



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

THIRD SECTION

CASE OF CĂTĂLINA FILIP v. ROMANIA

(Application no. 15052/09)

JUDGMENT

STRASBOURG

21 April 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 Cătălina Filip v. Romania,

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

Josep Casadevall, *President*,

Luis López Guerra,

Ján Šikuta,

Dragoljub Popović,

Kristina Pardalos,

Johannes Silvis,

Iulia Antoanella Motoc, *judges*,

and Stephen Phillips, *Section Registrar*,

Having deliberated in private on 31 March 2015,

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

PROCEDURE

1. The case originated in an application (no. 15052/09) 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, Mrs Cătălina Filip (“the applicant”), on 9 March 2009.

2. The applicant was represented by Ms C. Darlaiane, a lawyer practising in Bucharest. The Romanian Government (“the Government”) were represented by their Agent, Ms C. Brumar, of the Ministry of Foreign Affairs.

3. The applicant alleged, in particular, that no effective investigation had been carried out into the death of her husband, who had been shot during the violent events of December 1989.

4. On 11 September 2013 the application was communicated to the Government.

THE FACTS**I. THE CIRCUMSTANCES OF THE CASE**

5. The applicant was born in 1950 and lives in Bucharest.

A. Background to the case

6. The facts of the case are linked to the same events and criminal proceedings as those described in the case of *Association “21 December*

1989” and *Others v. Romania* (nos. 33810/07 and 18817/08, §§ 12-41, 24 May 2011). They can be summarised as follows.

7. The military operations which were conducted in the second half of December 1989 in several towns in Romania caused many civilian victims. According to a letter of 5 June 2008 from the military prosecutor’s office at the High Court of Cassation and Justice, “more than 1,200 people died, more than 5,000 people were injured and several thousand people were unlawfully deprived of their liberty and subjected to ill treatment”, in Bucharest, Timișoara, Reșița, Buzău, Constanța, Craiova, Brăila, Oradea, Cluj, Brașov, Târgu Mureș, Sibiu and other towns in Romania. In addition, it appears from Ministry of Defence documents, declassified by Government decision no. 94/2010 of 10 February 2010, that thousands of servicemen, equipped with combat tanks and other armed vehicles, were deployed in Bucharest and other cities. During the period of 17 to 30 December 1989 they used considerable quantities of ammunition.

8. In Bucharest, many people were killed or wounded by gunshot. According to a report of 24 July 1990 by the Directorate of Military Prosecutor’s Offices (*Direcția procuraturilor militare*), in the night of 21 to 22 December 1989 “48 people died and 150 people were injured in Bucharest as a result of the violent crackdown by the armed forces, including through the use of firearms”.

9. Many victims were also killed after 22 December 1989, the date on which the then Head of State was deposed.

B. Criminal proceedings

10. On 25 December 1989, the applicant’s husband was shot in the head and killed at his home in Bucharest. He had been sitting in front of a window of his apartment, when a bullet came from outside. According to a ballistic report of 17 April 1990, the bullet had been shot by an AKM-type semi-automatic rifle.

11. On an unspecified date in 1990, the Bucharest Military Prosecutor’s Office opened a criminal investigation into the death of the applicant’s husband. From 1990 to 1994, the Military Prosecutor’s Office heard several witness testimonies in connection with the investigation.

12. In parallel with the investigation concerning the death of the applicant’s husband, a separate criminal investigation concerning the use of violence in Bucharest during the last days of December 1989 was undertaken (file no. 97/P/1990).

13. On 23 May 2007, the file concerning the death of the applicant’s husband was joined to file no. 97/P/1990.

14. By a decision of 15 January 2008, the military prosecuting authorities at the High Court of Cassation and Justice decided to separate the investigation concerning sixteen civilian defendants, including a former

President of Romania and a former Head of the Romanian Intelligence Service, from the investigation involving military personnel, and to relinquish its jurisdiction in favour of the prosecutor's office at the High Court of Cassation and Justice.

15. In a letter of 5 June 2008, the head prosecutor of the military prosecutor's office at the High Court of Cassation and Justice indicated that during the period from 2005 to 2007, 6,370 individuals had been questioned in case no. 97/P/1990. In addition, 1,100 ballistics reports had been prepared, and more than 10,000 investigative measures and 1,000 on-site inquiries had been conducted. He also stated:

“among the reasons for the delay [in the investigation], mention should be made of the repetitive measures ... concerning the transfer of the case from one prosecutor to another ...; the lack of cooperation on the part of the institutions involved in the crackdown of December 1989 ..., the extreme complexity of the investigation ... given that the necessary investigative measures had not been conducted immediately after the impugned homicides ...”.

