



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

THIRD SECTION

CASES OF PASTOR AND ȚICLETE v. ROMANIA

(Applications nos. 30911/06 and 40967/06)

JUDGMENT

STRASBOURG

19 April 2011

FINAL

19/07/2011

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the cases of Pastor and Țiclete v. Romania,

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

Josep Casadevall, *President*,

Corneliu Bîrsan,

Egbert Myjer,

Ján Šikuta,

Ineta Ziemele,

Nona Tsotsoria,

Kristina Pardalos, *judges*,

and Santiago Quesada, *Section Registrar*,

Having deliberated in private on 29 March 2011,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The cases originated in two applications (nos. 30911/06 and 40967/06) against Romania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by two Romanian nationals, Mr Gheorghe Pastor and Mrs Roxana Țiclete (“the applicants”), on 6 and 13 July 2006 respectively.

2. The applicant in case no. 30911/06 was represented by Ms Lavinia-Florina Labo, a lawyer practising in Cluj-Napoca, and the applicant in case no. 40967/06 was represented by Ms Loredana-Manuela Muscalu, a lawyer practising in Bucharest. The Romanian Government (“the Government”) were represented by their Agent, Mr Răzvan-Horațiu Radu.

3. The applicants alleged, in particular, that the criminal proceedings opened by the authorities in order to punish those responsible for the violent crushing of the anti-communist demonstration of December 1989 in Cluj-Napoca lacked promptness and was therefore ineffective.

4. On 22 May 2009 the President of the Third Section decided to communicate to the Government the complaint concerning the lack of promptness of the criminal proceedings under Articles 2, 3 and 6 § 1 of the Convention. It was also decided to rule on the admissibility and merits of the applications at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASES

5. The applicants, Mr Gheorghe Pastor (application no. 30911/06) and Mrs Roxana Țiclete (application no. 40967/06) were born in 1957 and 1967 respectively and live in Cluj-Napoca, Romania.

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

7. In December 1989 Mr Gheorghe Pastor and Mrs Roxana Ticlete's husband, among others, took part in the anti-communist demonstration in Cluj-Napoca. Following the intervention of the army to crush the demonstration, Mr Pastor suffered a bullet wound, which required months of medical treatment and which left him with a long-term physical disability. Mrs Ticlete's husband was killed. In total twenty-six people were killed during the demonstration and fifty-two others received bullet wounds.

8. In January 1990 the Cluj-Napoca Military Prosecutor's Office opened a criminal investigation in respect of several civilians and military officers as a result of the violent crushing of the anti-communist demonstration. The investigation was focused mainly on the role played by some of the prominent members of the former communist party and by military officers in the crushing of the demonstration. Consequently, several ballistic and forensic expert reports were made and the military prosecutors heard the victims and a number of witnesses.

9. On 15 October 1992 the Cluj-Napoca Military Prosecutor's Office ordered the discontinuance of the criminal investigation in respect of the individuals suspected of organising and participating in the crushing of the anti-communist demonstration, on the ground that no unlawful acts had been committed. At the same time, however, the Cluj-Napoca Military Prosecutor's Office ordered that the criminal investigation continue, so that the identity of alleged "unidentified shooters" could be discovered. The applicants contested the Cluj-Napoca Military Prosecutor's Office order.

10. On 22 September 1997 the Court of Cassation Military Prosecutor's Office ("the Military Prosecutor's Office") quashed the order of 15 October 1992 and ordered the reopening of the criminal investigation in respect of a member of the former communist party and the military officers who had organised and/or taken part in the crushing of the demonstration. The Court of Cassation Military Prosecutor's Office was given jurisdiction to investigate the case, and the prosecutors heard once again some of the witnesses and the parties to the proceedings.

11. On an unspecified date in 1998 the military personnel involved in the crushing of the demonstration and subject to investigation were assigned to the military reserves.

12. On 29 May 1998 the Military Prosecutor's Office issued an indictment and charged six individuals, in particular the former secretary of the local branch of the communist party and six military officers, with murder and incitement to murder. At the same time, the Romanian Ministry of Defence was summoned to take part in the proceedings as a civilly liable third party.

