



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

SECOND SECTION

FINAL DECISION

AS TO THE ADMISSIBILITY OF

Applications nos. 41138/98 and 64320/01 joined
by Iulius MOLDOVAN and 13 others and Octavian ROSTAȘ and 9 others
against Romania

The European Court of Human Rights (Second Section), sitting on
3 June 2003 as a Chamber composed of

Mr J.-P. COSTA, *President*,

Mr L. LOUCAIDES,

Mr C. BÎRSAN,

Mr K. JUNGWIERT,

Mr V. BUTKEVYCH,

Mrs W. THOMASSEN,

Mrs A. MULARONI, *judges*,

and Mrs S. DOLLÉ, *Section Registrar*,

Having regard to the above applications lodged with the European
Commission of Human Rights on 14 April 1997 and with the European
Court of Human Rights on 9 May 2000 respectively,

Having regard to the partial decision of 13 March 2001,

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 24 Romanian nationals of Roma origin. They all used
to live in the village of Hădăreni, Mureș county, and are agricultural
workers.

The first applicant, Iulius Moldovan, was born in 1959. The second applicant, Melenuța Moldovan, was born in 1963. The third applicant, Valentina Rostaş, was born in 1964. The fourth applicant, Lucreția Rostaş, was born in 1950. The fifth applicant, Silvia Moldovan, was born in 1955. The sixth applicant, Eleonora Rostaş, was born in 1956. The seventh applicant, Octavian Rostaş, was born in 1958. The eighth applicant, Bazil Moldovan, was born in 1943. The ninth applicant, Maria Moldovan, was born in 1940. The tenth applicant, Ghioloanca Lăcătuş, was born in 1933. The eleventh applicant, Adrian Moldovan (resident at Hădăreni, no. 195 A), was born in 1943. The date of birth of the twelfth applicant, Lucreția Moldovan, wife of the eighth applicant, is unknown. The thirteenth applicant, Maria Lăcătuş, wife of the nineteenth applicant, was born in 1959. The dates of birth of the fourteenth, fifteenth, sixteenth, seventeenth and eighteenth applicants - Otilia Rostaş, Ferdinand Lăcătuş, Adrian Moldovan (resident at Hădăreni, no. 170), Petru "Gălbinaş" Lăcătuş (resident at Hădăreni, no. 51) and Petru "Petrişor" Lăcătuş (resident at Hădăreni no. 115) - are also unknown. The nineteenth applicant, Petru Gruia Lăcătuş (resident at Hădăreni, no. 114), was born in 1962. The twentieth applicant, Maria Florea Zoltan, was born in 1964. The twenty-first applicant, Persida Dorina Rostaş, was born in 1970. The twenty-second applicant, Mariana Moldovan, filed the application on behalf of her late mother, Rozalia Rostaş (dates of birth unknown). The dates of birth of the twenty-third applicant, Bazil-Sami Lăcătuş, the son of the tenth applicant, and the twenty-fourth applicant, Lucaci Moldovan, are similarly unknown.

On 5 May 1998 the following eleven applicants submitted powers of attorney in favour of Iuliu Moldovan who had filed application no. 41138/98 : Melenuța Moldovan, Lucaci Adrian Moldovan, Maria Lăcătuş, Bazil Sami Lăcătuş, Maria Moldovan, Adrian Moldovan (resident at Hădăreni, no. 195 A), Bazil Moldovan, Adrian Moldovan (resident at Hădăreni no. 170), Eleonora Rostaş, Ghiolanca Lăcătuş et Otilia Rostaş.

By a letter dated 9 May 2000 describing in full the alleged facts and violations of the Convention, the European Roma Rights Centre (ERRC), an association based in Budapest (Hungary), conveyed to the Court the wish of the following applicants, identified by their full names, to lodge an application with the Court: Silvia Moldovan, Mariana Moldovan in the name of her deceased mother Rozalia Rostaş, Dorina Persida Roastaş, Lucreția Rostaş, Valentina Rostaş, Octavian Rostaş, Floarea Maria Zoltan, Petru "Gălbinaş" Lăcătuş, Petru "Petrişor" Lăcătuş and Ferdinand Lăcătuş. In this letter, ERRC also requested to receive application forms, the relevant authorisation forms and any instructions for the filing of the application.

This application was also lodged in the name of all applicants in file no. 41138/98, with the exception of Lucreția Moldovan, Bazil-Sami Lăcătuş and Adrian Moldovan.

Between 9 May and 14 December 2000 the applicants mentioned in the letter of 9 May 2000 sent powers of attorney authorising the ERRC to represent them before the Court. On 21 November 2000 Mr Iuliu Moldovan, representing Lucreția Moldovan, Bazil-Sami Lăcătuş and Adrian Moldovan, submitted a power of attorney in favour of the ERRC.

On 14 December 2000 the ERRC submitted the application form and asked the Court to treat this application together with application no. 41138/98. The application originally introduced in May 2000 was thus registered on 8 January 2001 under no. 64320/01.

All applicants in both applications are currently represented before the Court by the European Roma Rights Centre (“ERRC”).

Some applicants have returned to live in Hădăreni, while others, who are homeless, live in various parts of the country. Mr Iulius Moldovan is currently living in Spain.

A. The circumstances of the case

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

1. The incident on 20 September 1993

On the evening of 20 September 1993, a conflict arose in a bar in the centre of the village of Hădăreni (Târgu-Mureş county). Rapa Lupian Lăcătuş and Aurel Pardalian Lăcătuş, two Roma brothers, along with another Roma, Mircea Zoltan, began to argue with a non-Roma, Cheţan Gligor. The verbal conflict developed into a physical one which ended with the death of Cheţan Crăciun, who had come to the aid of his father. The three Roma then fled the scene and sought refuge in the house of a neighbour.

