



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

THIRD SECTION

CASE OF NICOLAE AUGUSTIN RĂDULESCU v. ROMANIA

(Application no. 17295/10)

JUDGMENT
(Revision)

STRASBOURG

19 May 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 Nicolae Augustin Rădulescu v. Romania (request for revision of the judgment of 11 February 2014),

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

Josep Casadevall, *President*,

Luis López Guerra,

Ján Šikuta,

Kristina Pardalos,

Johannes Silvis,

Valeriu Grițco,

Iulia Antoanella Motoc, *judges*,

and Stephen Phillips, *Section Registrar*,

Having deliberated in private on 21 April 2015,

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

PROCEDURE

1. The case originated in an application (no. 17295/10) 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, Mr Nicolae Augustin Rădulescu (“the applicant”), on 15 February 2010.

2. In a judgment delivered on 11 February 2014, the Court held that there had been a violation of Article 3 of the Convention on account of the conditions of detention in Jilava Prison. The Court also decided to award the applicant 5,000 euros (EUR) for non-pecuniary damage and dismissed the remainder of the claims for just satisfaction.

3. On 22 July 2014 the Government informed the Court that they had learned that the applicant had died on 10 April 2013. They accordingly requested revision of the judgment within the meaning of Rule 80 of the Rules of Court.

4. On 16 September 2014 the Court considered the request for revision and decided to give the applicant’s representative in the Court proceedings three weeks in which to submit any observations. The observations were received on 6 and 13 November 2014.

THE LAW

THE REQUEST FOR REVISION

5. The Government requested revision of the judgment of 11 February 2014, which they had been unable to execute because the applicant had died

before the judgment had been adopted. They asked the Court to strike the case out and abate the award of just satisfaction.

6. The applicant's representative in the Court proceedings stated that she had not been aware of the applicant's death. She was not able to contact the applicant in prison by telephone, only received phone calls from him. Her attempts to contact the applicant's mother, who lived further away from Bucharest where the lawyer had her office, remained futile as the latter was not answering the phone. In June 2014 the representative visited the mother, only to find out that she had been hospitalised. Later she managed to make contact with the mother and found out about the applicant's death and the mother's serious health issues. She pointed out that the applicant's mother was an eighty-year-old woman with no legal knowledge. She was the sole heir of her son who did not leave any assets at his death. The applicant's representative requested that the mother be allowed to pursue the procedure before the Court and be granted EUR 5,000 with respect to non-pecuniary damage.

7. The Court considers that the judgment of 11 February 2014 should be revised pursuant to Rule 80 of the Rules of Court, the relevant parts of which provide:

“A party may, in the event of the discovery of a fact which might by its nature have a decisive influence and which, when a judgment was delivered, was unknown to the Court and could not reasonably have been known to that party, request the Court ... to revise that judgment.

...”

8. In particular, it reiterates that where the applicant has died after the application was lodged, the Court has accepted that the next-of-kin or heir may in principle pursue the application, provided that he or she has sufficient interest in the case, for instance: the widow and children in *Raimondo v. Italy*, 22 February 1994, § 2, Series A no. 281-A, and *Stojkovic v. “the former Yugoslav Republic of Macedonia”*, no. 14818/02, § 25, 8 November 2007; the parents in *X v. France*, no. 18020/91, § 26, 31 March 1992; the nephew and potential heir in *Malhous v. the Czech Republic* (dec.), no. 33071/96, ECHR 2000-XII; or the unmarried or *de facto* partner in *Velikova v. Bulgaria* (dec.), no. 41488/98, 18 May 1999 (see *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 97, ECHR 2014; and *Ergezen v. Turkey*, no. 73359/10, § 29, 8 April 2014).

Therefore, there is no impediment to the mother seeking to continue proceedings in her departed son's place.

9. Furthermore, the Court notes that the applicant's representative advanced valid reason for not being able to inform the Court sooner about the applicant's death. The lawyer's only contact with the applicant concerned this case alone in which, once the exchange of observations was finished, she had little to do in the procedure; moreover it appears that she had difficulties in keeping regular contact with the applicant in prison or

with his mother. The applicant's mother was ill, lacked awareness of the Court requirements, and lived further away from the lawyer's place of practice (see *Meryem Çelik and Others v. Turkey* (revision), no. 3598/03, §§ 8 and 10, 16 September 2014).

10. For these reasons, the Court decides to award Mrs Nicoleta Rădulescu, the applicant's mother, the amount it previously awarded to the deceased applicant, namely EUR 5,000 for non-pecuniary damage.

11. 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,

Decides to revise the judgment of 11 February 2014 in so far as it concerns the claims made by the deceased applicant's heir under Article 41 of the Convention;

accordingly,

Holds

(a) that the respondent State is to pay to Mrs Nicoleta Rădulescu, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 5,000 (five thousand euros) 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, plus any tax that may be chargeable;

(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.

Done in English, and notified in writing on 19 May 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips
Registrar

Josep Casadevall
President