



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

FOURTH SECTION

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

*(Applications nos. 56842/08 and 7 others – see appended list)*

JUDGMENT

STRASBOURG

24 November 2015

*This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.*



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

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

András Sajó, *President*,

Vincent A. De Gaetano,

Boštjan M. Zupančič,

Nona Tsotsoria,

Krzysztof Wojtyczek,

Egidijus Kūris,

Iulia Antoanella Motoc, *judges*,

and Françoise Elens-Passos, *Section Registrar*,

Having deliberated in private on 3 November 2015,

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

**PROCEDURE**

1. The applicants are all Romanian nationals. The applicants' personal details, their representatives and the dates their respective applications were lodged are set out in the appended table.

2. The Romanian Government ("the Government") were represented by their Agent, Ms C. Brumar, from the Ministry of Foreign Affairs.

3. On 13 April 2012 and 11 July 2013 the applicants' complaints concerning the effectiveness of the criminal investigation, the length of criminal proceedings and the lack of an effective domestic remedy were communicated to the Government.

4. The parties submitted written observations.

**THE FACTS****THE CIRCUMSTANCES OF THE CASE****A. The events of December 1989 concerning all applicants**

5. The facts of the cases, as submitted by the parties, are similar to those presented in *Association "21 December 1989" and Others v. Romania* (nos. 33810/07 and 18817/08, §§ 12-41, 24 May 2011) and in *Bosnigeanu and Others v. Romania* (nos. 56861/08 and 33 others, §§ 5-15, 4 November 2014). They belong within the same historical context and relate to the same domestic criminal proceedings as those at issue in the above-mentioned case.

6. Between 21 and 23 December 1989, the applicants took part in the anti-communist demonstrations in Bucharest which led to the fall of the communist regime.

7. In 1990, following the overthrow of the communist regime, the military prosecutor's office opened a criminal investigation in respect of the December 1989 armed crackdown on the anti-communist demonstration in Bucharest.

8. According to the documents submitted to the Court by the parties, all the applicants were interviewed at the military prosecutor's office as witnesses in connection with the use of violence against civilian demonstrators. Subsequently, they lodged criminal complaints and joined the criminal proceedings as civil parties, citing the psychological suffering they had experienced following the violent crackdown on the anti-communist demonstration. It appears from the medical certificates issued between April 2008 and February 2009 and submitted by the applicants to the domestic criminal investigation file that they did not present any medical symptoms when they were examined following their involvement in the tragic events. Nevertheless, it could not be ruled out that they suffered psychological trauma at the time of the events in question.

9. The criminal investigation appears to be still pending before the prosecuting authorities. The most important procedural steps were summarised in *Association "21 December 1989" and Others*, cited above (§§ 12-41). Subsequent developments in the investigation are as follows.

10. On 18 October 2010 the military prosecutor's office at the High Court of Cassation and Justice decided not to institute criminal proceedings with regard to the acts committed by the military, finding that the applicants' complaints were partly statute-barred and partly ill-founded. The investigation into crimes committed by civilians, members of the Patriotic Guards, members of militia and prison staff was severed from the case file and jurisdiction was relinquished in favour of the prosecuting authorities at the High Court of Cassation and Justice.

11. On 15 April 2011 the chief prosecutor at the military prosecutor's office set aside the decision of 18 October 2010 on the grounds that the investigation had not yet been finalised and not all victims and perpetrators had yet been identified.

12. On 18 April 2011 the military prosecutor's office relinquished jurisdiction in favour of the prosecutor's office at the High Court of Cassation and Justice on the ground that the investigation concerned both civilians and military.

13. On 9 March 2012 – following the opening to the public in 2010 of the classified information in the criminal investigation file – the case was re-registered with a view to an investigation in the light of the recently available data.

14. This investigation appears to be still pending before the domestic authorities.

**B. The events of June 1990 concerning the applicants in applications nos. 56860/08, 724/09 and 11022/09**

15. The main facts of these cases concerning the crackdown on anti-government demonstrations between 13 to 15 June 1990 are similar to those presented in *Mocanu and Others v. Romania* [GC] (nos. 10865/09, 45886/07 and 32431/08, §§ 14-49, 55-72, 78-110, and 137-168, ECHR 2014 (extracts)).

