CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

THIRD SECTION

FINAL DECISION

AS TO THE ADMISSIBILITY OF

Application no. 57884/00
by Sandor KALANYOS and others
against Romania

The European Court of Human Rights (Third Section), sitting on 19 May 2005 as a Chamber composed of:

Mr B.M. ZUPANČIČ, *President*,
Mr J. HEDIGAN,
Mr C. BÎRSAN,
Mrs M. TSATSA-NIKOLOVSKA,
Ms R. JAEGER,
Mr E. MYJER,
Mr DAVID THÓR BJÖRGVINSSON, *judges*,
and Mr V. BERGER, *Section Registrar*,

Having regard to the above application lodged on 19 July 1999,

Having regard to the partial decision of 9 December 2003,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicants,

Having deliberated, decides as follows:

THE FACTS

The applicants are Romanian nationals of Roma origin. The first, Sandor Kalanyos, was born in 1941, the second, Tamas Kalanyos, in 1942 and the third, Istvan Rozsa, in 1972. They live in the hamlet of Plăieşii de Sus, in the district of Plăieşii de Jos, Harghita County.

The applicants were represented before the Court by the European Roma Rights Center (ERRC), an association based in Budapest (Hungary), and the Lawyers' Association for the Defence of Human Rights (APADO), an association based in Bucharest (Romania).

The respondent Government were represented by Mr B. Aurescu, followed by Mrs R. Rizoiu, Agents.

A. The circumstances of the case

The facts of the case, as submitted by the parties, may be summarised as follows.

1. The events of June 1991

On 6 June 1991 a fight started in Plăieşii de Sus between four Roma and a nightwatchman. The first applicant was one of the four Roma involved. Shortly afterwards, he was arrested by the police and taken into custody with three other people who were involved in the events. In the subsequent criminal proceedings, he was sentenced to three years' imprisonment.

Following the events, a crowd made up of non-Roma villagers assaulted and beat up two Roma men in a revenge attack, fatally injuring one of them. The other victim of the attack, A.K., the third applicant's uncle, died a year later.

On 8 June 1991 a public notice was displayed on the outer limit of the Roma settlement informing the inhabitants that on 9 June 1991 their houses would be set on fire. The Roma informed the police and village officials. However, the local authorities failed to intervene, preferring instead to "advise" the Roma to leave their homes for their own safety.

On 9 June 1991 the Roma villagers, including the second applicant, fled their homes and sought refuge in a nearby stable belonging to the local farming cooperative. An organised group of non-Roma villagers then cut off the electricity supply to the settlement, knocked down the telegraph pole thereby severing telephone connections with the neighbouring town of Miercurea Ciuc, and set fire to all twenty-seven Roma houses, including those belonging to the applicants. The houses and their contents were completely destroyed.

At the time of these events, the first applicant was still in pre-trial detention. According to his own declarations and to statements made by his parents and other witnesses, the third applicant said that he and his wife were living at the time with his uncle A.K., whom they were looking after. During the events the third applicant fled to the neighbouring town of Sfântu Gheorghe, in Covasna County, where his parents lived.

During the following year, the Roma villagers, including the applicants and their families, were forced to live in nearby stables in dreadful

conditions, without heating or running water. The applicants only managed to survive with the help of their friends and family.

2. Investigation into the events

Following the destruction of the settlement, the Harghita County Police Department started an investigation. A team of policemen, representatives of the county council and a prosecutor attached to the Miercurea Ciuc District Court visited the site and recorded their findings. The report registered the destruction by arson of 27 houses belonging to Roma. It identified as the causes of the events the fight on 6 June 1991 and the fact that the Roma were in the habit of putting their animals to graze on land belonging to non-Roma villagers.

Some 24 Roma from the hamlet were questioned by the investigation team. Most said that they had no idea who the culprits were. However, some were able to give the names of possible suspects.

According to the applicants' lawyer (who was acting on behalf of APADO), he was refused access to the case file by the police and the mayor's office. The local authorities are said to have expressed the opinion that the Roma themselves, or the "Gypsies" as they put it, "are to blame for what happened" as "they steal for a living and are aggressive towards other people".

The case file was marked "offenders unknown" and the offence classified as "destruction by arson" under Article 217 § 4 of the Criminal Code. On an unspecified date, the lawyer was informed that the investigation into the events would be closed under the statute of limitations and that no further investigations were planned owing to the imminent expiry of other limitation periods. Finally, both the mayor's office and the police stated that, given the large number of persons involved in the events, it had not been possible to identify the culprits.

