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

FORMER SECOND SECTION

CASE OF MOLDOVAN AND OTHERS v. ROMANIA

(as regards the applicants Iulius Moldovan, Melenuța Moldovan, Maria Moldovan, Otilia Rostaş, Petru (Gruia) Lăcătuş, Maria Floarea Zoltan and Petru (Dîgăla) Lăcătuş)

(Applications nos. 41138/98 and 64320/01)

JUDGMENT No. 2

STRASBOURG

12 July 2005

FINAL

30/11/2005

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Moldovan and Others v. Romania (as regards Iulius Moldovan, Melenuța Moldovan, Maria Moldovan, Otilia Rostaş, Petru (Gruia) Lăcătuş, Maria Floarea Zoltan and Petru (Dîgăla) Lăcătuş),

The European Court of Human Rights (Second Section), sitting 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 deliberated in private on 3 June 2003 and 16 June 2005,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in two applications (nos. 41138/98 and 64320/01) against Romania lodged respectively with the European Commission of Human Rights ("the Commission") under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 14 April 1997 and with the European Court of Human Rights on 9 May 2000. The applicants were twenty-five Romanian nationals of Roma origin. Eighteen of the applicants are the subject of a separate judgment (No. 1) involving a friendly settlement. The seven applicants who are the subject of the present judgment on the merits (No. 2) are as follows: the first applicant, Iulius Moldovan, was born in 1959; the second applicant, Melenuţa Moldovan, was born in 1963; the third applicant, Maria Moldovan, was born in 1940; the date of birth of the fourth and fifth applicants, Otilia Rostaş and Petru (Gruia) Lăcătuş (resident at Hădăreni, no. 114), is unknown; the sixth applicant, Maria Floarea Zoltan, was born in 1964; and the seventh applicant, Petru (Dîgăla) Lăcătuş (resident at Hădăreni, no. 148) was born in 1962.

2. The applicants in both applications, with the exception of the first applicant, Mr Iulius Moldovan, were represented before the Court by the European Roma Rights Centre ("the ERRC"), an organisation based in Budapest, some of them having originally been represented by the first applicant. The Romanian Government ("the Government") were represented by their Agent, Mrs R. Rizoiu, from the Ministry of Foreign Affairs.

3. The applicants alleged, in particular, that the destruction of their property during a riot on 20 September 1993, and the ensuing consequences, disclosed a breach by the respondent State of its obligations under Articles 3, 6, 8 and 14 of the Convention.

4. Application no. 41138/98 was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. The applications were allocated to the Second Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

6. On 13 March 2001 the Chamber decided to join the proceedings in the applications (Rule 42 § 1).

7. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Second Section (Rule 52 § 1).

8. By a decision of 3 June 2003, the Court declared the applications partly admissible.

9. The Chamber having decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 3 *in fine*), the parties replied in writing to each other's observations.

10. On 4 and 19 March 2004, after an exchange of correspondence, the Registrar suggested to the parties that they should attempt to reach a friendly settlement within the meaning of Article 38 § 1 (b) of the Convention. On 19 April 2004 and 18 May 2004 eighteen of the original applicants and the Government, respectively, submitted formal declarations accepting a friendly settlement of the case.

11. On 19 April 2004, the present applicants informed the Court that they did not wish to reach a friendly settlement.

12. On 1 November 2004 the Court changed the composition of its sections (Rule 25 § 1), but this case was retained by the former Second Section.

13. On 16 June 2005, the Court adopted the first judgment striking the case out of the list insofar as it concerned the friendly settlement between the eighteen applicants and the Government. That judgment severed the application insofar as it concerns the present applicants and adjourned the examination of the complaints introduced by them.

14. The present judgment (No. 2) examines the merits of those complaints.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

15. The applicants are Romanian nationals of Roma origin. They used to live in the village of Hădăreni, in the Mureş district, and are agricultural workers. After the events described below, some applicants 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 and Mrs Maria Floarea Zoltan is living in the United Kingdom.

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

A. The incident in 20 September 1993

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

18. Soon afterwards, news of the incident spread and a large number of villagers learned of Chețan 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 the 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 alleged that, on the contrary, the police also called for and allowed the destruction of all Roma property in Hădăreni.

19. Later that evening the villagers decided to vent their anger on all the Roma living in the village and proceeded to burn the 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 made the following allegations:

1. Iulius Moldovan

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

2. Melenuța Moldovan

21. The applicant alleged that her house and various personal possessions were destroyed by the fire.

3. Maria Moldovan

22. The applicant alleged that, on the evening of 20 September 1993, an angry mob had appeared at her door, entered the house and destroyed all her belongings. The mob had then proceeded to set fire to her home and she had watched as the flames destroyed it. The next day, when she had returned home with her husband and daughter, she had been met by an enraged mob of villagers who had prevented her from entering the house. Police officers Ioan Moga, Alexandru Şuşcă and Florin Nicu Drăghici had taken hold of her, sprayed pepper in her face and then proceeded to beat her badly. Costică Moldovan had witnessed these events. Colonel Drăghici had also fired at Costică Moldovan and his family as they tried to return home to fetch their pigs. The applicant declared that her house had been damaged and that she had lost valuables and other possessions.

4. Otilia Rostaş

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

24. Fearing for the safety of her children, the applicant had taken them to her mother's house. Later that evening, when she returned, 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 people armed with clubs, urging the mob to set fire to it. Within minutes, her mother's home was in flames.

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

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

5. Petru (Gruia) Lăcătuş

27. Petru (Gruia) Lăcătuş alleged that his house had been destroyed, as had the three cars he had had in the courtyard.

6. Floarea Maria Zoltan

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

7. Petru (Dîgăla) Lăcătuş

29. The applicant alleged that his house had been destroyed and that he had lost valuable goods. His wife had been pregnant at the time of the incident and, because she had been beaten and had experienced severe fear, the baby had been born with brain damage.

B. The investigation into the incident

30. In the aftermath of the incident the Roma residents of Hădăreni lodged a criminal complaint with the Public Prosecutors' 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, the Mureş County Chief of Police.

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

32. On 21 July 1994 three civilians – P.B., I.B. and N.G. - were remanded in custody. They were charged 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 set aside by order of the General Prosecutor.

33. By an order of 31 October 1994, on the basis of ample evidence that suggested police involvement in the incident, the case was sent to the Târgu-Mureş Military Prosecutors' Office, which had jurisdiction to investigate crimes committed by police officers. According to the order of the Public Prosecutors' Office of the 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."

34. By a resolution dated 15 November 1994, the Târgu-Mureş Military Prosecutors' Office ordered an extension of the investigation and the initiation of a criminal investigation in respect of 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 had even directly participated in setting fire to certain houses. On the basis of oral evidence, the prosecutor found that officers Moga and Şuşcă had participated in the events and "repeatedly" incited the villagers to take action against the men barricaded in the house, telling them to "set them on fire, because we cannot do anything to them". Moreover, he found that Lieutenant Colonel Palade had required the inhabitants of Hădăreni "not to tell anyone anything about the actions of the police officers, and everything will be forgotten and you shall bear no consequences."

35. On 10 January 1995, having regard to the involvement of Colonel Palade, the Târgu-Mureş Military Prosecutor declined jurisdiction to investigate the case and referred it to the Bucharest Territorial Military Prosecutors' Office.

36. On 22 August 1995 Colonel Magistrate M.S., the military prosecutor at the Bucharest Military Court, decided 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. As to the statements made by various witnesses confirming the involvement of these police officers, the prosecutor found that one of them had been made by the sister of two of the victims and, given the fact that the officers had punished the victims several times, her evidence was obviously tendentious. The prosecutor found the other oral evidence confused. He concluded that the police officers could not be accused of having committed crimes, "even though one should accept that during the events they had used words such as 'do what you want, I have a family to take care of' or 'they will come out immediately if you set the house on fire'. Moreover, we cannot consider the

lack of initiative and the inability of the two policemen to influence the behaviour of the furious villagers as a form of participation – either in the form of instigation or as possible moral complicity."