Soon after, news of the incident spread and a large number of villagers learned of Cheţan Crăciun’s death. Enraged, they gathered together to find the Roma. The angry mob arrived at the house where the three were hiding and demanded that they come out. Among the crowd were members of the local police force in Hădăreni, including Chief of Police Ioan Moga, and Sergeant Alexandru Şuşcă, who had heard of the incident. When the brothers refused to come out, the crowd set fire to the house. As the fire engulfed the house, the brothers tried to flee but were caught by the mob who beat and kicked them with vineyard stakes and clubs. The two brothers died later that evening. Mircea Zoltan remained in the house, where he died in the fire. It appears that the police officers present did nothing to stop these attacks. The applicants allege that, on the contrary, the police also called for and allowed the destruction of all the Roma property in Hădăreni.

Later that evening, the villagers decided to vent their anger on all the Roma living in the village, and proceeded to burn Roma homes and

property in Hădăreni, including stables, cars and goods. The riots continued until the following day. In all, thirteen Roma houses belonging to the applicants were destroyed.

The individual applicants allege as follows:

a) Iulius Moldovan

The first applicant alleges that on 20 September 1993 it was on his property that the three Roma men were killed. His home and other property were set on fire and destroyed.

b) Melenuța Moldovan

The second applicant alleges that her house and various personal possessions were destroyed by the fire.

c) Valentina Rostaş

The third applicant lost her two nephews, Rapa Lupian Lăcătuş and Pardalian Lăcătuş, in the events on 20 September 1993. She also alleges that various personal possessions of hers were destroyed by the fire.

d) Lucreția Rostaş

The fourth applicant lost both her nephews, Rapa Lupian Lăcătuş and Aurel Pardalian Lăcătuş, in the events on 20 September 1993. She also claims that her home and various goods were destroyed.

e) Silvia Moldovan

The fifth applicant declares that her house was destroyed.

f) Eleonora and Octavian Rostaş

The sixth and seventh applicants declare that their house was destroyed by fire. In 1993 it was valued at ROL 50,000,000 and, although it was rebuilt, the house required additional repairs which would now cost ROL 20,000,000. They also allege that they lost other valuable goods and possessions in the fire.

g) Bazil Moldovan

The eighth applicant declares that his house was destroyed by fire.

h) Maria Moldovan

The ninth applicant alleges that, on the evening of 20 September 1993, an angry mob appeared at her door, entered the house and destroyed all her belongings. The mob then proceeded to set fire to her home and she watched as it was entirely destroyed by flames. The next day, when she returned home with her husband and daughter she was met by an enraged

mob of villagers who prevented her from entering the house. Police officers Ioan Moga, Alexandru Şuşcă and Florin Nicu Draghici took hold of her, sprayed a defense spray in her face and then proceeded to seriously beat her. Costică Moldovan witnessed these events. Colonel Draghici also fired at Costică Moldovan and his family as they tried to return home to fetch their pigs. The applicant declares that she suffered damage to her house and that she lost valuables and possessions.

i) Ghioloanca Lăcătuş

The tenth applicant states that on the night of 20 September 1993 her two houses, a stable and the family car were all destroyed by fire. In addition, all furnishings, goods and money in her home were destroyed.

j) Adrian Moldovan

The eleventh applicant declares that various personal possessions of his were destroyed.

k) Lucreţia Moldovan

The twelfth applicant alleges that on the night of 20 September 1993, when she returned home, she found an angry mob in the courtyard of her home. Fearing for her safety, she watched from a distance as her home and possessions were set on fire. She witnessed many villagers with clubs beating her horses and destroying her two cars and a van. She also witnessed a Roma male being beaten severely by a mob of villagers and several policemen present who did nothing to prevent this attack. The applicant ran to one of the men beating the Roma and asked him why the villagers were burning her home. The man, whom the applicant identified as Pavel Bucur, beat her, breaking her arm.

l) Maria Lăcătuş

The thirteenth applicant alleges that her house, goods and valuables were destroyed.

m) Otilia Rostaş

The fourteenth applicant alleges that on the evening of 20 September 1993 she learned from her eleven-year-old daughter what was happening in Hădăreni. Her daughter told her that a neighbour had said that the non-Roma villagers wanted to kill all the Gypsies in retaliation for the death of Cheţan Crăciun.

Fearing for the safety of her children, the applicant brought all her daughters to her mother's house. Later that evening, when she returned to her house, she witnessed several people gathered in front of the courtyard throwing stones and pieces of wood and eventually setting her house on fire.

As she ran back to her mother's house, she saw three persons armed with clubs urging the mob to set fire to her mother's place. Within minutes, her mother's home was in flames.

The following day, the applicant attempted to return to what was left of her home to assess the damage. As she approached her property, she was threatened verbally and physically by an angry mob of non-Roma villagers and police officers. One villager threatened her with a shovel and others violently threw rocks. The villagers, including the police officers present, prevented her from entering what remained of her home. Fearing for her safety, the applicant and her children left Hădăreni.

Later that day, she once again attempted to return to her home along with other Roma villagers. This time, the applicant found the road to her house entirely blocked by an even larger crowd of villagers, all of whom were carrying clubs. Police officers were also among the crowd. Among the enraged mob of villagers, the applicant recognised Officer Nicu Drăghici, who was holding a truncheon. One police car even pursued the applicant and other Roma trying to return to their homes, firing shots at them from their police car and shouting at them to leave the village. The applicant alleges that her house was destroyed and that she lost valuable goods.

n) Ferdinand Lăcătuş

The fifteenth applicant declares that his house was destroyed by fire and that he lost valuable goods and possessions.

o) Adrian Moldovan

The sixteenth applicant declares that his house was destroyed by fire, together with his hen-house, and that he lost valuable goods and possessions.

p) Petru "Gălbinaş" Lăcătuş

The seventeenth applicant declares that his two brothers were killed in the riots. He also claims that his house, although not set on fire as it was near a Romanian house, was wrecked and partly destroyed by villagers. He was later forced to sell his property at a very low price due to the destruction.

q) Petru "Petrişor" Lăcătuş

The eighteenth applicant states that his house was partly destroyed by the fire and that he lost valuable goods and possessions.

r) The case of Petru Gruia Lăcătuş

Petru Gruia Lăcătuş alleges that his house was destroyed, as were the three cars he had had in the courtyard.

s) Florea Maria Zoltan

The twentieth applicant states that on the night of 20 September 1993, her husband, Mircea Zoltan, and her two brothers, Rapa Lupian Lăcătuş and Aurel Pardalian Lăcătuş, were brutally murdered in the Hădăreni pogrom. She alleges that one of the thirteen Roma houses set on fire that evening belonged to her late mother, Cătălina Lăcătuş.

t) Persida Dorina Rostaş

The twenty-first applicant declares that her husband, Rapa Lupian Lăcătuş, was murdered on the night of the pogrom.

u) Mariana Moldovan on behalf of Rozalia Rostaş

The twenty-second applicant declared that her late mother had suffered damage to her home in an amount of 500,000 lei (ROL), and other personal possessions were destroyed as well.

v) Bazil-Sami Lăcătuş

The twenty-third applicant alleges that he suffered damage to his home and that other valuable belongings were destroyed, including a car.

x) Lucaci Moldovan

The twenty-fourth applicant alleges that his house was destroyed and that he lost valuable goods.

