CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

PARTIAL DECISION

AS TO THE ADMISSIBILITY OF

Applications nos. 41138/98 by Iulius MOLDOVAN and others

and 64320/01 by Octavian ROSTAŞ and others

against Romania

The European Court of Human Rights (First Section), sitting on 13 March 2001 as a Chamber composed of

Mrs E. PALM, *President*,
Mrs W. THOMASSEN,
Mr GAUKUR JÖRUNDSSON,
Mr R. TÜRMEN,
Mr C. BÎRSAN,
Mr J. CASADEVALL,
Mr R. MARUSTE, *judges*,

and Mr M. O'BOYLE, *Section Registrar*,

Having regard to the application no. 41138/98 introduced with the European Commission of Human Rights on 14 April 1997 and registered on 6 May 1998 and to the application no. 64320/01 introduced on 14 December 2000 and registered on 8 January 2001,

Having regard to Article 5 § 2 of Protocol No. 11 to the Convention, by which the competence to examine the application no. 41138/98 was transferred to the Court,

Having deliberated, decides as follows:

THE FACTS

The applicants are 25 Romanian nationals of Roma origin. They all used to live in the village of Hădăreni, Mureş county and are agricultural workers.

The first applicant, Iulius Moldovan, was born in 1959. The second applicant, Melenuţa Moldovan, was born in 1963. The third applicant, Valentina Rostaş, was born in 1964. The fourth applicant, Lucreţia Rostaş, was born in 1950. The fifth applicant, Silvia Moldovan, was born in 1955. The sixth applicant, Eleonora Rostaş, was born in 1956. The seventh applicant, Octavian Rostaş, was born in 1958. The eighth applicant, Bazil Moldovan, was born in 1943. The ninth applicant, Maria Moldovan, was born in 1940. The tenth applicant, Ghiolanca Lăcătuş, was born in 1933. The eleventh applicant, Adrian Moldovan, was born in 1943. The twelfth applicant, Lucreţia Moldovan, was born on an unknown date. The thirteenth applicant, Maria Lăcătuş, was born in 1959. The fourteenth, fifteenth, sixteenth, seventeenth and eighteenth applicants, Otilia Rostaş, Ferdinand Lăcătuş, Lucaci Adrian Moldovan, Petru Lăcătuş ("Galbinus") and Petru "Petrişor" Lăcătuş respectively, were born on unknown dates. The nineteenth applicant, Petru Lăcătuş, was born in 1962. The twentieth applicant, Maria Zoltan Florea, was born in 1964. The twenty-first applicant, Persida Dorina Rostaş, was born in 1970. The twenty-second applicant, Mariana Moldovan, filed the application on behalf of her deceased mother, Rozalia Rostaş. The twenty-third, the twenty-fourth and the twenty-fifth applicants, Bazil Sami Lăcătuş, Petru Gruia Lăcătuş and Lucaci Moldovan, were born on unknown dates.

All applicants with the exception of Bazil Sami Lăcătuş, Petru Gruia Lăcătuş and Lucaci Moldovan are represented before the Court by the European Roma Rights Centre, an association based in Budapest (Hungary). The applicants Bazil Sami Lăcătuş, Petru Gruia Lăcătuş and Lucaci Moldovan are represented before the Court by the first applicant, Iulius Moldovan.

The facts of the case, as presented by the applicants, can be summarised as follows.

A. The circumstances of the case

The incident on 20 September 1993

On the evening of 20 September 1993, a conflict arouse in a bar in the center of Hădăreni village (Târgu-Mureş county) between three Romas and one non-Roma. Rapa Lupian Lăcătuş and Aurel Pardalian Lăcătuş, two Roma brothers, along with another Roma, Mircea Zoltan, began to argue with a non-Roma, Cheţan Gligor Sr. The verbal conflict developed into a physical one which ended with the death of Cheţan Crăciun, who came to

the aid of his father. The two brothers and Mircea Zoltan then fled the scene and sought refuge in the house of a neighbour.