On 27 June 1996 the Prosecutor's Office of the Harghita County Court closed the investigation on the ground that the prosecution of the offences was statute-barred.

On 23 April 1998 the applicants filed a complaint, through their lawyer, with the Prosecutor's Office of the Tîrgu-Mureş Court of Appeal. They requested that the competent prosecuting and investigative authorities identify the culprits and secure convictions. They requested that the authorities establish the real value of the damage incurred and classify the crimes accordingly. In this respect, they claimed that the correct classification of the crimes was aggravated criminal damage for which the limitation period had not yet expired. In addition, they requested access to the case file. The lawyer mentioned that the absence of an adequate investigation up till then appeared to be due to the Roma ethnicity of the victims.

The applicants' lawyer renewed his request on 6 July 1998. He attached to the complaint authorities signed by the applicants. He was allowed to examine the case files on 8 July 1998.

On 14 July 1998 the lawyer filed a complaint with the Prosecutor's Office at the Supreme Court of Justice. He requested that the competent prosecuting and investigative authorities identify the culprits and secure their conviction. On 6 August 1998 the Prosecutor's Office at the Supreme Court of Justice informed the lawyer that his complaint had been forwarded to the Prosecutor's Office at the Tîrgu-Mureş Court of Appeal.

In a decision of 9 October 1998, the Prosecutor's Office rejected the complaint. It found that the offences had been committed "as a result of serious acts of provocation by the victims", which it described as follows:

> "As indicated in the report drafted by the police in the case, the malicious burning of the houses belonging to the Roma villagers was caused by the fact that the latter had shown contempt towards the local population in recent years, by repeatedly breaking social norms, threatening and using violence against school children who happened to pass by, demanding money or other goods from them, threatening the whole hamlet with arson, attacking the elderly in their homes in order to steal money and other goods, repeatedly causing destruction of the crops by allowing their horses to eat from the fields, stealing ..."

The prosecutor stated that, given the large number of persons involved, it had been impossible to identify the perpetrators of the attack. With regard to the proceedings, he noted:

> "The case file shows that although an investigation took place on site and statements were taken from a large number of people, the culprits could not be identified. The police therefore classified the file under "unknown offenders" and, when the limitation period expired, forwarded it to the Prosecutor's Office for decision."

Lastly, the prosecutor dismissed the applicants' request for the facts to be recharacterised as a more serious offence proportionate to the damage caused to the victims, on the grounds that:

> "The facts of the case were correctly characterised [by the Prosecutor's Office of the Harghita County Court as an offence] under Article 217 §§ 1 and 4 of the Criminal Code, since the consequences of the offence were not extremely serious."

On 28 October 1998 the applicants' lawyer appealed against this decision to the Prosecutor's Office at the Supreme Court of Justice under Article 278 of the Code of Criminal Procedure. On 21 January 1999 the Prosecutor's Office upheld the decision of the Tîrgu-Mureş Court of Appeal. This was the final decision in the case.

3. Reconstruction of the houses

On 9 September 1991 the mayor of Plăieşii de Jos purchased a dismantled wooden stable in order to provide the Roma with materials for the reconstruction of their homes. The purchase price of 110,400 Romanian lei ("ROL") was funded by the County of Mureş, following a decision by

the Prefect on 13 September 1991. The local authorities also gave the applicants permission to gather wood from a nearby forest. The houses were rebuilt by the applicants with the help of friends and relatives between 1991 and 1993.

On an unspecified date the Mayor's Office included the Roma settlement in its programme for extending the electricity network. The houses belonging to the Roma are now connected to the electricity supply.

It appears from the file that the applicants have yet to receive compensation for the belongings and furniture they lost during the events.

The applicants have made the following statements to the Court:

(a) Sandor Kalanyos

The first applicant claimed he had rebuilt his house with his own money. The aid promised by the officials had never been received by him or his family. A witness, M.G., confirmed these allegations.

(b) Tamas Kalanyos

The second applicant claimed that he had not received any wood from the local authorities for the reconstruction of his house and that it had only been as a result of his family's help that he had been able to rebuild his house, which had been destroyed during the events. His statements were supported by a witness, J.M.