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

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

39. Certain testimonies confirmed that the police had promised the villagers involved in the riot 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.

40. On 11 November 1997 a criminal trial, in conjunction with a civil case for damages, began against the civilian defendants in the Târgu-Mureş County Court. 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 had 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, witnesses cited the names of Chief of Police Moga, Colonel Drăghici and Sergeant Şuşcă.

41. 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 12 August 1997. As a result, the civilian prosecutor sent the relevant military prosecutor the information on which to base proceedings before a military court against the officers concerned.

42. The applicants Iulius Moldovan and Floarea Zoltan asked the court in writing to extend the criminal charges. According to them, the prosecutor refused to do so.

43. On 23 June 1998 the Târgu-Mureş County Court severed the civil and the criminal case because the criminal investigation had already lasted four years and the determination of the civil aspect would take even longer.

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

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

> "The village of Hădăreni, belonging to the commune of Cheţani, is situated in the south-west Mureş district on the main road between Târgu-Mureş and Cluj and has a

population of 882 inhabitants, of which 641 are Romanians, 145 Hungarians and 123 Roma.

The Roma community represents 14% of the total population and the marginal lifestyle of some categories of Roma, especially the ones who settled in the village after 1989, has 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, shown aggressive behaviour and deliberately denied and violated the legal norms acknowledged by society.

Most of the Roma have no occupation and earn their living by doing odd jobs, 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 population were allocated plots of land. However, they did not work the land and continued to steal, to commit acts of violence and to carry out attacks, mainly against private property, which has generated even more rejection than before.

Groups of Roma have started arguments with the young people in the village, attacked them or stolen 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 Mureş County disclose that seven criminal cases were registered between 1991 and 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 vindictive threats by the Roma.

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

45. 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 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 allegedly 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 Mr 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 had died from respiratory failure, 100% carbonized.

46. To escape the fury of the villagers, 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 from shock and internal bleeding, with multiple traumatic injuries affecting his liver, a hemiperitoneum and peripheral haematoma on 70% of his body.

47. 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 eighty-nine lesions on his body (multiple fractures of his arms, ribs and thorax, and multiple traumatic injuries and contusions).

48. During the trial, all the civilian defendants stated that, in addition to officers Moga and Şuşcă, two other policemen had arrived from the city of Luduş and encouraged the crowd to set fire to the houses. Two police cars had also arrived at Hădăreni, from which 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 a scapegoat found.

49. 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 questioned further until 1997, when they were arrested again.

50. 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."

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

52. 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 of the fact 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."

53. The court also noted that the prosecution had not agreed to an extension of the criminal investigation or to the initiation of criminal proceedings against "other persons". Therefore, the court could only rule in respect of those perpetrators prosecuted in accordance with Article 317 of the Code of Criminal Procedure.

54. 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 destroying property, outraging public decency and disturbing public order. Among those convicted of destruction of property and disturbance was V.B., the Deputy Mayor of Hădăreni. The court pronounced prison sentences ranging from one to seven years, and noted that those given terms of less than five years had half the sentence pardoned under 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."

55. On 17 July 1998, the Public Prosecutors' 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, P.B., of extremely

serious murder under Articles 174 and 176 of the Criminal Code, sentencing him to six years' imprisonment. It also increased the sentence under Article 174 in respect of N.G. to six years' imprisonment. However, it reduced the other sentences under Articles 174 and 176: in respect of V.B. and S.I.P. from seven to six years' imprisonment, in respect of V.B.N. and S.F. from five to two years' imprisonment, and in respect of N.B., I.B. and O.V. from three to two years' imprisonment. Finally, it discontinued the criminal proceedings against the Deputy Mayor V.B.

56. The Court of Appeal also reduced the sentences of those convicted of destruction of property under Article 217 of the Criminal Code.

57. 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 with extenuating circumstances for V.B., P.B. and S.I.P., sentencing them to five years' imprisonment. It acquitted P.B. and N.G.

58. By a decree of 7 June 2000, the President of Romania issued individual pardons to S.I.P. and P.B., convicted of serious murder, whereupon they were released.

D. The appeal procedure concerning the refusal to open an investigation against State authorities

59. On 22 August 1999, following new evidence brought to light in the criminal trial, the applicants lodged an appeal with the Military Prosecutors' 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.

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

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

61. By decision no. 636 of 19 November 1993, the Romanian Government allocated 25,000,000 Romanian lei (ROL) [1] 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.

[1] Nowadays this would convert to around 720 euros (EUR)

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

63. In a letter of 30 June 1994 addressed to the Government, the Prefect of Mureş indicated that an additional amount of ROL 53,000,000[1] was needed to rebuild the remaining ten houses.

64. By decision no. 773 of 25 November 1994, the Government granted an additional sum of ROL 32,000,000[2] in funds, which had been earmarked for natural disasters occurring between March and September 1994. Four other houses were rebuilt. As shown in photographs 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.

65. 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.

66. 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 of the victims had 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 Prefect in 1995, the mayor of Chețani (of which Hădăreni is a part), G.G., a member of the reconstruction commission, reported that, of the fourteen houses 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 victim's family (Chețan Crăciun), who refused to have Gypsy families living close by. Another problem mentioned by the mayor was the house of the late mother of two of the Roma "criminals" who had 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.

67. To date, six houses have not been rebuilt, of which two belonged to the applicants Petru (Dîgăla) Lăcătuş and Maria Floarea Zoltan. According to an expert report submitted by the Government, the damage caused to the

[1] Around 1,525 EUR
[2] Around 920 EUR

houses of Petru (Gruia) Lăcătuş and Moldovan Maria had not been repaired, whereas the houses of Iulius Moldovan and Otilia Rostaş had been rebuilt but required finishing work.

68. 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 being continually ill.

69. The applicants submitted that, in general, following the events of September 1993, they had been forced to live in hen-houses, pigsties, windowless cellars, or in extremely cold and deplorable conditions: sixteen people in one room with no heating; seven people in one room with a mud floor; families sleeping on mud or concrete floors without adequate clothing, heat or blankets; fifteen people in a summer kitchen with a concrete floor (Melenuța Moldovan), etc. These conditions had lasted for several years and, in some cases, continued to the present day.

70. As a result, the applicants and their families fell ill. In particular, the applicant Petru (Gruia) Lăcătuş had developed diabetes and begun to lose his eyesight.

F. The outcome of the civil case

71. 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 their contents (furniture, etc.), as well as non-pecuniary damages. The court further noted that, during the events of 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 its decision 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 awarded pecuniary damages in respect of the partial or total destruction of the houses of six Roma, including those of the third and fifth applicants. The court rejected the other applicants' request for pecuniary damages in respect of the rebuilt houses, finding, on the basis of 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 taxpayers 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 a ton of wool in the attic of his house. However, from the information obtained by the court from the local tax office in Chețani, it appears that the civil party was not registered as having any income. ...
>
> The damage suffered because of the destruction of the chattels and furniture has not been substantiated. The civil parties consider that their own statements, the lists of 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..."

72. 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 a nature to produce moral damage.

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

74. Having regard to some procedural errors in the Mureş Regional Court's judgment, the applicants lodged an appeal with the Mureş Court of Appeal.

75. On 17 October 2001 the Mureş Court of Appeal found that a number of procedural errors had occurred during the public hearings on the merits before the Mureş Regional Court: the hearings had been held in the absence of the accused and their lawyers; one of the original applicants, Adrian Moldovan, had not been summoned; the public prosecutor had not been given leave to address the court; a number of expert reports ordered by the court had not been completed, and confusion had been created as to the number and names of the victims and their children. The Court of Appeal concluded that these errors rendered the proceedings null and void. It therefore quashed the judgment of 12 January 2001 and ordered a new trial of the case.