Soon after, news of the incident spread and a large number of villagers learned of Cheţan Gligor Jr.'s death. Enraged, they gathered together to find the two Roma brothers and Mircea Zoltan. The angry mob arrived at the house where the three Roma men were hiding and demanded that they come out. Among the crowd were members of the local police force in Hădăreni, including the Chief Police, Ioan Moga, and police officer Alexandru Şuşcă, who heard of the incident and soon came to where the brothers were hiding. When the brothers refused to come out, the angry crowd set fire to the house. As the fire engulfed the house, the brothers tried to flee but were caught by the angry mob and that 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 from the fire. The police officials present that evening did nothing to stop the violent attacks on the Lăcătuş brothers which resulted in their deaths, nor did they prevent the mob from setting fire to the house, causing the death of Mircea Zoltan. The applicants allege that on the contrary, they also called for and allowed the destruction of all Roma property in Hădăreni that same evening.

Later the same evening, the villagers decided to take their anger out on all the Roma living in the village and proceeded to burn Roma homes and property in Hădăreni. The pogrom continued through to the following day and resulted in the villagers setting fire to Roma houses and destroying other Roma property such as stables, cars and goods. In all, thirteen Roma houses were destroyed, the applicants' houses.

The following are the facts related to the violations that each applicant alleges to have suffered on the evening of 20 September 1993 and the following day.

Florea Maria Zoltan states that on the night of 20 September 1993, her husband Mircea Zoltan, and her two brothers, Rapa Rupina Lăcătuş and Aurel Pardalian Lăcătuş, were brutally murdered in the Hădăreni pogrom. She alleges that one of the thirteen Roma houses set on fire that evening belonged to her deceased mother Cătălina Lăcătuş. Persida Dorina Rostaş declares that her husband, Rapa Lupian Lăcătuş was murdered on the night of the pogrom. Lucreţia Rostaş lost both her nephews, Rapa Lupian Lăcătuş and Aurel Pardalian Lăcătuş, in the pogrom. She also claims that her home and various goods were destroyed. Petru Lăcătuş declares that his brothers, Rapa Lupian and Aurel Pardalian Lăcătuş were killed in the pogrom and that his house was destroyed by the fire. He was later forced to sell his property for a very small amount due to destruction. Iulis Moldovan alleges that on 20 September 1993, the three Roma men killed were lynched on his property. His home and other property were set on fire and destroyed.

Otilia Rostaş alleges that on the evening of 20 September 1993, she learned from her eleven year daughter about what was happening in Hădăreni. Her daughter told her that she had just been hit with a carriage thrown at her by a neighbour, who also informed her that the non-Roma

villagers wanted to kill all the Gypsies in retaliation for the death of Cheţan Gligor Jr. Fearing for the safety of her children, the applicant brought all her daughters to her mothers' house. Later that evening, when she returned to her house, she witnessed several people gathered in from of the courtyard throwing stones and pieces of wood at the house and eventually set her house on fire. As she ran back to her mother's house, she saw three persons armed with clubs urging the mob to set fire on her mother's house. Within minutes, her mother's home was in flames. The following day, the applicant attempted to return to what was left of her home to assess the damage. As she approached her property, she was threatened verbally and physically by an angry mob of non-Roma villagers and police officers. One villager threatened her with a shovel and others violently threw rocks. The villagers, including the police officials present, prevented her from entering what remained of her home. Fearing for her safety, the applicant and her children left Hădăreni. Later that day, she once again attempted to return to her home along with other Roma villagers who wished to return to their homes. This time, the applicant found the road to her house entirely blocked by an even larger crowd of villagers, all of whom were carrying clubs. Police officials were also among the crowd. Among the enraged mob of villagers, the applicant recognised officer Nicu Drăghici who was holding a truncheon. One police car even pursued the applicant and other Roma trying to return to their homes, firing shots at them from their police car and shouting at them to leave the village.