(c) Istvan Ruzsa

The third applicant claimed that he had received one consignment of wood, had purchased the construction materials himself and had rebuilt his house. A witness, T.G., confirmed that the applicant had rebuilt and refurnished his house himself after the events. The applicant's parents confirmed that the family had helped him buy the construction materials and that no compensation had been received for the belongings that had been destroyed.

B. Relevant domestic law and practice

1. Code of Civil Procedure

Article 244 of the Code of Civil Procedure, as amended by Government Order no. 59/2001, provides that a court examining a civil action may stay civil proceedings.

Article 244

"2. if criminal proceedings have been instituted in relation to an offence and the verdict in those proceedings is decisive for the outcome of the civil dispute."

2. Code of Criminal Procedure

Article 10

"Criminal proceedings may not be instituted or, if already instituted, continued if ...

(c) the act was not committed by the defendant; ... "

Article 15

"A person who has suffered civil damage may join the criminal proceedings...

He or she may do so either during the criminal investigation... or during the proceedings before the court..."

Article 22

"Findings in a final judgment of a criminal court concerning the commission of the act in question, the identity of the perpetrator and his or her guilt, shall be binding on a civil court when it examines the civil consequences of the criminal act."

Article 278

"Complaints about decisions and acts of the prosecutor ... shall be examined by the prosecutor-in-chief at the Prosecutor's Office. If it is the prosecutor-in-chief who adopted the decision ... the complaint shall be examined by the Prosecutor's Office which is his or her hierarchical superior..."

Law no. 281/24 June 2003 amended the Code of Criminal Procedure. It introduced, *inter alia*, a new Article 278^1 regulating appeals to the courts against the prosecutor's decision. It prescribes the time-limit for lodging an appeal, the competent court and the procedure to be followed.

3. Decision no. 486 of 2 December 1997 of the Constitutional Court

In a decision of 2 December 1997, the Constitutional Court ruled that Article 278 of the Code of Criminal Procedure is constitutional only in so far as it does not deny anyone who is dissatisfied with a decision of the Prosecutor's Office direct access to a court in accordance with Article 21 of the Constitution.

4. The Constitution

Article 21 Free access to justice

"1. Everyone shall be entitled to apply to the courts for the protection of his rights, liberties and legitimate interests.

2. The exercise of this right shall not be restricted by any law."

5. Civil Code

Articles 999 and 1000 of the Civil Code provide that a person who suffers damage may seek redress through a civil action in tort against the person responsible.

Article 1003 of the Civil Code provides that the liability of joint tortfeasors is joint and several.

6. Case-law of the domestic courts

The Government have submitted examples of decisions in which the domestic courts have ruled that a prosecutor's decision not to open a criminal investigation on the ground that there was no criminal intent, did not prevent the civil courts from examining a civil claim arising out of the same facts.

COMPLAINTS

1. The applicants complained under Article 3 of the Convention that after the destruction of their homes they had had to live in very poor, cramped conditions, which amounted to treatment contrary to Article 3 of the Convention.

2. Relying on Article 6 § 1 of the Convention, they complained that the authorities' failure to carry out an adequate criminal investigation into the events, culminating in formal charges and the conviction of those responsible, had deprived them of the right to a fair and public hearing within a reasonable time by an independent and impartial tribunal in the determination of their civil rights. That failure had hindered the establishment of liability and the recovery of damages, both pecuniary and non-pecuniary, for the losses they had suffered.

3. The applicants complained that the Romanian authorities had breached the letter and spirit of Article 8 of the Convention by failing to prevent and to respond adequately to the events that had led to the destruction of their homes, both before and after the ratification of the Convention. They claimed that, since ratification, there had been a continuing breach of their rights to respect for their homes and private and family lives as the authorities had neither conducted a thorough and comprehensive investigation nor provided redress for the alleged violations.

4. The applicants complained under Article 13 of the Convention that following the events, and even after the Convention had been ratified, they were denied an effective and comprehensive remedy for inhuman and/or

degrading treatment, the destruction of their houses and possessions, and the violation of their privacy.

Under Romanian law, the public prosecutor was the final domestic authority capable of providing a remedy for crimes prosecuted *ex officio*. Victims of crime had no right to bring a private prosecution if the State authorities failed to fulfil their duty to conduct a thorough and effective investigation or to seek judicial review of an allegedly arbitrary decision not to prosecute.