2. Investigation into the incident

In the aftermath of the incident, the Roma residents of Hădăreni lodged a criminal complaint with the Prosecutor's Office. The complainants identified a number of individuals responsible for what had occurred on 20 September 1993. Among those identified were several police officers - Chief of Police Ioan Moga, his assistant Sergeant Alexandru Şuşcă, Colonel Florentin Nicu Draghici, a certain Panzaru from Luduş, and Lieutenant Colonel Constantin Palade.

Thereafter, an investigation was initiated which identified the offenders who had actively participated in the killing of the Lăcătuş brothers and Mircea Zoltan, and in the destruction of Roma houses and other property.

On 21 July 1994 three civilians - Pavel Bucur, Iuliu Bucur and Nicolae Gall - were remanded in custody. They were charged in July 1994 with extremely serious murder (under Articles 174 and 176 of the Criminal Code) and arson (under Article 217 § 4 of the Criminal Code). However, a few hours later, they were released and all warrants for their arrest were cancelled by order of the General Prosecutor.

By an order of 31 October 1994, due to ample evidence that suggested police involvement in the incident, the case was sent to the Târgu-Mureş

Military Prosecutor's Office, which had jurisdiction to investigate crimes committed by police officers. According to the order of the Public Prosecutor's Office of Târgu-Mureş Court of Appeal, Lieutenant Colonel Palade had organised a small meeting with non-Roma villagers after the incident, advising them "not to tell anyone what the police had done if they wanted the incident to be forgotten and not have any consequences for themselves".

By a resolution dated 15 November 1994, the Târgu-Mureş Military Prosecutor's Office ordered the extension of the investigation and the initiation of a criminal investigation against Chief of Police Moga and Sergeant Şuşcă. According to the military prosecutor, the evidence produced so far indicated that these persons had incited the villagers to commit acts of violence against the Lăcătuş brothers and even participated directly in setting certain houses on fire.

On 10 January 1995, having regard to the fact that one of the accused was the Chief of Police, the Târgu-Mureş Military Prosecutor referred the case-file to the Bucharest Territorial Military Prosecutor's Office. However, the Bucharest Territorial Military Prosecutor's Office delegated jurisdiction back to the Târgu-Mureş Military Prosecutor's Office for an investigation into the circumstances of the incident.

On 22 August 1995, the competent military prosecutor from the Târgu-Mureş Military Prosecutor's Office issued a decision not to open a criminal investigation, stating that the evidence produced in the case had not confirmed the participation of Chief of Police Moga, Lieutenant Colonel Palade or Sergeant Şuşcă in the crimes committed during the riots. According to the prosecutor, "the lack of initiative and the incapacity of the policemen charged to influence the behaviour of the furious villagers" could not be considered to have been "a form of participation".

In September 1995 the Chief of the Bucharest Territorial Military Prosecutor's Office upheld the decision, refusing to open an investigation, and all charges against the police officers were dropped. The appeal lodged by the injured parties was dismissed by the Military Prosecutor's Office of the Supreme Court of Justice.

On 12 August 1997 the Public Prosecutor of the Târgu-Mureş Court of Appeal issued an indictment charging eleven civilians suspected of having committing the crimes on 20 September 1993.

Certain testimonies confirmed that the police had promised the villagers involved in the pogrom that they would help to cover up the entire incident. Several defendants testified that two police cars driving to the scene of the incident that night had ordered, over their loudspeakers, that the house where the three Roma victims were hiding be set on fire.

On 11 November 1997 a criminal trial, in conjunction with a civil case for damages, began before the Târgu-Mureş County Court against the civilian defendants. During these proceedings, the applicants learned of the

overwhelming extent of the evidence against the police. Various witnesses testified that police officers had not only been present that evening but actually instigated the incident and then stood idly by as the two Lăcătuş brothers and Mircea Zoltan were killed and Roma houses destroyed. In this connection, the names of Chief of Police Moga, Colonel Draghici and Sergeant Şuşcă were cited by witnesses.

In the light of numerous testimonies implicating additional individuals, both civilians and police officers, the applicants' lawyer asked the court to extend the indictment of 17 July 1997. As a result, the civilian prosecutor sent the appropriate military prosecutor the information on which to base proceedings before a military court against the officers concerned.

The applicants Iulius Moldovan and Floarea Zoltan asked the court in writing to extend the criminal charges. They claim that the acting prosecutor refused to do so.

On 23 June 1998 the Târgu-Mureş County Court severed the civil and the criminal case, taking into account that the criminal investigation had lasted for four years and that the determination of the civil aspect would take even longer.

3. The judgment of 17 July 1998 and the decisions on appeal

On 17 July 1998 the Târgu-Mureş County Court delivered its judgment in the criminal case. It started by noting the following:

“The village of Hădăreni, pertaining to the commune of Cheţani, is situated in the south-west of the Mureş district, along the national road Târgu-Mureş – Cluj and has a population of 882 inhabitants, out of which: 641 are Romanians, 145 Hungarians and 123 Roma.

The Roma community represents 14% of the total number of the population and the marginal lifestyle of some categories of Roma, especially the ones who settled in the village after 1989, often generated serious conflicts with the majority of the population.