16. According to a press release issued on 10 February 2009 by the Public Information Office at the High Council of the Judiciary, the President of the Council intended to ask the Judicial Inspection Board to identify the reasons which had prevented the criminal investigation from being conducted rapidly.

17. The criminal investigation appears to be still pending before the domestic authorities.

C. Civil proceedings brought by the applicant

18. On 22 December 2004, the applicant instituted civil proceedings against the Romanian Ministry of Public Finances, seeking non-pecuniary damage amounting to 1,000,000,000 lei (ROL) under Articles 998-999 of the Romanian Civil Code in force at that time. She submitted that the Romanian State was liable for the lack of diligence in the investigation of the violent events of December 1989 and for the failure to identify and punish those responsible for the death of her husband.

19. By a judgment of 2 February 2006, the Bucharest District Court dismissed the proceedings instituted by the applicant as time-barred, by allowing an objection concerning the statute of limitation of the right to trial. It rejected an objection of lack of legal capacity on the part of the defendant, as raised by the Ministry of Public Finances.

20. The applicant lodged an appeal on points of law (*recurs*) against the judgment.

21. By a judgment of 12 March 2007, the Bucharest County Court allowed the applicant's appeal and quashed the judgment on the grounds that it had incorrectly allowed the objection concerning the statute of

limitation, and remitted the case for re-examination to the first-instance court.

22. On 12 June 2008 the Bucharest District Court ordered the Romanian Ministry of Public Finances to pay the applicant 100,000 new Romanian lei (RON) in respect of non-pecuniary damage, as well as court fees amounting to RON 3,352. The court held that the criminal investigation into the death of the applicant's husband had not been effective and prompt as required by Article 2 of the Convention. During a period of more than eighteen years after the death of her husband, the only measure taken by the prosecutor's office had been to join the file regarding her husband's death to the main file concerning the events of December 1989. Therefore, the court considered that the conditions for triggering the tort liability of the State had been met, namely the existence of prejudice towards the applicant, in particular the frustration, confusion and extended suffering derived from the lack of an explanation as to the circumstances in which her husband had been killed, the identification and punishment of those responsible, and a causal link between the unlawful deed and the damage incurred.

23. The Ministry of Public Finances appealed on points of law against the judgment.

24. On 3 February 2009, the Bucharest County Court partially allowed the appeal on points of law lodged by the Ministry of Public Finances and ordered it to pay the applicant RON 50,000 in respect of non-pecuniary damage for the ineffective criminal investigation into the death of her husband during the violent events of December 1989 in Bucharest. In determining the non-pecuniary damages payable, the court held that it should take into consideration generally, but also in respect of the present case, the gravity and intensity of the psychological suffering caused to the applicant, who was a victim of the unlawful deed, the consequences of such prejudice on a social and family level, as well as the equity criterion. It considered that the overall amount of compensation payable to the applicant for her inability to have peace of mind caused by the ineffective investigation could not exceed RON 50,000. In addition, it upheld the first-instance court's judgment on the restitution to the applicant of the court fees relating to the civil proceedings brought by her.

II. RELEVANT DOMESTIC AND INTERNATIONAL LAW AND PRACTICE

A. Relevant domestic law

25. The judgments delivered in the cases of *Association "21 December 1989" and Others* (cited above, §§ 95-107) and *Mocanu and Others v. Romania* ([GC], nos. 10865/09, 45886/07 and 32431/08,

§§ 193-96, 17 September 2014) describe in detail the relevant domestic case-law and practice.

B. Decision by the Committee of Ministers

26. The last decision concerning the execution of the judgment in the case of *Association "21 December 1989" and Others* (cited above), adopted by the Committee of Ministers on June 2014 at the 1201st meeting of the Ministers' Deputies, invited the Romanian authorities to respond to the criticism made by the Court in its judgment concerning the impugned investigation. The relevant parts are worded as follows:

"The Deputies

1. noted that, in these cases, the European Court found that certain aspects of the national legislation governing the status of the military magistrates cast doubt on the institutional and hierarchical independence of military prosecutors, when the persons under investigation belong to the armed forces or to other military forces;

2. invited the Romanian authorities to carry out rapidly a thorough assessment of the consequences to be drawn from these findings, as regards the general and individual measures in these cases, and to keep the Committee of Ministers informed of the conclusions and of the measures that might be defined and adopted in the light of this assessment;

3. invited, moreover, the authorities to present an assessment of the general measures that might be necessary to ensure that, in the future, bodies holding information on facts that are the subject of such investigations, co-operate fully with the investigators; ..."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

27. The applicant complained of the ineffectiveness of the criminal investigation opened by the authorities into the death of her husband. She alleged that the respondent State had failed to comply with the procedural requirements of Article 2 of the Convention, which reads as follows:

"1. Everyone's right to life shall be protected by law. ..."

