

Stoica v. Romania (Application no. 42722/02)

1) Reference Details

Jurisdiction: European Court of Human Rights (Chamber Judgement)

Date of Decision: 4 March 2008

Case Status: Decided on Merits and Just Satisfaction

2) Facts

Constantin Stoica (the applicant) is a Romanian national of Roma origin who was born in 1987. In December 1999 the applicant had a brain operation. On 3 April 2001 the Deputy Mayor of Dolhasca (a municipality in northeast Romania), four police officers, their chief and six public guards entered a bar in Gulia (a village in Dolhasca, Romania) to check the owner's licence. A dispute ensued between the officials and 20 to 30 Roma gathered in front of the bar. The parties' submissions differed as to the sequence of events.

It was submitted by the by the applicant that in the course of the dispute Sergeant D.T. asked F.L., a villager of Roma origin, whether he was a "Gypsy (tigan) or Romanian". When F.L. answered that he was a Gypsy, the Deputy Mayor asked the police officers and the public guards to teach him and the other Roma "a lesson". The police and public guards allegedly started to beat F.L. and the other Roma. The applicant, passing by, was tripped up by Sergeant D.T. who beat, kicked and hit him on the back of his head until he lost consciousness, despite the applicant's warning that he had recently undergone head surgery. There was no official admission of any act of violence against the applicant. It was submitted by the Government that the owner of the bar (C.C) had encouraged customers who were gathered in front of the bar, to antagonise officials. It was alleged that the customers became aggressive and the police returned quickly to their cars. The Deputy Mayor's car, which was the last to leave, was attacked by the locals with bats.

The applicant was taken to hospital the same evening. A subsequent medical report certified that the applicant had bruises and grazes caused by a blunt instrument and thoracic concussion. On 12 April 2001 he was declared severely disabled.

On 9 April 2001 the Roma Center for Social Intervention and Studies ("the Romani CRISS"), acting on behalf of the applicant, asked the commander of the Suceava Police to open criminal investigations into the incidents. The same day, they expressed their concern to the Prefect about the racist motivation behind the incidents.

On 18 April 2001 the Prefect informed the Romani CRISS that the Mayor's investigation of 4 April, in which his representative had also taken part, had excluded the possibility of any racist motivation being behind these incidents. On the same day the applicant's father lodged a criminal complaint with the Bacău Military Prosecutor against D.T., the other police officers and the Deputy Mayor.

The Suceava Police, hierarchically superior to Dolhasca Police Force, started the investigations into the case. On 1 June 2001 the Suceava Police sent its final report to the Bacău Military Prosecutor. It proposed not to press charges against the accused persons. On 23 August 2001 the Suceava Police also informed the Military Prosecutor that the Dolhasca police officers had not filed a report in order to have criminal investigations started against the Roma (involved in the incident) for

insulting behaviour, because “[T]he way in which some of the Roma acted is pure Gypsy behaviour (pur țigănesc).” On 2 October 2001 the Bacău Military Prosecutor decided not to prosecute, as the evidence did not confirm the alleged violence against the applicant. The Military Prosecutor also found that the conflict had not been racially motivated. In reaching this decision, the Prosecutor relied upon the testimony of the police officers and public guards, in addition to that of the owner of the bar, C.C., whilst disregarding “eyewitness” statements in support of the applicant as unreliable.

On 19 February 2002 the applicant’s father filed another complaint in which he alleged that he and his family had been harassed by the police in an attempt to make them drop their case.

3) Law

- Article 3 (prohibition of inhuman or degrading treatment)
- Article 6§1 (right to a fair hearing)
- Article 13 (right to effective remedy)
- Article 14 (prohibition of discrimination) in conjunction with Article 3

4) Legal Arguments

Article 3

The applicant alleged violation of Article 3 alone, and in conjunction with Article 14. He alleged under Article 3 that he had been ill-treated by police officers and that the ensuing investigation into the incidents had not been effective. Under Article 3, the Court held that the State authorities had failed to conduct a proper investigation into the applicant's allegations of ill treatment and although there had been no official admission of any act of violence against the applicant, the Government had not satisfactorily established that the applicant's injuries were caused otherwise than by the treatment inflicted on him by the police officers. It thus found a violation of both the procedural and substantive aspects of Article 3.

Article 3 in conjunction with Article 14

The applicant:

The applicant further alleged that the impugned events and the flaws in the investigation had been motivated by racial prejudice, in breach of Article 14 taken in conjunction with Article 3.

The applicant complained that the ill-treatment that he had suffered and the decision not to prosecute the police who had beaten him had been predominantly due to his Roma ethnicity. He contended that the word “țigan” was offensive, in particular when used to differentiate the person from a person of Romanian ethnicity, as it had happened in this case. The applicant also contended that racist remarks in official police documents had gone unnoticed by the prosecutors.

The Government:

The Government considered that nothing in the file could prove discrimination against the applicant. They contended that the alleged flaws in the criminal investigations had not been caused by the applicant's ethnicity. Further, they contended that the word “Gypsy” (which was used in the

police report and in questions posed to F.L.) had a pejorative connotation only in certain contexts, and, even then mainly in the oral language.

5) Decision

The Court unanimously held that there had been a violation of Article 14 taken in conjunction with Article 3.

Preceding the legal analysis of the facts the Court reiterated the egregious nature of racial violence:

“Racial violence is a particular affront to human dignity and, in view of its perilous consequences, requires from the authorities special vigilance and a vigorous reaction. It is for this reason that the authorities must use all available means to combat racism and racist violence, thereby reinforcing democracy's vision of a society in which diversity is not perceived as a threat but as a source of its enrichment.”

Considering the procedural limb of Article 3 taken in conjunction with Article 14, the Court found that the authorities did not do everything in their power to investigate the possible racist motives behind the conflict, as is required of states when investigating violent incidents. Whilst the Court acknowledged that proving racial motivation will often be extremely difficult in practice and that the authorities had addressed, to a certain extent, the potential racist implications of the incidents, the Court remained concerned that the authorities' had disregarded witness statements to the contrary and official police documentation describing the villagers' alleged aggressive behaviour as “purely Gypsy”, which could not be considered completely racially neutral.

Moving on to consider the allegations of a substantive violation of Article 14, the Court referred to jurisprudence developed by the Grand Chamber in the case of *Nachova and Others v. Bulgaria* (Grand Chamber judgement of 6 July 2005), stating that,

“[W]here it is alleged – as here – that a violent act was motivated by racial prejudice, shifting the burden of proof to the respondent Government might amount to requiring the latter to prove the absence of a particular subjective attitude on the part of the person concerned.”

In the present case, however, the Court found that the burden of proof did fall on the Government, “regard having had to all the evidence of discrimination ignored by the police and the military prosecutor and the above conclusion of a racially biased investigation into the incidents”.

Finding a violation of the substantive limb of Article 14, taken in conjunction with Article 3, the Court held that,

“[T]he evidence indicating the racial motives behind the police officers' actions is clear and neither the prosecutor in charge with the criminal investigation nor the Government could explain in any other way the incidents or, to that end, put forward any arguments showing that the incidents were racially neutral.”

The Court declined to consider the case under Article 6 § 1 (regarding access to Court to obtain redress for the alleged ill-treatment) owing to failure to exhaust domestic remedies and under the procedural limb of Article 13 (regarding effective remedies) as the matter had been considered

under Article 3. The applicant also raised a separate issue under Article 13 regarding the impossibility of lodging an appeal against the military prosecutor's decision not to press charges. The Court did not find a violation with respect to this allegation owing to a failure to exhaust domestic remedies.