13. On 8 June 1998 the file was lodged with the Registry of the Court of Cassation.

14. At the first hearing of 2 November 1998 the Court of Cassation heard some of the civil parties and ordered the adjournment of the hearing on the ground that the accused lacked mandatory legal representation. On 16 and 30 November the Court of Cassation heard other civil parties and decided to adjourn the hearing on account of procedural errors concerning the summoning of some of the other parties.

15. On 25 January 1999 the Court of Cassation allowed the parties to submit oral observations in respect of an objection raised by the lawyers representing the accused concerning the lawfulness of the indictment. On the same date, the Court of Cassation decided that the file had not been lawfully referred to it and ordered the pre-trial investigation file to be returned to the Military Prosecutor's Office.

16. On 28 June 1999 the Military Prosecutor's Office referred the file to the Court of Cassation for the second time. On the same date it dismissed an application from the lawyers representing the accused for the withdrawal of the trial judges, and decided to adjourn the hearing.

17. On 20 September 1999 the Court of Cassation decided to suspend the hearing on the ground that the prosecutor was absent.

18. On 18 October 1999 the Court of Cassation heard two of the accused. On the same date it ordered a forensic expert report and adjourned the hearing in respect of the rest of the accused.

19. On 15 November 1999 three other accused were heard by the court.

20. On 10 January, 14 February, 13 March, 17 April, 15 May and 19 June 2000 the civil parties were heard by the Court.

21. Over the course of fifteen more hearings, held between 18 September 2000 and 25 March 2002, the Court of Cassation heard approximately sixty witnesses at a rate of between one witness per hearing (30 October and 20 November 2000, 7 May and 4 June 2001 and 25 February 2002) and nine witnesses per hearing (18 September 2000, 15 January and 12 February 2001, 14 February 2002). The court also fined on several occasions absent lawyers and witnesses.

22. On 25 March 2002 the Court of Cassation acknowledged that a large number of witnesses from Cluj-Napoca had not attended the hearings held in Bucharest, in spite of the fact that they had been fined. Consequently, the judges of the Court of Cassation decided to travel to Cluj-Napoca in order to hear 254 witnesses chosen on the basis of the parties' submissions.

23. In Cluj-Napoca, between 15 and 26 April 2002, the judges of the Court of Cassation heard 110 witnesses.

24. Following the return of the judges to Bucharest, on 3 June, 30 September, 28 October and 9 December 2002, the Court of Cassation continued to hear other witnesses and to accept submissions from the parties' lawyers.

25. On 20 January 2003 the Court of Cassation raised of its own motion the question of the judicial requalification of the acts committed by the accused to involuntary killing and negligent physical injury and allowed the parties to submit oral observations.

26. In order to allow the lawyers representing the parties also to submit written observations, the court adjourned delivery of the judgment several times, to 3 and then to 17 February, 3 and 17 March and 2 April 2003.

27. On 9 April 2003 the Court of Cassation, sitting as a court of first instance, acquitted two of the accused and convicted a third of murder and attempted murder and sentenced him to five years' imprisonment. Three other accused were convicted of involuntary killing and causing injury by negligence, however the court found that the crimes they were accused of were time-barred. The court also ordered jointly the convicted individuals and the Ministry of Defence to pay the applicants between 150,000,000 and 200,000,000 lei (ROL) (between 4,105 euros (EUR) and EUR 5,474) in compensation for pecuniary and non-pecuniary damages.

28. The parties appealed the judgment.

29. On 25 October 2004 the Court of Cassation, sitting as a second-instance court, allowed the parties' appeal and quashed the judgment of 9 April 2003, on the ground that procedural errors had been made in examining the question of the judicial requalification of the acts committed by the accused, and errors had been committed in determining the level of the pecuniary and non-pecuniary damages awarded to the applicants.

30. On 28 March 2005, during the second procedural cycle, the Court of Cassation, sitting as a first-instance court, proceeded to examine once again the judicial requalification of the acts committed by the accused, and allowed the parties to submit oral observations.

31. On 23 May 2005 the Court of Cassation acquitted one of the accused and convicted the five others of murder, incitement to murder and attempted murder, and sentenced them to between eight and fifteen years' imprisonment. It also ordered those convicted and the Romanian Ministry of Defence jointly to pay Mr Gheorghe Pastor ROL 650,000,000 (EUR 18,571) and Mrs Roxana Țiclete ROL 1,250,000,000 (EUR 35,714) in civil damages.

