



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

Legal summary

April 2024

Zăicescu and Fălticineanu v. Romania - 42917/16

Judgment 23.4.2024 [Section IV]

Article 8

Article 8-1

Respect for private life

Acquittal of two high-ranking military officials previously convicted of crimes connected with the Holocaust, in extraordinary appeal proceedings not disclosed to Holocaust victims or the public: *violation*

Article 14

Discrimination

Acquittal of two high-ranking military officials previously convicted of crimes connected with the Holocaust, in extraordinary appeal proceedings not disclosed to Holocaust victims or the public: *violation*

Facts – The two applicants are Jews and survivors of the Holocaust. In 1953, in the context of trials of war criminals that took place after Romania's defeat in the Second World War, R.D. and G.P., high-ranking members of the Romanian military, were convicted of war crimes and crimes against humanity for having jointly: 1) ill-treated prisoners; 2) cooperated with the Special Intelligence Service in the enactment of the Iași pogrom that had taken place in 1941; and 3) participated directly in the organisation and carrying out of deportations of Jews from Bessarabia and Bukovina. The judgment in relation to R.D. was subsequently quashed (G.P. had died in the meantime) and in 1957, after a retrial and a change of the legal classification of the acts committed to engaging in intense activity against the working class and the revolutionary movement, R.D. was convicted of contributing to the creation of ghettos and concentration camps and placement of a high number of Jews in ghettos and concentration camps. In 1998 and 1999, by means of an extraordinary appeal lodged by the Prosecutor General, the Supreme Court of Justice quashed the judgments in respect of G.P. and R.D., reopened the proceedings and acquitted them. The case files were stored for several years in the secret-services archives and subsequently in the archives of the CNSAS (the National Council for the Study of the Archives of the *Securitate* – the Communist-era secret police).

In 2016 the applicants found out about the acquittal proceedings at a conference they attended held by the the "Elie Wiesel" National Institute for the Study of the Holocaust in Romania ("INSHR-EW") in which copies of the 1998 and 1999 judgments were presented. The applicants then unsuccessfully attempted to obtain copies of the acquittal files via the courts. In May 2016 the applicants were eventually provided with electronic copies of the files following a request with the INSHR-EW.

Law – Article 8 in conjunction with Article 14:

(a) *Admissibility* –

(i) *Victim status* – It was not necessary to establish a direct connection between the acts committed by G.P. and R.D. and the applicants, given that the crimes at issue were by their nature directed against a whole group of people and having regard to the applicants' personal fate; the applicants had been through the first phase of deportation process, namely the transportation in inhuman conditions (the first applicant) and the placement in ghettos with a view to subsequent deportation to concentration camps (both applicants). Therefore, as Jews and Holocaust survivors, they could claim to have personally suffered from an emotional distress when they had found out about the reopening of the criminal proceedings and the acquittals. They could be seen as having a personal interest in proceedings aimed at establishing the responsibility of high-ranking members of the military for the Holocaust in Romania of which they had been victims. The fact that the applicants had not been parties to the domestic proceedings was not decisive where that aspect – the lack of involvement in the proceedings – was precisely one of the complaints that they had raised. Therefore, the applicants could claim to be victims of the alleged violation.

Conclusion: preliminary objection dismissed (victim status).

(ii) *Applicability* – The principles developed in the Court's case-law concerning the expression of public opinions denying the existence of the Holocaust or the negative stereotyping of Holocaust survivors, could be used as a reference in the present case. That being so, the Court also noted the uniqueness of this case in which it had established that the applicants had suffered from emotional distress when they had found out about the reopening of the criminal proceedings and the acquittals. The impugned proceedings and the authorities' behaviour in respect of those proceedings had been perceived by the applicants, once they had learned about them, as constituting a denial of the occurrence of the Holocaust in Romania and of the historical truth about it and revived in them the trauma of the Holocaust, of which they had been direct victims. The acquittals had also occurred at a time that had been marked by the questioning of the Romanian authorities' role in the Holocaust in Romania and by the honouring of war criminals by some members of the political class. Furthermore, when the applicants had found out about the acquittals anti-Semitic incidents had been occurring in Romania; such incidents continued to occur today.

Given all the above as well as the conclusion as to the applicants' victim status, the Court accepted that the result of the proceedings of 1998 and 1999 and the context surrounding those proceedings had been capable of having a sufficient impact on the applicants' sense of identity and self-worth as Jews and survivors of the Holocaust in Romania as to have produced in them emotional suffering that had reached the "certain level" or the "threshold of severity" required. Article 8 was therefore applicable and as a consequence so was Article 14 to be examined in its light.

