File no. 6104/118/2015

ROMANIA

COURT OF APPEAL

CONSTANTA, SECTION II CIVIL, ADMINISTRATIVE AND FISCAL LITIGATION

CIVIL DECISION NO. 203/CA

Public hearing dated 10th of March 2017

Panel members:

Presiding judge – Beatrice Mari

Judge – Ecaterina Grigore

Judge – Nicoleta Roxana Bacu

Court Registrar – Adriana Nezir

Pending before the court of administrative and fiscal litigation the settlement of the second appeal filed by the defendant-appellants and appellees – THE MAYOR OF EFORIE CITY – BRAILOIU ION OVIDIU, BRAILOIU ION OVIDIU – THE MAYOR OF EFORIE CITY, EFORIE CITY – THROUGH THE MAYOR and the LOCAL COUNCIL OF EFORIE CITY – with its headquarters in Eforie Sud, Progresului Street no. 1, Constanta county and the claimant-appellants and appellees [NAMES REDACTED] all through THE FOUNDATION ROMA CENTRE FOR SOCIAL INTERVENTION AND STUDIES – ROMANI CRISS, with its chosen seat for service of process in Bucharest, Raspantiilor Street, no. 11, sector 2, against the civil decision no. 744/CA/01.06.2016 delivered by the Constanta Tribunal in file no. 6104/118/2015, for the annulment of an administrative act.

Discussions on the merits were held in the public hearing on the 23rd of February 2017 and were recorded in court hearing minutes, minutes which forms an integral part of this decision.

Since the court required more time to deliberate, in consideration of the provisions under art. 396 paragraph 1 of the Civil Procedure Code, according to which "in justified cases, if the court does not decide immediately, the delivery of its decision can be postponed for a term no longer than 15 days", postponed the delivery of its decision for the 3rd of March 2017 and the 10th of March 2017, when it ruled as follows:

THE COURT:

Unofficial translation from Romanian language:

Taking into consideration that the referral of the court was made under the new procedural laws, the provisions under art. 499 of the New Civil Procedure Code (NCPC) apply, according to which "Notwithstanding art. 425 paragraph (1)b), the decision of the appeal court will take into consideration only the quashing grounds cited and their analysis, stating why they were admitted or rejected".

Per the request addressed to the Bucharest Tribunal – Fiscal and Administrative Litigation Section, registered under no. 10976/3/2014, the claimants Foundation Roma Centre for Social Intervention and Studies – Romani Criss [NAMES REDACTED] all through the Foundation Roma Centre for Social Intervention and Studies against the defendants the Mayor of Eforie City, Brailoiu Ion Ovidiu, Eforie City through the Mayor and Local Council of Eforie City, all with headquarters in Eforie Sud, Progresului Street no. 1, Constanta County, requested the delivery of a decision ordering the following:

1. Annulment of Order no. 296/19.09.2013 by the Mayor of Eforie City, as unlawful and issued in abuse of power,

2. Order the defendants to remedy the losses caused, by paying compensation for the material and non-material damages to the claimants as private individuals and by providing housing according to the minimal requirements stipulated under Annex 1 of Law 114/1996 and the international standards in housing matters.

By way of the civil decision no. 744/CA/01.06.2016, the request was partially admitted, the annulment of Order 296/19.09.2013 emitted by the Mayor of Eforie City was ordered, the defendants were ordered to grant housing to all private individuals with the exception of claimants Constantin Viorica, Constantin Vladimir and Constantin Florica, housing which complies with the provisions of Annex 1 of Law 114/1996 and all other claims were rejected as unsubstantiated.

Against this decision both the claimants through the FOUNDATION ROMA CENTER FOR SOCIAL INTERVENTION AND STUDIES – ROMANI CRISS and the defendants THE MAYOR OF EFORIE CITY – BRAILOIU ION OVIDIU, BRAILOIU ION OVIDIU – MAYOR OF EFORIE CITY, EFORIE CITY – THROUGH ITS MAYOR AND LOCAL COUNCIL OF EFORIE CITY filed an appeal, criticizing it for unlawfulness due to the following reasons:

Through the grounds for appeal, the claimants criticise the ruling of the first court in terms of violation and wrongful enforcement of substantive legal rules, grounds of unlawfulness according to art. 488 paragraph 1 point 8 of the Civil Procedure Code.