32. The applicants appealed against the decision on the ground that the amount of the civil damages awarded did not entirely cover the pecuniary and non-pecuniary damage they had sustained.

33. By a final decision of 20 March 2006 the Court of Cassation, following a global analysis of the appeal points submitted by the applicants, rejected the applicants' appeal, on the ground that the amount of the civil damages had been awarded correctly on the basis of the adduced evidence.

34. On 26 April and 10 May 2006 the Ministry of Defence paid the applicants the civil damages awarded by the final judgment of 20 March 2006.

II. RELEVANT DOMESTIC LAW AND PRACTICE

Civil Code

35. Articles 998 and 999 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 intentionally or negligently caused it.

Case-law of the domestic courts

36. The Government submitted two judgments (nos. 4238 and 4505 of 12 and 19 June 2008, respectively) delivered by the Bucharest District Court concerning general tort law proceedings brought by third parties against the State on the basis of Articles 998-999 seeking pecuniary and non-pecuniary damages for the excessive length of the criminal investigation opened by the authorities as a result of the violent anti-communist demonstration of December 1989 in Bucharest, which led to the killing of the third parties' relatives.

37. Relying on the provisions of the Romanian Constitution and on the case-law of the European Court of Human Rights, the domestic court held that the criminal investigation, which had been opened in 1990 and was still pending before the domestic authorities eighteen years later, was not compliant with the requirements set out by the Convention with regard to effectiveness of investigation and reasonable length of proceedings. Consequently, the domestic court allowed the general tort law action on the basis of Articles 998-999, on the ground that the domestic authorities' inactivity had caused pecuniary and non-pecuniary damage to the third parties. Finally, the court in both instances ordered the State to pay the third parties 100,000 new Romanian lei (RON) (EUR 23,700) and RON 50,000 (EUR 11,850) respectively.

38. The appeal brought by the State against the judgment of 12 June 2008 was allowed by the final judgment of 27 January 2009 of the Bucharest County Court, and the damages awarded were reduced to RON 50,000.

39. The Government has not informed the Court, however, if the judgment of 19 June 2008 was final.

THE LAW

I. JOINDER OF THE APPLICATIONS

40. In view of the similarity of the applications in terms of both fact and law, the Court finds it appropriate to join them.

II. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

41. The applicants complained of the length of the criminal proceedings opened by the domestic authorities in order to punish those responsible for the violent crushing of the anti-communist demonstration of December 1989 in Cluj-Napoca, and therefore considered it ineffective. Relying expressly on Articles 6 § 1 and 1 of Protocol No.1 to the Convention they alleged mainly that the criminal investigation opened by the domestic authorities lacked promptness and that the level of the pecuniary and non-pecuniary damages awarded by the domestic courts was inadequate.

42. The Court reiterates that since it is master of the characterisation to be given in law to the facts of the case, it does not consider itself bound by the characterisation given by an applicant or a government. By virtue of the *jura novit curia* principle, it has, for example, considered of its own motion complaints under Articles or paragraphs not relied on by those appearing before it. A complaint is characterised by the matters alleged in it and not merely by the legal grounds or arguments relied on (see, *mutatis mutandis*, *Powell and Rayner v. the United Kingdom*, judgment of 21 February 1990, Series A no. 172, p. 13, § 29; *Guerra and Others v. Italy*, judgment of 19 February 1998, Reports 1998-I, p. 223, § 44; *Berktaş v. Turkey*, no. 22493/93, § 167, 1 March 2001; and *Eugenia Lazăr v. Romania*, no. 32146/05, § 60, 16 February 2010).

43. Having regard to the facts of the present cases, and following the example of the case of *Șandru and Others v. Romania* (no. 22465/03, §§ 51-54, 8 December 2009), the Court considers that the present cases, communicated to the respondent Government under, among others, Article 2 of the Convention, must be examined under the procedural head of the said Article.

The relevant provisions of the Article read as follows:

“Everyone's right to life shall be protected by law (...)”