Maria Moldovan alleges that on the evening of 20 September 1993, an angry mob appeared at her door, entered the house and destroyed all her belongings. The mob then proceeded to set fire to her home and she watched as her home was entirely destroyed by flames. The next day, when she returned to her destroyed home with her husband and daughter she was met by an enraged mob of villagers who prevented her from entering her home. Police officers Ioan Moga, Alexandru Susca and Florin Nicu Draghici took hold of her, sprayed mace in her face and then proceeded to seriously beat her. Costică Moldovan witnesses these facts. Police officer Draghici also fired at Costică Moldovan and his family as they tried to return to their home to take their pigs from the land.

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

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

Rozalia Rostaş declared that she suffered damages to her home for an amount of 500,000 lei, and other personal possessions were destroyed as well.

Adrian Moldovan declares that various personal possessions were destroyed. Bazil Moldovan declares that his house was destroyed by fire.

Maria Moldovan declares she suffered damage to her house and that she lost valuables and possessions.

Octavian and Eleonora Rostaş declare that theirs house was destroyed by fire. In 1993, it was valued at 50 millions Lei (ROL) and although it was reconstructed, the house required additional repairs which would now cost ROL 20 millions. They also allege that they lost other valuable goods and possessions in the fire.

Otilia Rostaş alleges that her house was destroyed and that she lost other valuable goods in her house.

Lucaci Moldovan alleges that his house was destroyed and that he lost valuable goods.

Silvia Moldovan declares that her house was destroyed.

Maria Lăcătuş alleges that her house, goods and valuables were destroyed.

Bazil Sami Lăcătuş alleges that he suffered damages to his home and other valuable belongings were destroyed, including a car.

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

Investigation into the incident

In the aftermath of the incident, the Romani residents of Hădăreni filed a criminal complaint with the Prosecutor's Office. The complainants identified a number of individuals responsible for what occurred on 20 September 1993. Among those identified were Chief of Police Ioan Moga, police officer Alexandru Susca, Colonel Florentin Nicu Draghici and Lieutenant Colonel Constantin Palade, all members of the police force.

Following the filing of the complaint, an investigation was initiated which identified the offenders who actively participated in the killing of Lăcătuş brothers and Mircea Zoltan, as well as in the destruction of Roma houses and other Roma property.

On 21 July 1994, the civilians Pavel and Iuliu Bucur and Nicolae Gall were remanded on custody. They were charged in July 1994 with extremely aggravated manslaughter (under Articles 174 and 176 of the Criminal Code) and arson (under Article 217 § 4 of the Criminal Code). However, only a few hours after they were taken into custody, they were set free and all warrants for their arrests were cancelled under the orders of the General Prosecutor. Thus, no formal indictment was ever issued.

By an injunction of 31 October 1994, due to ample evidence that suggested police involvement in the incident, the case was sent to the Târgu-Mureş Military Prosecutor's Office, competent to investigate crimes

committed by police officers. According to the injunction of the Public Prosecutor' Office of Târgu-Mureş Court of Appeal, Colonel Palade had organised after the incident a small meeting with non-Roma villagers, 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 them".

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

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

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

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

On 12 August 1997 the Public Prosecutor of the Târgu-Mureş Court of Appeal issued a criminal indictment charging eleven civilians suspected of committing crimes on the evening of 20 September 1993 with criminal offences.

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

On 11 November 1997, a criminal trial, in conjunction with a civil case for damages, began before the Târgu-Mureş County Court against the civil defendants indicted. During these court proceedings, the applicants learned of the overwhelming extent of evidence against the police. Various witnesses testified that police officials were not only present that evening

but actually instigated the incident and then stood idly by and watched as the two Lăcătuş brothers and Mircea Zoltan were killed and Roma houses were destroyed. The Chief of police Ioan Moga, Lieutenant Florentin Nicu Draghici and police officer Alexandru Susca were specifically named by witnesses who testified before the Târgu-Mureş County court, as members of the police who instigated the events.

In light of numerous court testimonies that implicated the involvement of additional individuals, both civilian and officers of the law, the applicants' lawyer asked the court to expand the indictment of 17 July 1997. As a result, the civilian prosecutor informed the competent military prosecutor with a view that proceedings be initiated before a military court against the police officers concerned.

In letters to the court, applicants Iulius Moldovan and Florina Zoltan asked the court to extend the criminal charges. The acting prosecutor refused to expand the indictment.