The applicants claimed that the authorities' failure to conduct a thorough and effective investigation in the instant case resulted, in part, from the fact that the public prosecutors – the officials to whom Romanian law assigned exclusive and unreviewable authority for investigating allegations of crime – lacked sufficient independence and impartiality (they referred to *Silver and Others v. the United Kingdom*, judgment of 25 March 1983, Series A no. 61). As regards the issue of independence, they submitted that, due to their dual and contradictory functions – as parties to and supervisors of the criminal process – prosecutors in Romania could not be considered sufficiently independent for the purposes of Article 13. The applicants alleged that Romanian prosecutors did not enjoy guarantees of independence, immovability and transparency, while prosecution activities were not subjected to public scrutiny in any meaningful sense. They referred in this respect to Parliamentary Assembly Resolution no. 1123/1997 on the honouring of obligations and commitments by Romania, observing that "the role of the Public Prosecutor's Office is still very pronounced", and urging Romania to "continue the reform in this area".

As for the lack of impartiality, the applicants alleged that it was particularly conspicuous when it came to providing redress to Roma victims of human-rights abuses. They referred in this respect to the Concluding Comments of the United Nations Human Rights Committee on Romania of November 1993, expressing "concern at the continuing problems in Romania regarding discrimination against persons belonging to minorities and, in particular, offences committed as a result of incitement to ethnic or religious intolerance". The applicants stressed that, according to that document, "the situation is especially threatening to vulnerable groups, such as the Roma". Furthermore, they submitted that, in its Concluding Observations concerning Romania, issued in 1995, the United Nations Committee on the Elimination of Racial Discrimination had voiced concern "at the continuing reports of racism among police forces, which have been said to occasionally use excessive force against members of certain groups, or, alternatively, are said not to take action when acts of violence against certain groups are committed in their presence".

5. Finally, the applicants complained that the violations they had suffered as a result of the events were predominantly due to their Roma

ethnicity, and therefore discriminatory, in breach of Article 14 of the Convention, taken together with Articles 3, 6 § 1 and 8 of the Convention.

THE LAW

The applicants alleged that the destruction of their property, the ensuing consequences and the subsequent proceedings before the domestic authorities had violated Articles 3, 6 § 1, 8, 13 and 14 of the Convention, which guaranteed, *inter alia*, freedom from inhuman and degrading treatment, access to a court for a fair determination of civil rights and obligations, the right to respect for private and family life and the home, the right to an effective remedy and freedom from discrimination in the enjoyment of Convention rights and freedoms.

A. The Government's objections

1. Non-exhaustion of domestic remedies

The Government submitted that the applicants had failed to exhaust domestic remedies in respect of any of their complaints to the Court. In their view, the applicants should have lodged an action with the criminal courts after the decision of the Prosecutor's Office to close the investigation in the case. Such an action constituted an available effective remedy that was sufficient to afford redress in respect of the alleged breaches. Under Articles 275-279 of the Code of Criminal Procedure (hereinafter the "CCP") as interpreted by the Constitutional Court in its decision of 2 December 1997, a claimant could bring proceedings in the criminal courts against any decision of the prosecutor. The Government submitted a series of decisions, four by the Braşov Court of Appeal (decisions of 10 January 2000, 7 February 2001, 28 March 2001 and 30 March 2001) and one by the Supreme Court of Justice (decision of 14 September 2001), in which appeals against decisions of the prosecutor had been allowed under the aforementioned provisions.

The applicants contested the effectiveness of the remedy suggested by the Government. In their view, an appeal against the prosecutor's decision to close the investigation because of the time bar would have been rejected by the courts under Article 11 § 2 (b) of the CCP which provided that criminal proceedings could not be instituted, or if already instituted, could not be continued, if the limitation period had expired. They reiterated that the proposed appeal was not expressly provided for by law, but was based solely on an extensive interpretation of the provisions of the CCP. Moreover, they considered that the Romanian courts had no consistent

practice of allowing such appeals. They referred, in this respect, to court decisions in which similar actions had been rejected, namely the decisions of the Supreme Court of Justice dated 25 January 2000, of the Cluj-Napoca Court of Appeal dated 24 October 2000 and the Braşov Court of Appeal dated 9 November 2001. According to the case-law of the Court, therefore, such a remedy could not be considered effective (*X v. Denmark*, no. 8395/78, Commission decision of 16 December 1981, Decisions and Reports (DR) 27, p. 52).