A. Admissibility

44. The Government raised two preliminary objections. On the one hand they contested the Court's competence *ratione temporis* to examine the applications under the procedural head of Article 2 of the Convention and, on the other hand, they argued that the applicants had not exhausted the available domestic remedies with regard to their complaint.

1. Competence *ratione temporis*

45. The Government submitted that the killing and the physical injury suffered by the applicants and their relatives, as well as the opening of the criminal investigation, happened prior to the date of entry into force of the Convention for Romania on 20 June 1994. Moreover, according to the principles set out by the Court in the case of *Blečić v. Croatia* ([GC], no. 59532/00, §§ 63-69, ECHR 2006-III), the obligation under the Convention of the Romanian authorities to conduct a prompt and effective investigation is derived from the aforementioned unlawful acts and cannot be severed or examined separately by the Court. Consequently, the Government considers that the Court is not competent *ratione temporis* to examine the applicants' complaints falling under the procedural head of Article 2 of the Convention.

46. The applicant in case no. 30911/06 disagreed. He argued that the Court was competent *ratione temporis* to examine the promptness of the criminal proceedings pending before the domestic authorities following the entry into force of the Convention for Romania, although it was derived from unlawful acts which took place before the ratification of the Convention. The applicant in case no. 40967/06 did not submit any observations on this point.

47. The Court notes that the killing of Mrs Țiclete's husband and the serious injury suffered by Mr Pastor happened in 1989, before the entry into force of the Convention for Romania on 20 June 1994.

48. The Court would state, however, that it has already concluded that the procedural obligation to carry out an effective and prompt investigation under Article 2 has evolved into a separate and autonomous duty. Although it is triggered by the acts concerning the substantive aspects of Article 2, it can give rise to a finding of a separate and independent “interference”. In this sense it can be considered to be a detachable obligation, arising out of Article 2 and capable of binding the State, even when the substantive act took place before the critical date (see *Šilih v. Slovenia* [GC], no. 71463/01, § 159, 9 April 2009, and *Varnava and Others v. Turkey* [GC],

nos. 16064/90, 16065/90, 16066/90, 16068/90, 16069/90, 16070/90, 16071/90, 16072/90 and 16073/90, §§ 136, 138, 18 September 2009). At the same time, for the procedural obligations imposed by Article 2 to come into effect a significant proportion of the procedural steps required by this provision will have been, or ought to have been, taken after the critical date (see *Șilih*, cited above, § 163).

49. In the present cases none of the parties have contested the fact that most of the procedural steps were taken after the entry into force of the Convention for Romania.

50. In view of the above, the Court finds that the alleged interference with Article 2 in its procedural aspect falls within the Court's temporal jurisdiction and that it is therefore competent to examine this part of the application. It will confine itself to determining whether the events that occurred after the entry into force of the Convention in respect of Romania disclosed a breach of that provision (see, *mutatis mutandis*, *Șandru and Others*, cited above, § 59).

2. Exhaustion of domestic remedies

51. The Government submitted that the applicants had failed to exhaust the available domestic remedies in respect of their complaint to the Court.

52. The Government argued that the applicants could have lodged an action for compensation on the basis of general tort law, namely Articles 998-999 of the Romanian Civil Code, against the State for lack of promptness of the domestic proceedings. They consider that a general tort law action by the applicants would have enabled the domestic courts to decide the cases on their merits and award just satisfaction to the applicants for any alleged damage they might have suffered. They also consider that the remedies in question were available to the applicants, were sufficient to afford redress in respect of the breaches alleged, and were sufficiently certain not only in theory but also in practice. In supporting their arguments the Government relied on two judgments delivered by the Bucharest District Court (see paragraphs 35-37 above) which ordered the State to pay damages to third parties in compensation for the lack of promptness of the criminal proceedings opened as a result of the violent crushing of the anti-communist demonstration in Bucharest.

53. The applicant in case no. 30911/06 disagreed. He submitted that he had exhausted the available domestic remedies; in particular that he had been a civil party to the criminal proceedings. Consequently, he considers that being forced to bring a separate tort law action would be unreasonable, particularly since the criminal proceedings would have resulted in the suspension of any other separate civil proceedings, and in any event there was no reasonable ground to believe that the outcome of a separate tort law action would have been different. The applicant in case no. 40967/06 did not submit any observations on this point.

