



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

FOURTH SECTION

**CASE OF GIURCANU AND OTHERS v. ROMANIA**

*(Application no. 30365/15 and 2 other applications)*

JUDGMENT

STRASBOURG

16 October 2018

*This judgment is final but it may be subject to editorial revision.*



**In the case of Giurcanu and Others v. Romania,**

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

Georges Ravarani, *President*,

Marko Bošnjak,

Péter Paczolay, *judges*,

and Andrea Tamietti, *Deputy Section Registrar*,

Having deliberated in private on 25 September 2018,

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

## PROCEDURE

1. The case originated in three 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 three Romanian nationals, on 15 June 2015. The applicants’ personal details are set out in the appended table.

2. The applicants were represented by Mr I. Matei, 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 16 December 2015 notice of the applications was given to the Government.

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

4. The facts, as submitted by the parties, are similar to those in the case of *Association “21 December 1989” and Others v. Romania* (nos. 33810/07 and 18817/08, §§ 12-41, 24 May 2011).

5. All applicants were ill-treated and injured on the night of 21/22 December 1989 during the events which led to the fall of the communist regime in Bucharest. The applicant in application no. 30392/15 (*Vasu v. Romania*) suffered injuries that needed twenty-two days of medical care and the other two applicants were beaten by *militia* forces on the same occasion.

6. In 1990 the military prosecutor’s office opened, of its own motion, investigations into the illegal detention, ill-treatment and injury suffered by the applicants and other participants in the events of December 1989 in

respect of several offences as mentioned below. The main criminal investigation was recorded in file no. 97/P/1990 (currently no. 11/P/2014).

7. At the same time, another investigation concerning the offences of illegal deprivation of liberty, illegal arrest and abusive investigation against a large number of persons, including the applicants, culminated in the committal for trial of senior military and public officials and their subsequent conviction by a decision of the Supreme Court of Justice of 10 May 1991, which became final on 14 November 1991. It cannot be seen from the court's decision whether the injured persons, including the applicants, participated in those proceedings (see, *mutatis mutandis*, *Bănuțoiu and Ștefoglou v. Romania* [Committee], nos. 64752/13 and 54607/14, § 7, 3 July 2018).

8. As regards the offence of improper conduct, the military prosecutor's office decided on 27 October 1993 (Ms Nicoleta-Lorena Giurcanu - applicant in application no. 30365/15, hereinafter "the first applicant"), 9 March 1994 (Mr Traian Vasu – applicant in application no. 30392/15, hereinafter "the second applicant") and 27 August 1993 (Ms Luminița Zeleniuc – applicant in application no. 30410/15, hereinafter "the third applicant") not to open a separate investigation of its own motion on the grounds that the offence of improper conduct fell under a subsequently enacted amnesty law; that decision was communicated only to the third applicant on 25 September 2008. No decision was adopted in respect of the applicants' injury.

9. Further, without a formal decision to overturn the decisions issued by the military prosecutor's office (see paragraph 8 above) and to reopen the applicants' respective cases, in the main criminal investigation, the prosecutor heard evidence from the applicants, who reiterated their complaints regarding the offences of illegal deprivation of liberty and assault and battery, based on their ill-treatment and injuries during the events of December 1989. Thus, the first applicant asked on 29 April 2005 to be joined to these proceedings as a civil party and for the investigation of the case to be pursued by the military prosecutor's office. The second applicant gave statements as an injured party on 7 January 2000 and 23 November 2004. The third applicant raised civil claims on 25 September 2008 and requested that the persons responsible be identified and committed to stand trial.

10. The relevant procedural steps taken in the main criminal investigation were described in *Association "21 December 1989" and Others v. Romania* (cited above, §§ 12-41), and *Sidea and Others v. Romania* ([Committee] no. 889/15, §§ 8-11, 5 June 2018).

11. On 14 October 2015 the military prosecutor's office issued a decision in respect of the offence of instigating illegal deprivation of liberty, concerning all the applicants, by closing the main criminal investigation on the grounds of *res judicata* in relation to the Supreme Court of Justice's

decision of 10 May 1991 (see paragraph 7 above). In addition, the military prosecutor's office closed the main investigation in respect of the offence of instigating improper conduct regarding the second applicant, as it fell under an amnesty law (see paragraph 8 above). No decision was adopted with respect to the injury and assault and battery complained of by the applicants.

12. The decision of 14 October 2015 (see paragraph 11 above) was subsequently annulled by a Prosecutor General's decision of 5 April 2016, confirmed by the High Court of Cassation and Justice on 13 June 2016. On 1 November 2016 the military prosecutor ordered the opening of a criminal investigation *in rem* for the offence of crimes against humanity in respect of the same factual circumstances.

13. According to the information submitted by the parties, the main criminal investigation is still ongoing (see *Bănuțoiu and Ștefoglou*, cited above, § 12).

## II. RELEVANT DOMESTIC LAW

14. The legal provisions relevant to the criminal proceedings instituted in connection with the events of December 1989 are referred to in *Association "21 December 1989" and Others* (cited above, §§ 95-100), and *Mocanu and Others v. Romania* [GC] (nos. 10865/09 and 2 others, §§ 193-96, ECHR 2014 (extracts)).

