CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

THIRD SECTION

FINAL DECISION

AS TO THE ADMISSIBILITY OF

Application no. 62954/00
by Vasile TĂNASE and others
against Romania

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

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

Having regard to the above application lodged on 28 August 2000,

Having regard to the partial decision of 9 December 2003,

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

Having regard to the comments submitted by the European Roma Rights Center (ERRC),

Having deliberated, decides as follows:

THE FACTS

The applicants are 24 Romanian nationals of Roma origins.

The first, Vasile Tănase, died in 2000. He was represented before the Court by his wife, Elena Tănase, born in 1968.

The other applicants are: Constantin Catalan (the second applicant), born in 1936; Victor Păun (the third applicant), born in 1952; Ion Rupiţă (the fourth applicant), born in 1957; Paul Catalan (the fifth applicant); Nicolae Ion (the sixth applicant), born in 1974; Sidef Niculae (the seventh applicant), born in 1966; Petre Panciu (the eighth applicant), born in 1940; Stoica Răducanu (the ninth applicant), born in 1952; Emilian Niculae (the tenth applicant), born in 1963; Călin Ion (the eleventh applicant), born in 1928; Alexandru Nicolae (the twelfth applicant), born in 1941; Dumitru Catalan (the thirteenth applicant), born in 1957; Ion Nicolae (the fourteenth applicant), born in 1956; Gheorghe Staicu (the fifteenth applicant), born in 1949; Arestiţa Ion (the sixteenth applicant), born in 1942; Ştefan Catalan (the seventeenth applicant), born in 1963; Botonică Dumitru (the eighteenth applicant), born in 1980; and Claudia Florea (the nineteenth applicant), born in 1973.

The following applicants filed the application on behalf of their deceased parents or spouses respectively: Gheorghe Dumitru, represents Iarca Mitea (the twentieth applicant); Grecu Catalan, born in 1969 represents Marin Catalan deceased in 2000 (the twenty-first applicant); Irina Catalan, born in 1980 represents Ion Catalan, deceased in 2001 (the twenty-second applicant); Tudor Ion, born in 1971 represents Ion Ion, deceased in 2001, (the twenty-third applicant); Ioana Constantin, born in 1938, represents Lucian Niculae, deceased in 2000 (the twenty-fourth applicant).

During the events which gave rise to the present case, all applicants used to live in the village of Bolintin Deal, Giurgiu County.

All the applicants were represented before the Court by Mr N. Novogrodsky, a lawyer admitted to practice in the United States, head of the International Human Rights Clinic of the Faculty of Law, University of Toronto.

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

A. The circumstances of the case

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

1. The events of 7 April and 7 May 1991

On the night of 6/7 April 1991, I.T., a Roma from the village of Bolintin Deal killed a non-Roma inhabitant of the same village.

Next day, the church bells tolled, the siren from the cultural centre of the village sounded and a crowd of more than two thousand non-Roma inhabitants from Bolintin Deal and from Mihai Vodă, the neighbouring village, together with the priest and the mayor, gathered in the centre of Bolintin Deal. Allegedly enraged by the murder committed the previous

day, the crowd started speaking out against the Roma inhabitants and finally decided to chase them all out of the village. The angry mob arrived at I.T.'s house, cut the electric wires leading to the house, entered the house, destroyed the doors, the windows and everything inside the house, and finally set it on fire. Afterwards, the crowd burned and otherwise destroyed some twenty other houses belonging to the applicants, along with their contents. Then the mob went to Mihai Vodă village and set fire to other houses belonging to the applicants.

As a consequence, the entire Roma community fled their houses and were left homeless for a month.

On 5 May 1991 the non-Roma villagers of Bolintin Deal held a local assembly and decided to continue the actions against the Roma, should the latter try to return to the village.

On 7 May 1991 the evacuated Roma villagers tried to negotiate with the non-Roma community to allow their return. The non-Roma inhabitants gathered together again, warned by the sound of the church bells and the siren from the cultural centre, and together with the priest and the mayor, burned four more houses belonging to Roma.