By way of the decision under appeal, the first court admitted part of the proceedings brought forward by the appellants private individuals, ordering the annulment of Order no. 296/19.09.2013 by the Mayor of Eforie City as unlawful and issued in abuse of power, retaining that the claimants as private individuals were in fact evacuated from their homes, which were

subsequently demolished, without the conditions of proportionality imposed by Art. 8 of the ECHR being complied with. However, as regards the count of the claim related to the repair of the damage, by granting material, non-material damages and providing a home that complies with the requirements established by the provisions of Law no. 114/1996, the court rejected both the request for the award of material and non-material damages.

The court takes the view that this solution breaches both art. 18 para. 3 of Law no. 554/2004, as well as art. 13 of the ECHR. Therefore, as the first court reasoned, art. 18 of Law no. 554/2004 imposes the integral reparation of the damage in the situation of acceptance of the request regarding the annulment of the administrative act.

This interpretation is also consistent with art. 13 of the ECHR, which states that any person whose rights, set out in the Convention, have been breached (as is the case of the claimants private individuals for which the first court ruled the violation of art. 8 of the Convention) has the right to effectively address a national court. According to ECtHR case law, the phrase "to effectively address" means a procedure which results in both the recognition of the violation of the right, as well as the reparation of the losses suffered.

While the first court considered that, although the violation of the right to privacy was proven, amongst others including the way in which the forced evacuation of the claimants private individuals has taken place and the poor conditions in which they were housed subsequently, due to the implementation of the unlawful administrative act, the material and non-material damages were not proven.

With regard to the material damages, it is true that the appellants were not in possession of supporting documents justifying the extent of said damages, however they have proven beyond a doubt (fact also noted by the first court which partially admitted their claim) that they owned movable and immovable goods that were destroyed by the defendant-appellees.

The lack of detailed supporting documents is partially due to the behaviour of the defendant-appellees, who demolished the claimants' housing, so that some of the documents were destroyed and the evaluation of the goods through an expert survey became impossible, thus, according to ECtHR case law, the first court should have given a ruling in the sense of granting material damages on an equitable basis.

Therefore, in Case Moldovan and others v. Romania (no. 2) – the decision dated 12th July 2004, in which the domestic courts rejected the request for material damages regarding movable or immovable property destroyed in the absence of documents demonstrating their value, the ECtHR established violations of Convention provisions resulting from the claimants' living conditions, succeeding the interference of the defendant state's authorities in the rights of the claimants after June 1994, and the repeated failure to put an end to these violations (§149).

Unofficial translation from Romanian language:

On this basis "the Court noted that there is a causal connection between the interference in the claimants' rights and the material damages reported, since the Government was found liable of a failure to put an end to the violations carried out against the claimants' rights, which generated unacceptable living conditions for them." (§150) and awarded both material as well as non-material damages. Furthermore, the lack of precise information regarding the destroyed houses, for example regarding their surface area, does not prevent the award of material damages (ECtHR Judgement in the Case Akdivar v Turkey regarding equitable satisfaction from the 1st of April 1998 - §19).

Furthermore, the issue of unmitigated loss of material possessions, moveable and immovable, resulting from the enforcement of the unlawful administrative act, should have also been taken into account in the award of non-material damages.

Regarding the latter, contrary to what was stated by the first court, minimal supporting evidence exists with the case file, which have also been noted in the ruling of the court to annul the unlawful administrative act and award housing which provides the minimum standards of living.

The claimants natural individuals were victims of a forced evacuation, during which their belongings were destroyed, after which they were forced to live in improper conditions, situation which continues at the present moment, so that the first court considered that it is necessary for the defendants to provide adequate housing for the claimants.

Basically, the first court imposes in an unlawful manner the supplementary condition of a detailed proof of the scope of the moral damages, although even the High Court of Cassation and Justice stated that it is only necessary to prove the existence of the damages and the causal connection with the administrative act (see decision no. 2356/2011 of the High Court of Cassation and Justice – Administrative Litigation Section), both conditions being satisfied in this case.

Consequently, the first court breached the legal provisions mentioned above, which impose the full reparation of the damages arising from the unlawful administrative act.