54. The Court reiterates that under Article 35 of the Convention the applicants should have made normal use of those domestic remedies which are likely to be effective and sufficient. When a remedy has been attempted, use of another remedy which has essentially the same objective is not required (see *Wójcik v. Poland*, no. 26757/95, Commission decision of 7 July 1997, Decisions and Reports 90, p. 24; *Günaydin v. Turkey* (dec.), no. 27526/95, 25 April 2002; and *Moreira Barbosa v. Portugal* (dec.), no. 65681/01, 29 April 2004).

55. In the present cases the Court notes that the applicants were civil parties to the criminal proceedings brought against the individuals charged with the violent quashing of the anti-communist demonstration in Cluj-Napoca. Therefore, it remains to be determined whether the applicants were required to bring a separate general tort law action against the State in order to obtain just satisfaction for the lack of promptness of the criminal investigation.

56. The Court notes that the Government have submitted two separate tort law action judgments delivered by the Bucharest District Court, ordering the State to pay damages to third parties - relatives of those deceased during the violent crushing of the anti-communist demonstrations in Bucharest - as a result of the lack of promptness of the criminal investigation.

57. The Court draws attention, however, to the fact that the two general tort law action judgments, only one of which was final, have been delivered in 2008, more than two years after the proceedings in the present cases had ended. Moreover, the Court notes that the two judgments concern the criminal proceedings initiated as a result of the violent crushing of the anti-communist demonstration in Bucharest which is still pending before the domestic authorities. The Government, however, have not provided examples of general tort law action case-law concerning proceedings which ended with final judgments.

58. Consequently, the Court considers that one final judgment is insufficient to prove that a separate tort law action would have amounted to an effective remedy sufficiently certain not only in theory but also in practice at the time of the events in the present cases.

59. It follows that the objection raised by the Government must be dismissed by the Court.

60. Finally, the Court notes that the applicants' complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

61. The applicants submitted that the criminal proceedings brought against the individuals who had organised and participated in the violent crushing of the anti-communist demonstration in Cluj-Napoca lacked the promptness required by the Convention. They argued that the inactivity and the repeated procedural errors made by the domestic authorities had unjustly delayed the end of the proceedings and deprived them for a long time of just satisfaction for the damage they had suffered.

62. The Government disagreed. They argued that the domestic authorities have set up an effective investigation which led to the punishment of those responsible for the violent quashing of the anti-communist demonstration in Cluj-Napoca.

63. They have also submitted that the length of proceedings was not unreasonable, having regard to the complexity of the case and the considerable social and political impact it had for Romanian society.

64. They argued that during the pre-trial stage of the proceedings, in particular between January 1990 and 15 October 1992, more than 750 people were heard and several expert reports were made. On 22 September 1997 the criminal investigation was reopened by the domestic authorities as a result of their efforts to identify those responsible for the violent crushing of the demonstration. Moreover, the diligent attitude of the Military Prosecutor's Office in hearing 158 witnesses between November 1997 and April 1998 has led to the indictment of the suspects within less than eight months of the date of the reopening of the investigation. Also, the authorities were independent and impartial in carrying out the investigation and the military personnel involved in the crushing of the demonstration were assigned to the military reserves.

65. Moreover, the Court of Cassation has imposed sanctions in respect of all types of behaviour aimed at delaying the proceedings, in particular, it fined lawyers or witnesses who failed to appear before it.

66. The Government submitted that the hearings before the Court of Cassation had always been organised close together, at intervals of between two and five weeks. The only exceptions when longer intervals were allowed were during the annual judges' holiday and when procedural requirements, like summoning a large number of parties, had to be observed.

67. According to the Government, at all stages of the proceedings it was exceptional for the Court of Cassation to require more than three hearings for the delivery of its judgments. Moreover, it was mostly its procedural obligation to hear again the witnesses and the civil parties who had previously been heard by the prosecutors which caused difficulties and delay in the proceedings.

68. Finally, the Government argued that it was in fact the applicants' behaviour which had caused further delays in the proceedings. They had changed their claims for damages several times, and they called a large number of witnesses.

69. The Court reiterates that where there may be obstacles or difficulties which prevent progress in an investigation in a particular situation, a prompt response by the authorities is vital in maintaining public confidence in their adherence to the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts (see *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, § 72, ECHR 2002-II).