It appears that the police helped the applicants flee the village by boarding them all in a windowless military van and driving them outside of the village, near Bucharest, where the families were left on the side of the road. However, the authorities failed to take any steps to protect their property, which was destroyed while they were evacuated. The attacks against the applicants continued on the following days. Furthermore, the non-Roma inhabitants denied them access to the village, to the orthodox church and to the cemetery where the applicants tried to bury a deceased member of their community.

The applicants and their families found refuge with Roma communities in other villages. They only managed to survive with the help of friends, with almost no aid at all from the state authorities. It seems that families with children received some social assistance and few of the former residents of Bolintin Deal received some form of compensation.

It appears that the applicants had to change their addresses several times and to day they have no legal documents attesting their real residence. In the official papers they still appear to have their domicile in Bolintin Deal, although they had no contacts with the village after the events. The lack of legal registration caused repeated raids by the police into their temporary residence, and also deprivation of medical and social services, employment opportunities and schooling for their children, a situation that persists to this day. Emilian Niculae (the tenth applicant) informed the Court that in 1995 his replacement home had been raided by police on several occasions, allegedly because of the lack of residence papers.

It follows from the documents in the file that, on an unspecified date, some of the applicants sold their lands. According to the statements sent to

the Court by Emilian Niculae, the mayor of Bolintin Deal contacted members of the exiled Roma community with offers to purchase their lands for sums that were far below the true value of the property. Some members of the community, in desperate need of money, acquiesced to the offers and sold their lands.

2. Investigation into the events

In April 1991, the applicants filed a criminal complaint with the Giurgiu County Prosecutor's Office. An investigation was started and the applicants joined the proceedings as civil parties, seeking compensation for their destroyed houses and belongings. In their statements the applicants nominated persons who presumably participated to the attacks against them. Few of the applicants expressly mentioned the mayor of Bolintin Deal among the participants.

On 17 October 1996 a criminal trial in conjunction with a civil action for damages, began before the Bolintin Deal District Court against thirteen non-Roma villagers suspected of destruction of property and of associating with the view to committing crimes, under Articles 192 § 1, 217 § 4 and 323 §§ 2 and 3 of the Criminal Code.

On 27 January 1997 the Supreme Court of Justice sent the case for examination to the Bucharest District Court. The applicants sought compensation before the latter for the losses incurred, basing their claims on an expert report of 1994 and on the inflation rate, as established by the National Commission for Statistics.

In a judgment of 18 May 1998, the Bucharest District Court convicted the thirteen indicted individuals of unlawful entry to a person's home and destruction of property, under Articles 192 § 2 and 217 § 4 of the Criminal Code and gave them a three to six months' suspended prison sentence. The District Court found that the gathering of the inhabitants had been spontaneous and did not constitute the crime of associating with the view to committing crimes as described by Article 323 §§ 1 and 2 of the Criminal Code. It further established that the criminal acts had, in fact, been caused by the serious provocative acts of the victims which the District Court held to constitute ground for mitigating the sentence, under Article 73 (b) of the Criminal Code.

As for the civil claims, the District Court based its ruling on the expert report of 1994 and rejected the applicants' request to take into account the inflation rate. It finally halved the amount of the compensation, on the ground of the mitigating circumstances. The District Court justified its decision as follows:

> "[the Court] will take into account the 1994 expert report, since none of the parties requested a new evaluation of the damage in the case. In addition, it will halve the amount of the compensation because the existence of mitigating circumstances in

favour of the accused were established, namely the provocation which led to shared responsibility on the part of both the victims and the perpetrators.

The Court shall not afford any redress for the movable property ... by reason of the fact that its existence and subsequent destruction, during the incidents, have not been proven."

The applicants were referred to as "Gypsies" (in Romanian "*ţigani*") on several occasions in this judgment. Accordingly, the District Court established the facts of the case as follows:

"As a consequence of a Gypsy murdering ... a [non-Roma] inhabitant ... more than two thousand persons ... gathered together. Spontaneously, they ... agreed to chase the Gypsies out of the village and to destroy and burn their possessions...

On 7 May 1991, still troubled by the event, following the return of the chased Gypsies ... the indicted persons set on fire four other houses belonging to the Gypsies."