Providing adequate housing for the future does not place the claimants entirely in the same situation prior to the issuing and enforcement of the unlawful administrative act. The damage consisting in the loss of goods, the evacuation carried out in severe weather conditions and the forcing of the claimants to live in improper conditions for significant periods of time, is in no way repaired.

This is all the more obvious for the Constantin family, who have already received social housing from the defendants and practically does not receive any reparations through the appealed decision.

Furthermore, by imposing impossible tests regarding the material damages incurred, the decision of the first court also violates the right to a fair trial laid down in art. 6 of the ECHR.

As basis for unlawfulness, the provisions of art. 488 para. 1 point 6 are invoked, the decision failing to comprise the reasons on which it was based or containing conflicting reasons.

Regarding the count of the claim concerning the award of non-material damages, the first court reasoned their rejection by noting that there was no proof made of non-material damages. At the same time, when it analysed the legality of the administrative act from the perspective of complying with art. 8 of the ECHR and the award of adequate housing, referring to the admission of the application, the first court noted the existence of the damage as proven (the destruction of goods, the relocation to improper living conditions of the claimants, etc.).

Yet, it is not acceptable that on one side the court notes that the annulled administrative act produced disproportionate negative consequences with the objective pursued, and, on the other side, to note that no damage occurred, because it was not proven through minimal evidentiary elements.

Regarding the count of the claim concerned with awarding court expenses, the first court noted that the obligation to pay court expenses representing the attorney's fee of the lawyer is imposed on the defendants. However, the enacting terms of the decision mentions the obligation of the defendants to pay the amount of RON 1,500, which represents only a part of the attorney's fee requested as court expenses by the claimant, the Foundation Romani Criss.

According to the supporting documents submitted with the case file, the attorney's fee paid by the claimant amounted to RON 2,220.60. However, the decision does not include any reasons regarding any limitation to the court expenses.

Furthermore, the Foundation Romani Criss also requested the court expenses, representing the stamp duty of RON 50, and the court practically rejected the award of these expenses without stating the reasons in this respect.

The provisions of Law no. 554/2004 have been raised de jure, as further amended and supplemented, of the ECHR, ratified by Romania through Law no. 30/1994 and art. 483 and the following of the Civil Procedure Code.

Through the grounds of the second appeal, the defendants MAYOR OF EFORIE CITY – BRAILOIU ION OVIDIU, BRAILOIU ION OVIDIU – MAYOR OF EFORIE CITY, EFORIE CITY – THROUGH ITS MAYOR AND LOCAL COUNCIL OF EFORIE CITY, requested the admittance of the second appeal on the basis of art. 498 of the Civil Procedure Code, as well as the quashing of the appealed decision and a retrial, to dismiss the request for

summons, primarily through the admission of the raised exceptions and, secondarily, as unsubstantiated.

It is shown that the first court has wrongfully settled the invoked exceptions under consideration and, firstly, the absence of representative quality of the FOUNDATION ROMA CENTRE FOR SOCIAL INTERVENTION AND STUDIES – ROMANI CRISS, because this entity failed to prove the representative quality for all its claimants, as per art. 83 of the Civil Procedure Code.

Secondly, the exception regarding the lack of passive procedural legal capacity of the EFORIE CITY THROUGH ITS MAYOR and THROUGH THE LOCAL COUNCIL OF EFORIE CITY was wrongfully settled.

In accordance with the provisions of art. 8 para. 1 of Law no. 554/2004 republished and amended, titled – Subject Matter of the Legal Proceedings – (1) The injured party, in a right recognised by the law or in a legitimate interest, through a unilateral administrative act, dissatisfied with the response received to the preliminary complaint, or who did not receive a response within the timeframe prescribed in art. 2 para. 1(h), can bring an action before the appropriate administrative litigation court, to request the whole or partial annulment of the act, reparations for the damages caused and, potentially, reparations for moral damages.

Furthermore, a person who considers himself aggrieved in a legitimate right or interest due to an unresolved or unjustified refusal of settlement of a claim, and also due to the refusal of conducting any specific administrative operations necessary for the exercise or protection of a legitimate right or interest can address the administrative litigation court.

In this case, only the mayor of Eforie City has the passive procedural quality reported in the administrative act whose annulment is requested, namely Order no. 296/19.09.2013 of the Mayor of Eforie City.