76. The Mureş Regional Court delivered its judgment in the civil case on 12 May 2003. The court noted that the victims had requested pecuniary damages for the destruction of houses and their contents (furniture, etc.), as well as non-pecuniary damages. The court further noted that, during the events of 20 September 1993, eighteen houses belonging to the Roma population in Hădăreni had been totally or partially destroyed and three Roma had been killed. As a result of these events, the State had granted some money for the reconstruction of the houses.

Basing its decision on an expert report drafted in 1999 and updated in 2003, the court ordered the following damages to be paid by the civilians found guilty by the criminal court:

(a) Iulius Moldovan was awarded ROL 130,000,000 [1] in pecuniary damages in respect of the destroyed house, to be revised to take account of any devaluation in the national currency. The court further heard evidence from witnesses confirming that various assets belonging to the applicant, including furniture, belongings and the proceeds from the sale of more than 260 sheep, had been destroyed during the fire. However, the court refused to award damages on the ground that it was impossible to assess the loss.

(b) As regards Otilia Rostaş, the court noted that her house did not appear on the list of the houses (totally or partially) destroyed drawn up by Chețani Town Hall. The court heard testimony confirming the destruction of part of the roof and of the wooden structure of her house, but noted that there was no evidence to evaluate the damage. Therefore, it rejected the request for pecuniary damages.

(c) Petru (Gruia) Lăcătuş was awarded ROL 16,000,000[2] in pecuniary damages in respect of the destroyed house. The court noted the applicant's claim that various assets he had owned had been destroyed during the fire – furniture, three cars, jewellery and money – but rejected it as unsubstantiated.

(d) As regards Melenuța Moldovan, the court awarded ROL 28,000,000[3] for the destroyed house. The court heard evidence from two witnesses confirming that the applicant had had various belongings which had been destroyed by the fire, but refused to award damages in that respect, as there was no evidence as to their value.

(e) Maria Moldovan was awarded ROL 600,000 [4] for the destroyed house. The court rejected her claim in respect of the destroyed belongings as there was no evidence as to their value.

[1] Around 3,745 EUR
[2] Around 460 EUR
[3] Around 805 EUR
[4] Around 17 EUR

(f) Petru (Dîgăla) Lăcătuş was awarded, together with Floarea Maria Zoltan and Monica Simona Lăcătuş, as the brother and sisters of the deceased victims, ROL 60,000,000[1] for the destroyed house, to be revised to take account of any devaluation in the national currency. The court rejected their claim in respect of their destroyed belongings on the ground that the losses had not been substantiated. It also rejected as unsubstantiated the claim for the reimbursement of the money spent on the burial of the victims.

(g) Floarea Maria Zoltan, the widow of one of the victims who had died burned alive during the riots, also requested a maintenance allowance for her minor child. The court noted that although the applicant claimed that her husband used to be a manufacturer of woollen coats, she had not submitted any evidence as to his income, and therefore decided to take the statutory minimum wage as the basis for the calculation of the allowance, namely, ROL 2,500,000[2]. Moreover, it found that it was impossible to establish how much the applicant's husband used to spend on his child's maintenance, and applied the minimum granted by the Family Code, that is one quarter of the minimum wage, which amounted to ROL 625,000[3]. Finally, the court took into account that the deceased victims had provoked the crimes committed and decided to halve the above-mentioned amount. It therefore awarded ROL 312,500[4] per month in maintenance allowance for the applicant's minor child.

Finally, the court 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 a nature to produce moral damage.

77. On appeal by the persons convicted and the applicants, the Târgu-Mureş Court of Appeal gave judgment on 24 February 2004. The court recalled that, under the combined provisions of the Civil Code and the Codes of Criminal and Civil Procedure, it was bound by the ruling of the criminal court. Referring to recent publications by Romanian authors in the field of civil law and the Court's case of *Akdivar v. Turkey* (judgment of 16 September 1996, *Reports of Judgments and Decisions* 1996-IV), the court found that,

> "By their behaviour, the accused infringed the property rights of the complainants, for which pecuniary damages had already been awarded; however, some of the civil parties should also be awarded damages from a moral point of view. Some of the civil parties were deprived emotionally, as a result of the damage sustained, of the security which they had felt in the destroyed houses, of the comfort they had enjoyed as a result of the facilities of the houses, all these movable and immovable goods being the result of their work, which guaranteed them a normal standard of living, having regard to their personalities ...

[1] Around 1,725 EUR
[2] Around 72 EUR
[3] Around 18 EUR
[4] Around 9 EUR

As shown above, the accused committed the crimes in a state of provocation, which led the court to apply the provisions of Article 73 of the Criminal Code [regarding extenuating circumstances]. For this precise reason, the civil parties enumerated below are entitled to a certain amount of damages, but not the amount requested..."

The court awarded the following amounts: ROL 100,000,000[1] to Floarea Maria Zoltan as it found that she had had to leave the village and wander homeless in the country and abroad; ROL 50,000,000[2] to Iulius Moldovan as he had been profoundly affected by the events, had lost his fortune and his health had deteriorated substantially; ROL 30,000,000[3] to Otilia Rostaş as she had suffered psychological and emotional trauma for the same reasons; ROL 20,000,000[4] to Melenuța Moldovan for the same reasons as Otilia Rostaş; ROL 15,000,000[5] to Maria Moldovan for the psychological trauma suffered as a result of the partial destruction of her house; and ROL 70,000,000[6] to Petru (Dîgăla) Lăcătuş since he had sustained deep emotional damage and felt insecure as a result of the burning of his parents' house. No award was made in respect of Petru (Gruia) Lăcătuş.

78. The civil parties filed an appeal against this judgment, which was rejected by a final decision of the Court of Cassation, on 25 February 2005.

II. RELEVANT DOMESTIC LAW AND PRACTICE

Code of Civil Procedure

79. 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 have been 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; ... "

[1] Around 2,880 EUR
[2] Around 1,440 EUR
[3] Around 865 EUR
[4] Around 575 EUR
[5] Around 430 EUR
[6] Around 2,015 EUR

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, and the identification of the perpetrator and his guilt, are binding on the civil court when it examines the civil consequences of the criminal act."

Article 343 § 3

"In case of a conviction or an acquittal, or the termination of the criminal trial, the court shall deliver a judgment in which it also decides on the civil action.

Civil damages cannot be awarded if an acquittal was decided on the ground that the impugned act did not exist or was not committed by the accused."

Civil Code

80. 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 negligently caused it.

81. Article 1003 of the Civil Code provides that, where more than one person has committed an intentional tort, they shall be jointly and severally liable.

Case law of the domestic courts

82. The Government submitted a number of cases in which domestic courts had decided that the prosecutor's decision, based on Article 10 (b) of the Code of Criminal Procedure, not to open a criminal investigation on account 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.

83. The Government submitted only one case, dating back to 1972, in which the Supreme Court had decided that the prosecutor's decision, based on Article 10 (a) and (c) of the Code of Criminal Procedure, not to open a criminal investigation having regard to the fact that the acts were not committed at all or were not committed by the defendant, should not prevent civil courts from examining a civil claim arising out of the commission of the same act by the person in question. The Supreme Court's decision dealt solely with the competence issue and did not specify whether there was a legal provision offering a chance of success for such an action.

Legal doctrine

84. The common view of the criminal-procedure specialists is that a civil court cannot examine a civil action filed against a person against whom the prosecutor has refused to open a criminal investigation on the grounds provided for in Article 10 (a) and (c) of the Code of Criminal Procedure that the acts were not committed at all or were not committed by the defendant (see Criminal Procedural Law – General Part, Gheorghe Nistoreanu and Others, p. 72, Bucharest 1994, and A Treaty on Criminal Procedural Law – General Part, Nicolae Volonciu, pp. 238-39, Bucharest 1996).

