction for the non-pecuniary damage sustained by Ms Cegolea.

The judgment is available only in French.

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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.