A. Admissibility

28. The Government firstly submitted that the applicant lacked victim status. Secondly, they stated that the Court's jurisdiction *ratione temporis* to examine the application under the procedural limb of Article 2 of the

Convention was limited to the investigation conducted after the entry into force of the Convention with regard to Romania, on 20 June 1994.

1. The Court's jurisdiction ratione temporis

29. The Court reiterates that it has to satisfy itself that it has jurisdiction in any case brought before it, and is therefore obliged to examine the question of its jurisdiction even where no objection has been raised in this respect (see *Blečić v. Croatia* [GC], no. 59532/00, § 67, ECHR 2006-III, and *Mocanu and Others*, cited above, § 201).

30. In *Janowiec and Others v. Russia* ([GC], nos. 55508/07 and 29520/09, §§ 128-51, 21 October 2013), the Court found, in essence, that its temporal jurisdiction was strictly limited to procedural acts which were or ought to have been implemented after the entry into force of the Convention in respect of the respondent State, and that it was subject to the existence of a genuine connection between the event giving rise to the procedural obligation under Article 2 and the entry into force of the Convention (see also *Mocanu and Others*, cited above, §§ 205-10).

31. In the instant case, as in the case of *Association "21 December 1989" and Others* (cited above, §§ 114-18), the Court observes that the criminal proceedings relating to the death of the applicant's husband, instituted in 1990, continued after 20 June 1994, the date on which the Convention entered into force in respect of Romania. On that date, the proceedings were still pending before the Military Prosecutor's Office. It also notes that the majority of the proceedings and the most important procedural measures (see paragraphs 12-17 above) were carried out after that date.

32. Consequently, the Court finds that it has jurisdiction *ratione temporis* to examine the complaints raised by the applicant under the procedural aspect of Article 2 of the Convention, in so far as those complaints relate to the criminal investigation conducted in the present case after the entry into force of the Convention in respect of Romania.

2. Objection of lack of victim status

33. The Government stated that by allowing the applicant to bring a civil action, the domestic courts had expressly acknowledged a breach of the procedural guarantees enshrined in Article 2 of the Convention and had awarded her compensation. Therefore, as the applicant had been afforded sufficient redress, she had lost her status as a victim of a violation of Article 2.

34. The applicant argued that she had not lost her status as a victim of a breach of Article 2 because despite the domestic courts' findings, the investigation was still pending. Indeed, the investigation had not become

effective after the domestic courts' ruling, as it had still not established who had killed her husband.

35. The Court summarised the principles governing the assessment of an applicant's victim status in paragraphs 178-92 of its judgment in the case of *Scordino v. Italy (no. 1)* ([GC], no. 36813/97, ECHR 2006-V) and, with respect to claims under Article 2 of the Convention, in its judgment in the case of *Nikolova and Velichkova v. Bulgaria* (no. 7888/03, §§ 51-64, 20 December 2007).

36. In addition, in the case of *Association "21 December 1989" and Others* (cited above, §§ 124-25), the Court stated that a civil action did not represent a remedy that could lead to the acceleration of a criminal investigation and the identification of those responsible.

37. In the present case, the Court considers that the State's obligations under Article 2 of the Convention to conduct an effective investigation into the events that led to the death of the applicant's husband have not been met by the simple award of non-pecuniary damages, especially given that the award was made further to civil proceedings opened by the applicant and not by the authorities (see *Yaşa v. Turkey*, 2 September 1998, § 74, *Reports of Judgments and Decisions* 1998-VI, and *Dzieciak v. Poland*, no. 77766/01, § 80, 9 December 2008).

38. Even assuming that the findings of the national courts with regard to the ineffectiveness of the investigation and the awarding of compensation would deprive the applicant of her victim status as far as it concerns the period before February 2009, the Court notes that the Government did not adduce any evidence that there had been any progress in the investigation since 2009.

39. In conclusion, the Court finds that the measures taken by the authorities failed to provide appropriate redress to the applicant. She may therefore still claim to be a victim within the meaning of Article 34 of the Convention.