85. The common view of the civil-procedure specialists and of some criminal-procedure specialists is that the prosecutor's decision refusing to open a criminal investigation on the grounds mentioned in the previous paragraph, does not prevent a civil court from examining a civil action brought against the defendant. In such a case, civil courts are entitled to decide whether the acts were committed and by whom, but have to rely on the findings of the prosecutor set out in the decision refusing to open a criminal investigation (see The Civil Action and the Criminal Trial, Anastasiu Crişu, RRD no. 4/1997, and Criminal Procedural Law, Ion Neagu, p. 209, Bucharest 1988).

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLES 3 AND 8 OF THE CONVENTION

86. Article 3 of the Convention provides as follows:

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

87. Article 8 of the Convention provides, insofar as relevant, as follows:

> "1. Everyone has the right to respect for his private and family life, [and] his home...
>
> 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 ... 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."

A. Arguments of the parties

1. The applicants

88. The applicants complained that, after the destruction of their houses, they could no longer enjoy the use of their homes and had to live in very poor, cramped conditions, in violation of Articles 3 and 8 of the Convention.

89. The applicants claimed that State officials had been 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 pointed out that the State had positive obligations under Article 8, and relied in that connection 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) and *Fadele v. the United Kingdom* (no. 13078/87, Commission decision of 12 February 1990). The applicants alleged that the State also had positive obligations under Article 3, and claimed 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 had made decisions not to rebuild particular homes in retaliation for perceived "behavioural problems". The applicants also claimed that the houses rebuilt by the State had been badly constructed and were largely uninhabitable.

90. They further submitted that the Government's failure to respect their positive obligations had resulted in families with small children and elderly members being forced to live in cellars, hen-houses, stables, burned-out shells, or to move in with friends and relatives in such overcrowded conditions that illness frequently occurred.

2. The Government

91. The Government denied that the State authorities bore any responsibility for the destruction of the applicants' houses. Therefore, the State had only positive obligations under Article 8, obligations which had been fulfilled in this case by granting aid to the applicants to rebuild their homes. In any event, the Government considered that there was no obligation under the Convention to provide a home to persons who were in difficulties. They relied in this connection 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, ECHR 2001-I).

92. The Government submitted that the State's positive obligations under Article 3 had also been fulfilled in this case by granting aid to the applicants to rebuild their homes.

B. The Court's assessment

1. General principles

93. The Court has consistently held that, although the object of Article 8 is essentially that of protecting the individual against arbitrary interference by public authorities, it does not merely compel the State to abstain from such interference. There may, in addition to this primary negative undertaking, be positive obligations inherent in an effective respect for private or family life and the home. These obligations may involve the adoption of measures designed to secure respect for these rights even in the sphere of relations between individuals (see *X and Y. v. the Netherlands,* judgment of 26 March 1985, Series A no. 91, p. 11, § 23).

94. In addition, the acquiescence or connivance of the authorities of a Contracting State in the acts of private individuals which violate the Convention rights of other individuals within its jurisdiction may engage the State's responsibility under the Convention (see *Cyprus v. Turkey* [GC], no. 25781/94, ECHR 2001-IV, § 81). A State may also be held responsible even where its agents are acting *ultra vires* or contrary to instructions (see *Ireland v. the United Kingdom*, judgment of 18 January 1978, Series A no. 25, p. 64, § 159).

95. A State's responsibility may be engaged because of acts which have sufficiently direct repercussions on the rights guaranteed by the Convention. In determining whether this responsibility is effectively engaged, regard must be had to the subsequent behaviour of that State (see *Ilaşcu and Others v. Moldova and Russia* [GC], no. 48787/99, §§ 317, 382, 384-85 and 393, ECHR 2004-...).

96. Further, the Court has not excluded the possibility that the State's positive obligation under Article 8 to safeguard the individual's physical integrity may extend to questions relating to the effectiveness of a criminal investigation (see *Osman v. the United Kingdom*, judgment of 28 October 1998, *Reports* 1998-VIII, p. 3164, § 128).

97. Whatever analytical approach is adopted – positive duty or interference – the applicable principles regarding justification under Article 8 § 2 are broadly similar (see *Powell and Rayner v. the United Kingdom*, judgment of 21 February 1990, Series A no. 172). In both contexts, regard must be had to the fair balance that has to be struck between the competing interests of the individual and of the community as a whole. In both contexts the State enjoys a certain margin of appreciation in determining the steps to be taken to ensure compliance with the Convention

(see *Hatton and Others v. the United Kingdom* [GC], no. 36022/97, § 98, ECHR 2003-VIII; *Rees v. the United Kingdom*, judgment of 17 October 1986, Series A no. 106, p. 15, § 37, and *Leander v. Sweden*, judgment of 26 March 1987, Series A no. 116, p. 25, § 59). Furthermore, even in relation to the positive obligations flowing from Article 8 § 1, in striking the required balance, the aims mentioned in Article 8 § 2 may be of relevance (see *Rees,* cited above, *loc. cit*.; see also *Lopez Ostra v. Spain,* judgment of 9 December 1994, Series A no. 303-C, p. 54, § 51).

98. The obligation of the High Contracting Parties under Article 1 of the Convention to secure to everyone within their jurisdiction the rights and freedoms defined in the Convention, taken together with Article 3, requires States to take measures designed to ensure that individuals within their jurisdiction are not subjected to ill-treatment, including ill-treatment administered by private individuals (see *M.C. v. Bulgaria*, no. 39272/98, §§ 149-50, ECHR 2004-...; *A. v. the United Kingdom*, judgment of 23 September 1998, *Reports* 1998-VI, p. 2699, § 22; *Z. and Others v. the United Kingdom* [GC], no. 29392/95, §§ 73-75, ECHR 2001-V, and *E. and Others v. the United Kingdom*, no. 33218/96, 26 November 2002).

99. Article 3 of the Convention enshrines one of the most fundamental values of a democratic society. It prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the circumstances and the victim's behaviour (see, for example, *Labita v. Italy* [GC], no. 26772/95, § 119, ECHR 2000-IV).

100. According to the Court's case law, ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is relative. It depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim (see, among other authorities, *Ireland v. the United Kingdom,* judgment of 18 January 1978, Series A no. 25, p. 65, § 162).

101. The Court has considered treatment to be “inhuman” because, *inter alia*, it was premeditated, was applied for hours at a stretch and caused either actual bodily injury or intense physical and mental suffering. It has deemed treatment to be “degrading” because it was such as to arouse in the victims feelings of fear, anguish and inferiority capable of humiliating and debasing them (see, for example, *Kudla v. Poland* [GC], no. 30210/96, § 92, ECHR 2000-XI). In considering whether a particular form of treatment is “degrading” within the meaning of Article 3, the Court will have regard to whether its object is to humiliate and debase the person concerned and whether, as far as the consequences are concerned, it adversely affected his or her personality in a manner incompatible with Article 3 (see, for example, *Raninen v. Finland,* judgment of 16 December 1997, *Reports* 1997-VIII, pp. 2821-22, § 55). However, the absence of any such purpose

cannot conclusively rule out a finding of a violation of Article 3 (see, for example, *Peers v. Greece*, no. 28524/95, § 74, ECHR 2001-III).

2. Application of the above principles

102. The Court notes that the actual destruction of the applicants' houses and belongings, as well as their forceful expulsion from the village, took place in September 1993, before the ratification of the Convention by Romania in June 1994. It cannot therefore examine them (see *Moldovan and Others v. Romania* decision, nos. 41138/98 and 64320/01 joined, 13 March 2001).

103. It is clear from the evidence submitted by the applicants, and the civil court judgments, that police officers were involved in the organised action of burning the houses and later, also after June 1994, tried to cover up the incident (see paragraphs 39, 40, 48, 50, 52 and 53 above). Following this incident, having been hounded from their village and homes, the applicants had to live, and some of them still live, in crowded and improper conditions – cellars, hen-houses, stables, etc. - and frequently changed address, moving in with friends or family in extremely overcrowded conditions.