The District Court justified the applicability of the mitigating circumstances in the determination of the sentences as follows:

"... the court acknowledges ... the applicability of Article 73 (b), the crimes having been committed due to the disturbance created by the fact that one of the victims had murdered another person, [and consequently] the accused persons tried spontaneously to find a solution to the deed committed by that Gipsy."

The same wording was subsequently used by the courts examining the appeals introduced by the applicants, namely the Bucharest County Court, in its decision of 4 January 1999 and the Bucharest Court of Appeal, in its final decision of 27 May 1999.

The applicants appealed the judgment of 18 May 1998, on its civil aspects, seeking full compensation and a fresh expert report for the evaluation of their immovable property and witness testimony, documents and an expert evaluation of their movable property. In a preliminary decision of 15 December 1998, the County Court dismissed as ill founded the applicants' requests for a new expert report and for more witnesses to be heard. In their written submissions to the court, the applicants requested that, since none of the above evidence was admitted by the court, the inflation rate be applied to the damage as established in 1994.

In a decision of 4 January 1999, the County Court dismissed the appeal of the civil parties on the ground that they had not proved that the damage they had incurred was superior to that established by the District Court. It found that:

"The civil parties ... have criticised the judgment of the District Court concerning the amount of compensation awarded to them, considering that it had not covered the damage incurred, and they have demanded a fresh expert report of their movable and immovable property...

> ... the Court dismisses the appeal of the civil parties ... on the grounds that they have not proved losses incurred superior to the damages awarded by the District Court's judgment. Although in their written submissions the civil parties proposed a method of inflation evaluation, the Court cannot implement it since it was arbitrarily chosen and did not represent an uncontested expert report."

Therefore, the County Court upheld the 18 May 1998 judgment in its civil aspects. It noted that the criminal charges had become time barred (more that 7 years and 6 months had passed since the April 1991 events) and based on Articles 122 (d) and 124, it ended the trial in so far as its criminal aspects were concerned.

The applicants appealed the County Court's decision. Concerning its civil aspects, they claimed that lower courts should have had an active role in the determination of the amount of damages awarded to the applicants. They contested the attribution of mitigating circumstances to the culprits, the halving of the compensation and complained of the fact that their requests for a new evaluation of the damage had been rejected. Furthermore, they reiterated that the fact they had sold their plots of land to third parties did not amount to reparation for the damage they had incurred during the events of April-May 1991 (for the sale of lands, see *supra*, point no. 1).

Concerning the criminal aspects of the trial, the applicants requested that a criminal investigation be opened against the mayor of the village, bearing in mind the testimonies of the accused persons regarding the participation of the mayor and the priest in the events of April-May 1991.

In a final decision of 27 May 1999, the Bucharest Court of Appeal dismissed the appeal, on the grounds that the lower courts' assessment of the damage and the attribution of mitigating circumstances to the perpetrators were well founded on the evidence adduced to the case. Furthermore, the Court of Appeal noted that it was not within the power of the courts to order a fresh expert report in the case and upheld the decision of the lower courts not to use the method proposed by the applicants in the determination of inflation. The Court of Appeal stated:

> "...the civil aspects of the case were determined according to the principles applicable to the evaluation of the damage; the County Court could not have ordered a fresh expert report, as it is entirely for the parties to do so, and it examined all the requests for evidence by the parties, including for new expert reports, and rejected them."

The Court of Appeal rejected the applicant's complaints concerning the criminal aspects of the case on the ground that the law did not grant the victims right to appeal against the criminal aspect of a court decision.

B. Relevant domestic law

1. The Constitution

Article 16 Equality, Public office

"Citizens are equal before the law and public authorities, without any privilege or discrimination."

2. Criminal Code

Article 73 Mitigating circumstances

"The following are considered mitigating circumstances: ...

(b) when the crime is committed under a state of turmoil caused by the victim by use of violence, severe infringement of human dignity or by means of any other severe crime."

COMPLAINTS

1. The applicants complained that the Romanian authorities had breached the letter and spirit of Article 8 of the Convention by failing to prevent from happening and in not responding adequately to the attack that had led to the destruction of their homes, both before and after ratification of the Convention on 20 June 1994. They claimed that, since the ratification of the Convention, there had been a continuing breach of their rights to respect for their homes and private and family lives as the consequences of the 1991 events have never been removed by the respondent State. They recalled, in this respect, the involvement of the local authorities (the mayor) in the events and the fact that they could no longer return to their village, and were deprived of their homes, of medical and social services, employment opportunities and schooling for their children.

