



## Violation of Holocaust survivors' rights owing to unpublicised war-crimes retrials

The case of [Zăicescu and Fălticaneanu v. Romania](#) (application no. 42917/16) concerned the retrial and acquittal of two army officers in the 1990s who had been convicted in the 1950s of war crimes and crimes against humanity for their involvement in, among other crimes, the persecution of Romanian Jews in 1941, in particular the Iași pogrom, which Mr Zăicescu had survived, and the placement of a high number of Jews in ghettos, which was the case for both applicants.

In today's **Chamber** judgment<sup>1</sup> the European Court of Human Rights held, unanimously, that there had been:

**a violation of Article 8 (right to respect for private and family life) in conjunction with Article 14 (prohibition of discrimination) of the European Convention on Human Rights.**

The Court found in particular that the revision of historical convictions for crimes connected with the Holocaust had not been adequately justified by the Government, and must have caused feelings of vulnerability and humiliation in Holocaust victims such as the applicants.

The Court found, by a majority, the complaints under **Article 3 (prohibition of inhuman or degrading treatment) in conjunction with Article 14 inadmissible**. The ill-treatment the applicants had suffered had taken place nine years before the Convention had come into existence and 50 years before Romania had signed the Convention, and the most important procedural steps incumbent on the Government had taken place long before Romania had become a High Contracting Party.

A legal summary of this case will be available in the Court's database HUDOC ([link](#))

### Principal facts

The applicants, Leonard Zăicescu and Ana Fălticaneanu, are Romanian nationals who were born in 1927 and 1929 respectively. They live in Bucharest. They are Jews and Holocaust survivors.

#### *Background*

In 1940 the Romanian Government enacted anti-Semitic legislation which led to, among other effects, expropriation of property belonging to Jewish-Romanians and the internal displacement of the Jewish population. Following Romania's allying with Nazi Germany in 1941 with a view to liberating part of its territory from Soviet occupation, deportations of Jews outside of Romania to Transnistria (in modern day Republic of Moldova), which was at the time under Romanian Government administration were carried out. Pogroms took place, including a major one at Iași in the summer of 1941, resulting in thousands of deaths.

In 1945 two People's Tribunals (*Tribunalele Poporului*) were established to prosecute and punish, among other crimes, massacres of Jewish people. The wide-ranging proceedings led to, among other things, the conviction and execution of former Prime Minister Ion Antonescu in 1946. In the late 1940s the ordinary courts began prosecuting those accused of war crimes under Law no. 291/1947.

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](http://www.coe.int/t/dghl/monitoring/execution).

Among those convicted were R.D. (a lieutenant-colonel and a former section head in the Romanian Army General Staff) and G.P. (a lieutenant-colonel under the direct command of R.D.) for war crimes and crimes against humanity for having jointly: 1) ill-treated prisoners; 2) cooperated with the Special Intelligence Service in the carrying out of the Iași pogrom; and 3) participated directly in the organisation and carrying out of deportations of Jews from Bessarabia and Bukovina. They received 15 and 10 years' hard labour respectively.

R.D.'s case was re-examined in 1957 (G.P. had died in the interim) with the legal classification of the acts committed changed to engaging in intense activity against the working class and the revolutionary movement (*activitate intensă contra clasei muncitoare și a mișcării revoluționare*). He was convicted solely of contributing to the creation of ghettos and concentration camps and placement of a high number of Jews in ghettos and concentration camps.

### *The applicants*

Mr Zăicescu is a survivor of the Iași pogrom who witnessed members of his family killed there. He was then taken from his home and put on a "death train" in a carriage with 140 people and was placed in the Jewish ghetto of the town of Podul Iloaiei (Romania). Only one fifth of passengers arrived alive.

Ms Fălticineanu was taken from her home in Cernăuți (Bukovina, part of Romania at the time) in 1941 and placed in a ghetto awaiting transportation to Transnistria. After a year in the appalling conditions there, she went into hiding in a relative's house, which she did not leave for three years, without access to education.

### *Retrials and later events*

Following the ending of the communist regime, in the 1990s several war-crimes judgments were reopened, including R.D.'s and G.P.'s (both were dead at this point), whose convictions were quashed by the Supreme Court of Justice. The court acquitted the two army officers holding that they had been merely complying with orders concerning deportation of Romanian Jews, and had had no involvement in the massacres of Jews, which had been carried out by German troops only. Those proceedings allegedly took place in public with appointed legal representation for the deceased military personnel. The case files were deposited for several years in the secret-services archives and subsequently in the archives of the National Council for the Study of the Archives of the *Securitate* (CNSAS).