104. Therefore, having regard to the direct repercussions of the acts of State agents on the applicants' rights, the Court considers that the Government's responsibility is engaged as regards the applicants' subsequent living conditions.

105. In the present case, there is no doubt that the question of the applicants' living conditions falls within the scope of their right to respect for family and private life, as well as their homes. Article 8 is thus clearly applicable to these complaints.

106. The Court's task is therefore to determine whether the national authorities took adequate steps to put a stop to breaches of the applicants' rights.

107. In this context, the Court notes the following:

(a) despite the involvement of State agents in the burning of the applicants' houses, the Public Prosecutors' Office failed to institute criminal proceedings against them, and thus prevented the domestic courts from establishing the responsibility of these officials and punishing them;

(b) the domestic courts refused for many years to award pecuniary damages for the destruction of the applicants' belongings and furniture and justified this refusal by making allegations as to the applicants' good faith (see paragraph 71);

(c) it is only in the judgment delivered on 12 May 2003, ten years after the events, by the Mureş Regional Court, that compensation was awarded for the destroyed houses, although not for the loss of belongings;

(d) in the judgment in the criminal case against the accused villagers, discriminatory remarks about the applicants' Roma origin were made (see paragraph 44);

(e) the applicants' requests for non-pecuniary damages were also rejected at first instance, the civil courts considering that the events - the burning of their houses and the killing of some of their family members - were not of a nature to create any moral damage (see paragraphs 72 and 76);

(f) when dealing with a request from the applicant Floarea Maria Zoltan for a maintenance allowance for her minor child, whose father was burnt alive during the events, the Târgu-Mureş Regional Court awarded in its judgment of 12 May 2003, which became final on 25 February 2005, an amount equivalent to a quarter of the statutory minimum wage, and decided to halve this amount on the ground that the deceased victims had provoked the crimes;

(g) three houses have not to date been rebuilt and, as can be seen from the photographs submitted by the applicants, the houses rebuilt by the authorities are uninhabitable, with large gaps between the windows and the walls and incomplete roofs; and

(h) most of the applicants have not to date returned to their village, and live scattered throughout Romania and Europe.

108. In the Court's view, the above elements taken together disclose a general attitude of the authorities – prosecutors, criminal and civil courts, Government and local authorities – which perpetuated the applicants' feelings of insecurity after June 1994 and constituted in itself a hindrance of the applicants' rights to respect for their private and family life and their homes (see, *mutatis mutandis*, *Akdivar v. Turkey*, judgment of 16 September 1996, *Reports* 1996-IV, p. 1215, § 88).

109. The Court concludes that the above hindrance and the repeated failure of the authorities to put a stop to breaches of the applicants' rights, amount to a serious violation of Article 8 of the Convention of a continuing nature.

110. It furthermore considers that the applicants' living conditions in the last ten years, in particular the severely overcrowded and unsanitary environment and its detrimental effect on the applicants' health and well-being, combined with the length of the period during which the applicants have had to live in such conditions and the general attitude of the authorities, must have caused them considerable mental suffering, thus diminishing their human dignity and arousing in them such feelings as to cause humiliation and debasement.

111. In addition, the remarks concerning the applicants' honesty and way of life made by some authorities dealing with the applicants' grievances (see the decisions of the civil and criminal courts and remarks made by the mayor of Chețani, paragraphs 44, 66 and 71 above) appear to be, in the absence of any substantiation on behalf of those authorities, purely

discriminatory. In this connection the Court reiterates that discrimination based on race can of itself amount to degrading treatment within the meaning of Article 3 of the Convention (see *East African Asians v. the United Kingdom*, Commission Report, 14 December 1973, DR 78, p. 5, at p. 62).

Such remarks should therefore be taken into account as an aggravating factor in the examination of the applicants' complaint under Article 3 of the Convention.

112. The Court considers that the above findings are not affected by the conclusions reached in the judgment of 24 February 2004 of the Târgu-Mureş Court of Appeal, which became final on 25 February 2005, since the Court notes that the said judgment neither acknowledged nor afforded redress for the breach of the Convention (see, for example, *Amuur v. France,* judgment of 25 June 1996, *Reports* 1996-III, p. 846, § 36, and *Dalban v. Romania* [GC], no. 28114/95, § 44, ECHR 1999-VI).

113. In the light of the above, the Court finds that the applicants' living conditions and the racial discrimination to which they have been publicly subjected by the way in which their grievances were dealt with by the various authorities, constitute an interference with their human dignity which, in the special circumstances of this case, amounted to "degrading treatment" within the meaning of Article 3 of the Convention.

114. Accordingly, there has also been a violation of Article 3 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

115. The applicants complained that the failure of the authorities to carry out an adequate criminal investigation, culminating in formal charges and the conviction of all individuals responsible, had denied them access to court for a civil action in damages against the State regarding the misconduct of the police officers concerned. Several applicants also complained that, owing to the length of the criminal proceedings, the civil proceedings had not yet ended. They relied on Article 6 § 1 of the Convention, the relevant part of which provides as follows:

> "In the determination of his civil rights ..., everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."

A. As to the right of access to court

116. The applicants contended that, having regard to the fact that the decision not to prosecute was based on the finding that the accused had not committed the acts in question (Article 10 (c) of the Code of Criminal

Procedure), they could not bring a civil action against the police. Such a finding precluded such proceedings, which presuppose that the purported defendant had committed the impugned act. The applicants agreed that the situation would have been different had the prosecutor based his decision not to prosecute on the police officers' lack of guilt.

Moreover, under Article 1003 of the Civil Code, all civil defendants had to be sued in the same proceedings, being jointly liable. Therefore, the applicants could not have sued the police officers separately from the civilians. When filing their criminal complaint, the applicants had joined their civil claim to the criminal proceedings against all potential defendants, including the police officers. Despite suggestions in the criminal court's statements that many more than the indicted defendants were guilty, the civil court had only assessed the damage caused by the convicted defendants or their heirs. It had done so because, under Article 22 of the Code of Criminal Procedure, the criminal court's findings as to the existence of acts, the identity of the perpetrator and their guilt was binding on the civil court. Thus, the civil court could not have contradicted the criminal court's findings as to who the guilty parties were.

Finally, the applicants considered that the present situation differed from that in the case of *Assenov and Others v. Bulgaria* (judgment of 28 October 1998, *Reports* 1998-VIII). In that case the police could have been sued in a civil court on the basis of the Law on State Responsibility for Damage, the action being exempted from the payment of court costs. Romanian law did not have provisions enabling a person to sue a police officer in a civil court for alleged ill-treatment. Even assuming that the applicants could have filed a civil action against the police officers, because of their indigence they would not have been able to pay the court costs – around 10% of the damages requested - which would have resulted in the court refusing to examine the merits of the claim.

117. The Government submitted that, despite the prosecutor's decision not to pursue the police officers allegedly involved in the riots, the applicants could have brought a civil action against the police based on Articles 999 and 1000 of the Civil Code if the police had been shown to have caused damage for which they were responsible. Moreover, Article 22 of the Code of Criminal Procedure did not prevent the applicants from bringing such a civil action. They pointed out that the right of access to a court did not include a right to bring criminal proceedings against a third person or to see that person convicted. They relied in that respect on the aforementioned *Assenov* case.

118. The Court recalls that Article 6 § 1 secures to everyone the right to have any claim relating to his civil rights and obligations brought before a court or tribunal. The right of access to a court in civil matters constitutes one aspect of the "right to a court" embodied in Article 6 § 1 (see, amongst many authorities, *Aksoy v. Turkey* judgment of 18 December 1996,

Reports 1996-VI, p. 2285, § 92; *Waite and Kennedy v. Germany* [GC], no. 26083/94, § 50, ECHR 1999-I; *Golder v. the United Kingdom,* judgment of 21 February 1975, Series A, no. 18, p. 18, § 36.) This provision undoubtedly applies to a civil claim for compensation in cases where State agents were allegedly involved in treatment contrary to Article 3, including the destruction of homes and property.