3. Conclusion with regard to the admissibility

40. The Court further notes that the application 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

41. The applicant emphasised that twenty-four years after her husband had been killed, the related criminal investigation had still not identified those responsible and sent them for trial. She considered that the duration of the investigation had been excessive and that the authorities had not complied with the requirements set forth in the Court's case-law on Article 2 of the Convention, or with those set forth by the domestic courts.

42. The Government considered that given the particular complexity of the case, the impugned investigation had not been an ordinary one, as the circumstances surrounding the death of the applicant's husband had occurred in the very specific context of a general insurrection. They accepted however that the length of the investigation had been particularly long.

43. The Court reiterates the relevant principles concerning the procedural obligation imposed by Article 2, together with its findings in the case of *Association "21 December 1989" and Others* (cited above, §§ 133-54), which concern the same criminal proceedings as in the present case.

44. In view of its jurisdiction *ratione temporis*, the Court can only take into consideration the period after 20 June 1994, the date on which the Convention entered into force in respect of Romania.

45. In 1994 the case was pending before the Military Prosecutor's Office. In this connection, the Court notes, as it did in the cases of *Association "21 December 1989" and Others* (cited above, § 137) and *Șandru and Others v. Romania* (no. 22465/03, § 74, 8 December 2009), that the investigation had been entrusted to military prosecutors who, like the majority of the accused, including serving high-ranking army officers, were in a relationship of subordination within the military hierarchy.

46. In addition, the shortcomings in the investigation had on several occasions been noted by the domestic authorities themselves. The subsequent investigation, however, did not remedy the shortcomings in question.

47. As to the obligation to involve the victim's relatives in the procedure, the Court observes that no justification has been put forward with regard to the total lack of information provided to the applicant about the investigation, especially from 2011 to date (see *Association "21 December 1989" and Others* (cited above, §§ 140-41).

48. As stated in the case of *Association "21 December 1989" and Others* (cited above, § 142), which sought to establish those responsible for the entirety of the armed crackdown that occurred in the closing days of December 1989 in several Romanian towns, the Court does not underestimate the undeniable complexity of the present case. It considers, however, that 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, without the applicant or the public being informed of its progress.

49. The Court notes that three years after the judgment in the case of *Association “21 December 1989” and Others* (cited above) became final, the shortcomings identified by the Court still did not seem to have been remedied. Moreover, the decision concerning the state of the execution of that judgment, adopted by the Committee of Ministers on June 2014 at the 1201st meeting of the Ministers’ Deputies, invited the Romanian authorities to respond to the criticism made by the Court in its judgment concerning the impugned investigations. To date, the execution of the judgment is still pending before the Committee of Ministers.

50. In the light of the foregoing, the Court considers that the applicant did not have the benefit of an effective investigation as required by Article 2 of the Convention.

51. There has, accordingly, been a procedural violation of Article 2 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

52. 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

53. The applicant claimed 50,000 euros (EUR) in respect of non-pecuniary damage.

54. The Government submitted that the claim was excessive and asked the Court to dismiss it because the applicant had already been awarded 50,000 new Romanian lei (RON) by the domestic courts, which was equivalent to approximately EUR 12,000.

55. The Court points out that it has found a procedural violation of Article 2 of the Convention on account of the absence of an effective investigation into the death of the applicant’s husband, in particular, for the period after the end of her civil proceedings before the domestic court.

56. On the basis of the evidence before it, in particular the fact that the investigation is still pending despite the domestic court’s findings in 2009, and despite the Court’s judgment in the case of *Association “21 December 1989” and Others* (cited above), the Court considers that the violation of the procedural limb of Article 2 has caused the applicant substantial non-pecuniary damage such as distress and frustration. Ruling on an equitable basis, it awards the applicant EUR 15,000 under that head.

B. Costs and expenses

57. By sending a copy of documents attesting to the payment of her lawyer's fee amounting to RON 2,232, the applicant implicitly claimed the reimbursement of the costs and expenses incurred before the Court.

58. The Government stated that the applicant had not explicitly submitted a claim for just satisfaction in this respect and invited the Court not to award her any sum on that account.

59. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 500 for the proceedings before the Court.

C. Default interest

60. 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 application admissible in so far as relates to the criminal investigation conducted in the present case after the entry into force of the Convention in respect of Romania;
2. *Holds* that there has been a violation of Article 2 of the Convention in its procedural limb;
3. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
 - (i) EUR 15,000 (fifteen thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 500 (five hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(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;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 21 April 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips
Registrar

Josep Casadevall
President