On 23 June 1998 the Târgu-Mureş County court disjoined the civil and the criminal case, taking into account that the criminal investigation had lasted for four years and that the solving of the civil aspect of the case would take even longer. The civil case for damages is still pending.

The judgment of 17 July 1998

On 17 July 1998 the same court pronounced its ruling with regard to the criminal case. The court firstly noted the following :

> "...due to their life standard, to the rejection of the moral values accepted by the rest of the population, the Roma community marginalized itself, has an aggressive behaviour and deliberately denies and violates the legal norms acknowledged by society.
>
> Most of the Roma have no occupation and they earn their living by performing occasional activities, stealing and having all kind of illicit activities. As the old form of common property that gave them equal rights with the other members of the community was liquidated, 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 commit attacks mainly against private property - which generated even more rejection than before."

The Court pursued and established that on the evening of 20 September 1993, the Lăcătuş brothers and Mircea Zoltan, who were waiting at the village bus station, had a quarrel with Chetan Gligor Sr. concerning the attempts made by the three Roma to draw the attention of a girl on them. Answering the Romas' mockery and insults addressed to him and to his cow, Chetan Gligor Sr. 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 his chest by Rapa Lupian Lăcătuş. The Roma men ran away from the station, while

Cheţan Crăciun was brought to the hospital, where he died about half an hour later. During that time, the Roma men took refuge in the house of the applicants Lucreţia and Iulius Moldovan, while villagers gathered around the yard of the house. Two police officers, Moga and Şuşcă, arrived at the incident site minutes later, having been called by some villagers. The policemen were under the effect of alcohol. Before the arrival of the police, but also after that, the villagers threw stones, pieces of wood and clods 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 extended, two of the Roma men came out of the house. Rapa Lupian Lăcătuş was immediately immobilised by the policeman Moga, while Pardalian managed to run away. Mircea Zoltan was stopped from coming out of the house by a villager and was hit by another with the fist and a shovel, which finally led to his dying in the fire. The autopsy report established that he died due to respiratory insufficiency, carbonized at 100%.

To escape from the wild fury of the villagers, the policeman Moga took Rapa Lupian Lăcătuş to the cemetery, after trying in vain to enter several yards 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, Lăcătuş Rapa Lupian died of violent death due to traumatic and bleeding shock, as a result of multiple traumatisms that affected his liver, the hemiperitoneum, caused wounds and peripheral haematoma on 70 % of his body.

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

The Court further established that the villagers had declared that that night, the village was to be "purged from the Gypsies", an intention clearly expressed in action, and found that

> "the majority population of Hădăreni were directly or indirectly supported by the representatives of the authorities who came to the village and who not only did nothing to stop the setting of houses on fire, but also surrounded the area by groups of gendarmes."

The Court further found that the action was not premeditated, but all those present acted jointly, under different forms (aggression, murder, fire, destrcution), to reach their declared goal, that of eliminating the Roma community from the village.

The Court also found that the preliminary investigation was inadequate :

> " we deem that the inadequate manner in which the acts and all the procedures related to the investigation were performed on site reflect a negative attitude ... The same can be remarked regarding the delayed submitting the of the autopsy reports referring to all victims (Chetan Craciun, Lacatus Rapa Lupian and Zoltan Mircea died on 21 September 1993 and the forensic reports were drafted in November 1993; mention should be made that none of the four forensic reports includes specific dates,

> but only the indication of the month when they were drafted) and regarding the electoral meeting organised on the village stadium, attended by politicians, representatives of the police and of the law, who asked the population not to tell the truth and to delay the solving of the case."

The Court noted that the representative of the prosecution had not accepted the extension of the criminal investigation and initiation of the criminal action regarding "other persons" and therefore decided that it could only rule with regard to those perpetrators sued according to Article 317 of the Criminal Procedure Code.