16. Between 13 and 15 June 1990 a violent crackdown took place against demonstrators who were occupying University Square and other areas of Bucharest and protesting against the newly installed government. The armed intervention of military forces, followed by the arrival of thousands of miners transported to Bucharest (mainly from the Jiu Valley mining region) to take part in the crackdown on the demonstrators, resulted in more than a thousand civilian casualties, of whom a hundred were killed and several hundred injured or arrested. The applicants in the above-mentioned cases participated in the events, during which they allegedly suffered injuries. No relevant medical documents were appended to the case file.

17. Separate criminal investigations into the crimes committed during the violent repression of the demonstrations were opened in 1990 by several prosecutors' offices in Bucharest under different files. Subsequently, these cases were joined and, in 1997, jurisdiction over them was relinquished in favour of the military prosecutor's office at the High Court of Cassation and Justice. During the military prosecutor's investigations, several decisions were adopted in which decisions were reversed, charges were disjoined and jurisdiction relinquished to other domestic authorities. The applicants joined the domestic criminal proceedings as civil parties.

18. A decision not to bring a prosecution was adopted on 17 June 2009. An appeal lodged against that decision was dismissed on 3 September 2009 by the head prosecutor of the relevant section of the prosecutor's office at the High Court of Cassation and Justice. Those decisions have been upheld in several judgments of the High Court of Cassation and Justice.

## THE LAW

### I. JOINDER OF THE CASES

19. The Court notes that the applications concern the same factual circumstances and raise similar legal issues. Consequently, it considers it appropriate to join all the applications, in accordance with Rule 42 § 1 of the Rules of Court.

### II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION CONCERNING THE EVENTS OF DECEMBER 1989

20. All the applicants complained that the length of the criminal proceedings which they had joined as civil parties in order to claim compensation for the damage caused by the ill-treatment inflicted on them in December 1989 had been incompatible with the “reasonable time” requirement laid down in Article 6 § 1 of the Convention, which reads as follows:

“In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal...”

21. The Government contested that argument. They argued that the starting-point of the proceedings was the moment at which the applicants had lodged a request to join the proceedings as civil parties and that the authorities had displayed proper diligence in carrying out the investigation, taking into account the complexity of the case.

#### A. Admissibility

22. The Court notes that the applicants lodged civil-party complaints during the criminal investigation and exercised their right for redress of the damage caused by the offences of which they were allegedly victims. As civil-party proceedings constitute a civil action for reparation of damage caused by an offence and the outcome of the criminal investigation is decisive for the “civil right” in question, the proceedings come within the field of application of Article 6 § 1 of the Convention (see *Perez v. France* [GC], no. 47287/99, §§ 62-66 and 74-75, ECHR 2004-I, *Krumpel and Krumpelová v. Slovakia*, no. 56195/00, §§ 45-49, 5 July 2005, and *Javor and Javorová v. Slovakia*, no. 42360/10, §§ 46-66, 15 September 2015). Moreover, in addition to the findings in case of *Perez*, cited above, the Court has already emphasised the importance of the right of victims to know the truth about the circumstances surrounding events involving a massive violation of fundamental rights, like the events of December 1989, which implies the right to an effective judicial investigation and a possible right to

compensation (see *Association "21 December 1989" and Others*, cited above, § 144).

23. The Court observes that this part of the applications 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**

24. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case; the conduct of the applicants and of the relevant authorities; and what was at stake for the applicant in the dispute (see, among many other authorities, *Vlad and Others v. Romania*, nos. 40756/06, 41508/07 and 50806/07, § 131, 26 November 2013).

25. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case (see *Vlad and Others*, cited above).

26. The proceedings on the applicants' civil-party claims commenced when these were lodged between June and November 2008 (see appended table) and it appears that they are still pending. They thus lasted for seven years to date, at the pre-trial stage of the criminal investigation proceedings without a single decision having been taken in respect of the applicants' claims. The Court does not underestimate the undeniable complexity of the present case. It considers, however, that complexity cannot by itself justify either the length of the investigation or the manner in which it was conducted over a very lengthy period (see *Association "21 December 1989" and Others*, cited above, § 142).

27. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. Having regard to its case-law on the subject, the Court considers that in the instant case, the length of the proceedings concerning the investigation into the events of December 1989 was excessive and failed to meet the "reasonable time" requirement.

There has accordingly been a breach of Article 6 § 1.

### III. ALLEGED VIOLATION OF ARTICLES 2 AND 3, UNDER THEIR PROCEDURAL LIMB, AND ARTICLE 13 OF THE CONVENTION CONCERNING THE EVENTS OF DECEMBER 1989 AND JUNE 1990

28. The applicants complained of the lack of an effective, impartial and thorough investigation capable of leading to the identification and punishment of those responsible for the violent crackdown on the demonstrations of December 1989 and June 1990, in the course of which they had allegedly been subjected to ill-treatment. Further, the applicants complained of the lack of an effective remedy before the national authorities in that respect. They relied in that connection on Articles 2, 3 and 13 of the Convention. These provisions read as follows:

#### **Article 2**

“1. Everyone’s right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:

- (a) in defence of any person from unlawful violence;
- (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
- (c) in action lawfully taken for the purpose of quelling a riot or insurrection.”

#### **Article 3**

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

#### **Article 13**

“Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

### **Admissibility**

#### *1. The parties’ submissions*

29. Firstly, pointing out that the events in question and the opening of the investigations had occurred prior to the ratification of the Convention by Romania on 20 June 1994, the Government submitted that the Court did not have jurisdiction *ratione temporis* to examine the complaint at issue.

30. Secondly, the Government argued that certain applicants had failed to exhaust domestic remedies, since some of the applicants had not joined



the proceedings as civil parties or had applied to do so out of time, whereas other applicants had appeared before the prosecuting authorities only as witnesses.

31. Lastly, the Government argued that the applicants lacked victim status, given the fact that they had never been parties to the criminal action.

32. Regarding the merits of the complaint, the Government argued that the investigation into the armed repression of the anti-communist demonstrations of December 1989 was still pending and that the investigation into the events of June 1990 had been completed. In the Government's submission, the effectiveness of these investigations should be examined in the light of the particular complexity of the case, the length of these investigations being justified by the difficulties of establishing the facts of the case. They also submitted that the applicants had not acted with the necessary diligence during the proceedings.

33. In respect of Article 13, the Government considered that the applicants had not raised an arguable claim that they had suffered treatment infringing Article 3.

34. The applicants argued that they had victim status with regard to the absence of an effective investigation into the violence to which they had been subjected. Military forces deployed in large numbers had used not only tear gas, but also munitions and tanks when attacking demonstrators (including the applicants), causing panic and resulting in the victims suffering feelings of anxiety and episodes of depression.

35. They further pointed out that no effective investigation had been carried out into their complaints under Articles 2 and 3 of the Convention, noting that the investigation into the events of December 1989 was still pending before the prosecuting authorities after more than twenty-five years and that the authorities had yet to identify the perpetrators of the crackdown on the June 1990 demonstrations.

## 2. *The Court's assessment*

36. In the instant case, the Court notes from the outset that the applicants' complaints concern the ineffectiveness of the investigations opened into the violent repression of the demonstrations of December 1989 and June 1990, in the course of which they were allegedly subjected to ill-treatment.

37. The Court considers that these complaints should be examined under the procedural head of Article 3 of the Convention only (see *Bosnigeanu and Others*, cited above, § 36).

38. As regards the Government's objections that (i) the Court lacks jurisdiction *ratione temporis*, (ii) all domestic remedies have not been exhausted, and (iii) the applicants lack victim status, the Court finds that it is not necessary to examine the said objections, given the fact that these complaints are in any event inadmissible for the following reasons.

39. The Court reiterates that ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum level of severity is relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim (see, *inter alia*, *Jalloh v. Germany* [GC], no. 54810/00, § 67, ECHR 2006-IX, *Idalov v. Russia* [GC], no. 5826/03, § 91, 22 May 2012, and *Bouyid v. Belgium* [GC], no. 23380/09, § 86, 28 September 2015).

