



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

FOURTH SECTION

**CASE OF CHICHEANU v. ROMANIA**

*(Application no. 30400/15)*

JUDGMENT

STRASBOURG

16 October 2018

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



**In the case of Chicheanu 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 an application (no. 30400/15) 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, Ms Cristina Chicheanu (“the applicant”), on 15 June 2015.

2. The applicant was 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 application was given to the Government.

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1974 and lives in Bucharest.

5. During the events which led to the fall of the communist regime in Bucharest, on 21 December 1989, the applicant suffered injuries caused by impingement and compression, as a result of which she needed 50 days of medical care, her life not being imperilled.

6. In 1990 the military prosecutor’s office opened, of its own motion, several investigations into the ill-treatment and injuries suffered by those participating in the events of December 1989. The main criminal investigation was recorded in file no. 97/P/1990 (currently no. 11/P/2014). As regards the applicant, an investigation was opened under a separate file and she gave a statement as a witness on 23 June 1994. Her case has been further examined at a later date in the main criminal investigation.

7. The most important procedural steps were described in the case *Association “21 December 1989” and Others v. Romania* (nos. 33810/07 and 18817/08, §§ 12-41, 24 May 2011), and also in *Sidea and Others v. Romania* ([Committee] no. 889/15 and 38 others, §§ 8-11, 5 June 2018). Subsequent relevant domestic decisions are referred to below.

8. On 14 October 2015 the military prosecutor’s office closed the main investigation, finding that the complaint regarding the offence of attempted homicide committed against the applicant was statute-barred. This decision was annulled by a Prosecutor General’s decision of 5 April 2016, confirmed by the High Court of Cassation and Justice on 13 June 2016. It was noted that the investigation under file no. 11/P/2014 was incomplete and that the facts could not be established based on the evidence gathered up to that date.

9. 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. Up to February 2017 further steps were taken to gather information from domestic authorities: the prosecutor’s office contacted 211 civil parties, questioning members of the political party which took over the presidency at the time of the events, planning the hearing of military officers and other participants in the events, and verifying the activity of the relevant military units and the audio/video recordings broadcast by radio and television.

10. At the date of the latest information available to the Court (see *Sidea and Others*, cited above, § 11), the criminal investigation was still ongoing.

## II. RELEVANT DOMESTIC LAW

11. The relevant domestic law is set out 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. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

12. The applicant complained that the criminal investigation opened with respect to the injury she had sustained during the events of December 1989 had been ineffective and incapable of leading to the identification and the punishment of those responsible. She relied on Articles 2 and 3 of the Convention.

13. The Court reiterates that it has the power to decide on the characterisation to be given in law to the facts of a complaint by examining it under Articles or provisions of the Convention that are different from those relied upon by the applicant (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 126, 20 March 2018). Having regard to the facts (see paragraph 5 above), the Court considers that the complaint concerning the applicant's injury must be examined only under the procedural limb of Article 3 of the Convention (contrast *Şandru and Others v. Romania*, no. 22465/03, §§ 51-54, 8 December 2009, and *Dobre and Others v. Romania*, no. 34160/09, §§ 33-36, 17 March 2015). This provision reads as follows:

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

#### **A. Admissibility**

14. 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**

15. 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, §§ 128-32, 24 May 2011) and *Alecu and Others v. Romania* (nos. 56838/08 and 80 others, § 34, 27 January 2015).

16. The Court reiterates that, in the given circumstances, where an individual raises an arguable claim that he or she 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)).

17. Turning to the circumstances of the present case, the Court first observes that according to its findings with respect to its jurisdiction *ratione temporis* in the case of *Mocanu and Others* (cited above, §§ 205-11), 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 furthermore notes that the applicant has raised an arguable claim that she was injured during the events of December 1989 (see paragraph 5 above) and that this claim has been examined in the main criminal investigation (see paragraph 6 above). Nevertheless, the main criminal investigation to which she is a party is still ongoing after more than 28 years. In that connection, the Court has already found that, irrespective of the fact that the criminal investigation was carried out by the military prosecutor's office (see *Elena Apostol and Others v. Romania*, nos. 24093/14 and 16 others, § 34, 23 February 2016), 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).

18. 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.

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

19. The applicant complained under Article 6 § 1 of the Convention about the length of the criminal proceedings concerning the events of December 1989 and under Article 13 of the Convention about the absence of an effective remedy to enable her claims to be determined.

20. Having regard to the finding relating to Article 3 (see paragraph 18 above), the Court considers that it is not necessary to examine the admissibility and the 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).

## III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

21. 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**

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

23. The Government considered the claim to be excessive.

24. The Court takes the view, on the one hand, that the applicant has failed to demonstrate the existence of a causal link between the violation found and the pecuniary damage alleged; it therefore rejects that claim. On the other hand, the Court finds that the violation of Article 3 of the Convention, under its procedural limb, has caused the applicant substantial non-pecuniary damage, such as distress and frustration. Ruling on an equitable basis, it awards the applicant EUR 7,500 in respect of non-pecuniary damage, plus any tax that may be chargeable.

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

25. The applicant did not submit a claim for costs and expenses. The Court is therefore not called upon to make an award in this respect.

### **C. Default interest**

26. 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. *Declares* the complaint concerning Article 3 of the Convention admissible;
2. *Holds* that there has been a violation of Article 3 of the Convention under its procedural limb;
3. *Holds* that there is no need to examine the admissibility and the merits of the complaints under Article 6 § 1 and Article 13 of the Convention;

4. *Holds*

(a) that the respondent State is to pay the applicant, 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 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* the remainder of the applicant's claim 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