The Court found guilty and convicted three civilians for the crime of extremely aggravated murder under Articles 174 and 176 of the Criminal Code and ten civilians for destruction and outrage against morals and disturbance of public order. The court sentenced them to imprisonment from seven years to one year. The Court justified the "mildness" of the sentences as follows :

> "Taking into consideration the characteristics of this particular case, the punishments applied to the defendants might seem too mild, as compared to the gravity of the crimes. We consider that, as long as persons who contributed to a higher degree to the committing of the criminal actions were not sued and were not even investigated, although there was enough evidence to prove their guilt, the defendants who were sued should not be held responsible for all crimes committed, but only for the part they are liable for."

Subsequent procedure

On 17 July 1998 the Prosecutor's Office appealed this judgment, asking, *inter alia*, for harsher sentences. On 15 January 1999 the Târgu-Mureş Court of Appeal changed the sentences of the defendants convicted of murder to six to three years' imprisonment and reduced the sentence terms of those convicted for arson.

On 22 August 1999, based on new evidence brought to light in the criminal trial, the applicants filed an appeal with the Military Prosecutor's Office of the Supreme Court of Justice against the decision of 22 August 1995 not to open an investigation concerning the police officers Alexandru Şuşcă, Ioan Moga, Constantin Palade and Nicu Drăghici who allegedly instigated the incidents of 20 September 1993.

On 22 November 1999 the Supreme Court of Justice upheld the lower courts' convictions for arson and reduced the charges of extremely aggravated murder to a lesser charge of aggravated murder for three defendants and acquitted another defendant.

On 14 March 2000 the Chief Military Prosecutor of the Supreme Court of Justice upheld the Bucharest Military Court's decision of 22 August 1995 not to open a criminal investigation concerning the police officers allegedly involved in the incident.

In a decree of 7 June 2000 the President of Romania issued individual pardons to two of the three defendants convicted for extremely aggravated murder and set them free.

COMPLAINTS

1. The applicants Florea Maria Zolta, wife of the deceased Mircea Zoltan and sister of the deceased Lăcătuş brothers, Persida Dorina Rostaş, wife of Rapa Lupian Lăcătuş, Valentina and Lucreţia Rostaş, aunts of the deceased Lăcătuş brothers, and Petru Lăcătuş, brother of Lăcătuş brothers, complain under Article 2 of the Convention that the Romanian authorities failed to conduct an effective investigation capable of leading to the identification and punishment of all individuals, including police officials, responsible for the deaths of their relatives.

2. The applicants complain under Article 3 of the Convention that the Romanian authorities have failed to properly investigate the participation of police officers Ioan Moga, Alexandru Şuşcă, Constatin Palade and Nicu Draghici, in addition to other members of the police force, in the attacks of Roma residents during the Hădăreni pogrom. The applicants allege that notwithstanding the existence of evidence to identify all perpetrators (police officers included), the authorities have failed to carry out a prompt, impartial and effective investigation and to provide comprehensive redress to the applicants for the community violence they had been subjected to, i.e. their homes having been destroyed and they themselves having faced a real risk of being lynched.

The applicants also allege that that the death of the three Roma and the violence to which the applicants were subjected, resulting in the destruction of Roma property and belongings amounts to treatment contrary to Article 3 of the Convention.

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

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

The applicants Otilia and Eleonora Rostaş, Lucaci-Adrian, Lucreţia, Maria, Adrian, Bazil, Lucaci and Melenuţa Moldovan, Ghioloanca, Bazil-Sami, Maria and Petru-Gruia Lăcătuş and Iulius Moldovan also complain that, due to the length of the criminal proceedings, the civil proceedings have not, to date, ended.

They invoke Article 6 of the Convention.

4. The applicants complain under Article 8 of the Convention that the community violence incident at issue resulting in the deliberate destruction of their homes discloses an unequivocal violation of their rights to respect for their home and their private and family lives. They allege that the pogrom was incited by members of the police force, and, as such, agents of the State. Therefore, the Romanian authorities have breached the letter and the spirit of Article 8 by failing to adequately conduct a thorough and comprehensive investigation or provide adequate and comprehensive legal redress for the violation alleged since the time of their ratification of the Convention. The applicants point out in this respect that currently, most of them cannot live in their houses, since only eight of them were rebuilt, and this was by their own means. As for the houses which were rebuilt, due to the lack of money, they were reconstructed only partially and superficially. Therefore, they are not entirely proper for living, as they used to be.