2. The applicants complained that the length of the proceedings before the domestic courts did not meet the requirements of "reasonableness" laid down in Article 6 § 1 of the Convention, since a period of more that 8 years had passed from the date of the lodging of their criminal complaint (April 1991) to the date of the final decision of the Bucharest Court of Appeal (27 May 1999).

They considered that the courts which had examined their case had not been independent and impartial tribunals, as required by Article 6 § 1. They claimed that the judges could not be impartial in so far as they had belonged

to the majority population of Romania, as well as the culprits from the April-May 1991 events. They stressed that the judges had had a contemptuous attitude towards them throughout the trial, calling them pejoratively "Gipsies" (*ţigani*). They claimed that after having been subject to such treatments they had lost confidence in the domestic courts.

Finally, they argued that they had been deprived of a fair trial in so far as the courts had dismissed their requests concerning the evaluation of the damage, more precisely the fresh expert report.

They contested the application of the mitigating circumstances and the halving of the damages awarded to them and claimed that the outcome of the proceedings had not been proportionate with the seriousness of the consequences that the April-May 1991 events had for them.

3. The applicants complained that the violations they had suffered as a result of the attacks had been predominantly due to their Roma ethnicity, and therefore inconsistent with the requirement of non-discrimination guaranteed by Article 14 of the Convention taken together with Articles 6 § 1 and 8 of the Convention. More precisely, they felt discriminated against because of the language employed by the domestic courts who ruled on their case and because of the poor amount of damages awarded to them.

4. Lastly, the applicants complained under Article 1 of Protocol No. 1 to the Convention of the poor amount of damages awarded to them, caused by the lack of any active role of the courts, the dismissal of their request of a fresh expert report and the application of the mitigating circumstances to the perpetrators.

THE LAW

1. The applicants complained under Articles 3 and 8 of the Convention that the destruction of their homes had deprived them of the use of their houses and belongings, forcing them to live in very poor and cramped conditions, deprived of the basic medical and social services, of employment opportunities and schooling for their children.

The Court recalls that in its partial decision of 9 December 2003 it considered that the same facts also raised issue under Article 3.

Article 3 reads as follows:

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

Article 8 provides as follows:

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

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

The Government claimed that the State bore no responsibility for the destruction of the applicants' houses which was the work of private persons, as opposed to the situation in cases like *Akdivar and others v. Turkey*, (judgment of 16 September 1996, *Reports of Judgments and Decisions* 1996-IV, p. 1192 and *Mentes and others v. Turkey* (judgment of 28 November 1997, *Reports* 1997-VIII, p. 2689) and reiterated that the State's positive obligations under Articles 3 and 8 had been fulfilled in so far as the investigation into the events led to the identification of those responsible. In their view there was no obligation under the Convention to provide a home for persons who were in a difficult situation, or to offer compensation for the alleged damage. They relied on cases like *Velosa Barreto v. Portugal* (judgment of 21 November 1995, Series A no. 334), *Buckley v. the United Kingdom* (judgment of 25 September 1996, *Reports* 1996-IV, p. 1271) and *Chapman v. the United Kingdom*, ([GC], no. 27238/95, ECHR 2001-I).

As for the alleged poor living conditions, the Government maintained that the applicants had not proved their allegations. However, their living conditions after the ratification of the Convention by Romania had not attained the minimum level of severity required to fall within the scope of Article 3 of the Convention. They recalled that after the attacks the applicants had lived with their families in other locations. Some of the applicants had sold their lands, which should have provided them with means to live a decent life. The Government contended that even before the destruction of their homes the applicants had lived in poor conditions which had not satisfied the basic living requirements.