The requirement of access to court must be entrenched not only in law but also in practice, failing which the remedy lacks the requisite accessibility and effectiveness (see, *mutatis mutandis*, *Akdivar and Others,* cited above, p. 1210, § 66). This is particularly true for the right of access to courts in view of the prominent place held in a democratic society by the right to a fair hearing (see, for example, *Airey v. Ireland,* judgment of 9 October 1979, Series A no. 32, pp. 12-13, § 24).

Furthermore, only an institution that has full jurisdiction, including the power to quash in all respects, on questions of fact and law, the challenged decision, merits the description "tribunal" within the meaning of Article 6 § 1 (see, for example, *Umlauft v. Austria,* judgment of 23 October 1995, Series A no. 328-B, pp. 39-40, §§ 37-39).

In assessing the existence of an effective remedy in a case of destruction of houses, the Court must bear in mind the insecurity and vulnerability of the applicants' position and the fact that they must have become dependent on the authorities in respect of their basic needs after the events (see *Akdivar*, cited above, p. 1213, § 73).

119. The Government maintained that the applicants should have instituted proceedings against the police officers allegedly involved in the events before the civil courts, which could have made a determination on the merits of the compensation claim irrespective of the outcome of the domestic criminal investigation. That hypothesis has not however been tested, since the applicants have not at any stage pursued such a claim for compensation against the police officers.

As regards the domestic case law submitted by the parties, the Court observes that in none of those cases was it held that a civil court would not be bound by the decision of the prosecuting authorities terminating a criminal investigation on the ground that the acts had not been committed by the accused. This is also true in respect of the case dating back to 1972 submitted by the Government (paragraph 83 above), in which the only issue was whether a civil court was competent to examine a civil claim despite the discontinuation of criminal proceedings. In that case, the Supreme Court did not rule on the question whether the civil court was bound by the criminal authorities' findings.

120. Consequently, the Court finds that it has not been shown that there was a possibility to institute an effective civil action for damages against the police officers in the particular circumstances of the present case. The Court is not, therefore, able to determine whether the domestic courts would have

been able to adjudicate on the applicants' claims had they, for example, brought a tort action against individual members of the police.

121. However, it is to be observed that the applicants lodged a civil action against the civilians who had been found guilty by the criminal court, claiming compensation in respect of their living conditions following the destruction of their homes. This claim was successful and effective, the applicants being granted compensation (paragraph 77 above). In these circumstances, the Court considers that the applicants cannot claim an additional right to a separate civil action against the police officers allegedly involved in the same incident.

122. In the light of these considerations, the Court concludes that there has been no violation of Article 6 § 1 as regards the applicants' effective access to a tribunal.

B. As to the length of the proceedings

123. The applicants claimed 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 had delayed the arrest of the accused from September 1993 until January 1997, without providing any credible reason. The applicants refuted the Government's allegation that the delay had resulted from their non-payment of the expert's fees. They pointed out that they were impoverished, living in abysmal conditions and unable to pay for expert assistance. If their financial inability to pay such fees resulted 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 involved very high stakes for the applicants – their efforts to rebuild shattered homes and lives in order to provide decent living conditions for their children and other family members.

They relied on a considerable body of case law of the Court, including the cases of *Torri v. Italy* (judgment of 1 July 1997, *Reports of Judgments and Decisions* 1997-IV), *Corigliano v. Italy* (judgment of 10 December 1982, Series A no. 57), *Bunkate v. the 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).

124. The Government considered that the case was complex, given 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 alleged that the applicants were partly responsible for the length of the civil proceedings, as for many weeks they had refused to pay the expert appointed by the court.

125. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities and what was at stake for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

126. Criminal proceedings are to be taken into account in calculating the relevant period where the result of such proceedings is capable of affecting the outcome of the civil dispute before the ordinary courts (see *Rezette v. Luxembourg*, no. 73983/01, § 32, 13 July 2004).

127. While the Court's jurisdiction *ratione temporis* covers only the period after the entry into force of the Convention with respect to Romania on 20 June 1994, it will take into account the state of proceedings existing on the material date (see, among other authorities, *mutatis mutandis*, *Yağci and Sargin v. Turkey,* judgment of 8 June 1995, Series A no. 319-A, p. 16, § 40).

128. The period under consideration began in September 1993, when the applicants lodged their complaints and an application to join the proceedings as a civil party, and ended on 25 February 2005. They lasted more than eleven years, of which some nine months were prior to the entry into force of the Convention in respect of Romania. Three judicial instances have dealt with this aspect of the case.

129. The Court notes that five years elapsed before the civil case was severed from the criminal complaints on 23 June 1998 (see paragraph 43) in order to accelerate the procedure. However, it was only on 12 January 2001 that a first judgment was delivered, that is, more than seven years after the civil claim was lodged. That judgment was quashed on 17 October 2001 because of a substantial number of procedural errors (see paragraph 75 above). It was not until two years later, in May 2003, that the Regional Court was able to deliver another judgment on the merits. On 24 February 2004 the Court of Appeal amended the lower court's ruling in part. The Supreme Court upheld, in its final judgment of 25 February 2005, the judgment of the Court of Appeal. While the Court is aware of the difficulty of organising proceedings with more than thirty defendants and civil parties, and which required experts to assess the losses incurred by the victims, it notes that the delays were not due to the time taken to obtain expert reports, since the main report had been ready in 1999. The delays were rather due to the various errors committed by the domestic courts.

130. Having regard to the criteria established in its case law for the assessment of the reasonableness of the length of proceedings and the particular circumstances of the case, the Court finds that the length of the civil proceedings instituted by the applicants failed to satisfy the reasonable-time requirement of Article 6 § 1 of the Convention.

131. Consequently, there has been a violation of Article 6 § 1 in this respect also.

V. ALLEGED VIOLATION OF ARTICLE 14 IN CONJUNCTION WITH ARTICLES 6 AND 8 OF THE CONVENTION

132. The applicants submitted that, on account of their ethnicity, they were victims of discrimination by judicial bodies and officials, contrary to Article 14 of the Convention, which provides 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."

133. They submitted that the remarks made by the Târgu-Mureş County Court in its judgment of 17 July 1998 contained clear anti-Roma sentiment, and that the refusal of the authorities to improve their living conditions after the events of September 1993 was an expression of the hostility against the Roma population. They contended that local officials, in particular the mayor of Hădăreni in his information note concerning the situation of the Gypsy houses to be rebuilt, had demonstrated an obvious bias against the Roma families, in violation of Article 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 had 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.

134. 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.

135. The Government submitted that, in the absence of a violation of Article 8, the applicants could not allege a violation of Article 14. In any event, the State authorities had 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 had therefore been established. Insofar as the applicants relied on Article 6 combined with Article 14, the Government admitted that the impugned terms had been used, but contended that this had happened during criminal proceedings in which the applicants had not been the

accused, but civil parties. Article 6 did not therefore apply to those proceedings and Article 14 could not be relied on.

136. The Court reiterates that Article 14 only complements the other substantive provisions of the Convention and the Protocols. It has no independent existence since it has effect solely in relation to the enjoyment of the rights and freedoms safeguarded by those provisions. Although the application of Article 14 does not presuppose a breach of those provisions – and to that extent it is autonomous – there can be no room for its application unless the facts at issue fall within the ambit of one or more of the latter (see, among many other authorities, *Abdulaziz, Cabales and Balkandali v. the United Kingdom*, judgment of 28 May 1985, Series A no. 94, p. 35, § 71, and *Karlheinz Schmidt v. Germany*, judgment of 18 July 1994, Series A no. 291-B, p. 32, § 22).