The Court reiterates that the object of the rule on exhaustion of domestic remedies is to allow the national authorities (primarily the judicial authorities) to address allegations made of a violation of a Convention right and, where appropriate, to afford redress before those allegations are submitted to the Court (see *Azinas v. Cyprus* [GC], no. 56679/00, § 38, 28 April 2004; and *Kudla v. Poland* [GC] no. 30210/96, § 152, ECHR 2000-XI).

Under Article 35 of the Convention, normal recourse should be had by an applicant to remedies that are available and sufficient to afford redress in respect of the breaches alleged. The existence of the remedies in question must be sufficiently certain not only in theory but also in practice, failing which they will lack the requisite accessibility and effectiveness; it falls to the respondent State to establish that these various conditions are satisfied (see, *inter alia*, *Vernillo v. France*, judgment of 20 February 1991, Series A no. 198, pp. 11-12, § 27; and *Dalia v. France*, no. 26102/95, § 38, ECHR 1998-I).

In this respect the Court notes that the remedy suggested by the Government was not expressly provided by law at the time of the events in the case. It was inserted into the CCP by Law no. 281/2003, which amended the Code. Before the adoption of this law, the courts hearing such appeals relied on decision no. 486 of the Constitutional Court. However, it seems that this practice was not generalised (see *Rupa v. Romania* (dec.), no. 58478/00, 14 December 2004).

Furthermore, at the time of the events there were no regulations in place concerning the procedural aspects of the appeal, so that it is not clear which court would have had jurisdiction to examine it, what the time-limit for appealing would have been or whether there was any further right of appeal if the initial appeal failed.

Lastly, the Court notes that all decisions submitted by the Government date from after the final decision adopted in the present case, that is the decision of 21 January 1999 by the Prosecutor's Office attached to the Supreme Court of Justice. Moreover, the applicants have produced decisions contemporaneous with the proceedings in their case in which the domestic courts rejected similar appeals against the prosecutors' decisions.

In the light of the above aspects and bearing in mind the fact that a similar objection has been already rejected by the Court in the case of

Rupa v. Romania (cited above), this preliminary objection must be dismissed.

2. Lack of victim status in respect of the complaints under Articles 3 and 8 alone or combined with Article 14

a) The Government submitted that the third applicant, Istvan Rozsa, could not claim to be a victim of a violation of Articles 3 and 8 of the Convention since he was not living in Plăieşii de Sus at the time of the events. According to the official records, his permanent residence was at his parents' home in Sfântu Gheorghe, Covasna County, his only connection with Plăieşii de Sus being that he used to visit his uncle, A.K., there.

The applicants contested that argument. They claimed that, at the time of the events, the third applicant had already been providing live-in care for his uncle for several years. The third applicant considered the house – which was destroyed in the events – as his home. The applicants argued that the Court had previously held that a home may be found to exist even when the applicant had no proprietary right or interest, as it focused on the nature and degree of the ties between the person concerned and the dwelling (they referred to *Gillow v. the United Kingdom*, judgment of 24 November 1986, Series A no. 109, p. 19, § 46; and *Buckley v. the United Kingdom*, judgment of 25 September 1996, *Reports of Judgments and Decisions* 1996-IV, pp. 1287-1288, §§ 53-54).

Lastly, the applicants contended that it was common in Romania for individuals, including a large number of Roma, not to be officially registered at the address where they actually live. The reasons for this were unawareness of the obligation to register, not having documents required for the registration (such as title deeds, leases and identity papers), and fear of the police, particularly in the case of Roma who were often targets of police abuse. They concluded that the fact that the third applicant had not registered the address in Plăieşii de Sus with the police did not prove that he was not living there.

The Court reiterates that in the case of *Buckley v. the United Kingdom* it considered that a residence which was not legally established could be a "home" for the purpose of Article 8 of the Convention, in view of the applicant's links to and intentions concerning it (see *Buckley v. the United Kingdom*, cited above, pp. 1287-1288, §§ 53-54).

Similarly, in the present case the third applicant submitted statements indicating that he had his *de facto* residence with his uncle and that he considered the latter's house as home to him and his wife. Moreover, it appears that the third applicant rebuilt the house himself after the events, in order to resume living there with his family. The parties' statements confirm that the applicant is currently living in the rebuilt house.