In this case, the exception of inadmissibility of the court request for summons was wrongfully settled, given that the preliminary complaint is missing, thus breaching the provisions of art. 7 para. 1 of Law no. 554/2004 republished and amended, according to which "(1) before addressing the competent administrative litigation court, the person who considers themselves aggrieved in a right or legitimate interest through an individual administrative act, must demand the issuing public authority or the hierarchically superior authority, where applicable, within 30 days from the date of the act being communicated, its revocation in whole or partially".

On the merits of the case, in arguing the only unlawfulness reason invoked by the first court from the perspective of breaching the provisions of art. 8 of the ECHR, the court noted that the claimants lived for many years in the spaces that they or their predecessors built on the land belonging to the territorial-administrative unit, circumstance in which these living spaces represent their domicile within the meaning of art. 8 of the ECHR.

Unofficial translation from Romanian language:

Regarding the interference with their right of domicile, which also affects their private and family life, the first court noted that according to ECtHR case law, the rights guaranteed by the Convention are not breached in the situation in which the interference is prescribed by law, aims a legitimate purpose and is proportional with the objective pursued and in this case the interference is prescribed by law, with reference to the relevant provisions set out in Law 50/1991.

The first court noted that regarding the legitimate scope of the annulled administrative act, this does not make any reference to the scope of issuing, by reference to the report envisaged upon its issuing and the legal provisions invoked in its support, it can be assessed that it took into account the demolition of the abusive constructions built on the public domain.

It is mentioned that in relation to the administered items of evidence that reveal the manner in which the measures provided for by the appealed administrative act were applied, the short time elapsed between the issuing of the summons and the actual implementation of the demolition operation without ensuring alternative housing possibilities beforehand, either the parties have the possibility in this situation to subject the measure to a proportionality test made by the court which can be assessed as non-compliance with the proportionality principle.

The court also mentions that according to art. 2 (n) of Law no. 554/2004, abuse of power is defined as being the exercise of the right of assessment of public authorities by breaching the boundaries of their competence provided for by the law or by breaching the rights and freedoms of the citizens.

Thus, if in the situation of a breach of the principle of proportionality it comes to an abuse of power in using the assessment right on behalf of the community officer, in the situation of an abuse of power it comes to the misuse of the prerogatives conferred upon him, his administrative action lacking any legal foundation and deprived of the achievement of a public interest.

As a result, the court considered that there is an obligation to give primacy to the provisions of the Convention and of the case law of the Strasbourg Court, in accordance with the provisions of art. 11 para. 2 and art. 20 of the Romanian Constitution, followed by the retaining the unlawfulness of the administrative act in question regarding an abuse of power by breaching the proportionality principle of the measure ordered and the legitimate objective pursued by adopting it.

In addition, the first court, regarding the aspects noted with respect to art. 8 and art. 1 of Protocol no. 1 to ECHR, considered that it is no longer necessary to analyse the other criticism regarding the alleged breach of art. 3 of ECHR, the International Pact regarding Social, Economic and Cultural Rights of the International Convention on the Elimination of all forms of Racial Discrimination, of the Basic Guiding Principles of the UN regarding Children's

Rights and the European Union Framework for National Strategies of integration of the Roma people until 2020.

It is considered that all this reasoning is contradictory with the items of evidence administered in this case and even with the first court's findings mentioned in the appealed court decision.

By way of exception from the provisions of art. 32, the constructions built without any permit on land belonging to the public domain or the private domain of the counties, cities or communes can be demolished on the basis of administrative provisions by the competent public administration authority, without referring the courts of law at the expense of the offender.

Additionally, the first court noted that according to provisions of art. 37 para. 5 of Law no. 50/1991, constructions built before 01.08.2001, the date when Law no. 453/2001 came into force, amending and supplementing Law no. 50/1991 regarding the authorisation of construction works and certain measures for building houses, it is registered in the absence of building permit, on the basis of a fiscal ascertaining certificate attesting the payment of all fiscal obligations owed to the local public authority, that covers the territory in which the construction is built, as well as the cadastral documentation if the construction is not registered with the administration of the competent public authority, it is registered if the related tax for the last 5 years prior to the submission of the tax statement, including the current year, is paid.

Therefore, the court noted that for the 23 constructions annexes and enclosures mentioned in the content of the notice of finding as being demolished in consequence of applying the appealed order, there is no proof of the existence of building permits, of a definite date of edification and, therefore, as noted before, of any steps taken for entry into an implied state of legality of the quality of injured party by the appealed administrative act, from the analysed perspective.