137. As to the scope of the guarantee provided under Article 14, according to established case law, a difference in treatment is discriminatory if it has no objective and reasonable justification, i.e. if it does not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be realised. Moreover, the Contracting States enjoy a certain margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify a different treatment (see, for example, the *Gaygusuz v. Austria* judgment of 16 September 1996, Reports 1996-IV, p. 1142, § 42, and *Fretté v. France*, no. 36515/97, § 34, ECHR 2002-I).

138. The Court finds that the facts of the instant case fall within the scope of Articles 6 and 8 of the Convention (see paragraphs 105, 109, 126 and 131 above) and that, accordingly, Article 14 is applicable.

139. It notes first that the attacks were directed against the applicants because of their Roma origin. The Court is not competent *ratione temporis* to examine under the Convention the actual burning of the applicants' houses and the killing of some of their relatives. It observes, however, that the applicants' Roma ethnicity appears to have been decisive for the length and the result of the domestic proceedings, after the entry into force of the Convention in respect of Romania. It further notes the repeated discriminatory remarks made by the authorities throughout the whole case determining the applicants' rights under Article 8, when rejecting claims for goods or furnishings, and their blank refusal until 2004 to award non-pecuniary damages for the destruction of the family homes.

As to the judgment of 24 February 2004, confirmed by the Court of Cassation on 25 February 2005, the decision to reduce the non-pecuniary damages granted was motivated by remarks related directly to the applicants' ethnic specificity.

140. The Court observes that the Government advanced no justification for this difference in treatment of the applicants. It concludes accordingly

that there has been a violation of Article 14 of the Convention taken in conjunction with Articles 6 and 8.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

A. Pecuniary and non-pecuniary damage

141. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

142. The applicants claimed pecuniary damages in respect of the loss of their houses and household property. They conceded that some of the houses had been rebuilt by the Government, but the constructions were defective and most of them had in any event only been partially rebuilt.

Their claims in respect of the loss of the houses were based on the findings of an expert appointed by the Târgu-Mureş Regional Court.

They stressed that in most cases they had no independent proof as to the value of their household goods, as any written proof would have been destroyed in the fire. They insisted that, despite their level of poverty, none of the houses had been empty, and submitted, relying on the aforementioned *Akdivar* judgment, that if their declaration of goods and proposed valuations were not accepted, the Court could assess the value of simple furnishings and other household goods on an equitable basis.

Some of the applicants claimed the costs of alternative accommodation following their relocation after the destruction of their houses.

143. In particular, the applicants claimed the following sums: Iulius Moldovan claimed 40,000 euros (EUR) for the destruction of his house and EUR 55,000 for the destruction of his household goods and other assets, including the proceeds from the sale of 400 sheep which had burnt during the fire; Melenuța Moldovan EUR 2,133 for the destruction of her household goods; Maria Moldovan EUR 947 for the destruction of her house and belongings; Otilia Rostaş EUR 2,573 for the destruction of her belongings; Petru (Gruia) Lăcătuş EUR 10,738 for the destruction of his house and belongings; Maria Floarea Zoltan EUR 2,240 for the destruction of her belongings, and Petru (Dîgăla) Lăcătuş EUR 5,530 for the destruction of his house and household goods.

144. The applicants further contended that the frustration and helplessness suffered by them with respect to the non-indictment of the police, the lengthy delays in the trial of their civil claims, the racist attitudes of the judges, the insecurity of their housing situation, and the conditions under which they were living – and still lived in some cases – required an

award of non-pecuniary damages in order to achieve just satisfaction. In their representative's letter of 29 August 2003, they claimed under this head amounts ranging between EUR 30,000 and EUR 50,000 per applicant, depending on their individual situations: the applicants whose homes had been rebuilt requested EUR 30,000 each, whereas the applicants whose homes had not been rebuilt, that is, Petru (Dîgăla) Lăcătuş and Maria Floarea Zoltan, requested EUR 50,000 each.

145. On 29 January 2003 Mrs Maria Floarea Zoltan requested EUR 1,000,000 for non-pecuniary damage. She pointed out that, after the events in September 2003, she and her son were chased away from Hădăreni and all attempts to return there had failed. Moreover, she had suffered humiliation and harassment by the secret police, who had been observing her, and as a result of a massive media campaign in Romania describing the Roma population as criminals. Consequently, she and her son had gone to the United Kingdom in 2001, where they had obtained political asylum. She and her son were currently undergoing treatment at the Medical Foundation for the Victims of Torture, among other institutions, for the psychological disturbance they had suffered following these events.

In a letter sent to the Court on 19 July 2004, Mrs Otilia Rostaş claimed EUR 120,000 in damages and Mrs Melenuța Moldovan claimed EUR 100,000.

Mr Iulius Moldovan requested, in a letter dated 6 July 2004, EUR 196,875 for the destruction of his house and household goods, having regard to the devaluation of the Romanian national currency in the last ten years. He also requested EUR 300,000 in respect of non-pecuniary damage.

146. In short, taking all the heads of pecuniary and non-pecuniary damage together, the applicants claimed the following sums: Iulius Moldovan EUR 496,875; Melenuța Moldovan, EUR 100,000; Maria Moldovan EUR 30,947; Otilia Rostaş, EUR 120,000; Petru (Gruia) Lăcătuş, EUR 40,738; Maria Floarea Zoltan, EUR 1,002,240 and Petru (Dîgăla) Lăcătuş EUR 55,530.

147. The applicants made no claims for costs and expenses.

148. The Government submitted that they could not be held responsible for the alleged violations and that, in any event, they had granted money for the reconstruction of the applicants' homes. In October 2003 they had submitted a report prepared at their request by a local expert. According to the report, the applicants' living conditions after the reconstruction of some of the houses were either “good” or “satisfactory”. It was considered, however, that further works were needed in order to ensure that these buildings were habitable: masonry and work on the electricity, ceiling and drainpipes, the value of which was estimated at EUR 1,000.

In any event, they considered the sums claimed to be excessive and unsubstantiated.

149. The Court reiterates its findings that:

- the applicants were subject to degrading treatment within the meaning of Article 3 of the Convention;
- there was an interference with their right to respect for their private and family lives and their homes in violation of Article 8;
- the length of the civil proceedings failed to satisfy the reasonable-time requirement of Article 6 § 1; and
- the applicants were discriminated against within the meaning of Article 14 on the ground of their ethnic origin in the exercise of their rights under Article 8.

All these breaches of the Convention had occurred because of the applicants' living conditions following the interference by the authorities after June 1994 with the applicants' rights and their repeated failure to put a stop to the breaches.

150. The Court considers that there is a causal link between the violations found and the pecuniary damage claimed, since the Government were found to be responsible for the failure to put an end to the breaches of the applicants' rights that generated the unacceptable living conditions. It notes that the expert reports submitted by the parties are inaccurate and inconsistent. It also takes the view that, as a result of the violations found, the applicants undeniably suffered non-pecuniary damage which cannot be made good merely by the finding of a violation.

151. Consequently, regard being had to the seriousness of the violations of the Convention of which the applicants were victims, to the amounts already granted at the domestic level by the final judgment of 25 February 2005, and ruling on an equitable basis, as required by Article 41 of the Convention, the Court awards them the following sums, plus any amount that may be chargeable in tax:

(a) EUR 60,000 to Iulius Moldovan for pecuniary and non-pecuniary damage;

(b) EUR 13,000 to Melenuța Moldovan for pecuniary and non-pecuniary damage;

(c) EUR 11,000 to Maria Moldovan for pecuniary and non-pecuniary damage;

(d) EUR 15,000 to Otilia Rostaş for pecuniary and non-pecuniary damage;

(e) EUR 17,000 to Petru (Gruia) Lăcătuş for pecuniary and non-pecuniary damage;

(f) EUR 95,000 to Maria Floarea Zoltan for pecuniary and non-pecuniary damage; and

(g) EUR 27,000 to Petru (Dîgăla) Lăcătuş for pecuniary and non-pecuniary damage.