Due to their lifestyle and their rejection of the moral values accepted by the rest of the population, the Roma community has marginalised itself, shows aggressive behaviour and deliberately denies and violates the legal norms acknowledged by society.

Most of the Roma have no occupation and earn their living by performing occasional activities, stealing and engaging in all kinds of illicit activities. As the old form of common property that gave them equal rights with the other members of the community was terminated, the Roma populations were allocated plots of land. However, they did not work the land and continued to steal, to commit acts of violence and to commit attacks, mainly against private property, which has generated even more rejection than before.

Groups of Roma started conflicts with the young people in the village, attacked them, or stole their goods and money.

Moreover, they ostentatiously use insults, profanities and vulgar words in public places.

...

The records of the criminal investigation authorities and of the courts of law in the Mureş district disclose that seven criminal cases were registered between 1991-1993, having as their object acts of violence, ranging from simple blows to murder.

In fact, the real number of the crimes committed by the Roma was much higher, but many of them were not judged in court, because the injured parties did not file complaints, withdrew them or made peace with the perpetrators, for fear of the Roma vindictive threats.

The community feels that most of the conflicts were solved in an unfair, unsatisfactory manner, in favour of Roma and this caused an increase in the number of personal or collective vindictive actions.”

The court went on to establish that, on the evening of 20 September 1993, the Lăcătuş brothers and Mircea Zoltan had been waiting at the village bus station and had quarrelled with Cheţan Gligor about the attempts made by the three Roma to attract the attention of a girl. Answering the Roma’s mockery and insults addressed to him and to his cow, Cheţan Gligor started to threaten the Roma with his whip and even hit Pardalian Lăcătuş. A fight followed, during which Cheţan Crăciun, who had intervened to defend his father, was stabbed in the chest by Rapa Lupian Lăcătuş. The Roma ran away, while Cheţan Crăciun was brought to the hospital, where he died about half an hour later. During that time, the Roma men took refuge in the house of the applicants Lucreţia and Iulius Moldovan, while villagers gathered around the yard of the house. Two police officers, Chief of Police Moga and Sergeant Şuşcă, arrived at the scene of the incident minutes later, having been called by some villagers. The policemen were under the influence of alcohol. Before and after the arrival of the police, the villagers threw stones, pieces of wood and clods of earth at the house and shouted things like, “Set fire to the house! Let them burn like rats!” A villager started to throw flammable materials at the house and was soon followed by others, including children. When the fire spread, two of the Roma men came out of the house. Rapa Lupian Lăcătuş was immediately immobilised by Chief of Police Moga, while Pardalian Lăcătuş managed to run away. Mircea Zoltan was stopped from coming out of the house by a villager and was hit by another’s fist and a shovel, which finally led to his dying in the fire. His carbonized body was found the following day in the burned down house. The autopsy report established that he died due to respiratory insufficiency, 100% carbonised.

To escape the fury of the villagers, the Chief of Police Moga took Rapa Lupian Lăcătuş to the cemetery, after trying in vain to enter several courtyards in the village, which were all locked. The court noted that “the

policeman [Moga], realising his presence was useless, abandoned his prisoner to the infuriated crowd”. According to the autopsy report, Rapa Lupian Lăcătuş died a violent death due to traumatic shock and bleeding, with multiple traumatic injuries that affected his liver and the hemiperitoneum, wounds and peripheral haematoma on 70 % of his body.

Pardalian Lăcătuş was caught by the crowd near the cultural centre, where he was beaten to death. The autopsy report found that he had died as a result of direct blows from blunt objects causing 89 lesions on his body (multiple fractures of his arms, ribs and thorax, and multiple traumatic injuries and contusions).

During the trial, all the civilians accused stated that, in addition to the officers Moga and Şuşcă, two other policemen arrived from the city of Luduş, and encouraged the crowd to set fire to the houses. Two police cars also arrived at Hădăreni, and it was announced over loudspeakers that only the detached houses of the Gypsies should be set on fire, in order not to cause accidents. At a meeting held the next day in the village square, Lieutenant Colonel Palade stated that the case would be covered up and that a scapegoat would be found. All the accused stated that they had been arrested for the first time in 1994, but only for a few hours or days, after which they had been released in order to allow them to harvest the crops, a reason they found strange, since most of them were not farmers. They also stated that very few questions were put to them and that the prosecutor even tried to put pressure on them. They were not interrogated further until 1997, when they were arrested again.

The court further established that the villagers had declared that, on the night in question, the village was to be “purged of the Gypsies”, an intention clearly put into action, and found that,

“the majority of the population of Hădăreni was directly or indirectly supported by the representatives of the authorities who came to the village and not only did nothing to stop the houses being set on fire, but also surrounded the area with groups of gendarmes.”

The court found that the action was not premeditated, but that all those present had acted jointly, in different ways (aggression, murder, fire, destruction), to reach their declared goal, that of eliminating the Roma community from the village.

The court held that the preliminary investigation had been inadequate:

“we deem that the inadequate manner in which the acts and ... procedures related to the investigation were performed reflect a negative attitude ... The same can be noted regarding the delayed submission of the autopsy reports on the victims (Cheţan Crăciun, Lăcătuş Rapa Lupian and Zoltan Mircea died on 21 September 1993 and the forensic reports were drafted in November 1993; mention should be made that none of the four forensic reports gave specific dates, but only an indication of the month when they were drafted) ... [Moreover,] the electoral meeting organised at the village stadium, attended by politicians, representatives of the police and the law, ... asked the population not to tell the truth and to delay the resolution of the case.”

The court also noted that the prosecution had not accepted an extension of the criminal investigation or the initiation of criminal proceedings against “other persons”. Therefore the court could only rule on those perpetrators pursued in accordance with Article 317 of the Code of Criminal Procedure.

The court convicted five civilians of extremely serious murder under Articles 174 and 176 of the Criminal Code and twelve civilians, including the former five, of destruction, offences against morality and the disturbance of public order. Among those convicted of destruction and disturbance was V.B., Deputy Mayor of Hădăreni. The court issued prison sentences ranging from one to seven years, and noted that those given terms of less than five years had half the sentence pardoned by Law no. 137/1997. The court justified the sentences as follows:

“Taking into consideration the characteristics of this particular case, the punishments applied to the defendants might seem too mild compared to the gravity of the crimes. We consider that, as long as persons who contributed to a greater extent to the criminal actions were not prosecuted and were not even the subject of an investigation, although there was enough evidence to prove their guilt, the defendants who were prosecuted should not be held responsible for all the crimes committed, but only for that part for which they are liable.”