In this case, it is clear that the housing of the claimants did not comply with the minimal requirements of the sanitary domain and that of construction matters, which generated safety and health risks, there were no alternative methods, therefore the evacuation of the claimants was the only solution.

Examining the lawfulness of the appealed decision, in light of the invoked criticism, the Court notes the following aspects:

The exception of nullity of the second appeal will be rejected, through the clarifications filed by the defendant-appellants, indicating as reasons for unlawfulness the provisions of art. 488 para. 1(6) and 1(8) of the Civil Procedure Code.

I. The appeal filed by the claimants is grounded and will be admitted in light of the following considerations:

Unofficial translation from Romanian language:

The criticism regarding the wrongful settlement of the request concerning the compelling of the defendants to pay material and non-material damages is legitimate, the reason of unlawfulness as per art. 488 para. 1(8) of the Civil Procedure Code being applicable in this case.

The first court correctly ascertained the unlawfulness of Order no. 296/19.09.2013, in consideration of the breach of art. 8 and art. 1 of Protocol no. 1 of ECtHR, unlawfulness which imposes the award of damages according to art. 18 para. 3 of Law no. 554/2004.

The arguments of the first court according to which in the absence of an evidence material proving the goods in possession of the claimants and their value, material damages cannot be awarded and with respect to non-material damages no evidence was administrated which could highlight the impact that the applied measure had over them, the suffering incurred, so that these cannot be quantified and are not grounded.

The existence of material damages is proven by evidence administrative before the first court (photo plans), wherefrom it results that the claimants possessed constructions which met housing conditions, demolished on the basis of the administrative act ascertained as unlawful. Even though at this time an assessment can no longer be conducted to establish exactly the extent of the damages, and, from the point of view of certain categories of people, those goods have no economic value, the court will only relate to the necessities and needs of the claimants, from whose point of view those constructions met the conditions of housing, which means that their demolition created a damage to their estate, the extent of the damage to be further appreciated by the court.

As regards the non-material damage suffered, the negative effects involve the impairment of those attributes of an individual which influence their social relations and which are situated in the emotional domain of a person's life.

The quantification of the moral damage is the result of an assessment on the part of the judge of each and every case. This assessment refers to applying the criteria relating to negative consequences suffered by the respective person on a physical and psychological level, aggrieved values, the extent to which these values have been harmed, the intensity with which the consequences of the harm were perceived, the extent to which his family, professional and social life was affected.

To the extent the existence of the harmful unlawful act and the existence of the damage is proven, the judge has the right to assess the equitable way of repairing the moral damage, taking into account all the circumstances of the case.

This conclusion is based on ECtHR's case law in the Case of Moldovan and others v Romania (no. 2) – judgement of 12th July 2004, through which the European Court ruled on breaches of the provisions in the Convention which were due to the living conditions of the

claimants following the interference of the defendant state's authorities with the rights of the claimants and the repeated failure to end the breaches" (§149).

The court assessed that there was a causal connection between the interference with the claimants' rights and the material damage reported, since the Government was found responsible for its inability to end the breaches to the claimants' rights, which generated for them unacceptable living standards" (§150) and awarded both material and non-material damages. Furthermore, it was assessed that the lack of precise information regarding the destroyed houses, for example the surface thereof, does not impede the award of material damages (ECtHR decision in the Case of Akdivar v Turkey regarding equitable satisfaction of 1st of April 1998 – §19).

Applying the provisions of art. 18 para. 3 of Law no. 554/2004 which allows the court, in the case of annulment of the administrative act, to decide also on material and non-material damages, taking into consideration all the circumstances of the case held by the first court, the defendants will be obliged to cover both the material but also the moral damage generated by the effects of the unlawful administrative act.

The quantification of the damages will consider the manner in which the defendants acted, the fact that the claimants were notified only 7 days prior to demolishing the houses, the inexplicable hurry of the authorities given the severe weather conditions at the time of the demolition, the fact that every family had minor children, their trauma being far greater than that of adults, the failure to provide for adequate housing after the demolition, and it is assessed that the amount of RON 2,000 to be granted to every claimant is likely to cover the material and non-material damages incurred.