The applicants contended that the mayor of Bolintin Deal had been an organizer of the mob violence on both 7 April and 7 May 1991. Afterwards, the mayor and the police had refused to stop the violence and to assist the applicants in recovering their possession. They maintained that the State had a positive obligation to provide them with assistance or protection after the events. However, they did not prove in any way to have discharged it (see *Ayder and others v. Turkey* no. 23656/94, § 111, 8 January 2004, *Selçuk and Asker v. Turkey*, judgment of 24 April 1998, *Reports* 1998-II, p. 910, §§ 77-78). Furthermore, several people against whom complaints had been lodged were never investigated, as for example the mayor of the village. Moreover, the officials in charge of the investigation had been involved in the events and could not, therefore, be considered impartial. The Government did not offer any information on whether the investigators had examined the continuing effects of the 1991 events.

Furthermore, the applicants considered that the Government had not seriously contested that the living conditions after the ratification of the Convention and, in some cases, to the present, constituted inhuman and degrading treatment. The Government had not produced any evidence that any of the houses destroyed in the events had ever been rebuilt or that the applicants had received any compensation for their loss. They recalled that not all the applicants had sold their lands and, in any case, the evidence did not clearly indicate that the proceedings from the sale of the lands had been adequate to help them find appropriate housing.

They reiterated that the events of 1991 had rendered them internally displaced people. As a consequence, they had had no access to social and medical services. They also recalled the raids on Emilian Niculae's replacement home in 1995.

Lastly, the applicants maintained that the condition of Roma before they had been burned out of their homes in April 1991 had no bearing on whether the respondent State had violated the invoked Articles of the Convention after the ratification. However, to the extent that the Government had conceded that the applicants' living conditions prior to the destruction of their homes had been poor, it was difficult for them to understand how, after two episodes of mob violence and three years of neglect their living conditions would not qualify under Article 3.

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

2. The applicants complained that the length of the proceedings before the domestic courts did not meet the requirements of "reasonableness" set forth in Article 6 § 1 of the Convention. They also considered that the courts which had examined their case had not been independent and impartial and had not secured a fair trial, as required by Article 6 § 1. They contended that the outcome of the proceedings, in particular the application of the mitigating circumstances and the halving of the damages awarded to them, had not been proportionate with the seriousness of the consequences that the April-May 1991 events had for them.

Article 6 reads as follows in so far as relevant:

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

The Government contended that the date to be taken into account as the beginning date for the determination of the length of proceedings is that of the ratification of the Convention by the respondent State (see *Roman v. Romania* (dec.), no. 29960/96, 25 January 2000). They considered that the

case was complex, bearing in mind the number of accused persons and victims and the difficulty in establishing the facts. No periods of inactivity of the authorities could be noticed. The applicants themselves had failed to co-operate with the courts and had not informed the latter of the change of their addresses.

As for the fairness of the proceedings, the Government contended that the applicants had not requested a new expert report for the re-evaluation of the damage but a report that would give the current market value of their properties. This report would have been very difficult to draft such a long time after the destruction of the property. The expert evaluation of the belongings and furniture would have been even more difficult since the applicants had not proved their existence and subsequent destruction. Furthermore, the courts were not obliged to allow the request for new expert reports.

The applicants considered that the Court should take into account as the date of the commencement of the proceedings April 1991, the date on which they had first registered their criminal complaint with the prosecutor. They submitted that a seven year wait for a public judgment was not reasonable under Article 6 of the Convention. The case was not overly complex, the great number of persons involved not being sufficient for proving otherwise. They recalled that similar acts of violence against Roma followed by the destruction of their property and the expulsion of the communities from the respective villages, occurred throughout Romania in the years surrounding the 1991 events in the present case. The authorities should have been, thus, well versed in dealing with such cases from the legal point of view.

The applicants recalled that the Government had not produced any evidence that the applicants themselves had been responsible for the delays. They recalled that because their legal domicile had been in Bolintin Deal, most of the warrants addressed to them had been sent to the village authorities, more precisely to the mayor, whom they had accused of actively participating in the events. However, it was clear from the evidence in the case that they had no longer lived or had access to Bolintin Deal after the April 1991 events.

They reiterated that their stake in the proceedings had been the immediate compensation for the loss of their property so as to begin rebuilding their homes and to ensure proper health and education for them and for their family members.