On 17 July 1998 the Prosecutor’s Office appealed against this judgment, asking, *inter alia*, for heavier sentences. On 15 January 1999 the Târgu-Mureş Court of Appeal convicted a sixth civilian, Petru B., of extremely serious murder under Articles 174 and 176 of the Criminal Code, sentencing him to six years’ imprisonment. It further increased the sentence under Article 174 in respect of Nicolae G. to six years’ imprisonment. However, it diminished the other sentences under Articles 174 and 176: in respect of Vasile-Dorel B. and Severius-Ioan P. from seven to six years’ imprisonment, in respect of Vasile BN. and Simion F. from five to two years’ imprisonment, and in respect of Nicolae B., Iuliu B. and Olimpiu V. from three to two years’ imprisonment. Finally, it discontinued the criminal proceedings against the Deputy Mayor V.B.

The Court of Appeal also reduced the sentences of those convicted of destruction under Article 217.

On 22 November 1999 the Supreme Court of Justice upheld the lower courts’ convictions for destruction, but reduced the charges of extremely serious murder to a lesser charge of serious murder for Vasile-Dorel B., Pavel B. and Severius-Ioan P., sentencing them to five years’ imprisonment, and acquitted Petru B. and Nicolae G.

By a decree of 7 June 2000, the President of Romania issued individual pardons to Severius-Ioan P. and Pavel B., convicted of extremely serious murder, whereupon they were released.

4. Appeal procedure concerning the refusal to open an investigation against State authorities

On 22 August 1999, based on new evidence brought to light in the criminal trial, the applicants lodged an appeal with the Military Prosecutor's Office of the Supreme Court of Justice against the decision of 22 August 1995 not to open an investigation against the police officers involved in the incidents of 20 September 1993.

On 14 March 2000 the Chief Military Prosecutor of the Supreme Court of Justice upheld the Bucharest Military Court's decision of 22 August 1995.

5. Reconstruction of the houses destroyed during the events and the victims' living conditions

By decision no. 636 of 19 November 1993, the Romanian Government allocated 25 million ROL for the reconstruction of the eighteen houses destroyed by fire on 20 September 1993. The Government decided, moreover, that this amount could also be used as financial assistance for the families affected in order to help them replace items of strict necessity destroyed during the fire. However, only four houses were rebuilt with this money and none of the families received financial assistance.

By a Government decision of 30 November 1993, a commission for the co-ordination of the reconstruction of the houses was created. Membership of this commission included the mayor of Cheţani, G.G., and his Deputy, V.B.

In a letter of 30 June 1994 addressed to the Government, the Prefecture of Mureş indicated that an additional amount of 53 million ROL was needed to rebuild the remaining ten houses.

By decision no. 773 of 25 November 1994, the Government granted an additional sum of 32 million ROL in funds, which had been earmarked for natural disasters occurring between March and September 1994. Four other houses were rebuilt. As shown by pictures submitted by the applicants, these constructions were defective, as there appear to be huge gaps between the window frames and the walls, and the roofs only partially cover the houses.

In a letter dated 30 November 1994 addressed to the Prefect of Mureş, Petru Rostaş, the father-in-law of the applicant Otilia Rostaş, requested that her house be rebuilt as a priority because, since the events, she had been living with her four children in a hen-house.

In a letter dated 8 November 1995, *Liga Pro Europa*, a human rights association based in Târgu-Mureş, informed the Prefect that six houses had still not been rebuilt, which meant that six families had to spend another winter without a dwelling. Moreover, according to the association, most

victims complained about the bad quality of the rebuilt houses and alleged that the money allocated for this purpose had been improperly used.

In a letter addressed to the Prefecture in 1995, the mayor of Cheţani (of which Hădăreni is a part), G.G., a member of the reconstruction committee, reported that, of the fourteen houses completely destroyed by the fire, eight had been rebuilt or almost rebuilt. Concerning the remaining six houses, he reported that three of them posed “special problems” based in part on “the behaviour of the three families”, “the seriousness of the acts committed and the attitude of the population of Hădăreni towards these families”. In particular, one of the houses to be rebuilt was on land near the non-Rom family’s victim (Cheţan Crăciun), who refused to have “Gypsy families” living close by. Another problem involved the return of the land on which the family of Lucaci Moldovan had been living for the past ten years to its previous owner. The applicants claim that the return of this property was in violation of Law no. 18/1991 on agricultural land. A third problem mentioned by the mayor was the house of the mother, since deceased, of two of the Roma “criminals” who died during the 1993 events. It appeared that, after the events, the Lăcătuş family had started living in the city of Luduş, so the mayor had proposed that a house be built for them at a place of their choice.

The three above-mentioned houses have not been rebuilt to date.

On 2 September 1997 the applicant Iulius Moldovan wrote a letter to the President of Romania, informing him that six houses, including his, had still not been rebuilt. He urged the President to grant the necessary funds for the reconstruction of the houses, since he and his family were living in very difficult conditions in the home of the Rostaş family: fifteen people, including nine children, were living in two rooms and sleeping on the floor, which resulted in the children’s continuous illness.