40. Allegations of ill-treatment must be supported by appropriate evidence. To assess this evidence, the Court adopts the standard of proof “beyond reasonable doubt” but adds that such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see *Jalloh*, cited above, § 67 *in fine*, with further references).

41. In the instant case, the applicants alleged that during the demonstrations of December 1989 and June 1990 they had faced a serious risk to their lives and physical and mental integrity, and that subsequently they had suffered deep anxiety with serious psychological consequences.

42. The Court notes, however, that the applicants did not submit any medical certificate attesting to any physical or psychological after-effects of their participation in the events of December 1989 and June 1990. It notes that they have also failed to demonstrate that they had complained to the authorities promptly after the events of December 1989 and June 1990, in order to provide them with a detailed description of their suffering (see *Association “21 December 1989” and Others*, cited above, § 158).

43. Having regard to the circumstances of the present cases, in particular the absence of evidence concerning any physical and mental effects on the applicants of the alleged acts, and the delay in the applicants’ lodging their complaint with the domestic authorities, the Court considers that the latter did not fail to comply with the procedural obligation arising from Article 3 of the Convention in respect of the applicants (see *Bosnigeanu and Others*, cited above, §§ 39-40).

44. In the light of the foregoing, the applicants’ complaints must therefore be declared inadmissible as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

#### IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

45. All the applicants invoked Article 14 of the Convention, either alone or in conjunction with Article 6 of the Convention, complaining of discriminatory treatment.

46. Having carefully considered the applicants’ submissions in the light of all the materials in its possession, the Court finds that, in so far as the

matters complained of are within its competence, they do not disclose any appearance of a violation of these provisions.

47. It follows that this complaint must therefore be declared inadmissible as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

## V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

48. 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

49. Each of the applicants claimed EUR 100,000 in respect of pecuniary damage and EUR 100,000 in respect of non-pecuniary damage.

50. The Government contested these claims, considering the amounts excessive.

51. The Court notes that its finding of a violation of Article 6 § 1 of the Convention arising from the excessive length of the criminal proceedings concerning the events of December 1989 constitutes the sole basis for awarding just satisfaction in the present cases.

52. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, the Court considers that the applicants must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards each applicant EUR 2,400 under this head, plus any tax that may be chargeable.

### B. Costs and expenses

53. The applicants did not submit a claim for costs and expenses.

### C. Default interest

54. 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 applications admissible in respect of the complaint under Article 6 § 1 of the Convention regarding the excessive length of the criminal proceedings concerning the events of December 1989, and inadmissible in respect of the remaining complaints;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
4. *Holds*
  - (a) that the respondent State is to pay each applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 2,400 (two thousand four 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;
5. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 24 November 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise Elens-Passos  
Registrar

András Sajó  
President

## APPENDIX

No.	Application no. Date of introduction	Applicant name Date of birth Place of residence	Represented by	Date of request to join criminal proceedings in file no. 97/P/1990 as a civil party
1.	56842/08 10 November 2008	<b>Carmen Doroteia ALEXANDRESCU</b> 3 March 1950 Bucharest	Antonie POPESCU	2 October 2008
2.	56844/08 10 November 2008	<b>Ion BĂROIU</b> 2 March 1958 Bucharest	Antonie POPESCU	14 November 2008
3.	56849/08 10 November 2008	<b>Iosif BĂLAŞ-SALCOCI</b> 27 February 1939 Bucharest	Antonie POPESCU	14 November 2008
4.	56860/08 10 November 2008	<b>Ştefan BORAN</b> 12 November 1957 Bucharest	Antonie POPESCU	18 November 2008
5.	696/09 22 December 2008	<b>Vladimir CIOBANU</b> 11 April 1948 Bucharest	Ionuţ MATEI	2 September 2008
6.	704/09 22 December 2008	<b>Marin DINCĂ</b> 1 January 1938 Bucharest	Ionuţ MATEI	25 June 2008
7.	724/09 22 December 2008	<b>Cristian PAŢURCĂ</b> 10 September 1964 Bucharest	Antonie POPESCU	1 October 2008
8.	11022/09 28 January 2009	<b>Laura Veronica STOICA</b> 25 March 1943 Bucharest	Ionuţ MATEI	19 November 2008