70. The State's obligation under Article 2 of the Convention will not be satisfied if the protection afforded by domestic law exists only in theory: above all, it must also operate effectively in practice, and that requires a prompt examination of the case without unnecessary delays (see *Šilih*, cited above, § 195; *Varnava and Others*, cited above, § 191; and *Șandru and Others*, cited above, § 72).

71. In the present cases the Court notes that following the violent events of December 1989, the Cluj-Napoca Military Prosecutor's Office opened an *ex-officio* criminal investigation into the incidents in January 1990. The proceedings ended with a final judgment of 20 March 2006 sentencing those responsible for the violent crushing of the anti-communist demonstration. Consequently, the Court will confine itself to determining only whether the length of proceedings discloses a breach of the State's obligation under the procedural head of Article 2.

72. The Court draws attention to the fact that it is only the period of eleven years and nine months after the entry into force of the Convention for Romania on 20 June 1994 which falls under its temporal jurisdiction and can therefore be examined by the Court.

73. The Court notes, however, that on 20 June 1994 the proceedings were pending before the Military Prosecutor's Office and no further investigation had been carried out into the case since 15 October 1992 when the Cluj-Napoca Military Prosecutor's Office had ordered the continuation of the investigation in respect of unidentified shooters.

74. The Court also notes that at the pre-trial stage of the proceedings the criminal investigation was carried out by military prosecutors, who were military personnel under the same chain of command as the military officers they were investigating for the violent crushing of the demonstration of December 1989 (see, *mutatis mutandis*, *Güleç v. Turkey*, judgment of 27 July 1998, *Reports* 1998-IV, §§ 81-82; *Öğür v. Turkey*, [GC] no. 21954/93, ECHR 1999-III, §§ 91-92; *Barbu Anghelescu v. Romania*, no. 46430/99, § 67, 5 October 2004; and *Șandru and Others*, cited above, § 74).

75. Although the Government have argued that the military officers subject to investigation had been assigned to the military reserves following

their indictment, the Court notes that the indictment and the assignment to the military reserves happened in 1998 (see § 11) following a period of six years of unexplained inactivity on the part of the Military Prosecutor's Office and more than seven years after the opening of the criminal investigation.

76. The Court notes that during the trial stage of the proceedings there have been a repeated number of hearings, held mainly because of the adjournments ordered by the domestic courts as a result of procedural errors, such as failure to summon the parties and the absence of mandatory legal representation (see § 14).

77. The Court considers that the reduction of the number of witnesses and the judges' visit to Cluj-Napoca have speeded up the proceedings. However, the Court notes that these measures were taken only in 2002 (see § 22), four years after the indictment of the accused and when the authorities were already aware of the delay of the proceedings and the difficulties they would have encountered in hearing all the witnesses mentioned in the indictment documents. Moreover, the Court considers that the efforts of the authorities were partly undermined following the quashing of the judgment of the first-instance court as a result of procedural errors, which caused the re-examination of the merits of the case (see § 29).

78. While the Court accepts that the domestic courts are better placed to assess and interpret the applicable domestic legal provisions, it nevertheless notes that the passivity of the Military Prosecutor's Office and the delays in proceedings before the first-instance court have undoubtedly made a significant contribution to delaying the proceedings and have consequently impeded the effective processing of the case. It observes in this connection that it is for the State to organise its judicial system in such a way as to enable its courts to comply with the requirements of the Convention, including those enshrined in the procedural obligation of Article 2 (see, *mutatis mutandis*, *R.M.D. v. Switzerland*, 26 September 1997, § 54, *Reports* 1997-VI; *Šilih*, cited above, § 210; and *Șandru and Others*, cited above, § 78).

79. At the same time, the Court considers that the applicants' attitude did not contribute to the delay of the proceedings. The fact that according to the Government (see § 68) they repeatedly changed their just satisfaction claims in order to ensure that they were indexed to the inflation rate and that they appointed a large number of witnesses could not have interfered with the examination of the case by the domestic authorities within a reasonable time.

80. Finally, although the complexity of the case cannot be denied, the Court cannot share the Government's view that delaying the proceedings for more than sixteen years from the date the criminal investigation was opened and more than eleven years from the date the Convention entered into force for Romania could be justified by the political and social impact of the case.