## THE LAW

### I. JOINDER OF THE CASES

15. The Court notes that the present cases concern the same factual circumstances and raise similar legal issues. Consequently, it considers it appropriate to order their joinder, in accordance with Rule 42 § 1 of the Rules of the Court.

### II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

16. The applicants complained that the domestic authorities had not carried out within a reasonable time an effective investigation into the events of December 1989 in Bucharest, during which they had been ill-treated or injured, as provided in Article 3 of the Convention, which reads as follows:

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

### A. Admissibility

17. The Court notes that this complaint 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

18. The Government described the steps taken recently by the national authorities in order to complete the criminal investigation concerning the events of December 1989 and made reference to their previous arguments raised in *Association "21 December 1989" and Others v. Romania* (nos. 33810/07 and 18817/08, 24 May 2011) and *Alecu and Others v. Romania* (nos. 56838/08 and 80 others, 27 January 2015).

19. The Court reiterates that, in the given circumstances, 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 and 2 others, §§ 315-25, ECHR 2014 (extracts)).

20. The Court notes that the applicants have raised arguable claims that they were ill-treated and injured during the events of December 1989 and that they did address the investigative authorities regarding the matter (see paragraphs 5 and 9 above).

21. Having regard to its jurisdiction *ratione temporis*, permitting it to consider only that part of the investigation which occurred after 20 June 1994, the date on which the Convention came into force in respect of Romania, and irrespective of the fact that the investigation was carried out by military prosecutors (see *Elena Apostol and Others v. Romania*, nos. 24093/14 and 16 others, § 34, 23 February 2016), the Court further notes that the main criminal investigation to which the applicants are parties is still ongoing after more than 28 years. In that connection, the Court has

already found that it was procedurally defective, not only by reason of its excessive length and long periods of inactivity, but also because of the lack of involvement of the victims in the proceedings and of the lack of information afforded to the public about the progress of the inquiry (see *Association "21 December 1989" and Others*, cited above, §§ 133-45; *Mocanu and Others*, cited above, §§ 335-48; and *Alecu and Others*, cited above, § 39).

22. The foregoing considerations are sufficient to enable the Court to conclude that there has been a violation of Article 3 of the Convention under its procedural limb.

### III. ALLEGED VIOLATION OF ARTICLE 6 § 1 AND ARTICLE 13 OF THE CONVENTION

23. The applicants complained of the length of the criminal proceedings concerning the events of December 1989. They also complained that they did not have at their disposal an effective remedy for the determination of their claims. They relied in that connection on Article 6 § 1 and Article 13 of the Convention.

24. In the light of the finding relating to Article 3 of the Convention (see paragraph 22 above), the Court considers that it is not necessary to examine the admissibility and merits of the complaints under Article 6 § 1 and Article 13 of the Convention (see, among other authorities, *Association "21 December 1989" and Others*, cited above, § 181, and *Alecu and Others*, cited above, § 45).

### IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

25. 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

26. The applicants claimed 100,000 euros (EUR) in respect of pecuniary and non-pecuniary damage.

27. The Government contested those claims as excessive.

28. The Court takes the view, on the one hand, that the applicants have failed to demonstrate the existence of a causal link between the violation found and the pecuniary damage alleged; it therefore rejects those claims. On the other hand, the Court finds that the violation of Article 3 of the Convention, under its procedural limb, has caused the applicants substantial

non-pecuniary damage, such as distress and frustration. Ruling on an equitable basis, it awards to each of the applicants EUR 7,500 under this head.

### **B. Costs and expenses**

29. The applicants did not submit any claims for costs and expenses. The Court is therefore not called to make an award in this respect.

### **C. Default interest**

30. 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, UNANIMOUSLY,**

1. *Decides* to join the applications;
2. *Declares* the complaint concerning Article 3 of the Convention admissible;
3. *Holds* that there has been a violation of Article 3 of the Convention under its procedural limb;
4. *Holds* that there is no need to examine the admissibility and merits of the complaints under Article 6 § 1 and Article 13 of the Convention;
5. *Holds*
  - (a) that the respondent State is to pay to each of the applicants, within three months, 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 amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
6. *Dismisses* the remainder of the applicants' claims for just satisfaction.

Done in English, and notified in writing on 16 October 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Andrea Tamietti  
Deputy Registrar

Georges Ravarani  
President

**APPENDIX**

<b>No.</b>	<b>Application no. and date of introduction</b>	<b>Applicant's name Date of birth Place of residence</b>	<b>Particular circumstances of the application</b>
1.	30365/15 15/06/2015	<b>Nicoleta-Lorena GIURCANU</b> 07/02/1975 Bucharest	Beaten by the <i>militia</i> forces and placed in detention in a centre for minors in Bucharest, on the night of 21/22 December 1989.
2.	30392/15 15/06/2015	<b>Traian VASU</b> 10/06/1944 Bucharest	Beaten by the <i>militia</i> forces and placed in detention in Jilava Prison, Bucharest, on the night of 21/22 December 1989.
3.	30410/15 15/06/2015	<b>Luminița ZELENIC</b> 18/04/1970 Bucharest	Beaten by the <i>militia</i> forces and placed in detention in Jilava Prison, Bucharest, on the night of 21/22 December 1989.