The Court is, therefore, satisfied that the third applicant has established that he had links to his uncle's house and an intention to live there, regarding it as his *de facto* residence.

Accordingly, the third applicant can claim to be a victim of the alleged breaches.

b) The Government argued that the applicants were not victims as they had failed to allege, either expressly or in substance, a violation of Articles 3 and 8 of the Convention in respect of their living conditions after the ratification of the Convention by Romania on 20 June 1994.

The applicants contested that argument. They noted that in previous cases the Court had considered and raised with the respondent State possible violations disclosed by the facts even though the applicants themselves had not specifically raised the issue as a claim. They relied in this respect on the cases of *Moldovan and Others and Rostas and Others v. Romania* ((dec.), no. 41138/98 and 64320/01 joined, 3 June 2003), and *Guzzardi v. Italy*, (judgment of 6 November 1980, Series A no. 39, pp. 22-23, §§ 60-63).

The Court reiterates that it is master of the characterisation to be given in law to the facts of the case (see *Assenov v. Bulgaria*, judgment of 28 October 1998, *Reports* 1998-VIII, p. 3295, §§ 131-132). In the present case the applicants have provided enough evidence to enable the Court to picture their living conditions after the destruction of their homes.

Therefore, it is open to the Court to consider the applicants' allegations concerning their living conditions under Articles 3 and 8 of the Convention.

c) Lastly, the Government submitted that, with the help of the authorities and the non-Roma villagers, the Roma houses had been entirely rebuilt before the ratification of the Convention and were now of a better quality than before. Therefore, the applicants could no longer claim to be victims of the alleged violation of Articles 3 and 8 of the Convention taken alone or in conjunction with Article 14 of the Convention.

The applicants contended that they had rebuilt the houses themselves, with the help of friends and relatives. The only contribution the authorities had made was to allow them to gather wood from a nearby forest and from a dismantled stable and to connect their houses to the electricity network several years after the events. Furthermore, they reiterated that they had still not received any compensation for the loss of their belongings and furniture.

The Court reiterates that a decision or measure favourable to the applicant is not in principle sufficient to deprive him of his status as a "victim" unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention (see *Amuur v. France*, judgment of 25 June 1996, *Reports* 1996-III, p. 846, § 36). It appears from the documents submitted by the two parties in the present case that the authorities have not recognised even in substance a violation of the applicants' rights to respect for their homes and private and family lives following the destruction of their houses and belongings and

that the applicants have still not received any compensation for the loss incurred. The mere fact that the applicants' homes were rebuilt with some help from the authorities does not deprive them of their victim status.

Accordingly, the applicants can claim to be victims of the alleged violations, as required by Article 34 of the Convention.

In the light of the above, the Court dismisses all three limbs of the Government's objection of lack of standing as "victims".

B. The merits

1. The applicants complained, in substance, under Articles 3 and 8 of the Convention that the destruction of their homes had deprived them of the use of their houses and belongings, forcing them to live in very poor and cramped conditions.

Article 3 reads as follows:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

Article 8 provides as follows:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

The Government claimed that the State bore no responsibility for the destruction of the applicants' houses, which was the work of private individuals, and reiterated that the State's positive obligations under Articles 3 and 8 had been fulfilled as the houses had been rebuilt with the help of the authorities. They argued that the living conditions offered by the new houses were better than they had been before the events and, thus, did not attain the minimum level of severity required to fall within the scope of Article 3 of the Convention. They added that there was no obligation under the Convention to provide a home for persons who were in a difficult situation, or to carry out an investigation into the alleged violation of the applicants' right to respect for their homes that had occurred before the Convention was ratified (they referred to the Court's judgments in Buckley, cited above, p. 1271; Chapman v. the United Kingdom, [GC], no. 27238/95, ECHR 2001-I; and M.C. v. Bulgaria, no. 39272/98, 4 December 2003).

The applicants contended that the State's positive obligations could not be considered, in principle, to be limited solely to cases of ill-treatment by State agents. Any conduct that amounted to a violation of the Convention required a remedy, which meant undertaking an investigation and, if

appropriate, providing redress. Furthermore, they argued that the State must have been aware that an attack was likely, especially since a notice had been posted on the perimeter of the Roma settlement on the day before the events, informing the inhabitants that their houses would be set on fire.