152. The Court considers that these sums should constitute full and final settlement of the case, including that awarded at the domestic level.

B. Default interest

153. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT

1. *Holds* unanimously that there has been a violation of Article 8 of the Convention (paragraph 109 above);

2. *Holds* unanimously that there has been a violation of Article 3 of the Convention (paragraph 114 above);

3. *Holds* by five votes to two that there has been no violation of Article 6 § 1 of the Convention by reason of the denial of access to a court (paragraph 122 above);

4. *Holds* unanimously that there has been a violation of Article 6 § 1 of the Convention on account of the length of the proceedings (paragraph 131 above);

5. *Holds* unanimously that there has been a violation of Article 14 taken in conjunction with Articles 6 and 8 of the Convention (paragraph 140 above);

6. *Holds* unanimously

(a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following sums, plus any tax that may be chargeable:

(i) EUR 60,000 (sixty thousand euros) to Iulius Moldovan in respect of pecuniary damage and non-pecuniary damage;
(ii) EUR 13,000 (thirteen thousand euros) to Melenuța Moldovan in respect of pecuniary damage and non-pecuniary damage;
(iii) EUR 11,000 (eleven thousand euros) to Maria Moldovan in respect of pecuniary damage and non-pecuniary damage;
(iv) EUR 15,000 (fifteen thousand euros) to Otilia Rostaş in respect of pecuniary damage and non-pecuniary damage;
(v) EUR 17,000 (seventeen thousand euros) to Petru (Gruia) Lăcătuş in respect of pecuniary damage and non-pecuniary damage;

(vi) EUR 95,000 (ninety-five thousand euros) to Maria Floarea Zoltan in respect of pecuniary damage and non-pecuniary damage
(vii) EUR 27,000 (twenty-seven thousand euros) Petru (Dîgăla) Lăcătuş in respect of pecuniary damage and non-pecuniary damage;

(b) that these sums are to be converted into Romanian lei at the rate applicable at the date of settlement, with the exception of the award to Ms Zoltan, which should be converted into pounds sterling at the date of settlement and paid into the applicant's bank account in the United Kingdom;

(c) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

7. *Dismisses* unanimously the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 12 July 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following opinions are annexed to this judgment:
(a) joint concurring opinion of Mr Bîrsan and Mrs Mularoni; and
(b) partly dissenting opinion of Mrs Thomassen joined by Mr Loucaides.

J.-P. C.
S. D.

JOINT CONCURRING OPINION OF JUDGES BÎRSAN AND MULARONI

We share the view of the majority that there has been a violation of Articles 3 and 8 of the Convention.

However, we come to this conclusion on partially different grounds from the majority.

Noting that the facts at the origin of the applicants' complaints took place in September 1993, before the ratification of the Convention by Romania in June 1994, we consider that the following elements are essential for finding a violation of Articles 3 and 8:

(1) the failure of the Public Prosecutor's Office to institute criminal proceedings against those State agents who were clearly involved in the burning of the applicants' house, thus preventing the domestic courts from establishing the responsibility of these officials and punishing them;

(2) the applicants' living conditions in the last ten years, in particular the severely overcrowded and unsanitary environment and its detrimental effect on the applicants' health and well-being, combined with the length of the period during which the applicants have had to live in such conditions and the general attitude of the authorities (who *inter alia* made some very unpleasant remarks about the applicants' Roma origin in the judgment of 17 July 1998 in the criminal case), which must have caused the applicants considerable suffering, thus diminishing their human dignity and arousing in them such feelings as to cause humiliation and debasement. Three houses have not to date been rebuilt and the houses rebuilt by the authorities are uninhabitable, with large gaps between the windows and the walls and incomplete roofs.

As to the other elements taken into consideration by the majority (see paragraph 107), we consider that the circumstance that the domestic courts refused for many years to award pecuniary damages for the destruction of the applicants' belongings and furniture and to award non-pecuniary damages is an unfortunate one but not a relevant argument to find a violation of Articles 3 and 8. The Convention system is a subsidiary one and provides for the exhaustion of domestic remedies. We observe that the Târgu-Mureş court of appeal, in its judgment of 24 February 2004, referring *inter alia* to the Court's case-law, confirmed the applicants' right to pecuniary damages and awarded non-pecuniary damages (see § 77). This conclusion was recently upheld by the Supreme Court. The fact that the amount requested by the applicants was diminished by the domestic courts due to the state of provocation under which the accused had committed the crimes does not raise, according to us, any problem under the Convention. This opinion of ours has at least two reasons, as follows:

(1) the Court has repeatedly stated that while Article 6 § 1 of the Convention guarantees the right to a fair hearing, it does not lay down any

rules on the admissibility of evidence or the way in which it should be assessed, which are therefore primarily matters for regulation by national law and the national authorities (see, among many authorities, *Garcia Ruiz v. Spain*, GC, n° 30544/96, § 28, CEDH 1999-I);

(2) from the file it seems that the state of provocation taken into consideration by the Târgu-Mureş court of appeal did not lack any factual basis. The national courts were therefore entitled to draw consequences from their assessment of the evidence.

As to the specific circumstance that the proceedings lasted many years, we observe that the Court examined this issue separately and unanimously found a violation of Article 6§1.

PARTLY DISSENTING OPINION OF JUDGE THOMASSEN JOINED BY JUDGE LOUCAIDES

Contrary to the majority of the Court, I find that the applicants' right to a court within the meaning of Article 6 § 1 of the Convention was violated.

The applicants' complaint was that, since State agents were involved in the events of 1993, which had serious consequences upon their rights under Articles 3, 6, 8 and 14, they should have had the right to have a court determine their complaints and grant them compensation for the damage suffered as a result of the acts committed by those agents. However, the applicants were unable to file an action before a civil court since the prosecuting authorities decided not to bring criminal proceedings against the police officers.

The Court acknowledges that it was not able to conclude that an action for tort would have been an effective remedy for this aspect of the applicants' grievances (paragraph 120). In my opinion, the Court should then have drawn the conclusion that the applicants did not have an effective right to a court in order to claim compensation from the police officers allegedly involved in the incident.

Instead, the Court found that there has been no violation of Article 6 § 1 because of the damages awarded to the applicants by the civil courts in the course of an action lodged against the civilians involved in the riot.

However, Article 6 § 1 guarantees to the applicants the right to see a civil court, with full jurisdiction on questions of fact and law, rule on their claim of compensation directed against any tortfeasor including in this case the police officers.

At no moment did the domestic authorities acknowledge the violation of the Convention due to the behaviour of the police officers allegedly involved in the riot. As the Court has found, not only was there a lack of an effective investigation as regards the possible involvement of police officers in the burning of the houses, but the general attitude of the authorities was one of reluctance in admitting such illicit behaviour by members of the police (paragraphs 107 to 113). No court was ever able to examine the involvement of the State agents into the burning of the houses and allow, where appropriate, compensation in this respect.

Therefore I cannot agree with the Court's conclusion that the guarantees of Article 6 § 1 of the Convention concerning access to court are satisfied by the fact that civilians were held liable and obliged to pay compensation to the applicants. In the proceedings against the civilians, the applicants could not have had the State's responsibility established at the same time, with a more appropriate award of financial compensation being made as a consequence.

In my view, it would be unfortunate if the finding of the majority in paragraphs 121 and 122 could be understood as implying any acceptance that, where State agents allegedly violate human rights, they could escape their responsibility as soon as a private person is held liable for the impugned acts. To me, such a result would flout the rule of law.

For the reasons mentioned above, there has, in my opinion, been a breach of Article 6 § 1 of the Convention in the present case.