6. Outcome of the civil trial

Following the decision of 23 June 1998 to sever the civil and criminal proceedings, on 12 January 2001 the Mureş Regional Court delivered its judgment in the civil case. The court noted that the victims had requested pecuniary damages for the destruction of the houses and of their contents (furniture, etc.) as well as non-pecuniary damages. The court further noted that during the events on 20 September 1993, eighteen houses belonging to the Roma population in Hădăreni had been totally or partially destroyed and three Roma had been killed, a criminal court having found twelve villagers guilty of these acts. Basing itself on an expert report, the court awarded pecuniary damages for those houses which had not been rebuilt in the meantime, and maintenance allowances for the children of the Roma killed during the riots. On the basis of an expert report, the court allowed pecuniary damages in respect of the partial or total destruction of the houses of the fifth, ninth, fifteenth, seventeenth, eighteenth and nineteenth

applicants. The court rejected the other applicants' request for pecuniary damages in respect of the rebuilt houses, finding, on the basis the same expert report, that their value was either the same or even higher than the original buildings. It further refused all applicants damages in respect of belongings and furniture on the ground that they had not submitted documents to confirm the value of their assets, and were not registered as tax payers capable of acquiring such valuable assets. The court stated, *inter alia*:

“Mr Iulius Moldovan did not submit documents proving with certainty that he had any belongings. He claimed in particular that he was in the sheep business, from which he drew a substantial income, for instance, that he had in the attic of his house a ton of wool. However, from the information obtained by the court from the local tax office in Cheţani, it appears that the civil party was not registered as having any income. ...

The damage suffered as a result of the destruction of the chattels and furniture has not been substantiated. The civil parties consider that their own statements, the lists with the belongings destroyed submitted to the court and the statements of the other witnesses who are also civil parties, should be enough to substantiate their claims. Having regard to the context in which the destruction occurred and to the fact that all civil parties suffered losses, the court will dismiss as obviously insincere the statements made by each civil party in relation to the losses suffered by the other civil parties.

Last but not least, the type of belongings allegedly destroyed and the quantity of goods allegedly in the possession of each civil party, show a much more prosperous situation than that which a family of average income could have. Neither civil party adduced proof of having an income such as to allow them to acquire so many goods. As noted previously, the parties had no income at all. Moreover, the shape of the houses, the materials used for their construction and the number of rooms, show an evident lack of financial resources. It should be stressed in this context that only work can be the source of revenue, and not events such as the present one...”

The court finally rejected all the applicants' requests for non-pecuniary damages on the ground that they had not substantiated their claim and that the crimes committed were not of such a nature as to produce moral damage.

The court ordered the villagers convicted in the criminal trial to pay the damages awarded.

Having regard to some errors in the Mureş Regional Court's judgment, for instance the failure to mention the third minor child of the murdered victims, the applicants lodged an appeal with the Mureş Court of Appeal. These proceedings are apparently still pending.

B. Relevant domestic law and practice

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 can suspend the proceedings,

“...2. if criminal proceedings were instituted in relation to a crime, the determination of which is decisive for the outcome of the civil dispute.”

Code of Criminal Procedure

Article 10 (c)

“Criminal proceedings cannot be instituted and, if instituted, cannot be continued if ...

c) the act was not committed by the defendant;... ”

Article 15

“The person who has suffered civil damage can join the criminal proceedings...

He or she can do so either during the criminal investigation... or before the court...”

Article 22

“The findings contained in a final judgment of the criminal court concerning the issue whether the act in question has been committed, the identification of the perpetrator and his guilt, are binding on the civil court when it examines the civil consequences of the criminal act.”

Civil Code

Articles 999 and 1000 of the Civil Code provide that any person who has suffered damage can seek redress by bringing a civil action against the person who has, through fault, caused it.

Article 1003 of the Civil Code provides that when more than one person have committed an intentional or negligent tort, they shall be jointly and severally liable.

Case-law of the domestic courts

The Government submitted a number of cases examined by domestic courts in which it was decided that the prosecutor’s decision not to open a

criminal investigation on the ground of the absence of intention - as an element of the offence - did not prevent the civil courts from examining a civil claim arising out of the commission of the act by the person in question.

COMPLAINTS

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

2. Relying on Article 6 of the Convention, they complain that the failure of the authorities to carry out an adequate criminal investigation, culminating in formal charges and the conviction of all the individuals responsible, has deprived the applicants of their right to file a civil action for damages against the State in respect of the misconduct of the police officers concerned. This failure has allegedly deprived the applicants of a determination of their civil rights in order to establish liability and recover damages, both pecuniary and non-pecuniary, for the injury they suffered at the hands of police officers.

The applicants Iulius Moldovan, Melenuța Moldovan, Eleonora Rostaş, Bazil Moldovan, Maria Moldovan, Ghioloanca Lăcătuş, Adrian Moldovan (resident at Hădăreni, no. 195 A), Lucreția Moldovan, Maria Lăcătuş, Otilia Rostaş, Adrian Moldovan (resident at Hădăreni no. 170), Petru-Gruia Lăcătuş, Bazil-Sami Lăcătuş and Lucaci Moldovan, also complain that, due to the length of the criminal proceedings, the civil proceedings have not yet ended.

3. The applicants complain under Article 8 of the Convention that currently, due to the incident at issue resulting in the deliberate destruction of their homes, most of them cannot live in their houses, since only eight of them have been rebuilt, and this was by their own means. As for the houses which have been rebuilt, due to a lack of money they have only been partially and superficially reconstructed. Therefore, they are not entirely habitable, as they used to be.

4. The applicants submit that, due to their ethnicity, they were victims of discrimination by judicial bodies and officials, contrary to the principle of non-discrimination set out in Article 14 of the Convention taken together with Articles 3, 6 and 8. In particular, they complain about their living conditions after the ratification of the Convention and about the remarks made by the Târgu-Mureş County Court in its judgment of 17 July 1998, allegedly full of anti-Roma sentiment.

They stress that the report of the European Commission against Racism and Intolerance in 1999 on Romania stated that "... violent acts are publicly

committed against members of various minority groups, particularly Roma/Gypsies, which could have the effect of implying certain approval of racist acts and attitudes”.

THE LAW

The applicants allege that the destruction of their property and the ensuing consequences violated Articles 3, 6, 8 and 14 of the Convention, which guarantee, *inter alia*, freedom from inhuman and degrading treatment, access to court for a fair determination of civil rights and obligations, the right to respect for private and family life and the home, and freedom from discrimination in the enjoyment of Convention rights and freedoms.

A. The validity of the applications

The respondent Government allege that the applications have not been lodged in due form. They contend that most of the powers of attorney submitted by the applicants are not valid, since many of them have not been signed and/or dated.