The applicants reiterated that, apart from the permission to use wood from the nearby forest and the dismantling of the stable, they had not received any help from the authorities in rebuilding their homes. They contested the Government's allegations concerning the support given by the authorities and said that the Government could not furnish any invoices for the purchase of construction materials or any expert reports establishing the value of the reconstruction works. As for the ROL 110,400 that had been allotted to the Mayor's Office on 13 September 1991, they claimed that the amount had been allocated for the reconstruction of a total of 51 houses that had been destroyed in both Plăieşii de Sus and Caşinul Nou, another hamlet from the district of Plăieşii de Jos, where similar events had occurred.

Concerning the connection of the Roma houses to the electricity network, the applicants pointed out that at the material time the rest of the hamlet already had an electricity supply; it was only in the area inhabited by the Roma that a special intervention had been necessary to provide basic living conditions of the standard to be expected in the twenty-first century.

They considered that the extreme poverty and poor living conditions, and the fact that they had received no compensation for the loss of their personal belongings or the emotional distress caused by the destruction of their homes reached the threshold of both Articles 3 and 8 of the Convention (see *Costello-Roberts v. the United Kingdom*, judgment of 25 March 1993, Series A no. 247-C, p. 59, § 30; *Dougoz v. Greece*, no. 40907/98, § 44, ECHR 2001-II; and *Selcuk v. Turkey*, judgment of 24 April 1998, *Reports* 1998-II, p. 909, § 74).

The Court considers, in the light of the parties' submissions, that the complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes therefore that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

2. The applicants claimed that the authorities' failure to carry out an adequate criminal investigation had deprived them of their right to bring a civil action to establish liability and recover damages for the pecuniary and non-pecuniary losses they had suffered, in violation of Article 6 § 1, which provides:

> "In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

The Government submitted that after the decision of the prosecutor to discontinue the investigation, the applicants should have lodged an action

with the civil courts, under Articles 998 and 999 of the Civil Code. Such an action would have had prospects of success, since the civil courts were not bound by the decision of the prosecutor (they also rely on the case of *Assenov*, cited above, p. 3292, § 112). In their view, the findings of a criminal court were only binding on the civil courts in so far as they concerned the existence of the facts, the person responsible and his or her liability.

The Government reiterated that the criminal investigation was closed because the limitation period had expired. In that connection, they stressed that Romanian law distinguished between criminal and civil liability in various ways, including as regards the applicable limitation periods. In their view, the applicants would have been entitled to institute a civil action within three years from the date of the prosecutor's decision.

Lastly, the Government submitted that the investigation conducted by the authorities following the destruction of the settlement had been effective, unlike the situation in the case of *Kaya v. Turkey* (judgment of 19 February 1998, *Reports* 1998-I, p. 328-329, § 102).

The applicants contested the Government's position. They alleged that while the criminal investigation was pending, their expectation had been that their claim for damages for their losses would be examined by the court that was dealing with the criminal and civil proceedings together. Moreover, they considered that the three-year period for bringing a civil action had started to run on the date of the event, so that by the time of the prosecutor's decision to discontinue the investigation, they were prevented from bringing a civil action by the time bar. In any event, they contested the effectiveness of the remedy pointing out that, in the *Moldovan and Rostas* case cited above, a similar action had been brought by the applicants in 1997 and was still pending in the domestic civil courts.

The Court considers, in the light of the parties' submissions, that the complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. It concludes, therefore, that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

3. The applicants complained that they had no effective remedy for inhuman and degrading treatment, for the destruction of their homes or for the infringement of their privacy, in violation of Article 13 of the Convention taken together with Articles 3 and 8 of the Convention. Article 13 provides as follows:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

The Government contended that at the time of the events, the destruction of a house was an offence under the Criminal Code, which would be

investigated *ex officio* by the police, and rendered the culprit liable to between one and five years' imprisonment. Moreover, in 1996 the Code had been amended and the sentence increased to between three and fifteen years' imprisonment.

They reiterated that a criminal investigation had been conducted in the case and argued that it had been effective and had thus met the requirements of Article 13 of the Convention.

Referring to *Chahal v. the United Kingdom* (judgment of 15 November 1996, *Reports* 1996-V, p. 1869-1870, § 145), they noted that the aggregate of remedies provided by national law could satisfy the requirements of Article 13. In that connection, they considered that the applicants could have lodged an action with the civil courts for the recovery of damages. The civil courts would have decided their claim on its merits and the applicants would have received compensation for the alleged violation of Articles 3 and 8 of the Convention.