6. The applicants complain under Article 1 of Protocol no. 1 to the Convention that their homes, furniture and other household and personal possessions were completely destroyed during the pogrom. They also allege that the State must be held responsible for its failure to provide the applicants with comprehensive and adequate legal redress for this and point out that, to date, no compensation was granted for the loss of their houses and possessions.

7. The applicants complain under Article 13 of the Convention that following the incident at issue, both leading up to the ratification of the Convention and subsequent to that date, they have been denied an effective and comprehensive remedy for ill-treatment and the destruction of their homes and possessions in that even though there was strong evidence that suggested police involvement, there was never a comprehensive investigation or a formal criminal indictment issued against any police officials.

The applicants claim that the failure of the authorities to carry out a thorough and effective investigation in the instant case results, in part, from the fact that the public prosecutors - those officials to whom Romanian law assigns exclusive and unreviewable authority for investigating allegations of crime - lack sufficient independence (they refer in this respect to Silver and Others v. UK judgment of 25 March 1983) and impartiality. As regards the issue of independence, they submit that, due to their dual and contradictory functions - as parties to and supervisors of the criminal process, prosecutors in Romania cannot be considered sufficiently independent for the purposes of Article 13. They allege that Romanian prosecutors do not enjoy guarantees of independence, immovability and transparency, nor is prosecution activity subjected to public scrutiny in any meaningful sense and refer in this respect to the Parliamentary Assembly resolution no. 1123/1997 on the honouring of obligations and commitments by Romania observing that “the role of the Public Prosecutor Office is still very pronounced” and urging Romania to “continue reform in this area”.

As for the lack of impartiality, the applicants allege that this is particularly conspicuous when it comes to providing redress to Romani

victims of human rights abuse. They refer in this respect to the Concluding Comments of the United Nations Human Rights Committee on Romania of November 1993 expressing "concern at the continuing problems in Romania regarding discrimination against persons belonging to minorities and, in particular, offences committed as a result of incitement to ethnic or religious intolerance". The applicants stress that according to that document, "the situation is especially threatening to vulnerable groups, such as the Roma". They submit furthermore that in its Concluding Observations concerning Romania, issued in 1995, the United Nations Committee on the Elimination of Racial Discrimination voiced concern "at the continuing reports of racism among police forces, which have been said to occasionally use excessive force against members of certain groups, or, alternatively, are said not to take action when acts of violence against certain groups are committed in their presence".

8. The applicants finally complain that the violations they suffered as a result of the community violence incident at issue were predominantly due to their Romani ethnicity, and therefore, inconsistent with the requirement of non-discrimination set forth in Article 14 taken together with Articles 3,8, 1 of Protocol no. 1, and 13 read in conjunction with Articles 3, 8 and Article 1 of Protocol no. 1. According to the applicants, it is obvious that the harms suffered by them at the hand of the anti-Roma villagers and police officials in this case were due primarily to their ethnicity. They further submit that, due to their ethnicity, they were victims of discrimination by judicial bodies and officials.

They also stress that the European Commission against Racism and Intolerance's report of 1999 on Romania stated that "... violent acts are publicly committed against members of various minority groups, particularly Roma/Gypsies, which could have the effect of implying certain approval of racist acts and attitudes".

Alleging in substance a violation of Article 14 of the Convention taken together with Article 6 of the Convention, they also complain about the remarks made by the Târgu-Mureş Coutny Court in its judgment of 17 July 1998, allegedly replete with anti-Roma sentiment.

The applicants submit in respect to all complaints that the Court is competent *ratione temporis* to examine their complaints and refer to the jurisprudence of the Court and the Commission, which found themselves competent *ratione temporis*, either if the events taking place before the date of entry into force of the Convention constituted a violation continuing after that date, or had effects which themselves constituted a violation after that date (judgments Yağci and Sargın v. Turkey and Mansur v. Turkey of 8 June 1995; Loukanov v. Bulgaria of 20 March 1997; Philis v. Greece no. 2 of 27 June 1997).