The applicants claim that there is no requirement under the Convention to have the date appear on an authorisation, as long as it was made with their understanding and agreement. They stress that their failure to comply with the requirements of Romanian law regarding powers of attorney is irrelevant and rely on the case of *Velikova v. Bulgaria* ([GC], no. 41488/98, §§ 50-52, ECHR 2000-VI).

They submit that they are uneducated agricultural workers and that many of them are illiterate. For this reason, some applicants had their authorisations signed by members of their family, who are themselves applicants. However, all of them subsequently confirmed their wish to lodge an application or to join the applications already lodged. As to the date when the authorisations were signed and submitted to the Court, the applicants allege that their requests to join an application are not time-barred and therefore cannot be considered to be invalid. They admit that an issue might arise with regard to the six-month rule in so far as the applicants allege a violation of their right of access to court. However, this would in any event concern only two applicants, Mmes Floarea Maria Zoltan and Doina Persida Rostaş, who submitted their authorisations on 12 December 2000, more than six months after the final decision of 14 March 2000. Moreover, the violations alleged under Articles 3, 8 and 6 (length of proceedings) of the Convention are of a continuous nature and consequently, in respect of these complaints, the aforementioned applicants

did file their authorisations within the time-limit required by Article 35 § 1 of the Convention. Having regard to this aspect, the applicants request the Court to consider all the claims submitted by Mmes Zoltan and Rostaş, since the purpose of the six-month rule - to ensure legal certainty and the examination of cases within a reasonable time - was fulfilled.

The Court first notes that the Government do not deny that the powers of attorney submitted by the applicants are authentic, but claim that most of them are invalid. It next notes that on 14 April 1997 the first applicant, Iulius Moldovan, lodged an application with the European Commission of Human Rights in his capacity as President of the association Speranța, grouping together the victims of the present alleged violations of the Convention. Several applicants submitted authorisations in his favour.

On 9 May 2000 the ERRC lodged an application with the Court, registered under no. 64320/01, in the name of twenty-one applicants, of which eleven were already applicants in the case no. 41138/98. Between 9 May 2000 and December 2000 all twenty-four applicants had submitted powers of attorney in favour of the ERRC.

The Court observes that, contrary to the Romanian Government's allegations, all powers of attorney were signed, with the exception of the authorisation submitted by Lucreția Moldovan. Her authorisation, submitted in the course of 1998, stated that she wished to join the application no. 41138/98 lodged by Iulius Moldovan. Although not signed, the statement contains the applicant's domicile, at Hădăreni no. 2, and specifies the damages claimed by her. It is true that other authorisations were signed by family members and not by the applicants themselves. However, the Court notes the applicants' statements that some of them are illiterate. Moreover, having regard to the allegations that some applicants are homeless, travelling across the country to find a place to live, the Court is satisfied that the authorisations signed by family members represent the applicants' wish to lodge an application.

Moreover, the Court observes that at no time did the respondent Government claim that the applications had been lodged without the applicants' consent or that the applicants wished to withdraw them or had lost interest in pursuing them.

In these circumstances, the Court is satisfied that all the statements submitted by the applicants and the grant of powers of attorney to Iulius Moldovan and the ERRC are valid. The Court finds therefore that there is no doubt that the applications disclose a genuine and valid exercise of the applicants' right of individual petition under Article 34 of the Convention and that the Court is competent to examine them.

B. Compliance with the six-months' rule

The Government contend that some applicants submitted their complaints out of time. They state that certain applicants submitted their power of attorney later than the dates of introduction of the applications. Therefore, they should be considered to have lodged their applications on the dates when each power of attorney was submitted and not on 14 April 1997 for application no. 41138/98 or 9 May 2000 for application no. 64320/01. Therefore, the six-month rule provided for in Article 35 § 1 of the Convention should be applied.

The applicants submit that they lodged their applications within the six months period prescribed by Article 35 § 1, since the final decision was given on 10 November 1999 and the application form of the second application was submitted on 9 May 2000.

The Court notes that the final decisions in the present case are the decision of the Supreme Court of Justice of 22 November 2000 and the decision of 14 March 2000 of the Chief Military Prosecutor of the Supreme Court of Justice not to open a criminal investigation concerning the police officers.

Taking into account that the present applications were duly lodged on 14 April 1997 and 9 May 2000 respectively, that as regards application no. 41138/98 all the applicants were specified in June 1998 whereas, as regards application no. 64320/01, all the applicants had been identified on 9 May 2000, within six months of the aforementioned decisions, the Court considers that the Government's objection should be rejected.

C. On the merits

1. The applicants complain in substance, some specifically, under Articles 3 and 8 of the Convention, that after the destruction of their homes they could no longer enjoy the use of their homes, but had to live in very poor, cramped conditions.

The Government claim that the State authorities bear no responsibility for the destruction of the applicants' houses. The State therefore has only positive obligations under Articles 3 and 8, obligations which were fulfilled in this case by granting aid to the applicants to rebuild their homes. In any event, the Government consider that there is no obligation under the Convention to provide a home to persons who are in a difficult situation and they rely in this respect on the cases of *Buckley v. the United Kingdom* (judgment of 25 September 1996, *Reports of Judgments and Decisions*, 1996-IV), and *Chapman v. the United Kingdom* ([GC], no.27238/95, § 99, 18 January 2001).

The applicants claim that State officials were involved in the destruction of their homes, including police officers and a Deputy Mayor, the latter having been convicted of a criminal offence in the case. They also point out that the State has positive obligations under Articles 3 and 8, and rely in this respect on a number of cases, for instance *Burton v. the United Kingdom* (no. 31600/96, Commission decision of 10 September 1996), *Marzari v. Italy* (decision, no 36448/97, 4 May 1999 unreported), and *Fadele v. the United Kingdom* (no. 13078/87, Commission decision of 12 February 1990). The applicants allege that it was incumbent on the Romanian Government to provide sufficient compensation to restore the applicants to their previous living conditions. Moreover, local officials were responsible for the management or mismanagement of the reconstruction funds and efforts, and made decisions not to rebuild particular homes in retaliation for perceived “behavioural problems”. The applicants also claim that the houses reconstructed by the State were built badly and are largely uninhabitable.