Lastly, the applicants contended that the courts, knowing their desperate situation and their limited access to legal counselling, should have applied more lenient evidentiary rules or they should have at least duly notified the applicants of the appropriate methods to comply with court procedures. In their view, by disqualifying their expert witness and insisting that they had used an improper inflation rate, the domestic courts had effectively denied

the applicants their right to a fair trial and to receive adequate compensation for the damage incurred.

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

3. The applicants complained that the violations they suffered as a result of the attack were predominantly due to their Roma ethnicity, and therefore inconsistent with the requirement of non-discrimination guaranteed by Article 14 of the Convention taken together with Articles 6 § 1 and 8 of the Convention. The Court recalls that in its partial decision of 9 December 2003, it considered that the same facts also raise issues under Article 3 take in conjunction with Article 14, the latter providing as follows:

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

The Government submitted that the applicants could not claim to be victims of a violation of Article 14 taken in conjunction with Articles 3 and 8 of the Convention. As opposed to the situation in the case of *Nachova v. Bulgaria*, where the violence was perpetrated by state agents, in the present case, since the violence had been caused by private individuals for whose actions the State was not responsible, the only obligation incumbent on the authorities was to carry out an effective investigation. The State was not responsible for proving that the alleged ineffectiveness was caused by racial attitudes or to ensure conviction of those allegedly responsible, since the latter's conviction would not create better living conditions for the applicants.

They maintained that the applicants had not sought compensation for moral damages before the domestic courts and recalled that such compensation could not have been awarded *ex officio* by the courts.

As for the alleged discrimination because of the language used by the State actors, the Government contended that the applicants did not prove the causal link between the use of the term "*ţigan*" (Gypsy) by the domestic courts and the alleged lack of a fair trial. The word "*ţigan*" (Gypsy) was used in Romanian literature and music without any pejorative connotation and the courts only employed it to identify the persons belonging to the Roma ethnic group. Moreover, there was no obligation for the judges to use a specific word when referring to Roma.

The applicants contested the Government's position. Firstly, they submitted that, in their view, the question was not whether the acts of violence had been perpetrated by State agents but whether the investigation

was truncated for racist or discriminatory reasons. They considered that the facts of the case provided real evidence of discrimination and recalled that no non-Roma residents of Bolintin Deal had ever been forced out of their homes and of the village or refused return thereto.

As for the Article 6 violation due to the ethnicity of the applicants, they maintained that the judges' repeated use of the derogatory word "*ţigan*" was alone sufficient to establish that the judges had had racially discriminatory views against the Roma. The applicants' fear of lack of impartiality of the judges was, thus, objectively justified. The discrimination they suffered was, in their view, part of a pattern and practice of discrimination against Roma in Romania.

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

4. The applicants complained under Article 13 of the Convention and Article 1 of Protocol No. 1 of the poor amount of damages awarded to them, caused by the lack of any active role of the courts, the dismissal of their request of a fresh expert report and the application of the mitigating circumstances to the culprits. The Court considers that the applicants' complaint essentially relates to their property rights under Article 1 of Protocol No. 1, which provides as follows:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

The Government contended that, according to the case-law of the Court, in so far as the destruction had occurred before the ratification of the Convention by Romania, it did not constitute a violation of the Convention (see *Costandache v. Romania* (dec.), no. 46312/99, 11 June 2002). Furthermore, the applicants had not proven the existence and subsequent destruction of any movable property. A new expert evaluation of the houses and belongings in 1998 would have been too difficult a task. They concluded that the applicants did not have possession within the meaning of Article 1 of Protocol No. 1 to the Convention. Furthermore, they maintained that the simple fact of lodging an action with the domestic courts seeking compensation for the losses did not mean that the applicants had a "legitimate expectation" to obtain damages for the alleged loss (see

Anagnostopoulos and others v. Greece (dec.), no. 39374/98, 30 November 1999).

The applicants contested this argument and submitted that the State continuously failed to remedy the destruction of their possessions which, in their view, refers to the "civil claims", namely the property interest in a damages award that was resolved against the applicants, in an unfair manner, long after Romania ratified the Convention.

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

For these reasons, the Court unanimously

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

Vincent BERGER
Registrar

Boštjan M. ZUPANČIČ
President