The Government reiterated that the effectiveness of the remedy for the purpose of Article 13 did not depend on the certainty of a favourable outcome (see *Nekvedavcius v. Germany* (dec.), no. 46165/99, 19 June 2003).

Furthermore, they submitted that the applicants had a remedy for any alleged discrimination against them in the form of a criminal complaint for defamation under Article 206 of the Criminal Code. The outcome of such proceedings would not have been dependent in any way on the outcome of the criminal investigation into the events during which the alleged defamation occurred.

Lastly, the Government submitted that in so far as the applicants alleged a lack of access to a court, Article 6 § 1 was deemed to constitute a *lex specialis* in relation to Article 13, in accordance with the Court's case-law (they referred to *Kudla v. Poland*, cited above, § 146).

The applicants considered that the investigation carried out by the authorities had not been effective, as the prosecutors had not charged anyone, preferring instead to wait until the statute of limitations had excluded any criminal liability.

They submitted that the lack of an effective remedy should be considered in the context of widespread violence and discrimination against Roma in Romania as well as of the continued lack of an adequate response from the authorities.

Lastly, they said that they had not complained of a lack of an effective remedy either in respect of the alleged discrimination or of the alleged lack of access to a court. However, they contended that the Government had not proved the effectiveness of a complaint for defamation by any relevant case-law in which the victims of a crime investigated by a prosecutor had been able to file a complaint under Article 206 of the Criminal Code and

obtain redress for allegations of an inadequate investigation due to racial considerations.

Bearing in mind the applicants' submissions, the Court will limit its examination of the case to the alleged lack of an effective remedy for inhuman and degrading treatment, for the destruction of the applicants' homes and for the violation of their privacy (Article 13, taken together with Articles 3 and 8 of the Convention).

The Court considers, in the light of the parties' submissions, that the complaint formulated by the applicants under Article 13, taken together with Articles 3 and 8 of the Convention, raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes, therefore, that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

4. The applicants complained that the violations they had suffered as a result of the events were predominantly due to their Roma ethnicity, contrary to the principle of non-discrimination set forth in Article 14 of the Convention, taken together with Articles 3, 6 and 8 of the Convention. In particular, they complained about their living conditions after the ratification of the Convention by the respondent State and the remarks made by the prosecutor and mayor about the applicants' ethnicity in the proceedings following the events. Article 14 reads as follows:

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

The Government contended that the applicants had not proved "beyond reasonable doubt" the alleged discrimination (see *Anguelova v. Bulgaria*, no. 38361/97, § 166, ECHR 2002-IV).

As for the alleged racist speech used by the authorities, the applicants had not substantiated their claims and, in any event, no proof of racial discrimination against the applicants had been found in the files of the prosecuting authorities.

Lastly, they reiterated that the word *"ţigan"* (Gipsy) had been used in Romanian literature and music without any negative or pejorative connotation and that, at the time of the events, the word was widely used to designate ethnic Roma nationals.

The applicants contested the Government's arguments. Firstly, they had not been afforded any redress for the destruction of their homes and belongings. In their view, the Court had demonstrated a willingness to relax the "reasonable-doubt" requirement with respect to substantive violations of the Convention where the respondent State had failed to cooperate in providing evidence. Hence, they considered that the evidence adduced

before the Court was sufficient to allow the Court to shift the burden of proof.

They argued that the authorities had made no attempt to investigate whether discriminatory attitudes had played a role in the events, despite having compelling evidence before them that should have prompted them to carry out such an investigation.

Lastly, they stressed that the respondent Government had not denied the use of the term "Gypsies" in the official documents, but justified it by the widespread usage of the term at the material time. In the applicants' view, the respondent State was responsible for the level of human-rights awareness of its nationals and the fact that a pejorative term was widely use in connection with a minority group did not make it less offensive for the applicants or, for that matter, the vast majority of Romanian Roma.

The Court considers, in the light of the parties' submissions, that the complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes, therefore, that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

For these reasons, the Court unanimously

Declares the remainder of the application admissible, without prejudging the merits of the case.

Vincent BERGER
Registrar

Boštjan M. ZUPANČIČ
President