The Government’s failure to respect their positive obligations resulted in families with small children and elderly members being forced to live in inhuman conditions in cellars, hen-houses, stables, burned-out shells, or to move in with friends and relatives in such overcrowded conditions that frequent illness occurred.

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 should depend on an examination of the merits. The Court therefore concludes 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. Relying on Article 6 § 1 of the Convention, the applicants complain that the failure of the authorities to carry out an adequate criminal investigation, culminating in formal charges and the conviction of all individuals responsible, has deprived them of their right to file a civil action for damages against the State with respect to the misconduct of the police officers concerned.

Several applicants also complain that, due to the length of the criminal proceedings, the civil proceedings have not yet ended.

The Government contend that, despite the prosecutor’s decision not to pursue the police officers allegedly involved in the riots, the applicants could bring a civil action against the police on the basis of Articles 999 and 1000 of the Civil Code, if the police were shown to have caused damage for which they were responsible. They also allege that Article 22 of the Code of Criminal Procedure is not an obstacle preventing the applicants from bringing such a civil action. Moreover, the Government point out that the right of access to court does not include a right to bring criminal proceedings against a third person or to see this person convicted. They rely

in this respect on the case of *Assenov and Others v. Bulgaria* (judgment of 28 October 1998, *Reports* 1998-VIII).

Concerning the length of the proceedings, the Government consider that the case was a complex one, taking into account that it concerned crimes committed by many villagers during a whole night, and that an expert assessment of the value of the damaged property was needed. They allege that the applicants are partly responsible for the length of the civil proceedings, as for many weeks they refused to pay the expert appointed by the court.

The applicants claim that, having regard to the fact that the decision not to prosecute was based on Article 10 (c) of the Code of Criminal Procedure, that is, the accused did not commit the acts in question, they could not bring a civil action against the police. Such a finding is inconsistent with bringing an action against a person, since it presupposes that the impugned act was committed by the purported defendant, who, for one reason or another, does not incur any criminal liability. The applicants agree that the situation would have been different had the prosecutor based his decision not to prosecute on the policemen's lack of guilt.

Moreover, according to Article 1003 of the Civil Code, all civil defendants must be sued in the same proceedings, being jointly liable. Therefore, the applicants could not have sued the police officers separately from the civilians. Finally, the applicants stress that the current situation differs from that in the *Assenov* case, in which the police could have been sued in a civil court on the basis of the Law on State Responsibility for Damage, the action in that case being exempted from the payment of court costs. Romanian law does not have provisions enabling a person to sue a policeman in a civil court for alleged ill-treatment. Even assuming that the applicants could have filed a civil action against the policemen, because of their indigence they would not have been able to pay the court costs - 10 % of the damages requested - which would have resulted in the court refusing to examine the merits of the claim.

As to the complaint of an unreasonable length of proceedings, the applicants contend that, despite the numerous potential defendants and witnesses involved, the case was not very complex. The facts were relatively straightforward, the applicants having been able to provide the police with the names of many of the people involved. The case did not present any novel or complex legal issues. The Romanian authorities delayed from September 1993 until January 1997, without providing any credible reason, before effecting the arrest of the accused. The applicants refute the Government's allegation that delay resulted from their non-payment of the expert's fees. They point out that they are absolutely impoverished, living in abysmal conditions, and unable to pay for expert assistance and that, if their financial inability to pay such fees results in the

loss of their right to a determination of their civil claims, that in itself would constitute a violation of Article 6 § 1 of the Convention.

Moreover, the civil claims involve very high stakes for the applicants - efforts to rebuild shattered homes and lives in order to provide decent living conditions for their children and other family members.

They rely on a considerable body of case-law of the Court, including the cases of *Torri v. Italy* (judgment of 1 July 1997, *Reports* 1997-IV), *Corigliano v. Italy* (judgment of 10 December 1982, Series A no. 57), *Bunkate v. Netherlands* (judgment of 26 May 1993, Series A no. 248-B), and *De Micheli v. Italy* (judgment of 26 February 1993, Series A no. 257-D).

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 should depend on 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.

3. The applicants submit that, due to their ethnicity, they were victims of discrimination by judicial bodies and officials, contrary to the principle of non-discrimination set out in Article 14 of the Convention, taken together with Articles 3, 6 and 8. In particular, they complain about their living conditions after the ratification of the Convention by Romania and about the remarks made by the Târgu-Mureş County Court in its judgment of 17 July 1998, allegedly full of anti-Roma sentiment.

The Government submit that, as there was no violation of either Articles 3 or 8, the applicants could not allege a violation of Article 14. In any event, the State authorities provided help to the Roma community in Hădăreni on the same terms as that provided to other categories of the population, for instance those affected by natural disasters. No discrimination has therefore been established. In so far as the applicants rely on Article 6 combined with Article 14, the Government contend that the impugned terms were used during criminal proceedings in which the applicants were not the accused, but civil parties. Article 6 does not therefore apply to those proceedings and Article 14 could not be relied on.

The applicants contend that local officials, in particular, the mayor of Hădăreni in his information note concerning the situation of the Gypsy houses to be rebuilt, demonstrated an obvious bias against the Roma families, in violation of Article 3 and 8 combined with Article 14. Moreover, the remarks made by the Târgu-Mureş County Court in its judgment of 17 July 1998, although made in the course of the criminal proceedings after the severance of the civil and criminal cases, could have consequences for the outcome of the civil case, having regard to the close relation in Romanian law between the criminal proceedings and the civil claims.

Furthermore, the civil court's abrupt dismissal, in the judgment of 12 January 2001, of any claims relating to goods or furnishings, its comments characterising the applicants as liars and tax evaders, its refusal to award non-pecuniary damages for the destruction of homes, and the very low, inappropriate award of damages, constituted discrimination in the enjoyment of the applicants' right to a fair hearing of their civil claims, in violation of Article 6 combined with Article 14.

The Court considers, in the light of the parties' submissions, that this complaint also raises serious issues of fact and law under the Convention, the determination of which should depend on an examination of the merits. The Court therefore concludes 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 applications admissible, without prejudging the merits of the case.

S. DOLLÉ
Registrar

J.-P. COSTA
President