Quoting a certain number of cases, the applicants also refer to the practice of the Human Rights Committee, which had pointed out that it could consider violations alleged to have occurred prior to the date of entry into force if the alleged violation was one which, although occurring before

that date, continued or continued to produce effects which themselves constituted violations after that date.

THE LAW

1. The applicants Florea Maria Zolta, Persida Dorina Rostaş, Valentina and Lucreţia Rostaş and Petru Lăcătuş complain under Article 2 of the Convention that the Romanian authorities failed to conduct an effective investigation capable of leading to the identification and punishment of all individuals, including police officials, responsible for the deaths of their relatives.

The Court recalls that the obligation to protect life under Article 2 of the Convention, read in conjunction with the State's general duty under Article 1 of the Convention "to secure to everyone within [its] jurisdiction the rights and freedoms defined in the Convention", requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force (see, among others, Timurtaş v. Turkey, judgment of 13 June 2000, No. 23531/94, § 87).

In the present case, the Court notes that the killings happened in September 1993 before the entry into force of the Convention with regard to Romania, i.e. 20 June 1994. However, in accordance with the generally recognised rules of international law, the Convention only applies in respect of each contracting party to facts subsequent to its coming into force for that party. The possible existence of a continuing situation must be determined, if necessary *ex officio*, in the light of the special circumstances of each case (e.g., Nos. 8560/79 and 8613/79 (joined), Dec. 3.7.79, D.R. 16, p. 209). The Court must therefore verify whether it is competent *ratione temporis* to examine the present complaint.

It observes however that the alleged obligation under the Convention of the Romanian authorities to conduct an effective investigation capable of leading to the identification and punishment of all individuals responsible for the deaths of the applicants' relatives is derived from the aforementioned killings whose compatibility with the Convention cannot be examined by the Court.

It follows that this complaint is incompatible *ratione temporis* with the provisions of the Convention within the meaning of Article 35 § 3.

2. The applicants further complain under Article 3 of the Convention that the Romanian authorities have failed to properly investigate the participation of police officers in the attacks of Roma residents during the Hădăreni pogrom and that the destruction of their property and belongings amounts to treatment contrary to Article 3 of the Convention. The applicants also complain that after the destruction of their homes, they had to live in very poor, promiscuous conditions, which amount to treatment contrary to Article 3 of the Convention.

The Court notes that the destruction of the applicants' homes and belongings took place in September 1993, before the ratification of the

Convention by Romania on 20 June 1994. It further observes that the obligation under Article 3 of the Romanian authorities to carry an effective investigation in relation to the attacks of Roma and their properties is the result of the aforementioned attacks, whose compatibility with the Convention cannot be examined by the Court.

It follows that this part of the complaint is also incompatible *ratione temporis* with the provisions of the Convention and must be rejected according with Article 35 § 4.

Insofar as the applicants complain that, after the ratification of the Convention, they had to live in very poor, promiscuous conditions, the Court considers that it cannot, on the basis of the file, determine the admissibility of this complaint and that it is, therefore, necessary, in accordance with Rule 54 § 3 (b) of the Rules of Court, to give notice of this part of the application to the respondent Government.

3. The applicants complain under Article 6 of the Convention that the failure of the authorities to carry out an adequate criminal investigation, culminating in formal charges and a conviction of all individuals responsible has deprived the applicants of their right to file a civil action for damages against the State with respect to the misconduct of police officers concerned.

The applicants Otilia and Eleonora Rostaş, Lucaci-Adrian, Lucreţia, Maria, Adrian, Bazil, Lucaci and Melenuţa Moldovan, Ghioloanca, Bazil-Sami, Maria and Petru-Gruia Lăcătuş and Iulius Moldovan also complain that, due to the length of the criminal proceedings, the civil proceedings have not, to date, ended.

The Court considers that it cannot, on the basis of the file, determine the admissibility of this complaint and that it is, therefore, necessary, in accordance with Rule 54 § 3 (b) of the Rules of Court, to give notice of this part of the application to the respondent Government.