The solution of the first court regarding legal costs is correct pursuant to art. 453 (2) of the Civil Procedure Code, the amount set out as legal costs being proportional to the admitted claims.

The grounds for unlawfulness under art. 488 1(6) of the Civil Procedure Code according to which the decision is unlawful when "it does not comprise the reasons on which it is established or when it comprises reasons which are contradictory or departing from the nature of the cause" are not established.

According to art. 425 1(b) of the Civil Procedure Code, the recitals of the decision will show the object of the claim and the summary of the parties' arguments, the factual situation held by the court on the basis of the evidenced produced in the case, the factual or legal grounds for which the solution is established, while showing both the reasons for which the parties' claims were admitted and those for which they were dismissed.

The assessment of the appealed decision, it is noted that it was motivated in line with the provisions above and does not comprise reasons which are contradictory or departing from the nature of the cause.

Unofficial translation from Romanian language:

II. Regarding the second appeal filed by defendants, the court notes that it is unsubstantiated for the following reasons:

The criticism regarding the lack of representative capacity of the Foundation of Roma Centre for Social Intervention and Studies – ROMANI CRISS for all claimants is unsubstantiated, the case file comprising authentic powers of attorney whereby claimants empower the Foundation to represent their interests in these proceedings.

Regarding the inaccurate settlement of the plea of the lack of capacity to stand trial of Eforie City and of the Local Council of Eforie City, it is ascertained that according to the petition of the statement of claim, the obligation to grant housing space and pay material and non-material damages, these defendants comply with their capacity to stand trial, capacity which derives from Law no. 215/2001, according to which the Local Council holds deliberative powers regarding the assets of the territorial-administrative unit, such powers confirming that it is one of the persons under the obligation to do within the legal dispute and the Eforie City is the entity holding the assets of the respective administrative unit.

The plea of the inadmissibility of the legal action was accurately dismissed by the first court, given that the claimants proved the compliance with the preliminary procedure under art. 7 (1) of Law no. 554/2004.

Regarding the grounds of unlawfulness under art. 488 1(6) and 1(8) of the Civil Procedure Code cited as grounds for the second appeal, such grounds are not justified.

Therefore, the abuse of power is defined by the law under art. 2 (n) of Law no. 554/2004 as "the exercise of the right of assessment of public authorities in breach of the limits of their competence provided under the law or the breach of citizens' rights and liberties".

The assessment right means that the administrative authority may decide on the opportunity of an approach or action materialised subsequently in the issuance and enactment of an administrative act whose effects will modify the surrounding reality, modification which should always be according to the general interest and in line with the individuals' rights.

The findings of the first court were correct insofar as for the 23 attached constructions and surroundings demolished following the enforcement of the appealed order, there is no evidence as to the existence of building permits or the date certain of their building, which is not a sufficient condition however in itself for the application of demolishing measures under the provisions of art. 8 (2) of the Convention.

Therefore, the obligation to observe the right of domicile, the right to private and family life is established under art. 8 (1) of the Convention which sets out in art. 2 as follows: "the interference of a public authority in the exercise of this right will not be admitted, unless it is provided for under the law and the Constitution in a democratic society, a measure necessary

for national security, public safety, economic welfare of the country, defence of order and prevention of criminal acts, protection of health and morals, the rights and freedoms of others.".

The Court's constant case law established that the rights guaranteed by the Convention are not breached if the interference is provided under the law pursuant to a legitimate purpose and is proportional to that purpose.

As regards the actual circumstances of the case, the interference does not observe the principle of proportionality between the aim pursued and the violation of the claimants' rights.

Although it is invoked that the circumstances of the Case Yordanova and others v. Bulgaria decision are not applicable in this case, the principle of proportionality being observed, no argument is cited to uphold this claim.

Even if the claimants' housing space did not meet the minimum sanitation and building material requirements, which could be a threat to health and safety, according to the defendants, the conclusion that there was no other alternative cannot be accepted considering the grounds noted by the Court in the decision of Yordanova and others v. Bulgaria, namely that "the particular circumstances of the case, especially the lengthy period of time in which the authorities tolerated de facto the settlement deemed to be illegal and the community created, according to the principle of proportionality, due consideration should be given to the consequences of the evacuation and to the risk of homelessness. By the same decision, it was assessed that although a fact that the housing space of most of the claimants did not meet the minimum sanitation and building material requirements, which could be a threat to health and safety, they considered that in the absence of any evidence of the involved authorities having seriously analysed any alternatives to remedy these threats, the statement of the Government that the evacuation was the right solution is insufficient and not in itself useful to justify the evacuation order.".