Conclusion: Article 8 in conjunction with Article 14 applicable.

(b) *Merits* – The findings of the Supreme Court of Justice that had led to the acquittals of 1998 and 1999 – namely, that the German troops alone had been involved in the Iași pogrom and in the placement of Romanian Jews in ghettos and their subsequent deportation – contradicted both the written evidence still contained in the initial conviction files and the court's own findings that the placement of Jews in ghettos with a view to their subsequent deportation had been based on lists of names compiled by the Romanian Special Intelligence Service and by the gendarmerie. Furthermore, the Supreme Court of Justice had firstly acquitted R.C. on the basis that he had merely complied with orders received from high-ranking officials. In that connection, the Court

noted, that the fact that an act was ordered by a superior did not amount to a defence within the context of war crimes under the rules of customary international humanitarian law. The Supreme Court of Justice had also overlooked the historical background as reflected by the anti-Semitic measures taken by the Romanian Government itself at the time. Furthermore, when examining the reasoning of the acquittal decisions within the context of the internationally accepted definition of Holocaust denial and distortion, the above findings of the Supreme Court of Justice might objectively be seen as 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. The Court had already held that in the light of their historical role and experience, States that had experienced Nazi horrors might be regarded as having a special moral responsibility to distance themselves from the mass atrocities perpetrated by the Nazis. Although that case-law involving anti-Semitic statements or Holocaust denial brought into play the balancing exercise that needed to be carried out between the competing Convention rights or private persons, *a fortiori*, those principles were also applicable in the present case, where the alleged discriminatory acts had been performed by State authorities.

As regards the international context surrounding the initial convictions and the subsequent acquittals, under the international armistice agreement signed in 1945, Romania had been obliged to put an end to all Fascist organisations on its territory, to repeal discriminatory legislation and measures and to apprehend and send to court those accused of war crimes. A duty to apprehend, prosecute and send to court those suspected of war crimes and crimes against humanity had existed and still existed under international law in general. On that point, the Court reiterated that when it considered the object and purpose of the Convention provisions, it also took into account the international-law background to the legal question before it; the common international or domestic legal standards of European States reflecting a reality that the Court could not disregard when it was called upon to clarify the scope of a Convention provision that more conventional means of interpretation had not enabled it to establish with a sufficient degree of certainty.

The retrials had undeniably concerned a matter of utmost public interest – namely responsibility for the Holocaust; accordingly, the general public and therefore also the applicants, as Holocaust survivors, should have been made aware of the proceedings and their outcome. Moreover, international principles that had already existed at the time of the retrials mentioned that victims of crime must be informed of the fact that proceedings have been initiated, the progress of their cases, and had to have access to justice and to proper assistance. Nevertheless, there was no proof of any public announcement or public debate about the proceedings in question until the 2016 conference. Furthermore, the files relating to the initial convictions and the retrial proceedings had been kept by the secret services even after the fall of the Communist regime and subsequently by the CNSAS, with restrictive conditions imposed on the possibility of outside access. Although the applicants had eventually been granted access to the files, that had happened only after their earlier attempts had been rebuffed with no reasonable justification. Lastly, no official public explanation or debate had ever taken place about the lodging of the request to reopen the proceedings by the Prosecutor General in the absence of any relevant reasons, or in respect of the subsequent acquittals.

In conclusion, the authorities had never officially brought to the attention of the public the acquittals and the applicants had found out about them by accident, many years after they had taken place. Furthermore, the judgments given as a result of the retrials had not been accessible to the public and the applicants had initially been refused access to them. Those elements, coupled with the findings and the Supreme Court of Justice's reasoning for its acquittal decisions, could have legitimately provoked in the applicants feelings of humiliation and vulnerability and caused them psychological trauma.

Accordingly, in the light of the case as a whole, the domestic authorities had failed to adduce relevant and sufficient reasons for their actions that had led to the revision of historical convictions for crimes connected with the Holocaust in the absence of new evidence and by reinterpreting historically established facts and denying the responsibility of State officials for the Holocaust (in contradiction with principles of international law). Their actions had thus been excessive and could not be justified as “necessary in a democratic society”.

Conclusion: violation (unanimously).

Article 41: No award.

(See also *Aksu v. Turkey* [GC], 4149/04 and 41029/04, 15 March 2012, [Legal Summary](#); *Perinçek v. Switzerland* [GC], 27510/08, 15 October 2015, [Legal Summary](#); *Lewit v. Austria*, 4782/18, 10 October 2019, [Legal Summary](#))

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