Quite the opposite, its importance for Romanian society should have urged the domestic authorities to examine the case without undue delay in order to prevent any appearance of collusion in or tolerance of unlawful acts (see, *mutatis mutandis*, *Șandru and Others*, cited above, § 79).

81. Having regard to the above background, the Court considers that the domestic authorities failed to deal with the applicants' claim arising from their relative's death or their serious personal injury with the level of diligence required by Article 2 of the Convention. Consequently, there has been a violation of Article 2 in its procedural aspect.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

82. Lastly, the applicants complained under Article 6 § 1 of the Convention of the fairness of the proceedings and the lack of reasoning in the judgment of the Court of Cassation, under Article 13 of the lack of an effective remedy in the determination of adequate just satisfaction claims and under Article 1 of Protocol No. 1 of the amount of compensation.

83. Having carefully considered the applicants' submissions in the light of all the materials in its possession, the Court finds that, in so far as the matters complained of are within its competence, they do not disclose any appearance of a violation of the guarantees set out in Articles 6 § 1, 13 and 1 of Protocol No. 1 of the Convention.

84. It follows that these complaints are manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

85. 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.”

A. Damage

86. The applicant in case no. 30911/06 claimed EUR 75,000 in respect of non-pecuniary damage on account of the length of proceedings and the small amount of damages awarded to him by the domestic courts in spite of the medical and social problems he had to face as a result of his injury.

87. The applicant in case no. 40967/06 did not expressly submit a claim for just satisfaction. She argued, however, that the length of proceedings had caused her psychological distress which could not be quantified.

88. The Government submitted that the damages claimed by the applicant in case no. 30911/06 were excessive and argued that the conclusion of a violation of the Convention Article would suffice to compensate for the non-pecuniary damage incurred by both applicants.

89. The Court observes that in the present cases, the basis for making just satisfaction awards is the domestic authorities' failure to examine the applicants' claim concerning the violent crushing of the anti-communist demonstration in Cluj-Napoca with the level of diligence required by Article 2 of the Convention.

90. Consequently, the Court finds that the breach of Article 2 in its procedural aspect must have caused the applicants serious psychological distress. Ruling on an equitable basis, it therefore awards each of the applicants EUR 10,000 in respect of non-pecuniary damage.

B. Costs and expenses

91. The applicant in case no. 30911/06 also claimed costs and expenses incurred before the Court. He claimed RON 3,000 (EUR 726) and an additional 1% "success fee" in respect of lawyers' fees and RON 101.30 (EUR 25) in respect of postal fees. He submitted receipts totalling EUR 751 in respect of lawyers' and postal fees.

92. The Government conceded that the applicant is entitled to the reimbursement of the postal fees of EUR 25, however they contested the amount of the lawyers' fees. They argued that the amount claimed by the applicant in respect of lawyers' fees was not supported by sufficient evidence, and that part of the claim did not have any direct link to the present case.

93. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are also reasonable as to quantum (see, for example, *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 54, ECHR 2000-XI).

94. Regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the applicant in case no. 30911/06 the sum of EUR 751 for the costs and expenses incurred and to dismiss his request for an additional 1% "success fee" in respect of lawyers' fees.

C. Default interest

95. 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 UNANIMOUSLY

1. *Decides* to join the applications;
2. *Declares* the complaint concerning the procedural limb of Article 2 of the Convention admissible and the remainder of the applications inadmissible;
3. *Holds* that there has been a violation of Article 2 of the Convention in its procedural limb;
4. *Holds*
 - (a) that the respondent State is to pay, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
 - (i) EUR 10,000 (ten thousand euros), plus any tax that may be chargeable, to each of the applicants Mr Pastor (application no. 30911/06) and Mrs Țiclete (application no. 40967/06), in respect of non-pecuniary damage;
 - (ii) EUR 751 (seven hundred and fifty-one euros), plus any tax that may be chargeable, to Mr Pastor (application no. 30911/06), in respect of costs and expenses;
 - (b) that the above-mentioned amounts be converted into the official currency of the respondent State at the rate applicable on the date of settlement;
 - (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;
5. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 19 April 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President