The defence of the defendants regarding the provision of alternative housing which would justify the measure ordered and legitimise it, cannot be accepted as the spaces allocated do not meet the minimum standard housing conditions provided under Law no. 114/1996, which is proven by the letter cited by the defendants-appellants under no. 9311/R/10.07.2014 issued by the Department of Public Health of Constanta County (page 145 vol. III of the case file). The evacuated persons were relocated to building improper for living, part of them not connected to the sewage, water supply and electricity systems, their walls being damaged by mould, having collapsed ceilings. That is why, in the letter referred to above, the issuing authority considered that a housing solution had to be identified for the inhabitants of the old school within 30 days and the building of the boarding house would be refurbished and modernised within 90 days.

Therefore, the first court correctly noted that the appealed administrative act was issued under an abuse of power by breaching the proportionality principle of the ordered measure and

the legitimate scope as intended, breaching art. 8 (1) of the ECHR, the defendants being bound to remedy and pay damages, such obligation entailing also the grant of new housing with the observance of the provisions of Annex 1 of Law no. 114/1996.

For all these reasons, in accordance with art. 496 (1) of the Civil Procedural Code, the second appeal filed by the claimants will be admitted, the result being to partly quash the appealed decision and to compel the defendants to pay material and non-material damages and the second appeal filed by the defendants will be dismissed as unsubstantiated.

According to article 18 of G.E.O. no. 51/2008 stating that the costs for which the party was exonerated or benefitted from discounts under public legal aid will be allocated to the other party, if that party failed to prove its claims, such party being bound to pay these monies to the state, the court is to compel the appellants to pay RON 2,850 representing the costs for which the claimants-appellants were exonerated under public legal aid.

The other provisions of the appealed decision shall be maintained unless such provisions are not contrary to this decision.

FOR THESE REASONS, IN THE NAME OF THE LAW, THE COURT HEREBY DECIDES:

To dismiss the plea of the nullity of the second appeal lodged by the defendants-appellants as unsubstantiated. To admit the second appeal lodged by the claimants-appellants and appellees [NAMES REDACTED], having its chosen headquarters for the service of process in Bucharest, Str. Raspantiilor nr. 11, sector 2, against the civil decision no. 744/CA/01.06.2016 rendered by the Constanta Tribunal in the case file no. 6104/118/2015.

To partly quash the appealed decision after the retrying the case, the court hereby orders as follows:

To partly admit the legal action brought by claimants [NAMES REDACTED] all by and through THE FOUNDATION OF ROMA CENTRE FOR SOCIAL INTERVENTION AND STUDIES – ROMANI CRISS.

To compel the defendants to pay each claimant, a natural personal, the amount of RON 2,000 as material and non-material damages.

To dismiss the second appeal filed by appellants-defendants and appellees THE MAYOR OF EFORIE CITY – BRAILOIU ION OVIDIU, BRAILOIU ION OVIDIU – MAYOR OF EFORIE CITY, EFORIE CITY – THROUGH ITS MAYOR AND LOCAL COUNCIL OF EFORIE CITY – having headquarters in Eforie Sud, Str. Progresului nr. 1,

Unofficial translation from Romanian language:

Constanta County against the civil decision no. 744/CA/01.06.2016 delivered by Constanta Tribunal in the case file no. 6104/118/2015, as unsubstantiated.

To compel the appellants-defendants to pay the state the amount of RON 2,850 representing costs for which the appellants-claimants were exonerated by public legal aid.

Final decision.

Delivered in public hearing this day, 10 March 2017.

Presiding Judge,	For Judge	Judge,
Beatrice Mari	Ecaterina Grigore	Nicoleta Roxana Bacu
	In annual leave	

Signed as per art. 426 (4) of the Civil Procedure Code

Presiding over the Panel of Judges, Beatrice Mari

Court Clerk, Adriana Nezir

Decision drafted by C. Neacsu

Decision drafted by B. Mari 18.05.2017

The Constanta Court of Appeal

True to the original

No. 13