In 2004 a report by the International Commission on the Holocaust in Romania recommended reversing the acquittal of war criminals.

After finding out about the acquittal proceedings by accident during a conference held by the Elie Wiesel National Institute for the Study of the Holocaust in Romania (INSHR-EW) in 2016, the applicants tried to gain access to the case files unsuccessfully via the courts. They finally obtained copies of the case files through the efforts of the INSHR-EW.

## Complaints, procedure and composition of the Court

Relying on Articles 3 (prohibition of inhuman and degrading treatment) and 8 (right to respect for private and family life), both taken alone and in conjunction with Article 14 (prohibition of discrimination), the applicants complained that the retrial proceedings' taking place, the resulting acquittals and the failure to inform them and the general public had denied them an effective investigation into the Holocaust, and had damaged their psychological integrity as Holocaust survivors. They also alleged the authorities had failed to take into account the anti-Semitic nature of the crimes, which had amounted to discrimination.

Under Article 6 § 1 (right to a fair trial) they also complained of a lack of access to the case files. Under Article 1 of Protocol No. 12 to the Convention (general prohibition of discrimination) they complained that the attitude of the authorities had amounted to discrimination.

The application was lodged with the European Court of Human Rights on 14 July 2016.

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

Gabriele **Kucsko-Stadlmayer** (Austria), *President*,  
 Tim **Eicke** (the United Kingdom),  
 Faris **Vehabović** (Bosnia and Herzegovina),  
 Yonko **Grozev** (Bulgaria),  
 Armen **Harutyunyan** (Armenia),  
 Ana Maria **Guerra Martins** (Portugal),  
 Sebastian **Rădulețu** (Romania),

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

## Decision of the Court

### Articles 3 and 14

An obligation on a State to investigate deaths and ill-treatment that occurred before the Convention had come into force in that State generally applied only when the investigation procedure should have taken place after the Convention's coming into force (the "genuine connection" test). This was not the situation in this case. The Court noted that the events in question – the Iași pogrom and the placing of Jews in ghettos – had taken place about 50 years before Romania had ratified the Convention, and some nine years before the entry into force of the Convention itself. The most important procedural steps had taken place long before Romania had become a High Contracting Party, and so there was no "genuine connection". There was also no room for derogating from the "genuine connection" clause and applying "Convention values" owing to these crimes against Jews having been committed before the Convention had itself had even come into being.

The Court therefore rejected this part of the application.

### Articles 8 and 14

The applicants stated that they felt humiliated and traumatised because of the revision of historically and judicially established facts that, in their opinion, had amounted to a denial of the ethnically motivated violence of which they had been victims during the Holocaust.

The Court held that the findings of the Supreme Court of Justice – specifically that only German troops had carried out on the territory of Romania actions against Jews and that R.D. had only followed orders issued by a superior – in the acquittal decisions of 1998 and 1999 had been excuses or efforts to blur responsibility and put blame on another nation for the Holocaust contrary to well established historical facts – all elements of Holocaust denial and distortion.

States that had experienced Nazi horrors could be regarded as having a special moral responsibility to distance themselves from the mass atrocities perpetrated by the Nazis. This obligation formed part of the case at issue, where alleged discriminatory acts had been performed by State authorities.

As matters of public interest, the authorities should have publicised the retrial proceedings and their outcome. The Court found that, owing to that failure, the applicants had found out about them by accident, which could have caused them to feel vulnerable and humiliated.

The Court was satisfied that the Government had not provided relevant and sufficient reasons for the revision of historical convictions for crimes connected with the Holocaust. The acquittals had

therefore been “excessive” and “not necessary in a democratic society”, leading to a violation of Article 8 read in conjunction with Article 14.

### Other articles

The Court found no evidence of breaches of Article 6 § 1 and Article 1 of Protocol No. 12 and so ruled those parts of the application inadmissible.

### Just satisfaction (Article 41)

The Court held that Romania was to pay the applicants 8,500 euros (EUR) in respect of costs and expenses.

### Separate opinions

Judge S. Rădulețu expressed a partly dissenting opinion joined by judges F. Vehabović and A.M. Guerra Martins. This opinion is annexed to the judgment.

*The judgment is available only in English.*

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