4. The applicants complain under Article 8 of the Convention that the deliberate destruction of their homes discloses an unequivocal violation of their rights to respect for their home and their private and family lives and that currently, most of them cannot live in their houses, since only eight of them were rebuilt. As for the houses which were rebuilt, due to the lack of money, they were reconstructed only partially and superficially and therefore, they are not entirely proper for living, as they used to be.

Insofar as the applicants complaint about the destruction of their houses in September 1993, event that took place before the ratification of the Convention by Romania, the Court considers that this part of the complaint is incompatible *ratione temporis* with the provisions of the Convention and must be rejected according to Article 35 § 4.

Concerning the applicants' complaint that most of them still cannot live in their houses whereas some of them live in improper conditions, contrary to Article 8 of the Convention, the Court considers that it cannot, on the basis of the file, determine the admissibility of this complaint and that it is, therefore, necessary, in accordance with Rule 54 § 3 (b) of the Rules of

Court, to give notice of this part of the application to the respondent Government.

5. The applicants complain under Article 1 of Protocol no. 1 to the Convention that their homes, furniture and other household and personal possessions were completely destroyed during the pogrom and that the State did not grant them any compensation for this loss. They also complain under Article 13 of the Convention that they have been denied an effective and comprehensive remedy for ill-treatment and the destruction of their homes and possessions.

The Court notes that the destruction of the applicants' homes and other possessions took place in September 1993, before the ratification of the Convention by Romania. This part of the complaint is therefore incompatible *ratione temporis* with the provisions of the Convention. Consequently, the applicants' claim that as a result of this loss they were entitled to compensation by the Romanian authorities cannot be examined by the Court as it is also incompatible *ratione temporis* with the Convention.

Concerning Article 13, the Court recalls its conclusion above that the applicants' complaint under Article 3 of the Convention and Article 1 of Protocol No. 1 are outside the competence *ratione temporis* of the Court. It follows that the Court is not competent *ratione temporis* to examine whether the applicants had an arguable claim and therefore, the applicants' submissions in respect of Article 13 also fall outside the Court's competence *ratione temporis* (see, for example, Dec. 16.1.2001, Meriakri v. Moldova, No. 53487/99).

The Court concludes that this part of the application should be rejected as inadmissible pursuant to Article 35 § 4 of the Convention.

6. The applicants finally complain that the violations they suffered as a result of the community violence incident at issue were predominantly due to their Romani ethnicity, and therefore, inconsistent with the requirement of non-discrimination set forth in Article 14 taken together with Articles 3, 8, 13 and Article 1 of Protocol No. 1. They also allege in substance a violation of Article 14 of the Convention taken together with Article 6 of the Convention and complain about the remarks made by the Târgu-Mureş County Court in its judgment of 17 July 1998.

The Court recalls its conclusions above that it was not *competent ratione temporis* to examine the complaints related to the incident in September 1993 under Articles 3, 8, 13 and Article 1 of Protocol No. 1. It follows that the present complaint under Article 14 taken together with the aforementioned articles in relation to the events in September 1993 also falls outside the competence *ratione temporis* of the Court and must be rejected in accordance with Article 35 § 4 of the Convention.

As concerns the allegation that there was a violation of Article 14 taken together with Article 6 of the Convention, as well as a violation of Article 14 taken together with Articles 3 and 8 of the Convention due to their living conditions after the ratification of the Convention, the Court considers that

it cannot, on the basis of the file, determine the admissibility of this complaint and that it is, therefore, necessary, in accordance with Rule 54 § 3 (b) of the Rules of Court, to give notice of this part of the application to the respondent Government.

For these reasons, the Court unanimously,

Decides to join the applications,

Decides to adjourn the examination of the applicants' complaints about their living conditions following the destruction of their houses and belongings, their lack of access to a civil court, the length of civil proceedings against the civilians convicted and the alleged discrimination on the basis of their ethnicity,

Declares inadmissible the remainder of the applications.

Michael O'BOYLE
Registrar

Elisabeth PALM
President