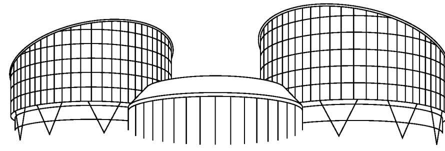

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

GRAND CHAMBER

CASE OF MOCANU AND OTHERS v. ROMANIA

(Applications nos. 10865/09, 45886/07 and 32431/08)

JUDGMENT

STRASBOURG

17 September 2014

This judgment is final but may be subject to editorial revision.

In the case of Mocanu and Others v. Romania,

The European Court of Human Rights, sitting as a Grand Chamber composed of:

Dean Spielmann, *President,*
Guido Raimondi,
Mark Villiger,
Isabelle Berro-Lefèvre,
Peer Lorenzen,
Mirjana Lazarova Trajkovska,
Ledi Bianku,
Nona Tsotsoria,
Ann Power-Forde,
Işıl Karakaş,
Nebojša Vučinić,
Paulo Pinto de Albuquerque,
Paul Lemmens,
Aleš Pejchal,
Johannes Silvis,
Krzysztof Wojtyczek, *judges,*
Florin Streteanu, ad hoc *judge,*

and Johan Callewaert, *Deputy Grand Chamber Registrar,*

Having deliberated in private on 2 October 2013 and 25 June 2014,

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

PROCEDURE

1. The case originated in three applications against Romania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by three Romanian nationals, Mrs Anca Mocanu (no. 10865/09), Mr Marin Stoica (no. 32431/08) and Mr Teodor Mărieş, and by the Association "21 December 1989", a legal entity registered under Romanian law and based in Bucharest (no. 45886/07) ("the applicants") on 28 January 2009, 25 June 2008 and 13 July 2007 respectively.

2. Before the Court, Mrs Anca Mocanu, Mr Teodor Mărieş and the applicant association were represented by Mr A. Popescu, Ms I. Sfîrăială and Mr I. Matei, lawyers practising in Bucharest. Mrs Anca Mocanu was granted legal aid. Mr Marin Stoica, who was also granted legal aid, was represented until 8 December 2009 by Ms D. Nacea, a lawyer practising in Bucharest, and from 22 January 2013 by Ms D.O. Hatneanu, a lawyer practicing in Bucharest. The Romanian Government ("the

Government”) were represented by their Agents, first by Mr R.H. Radu, then by Ms I. Cambrea, and finally by Ms C. Brumar, of the Ministry of Foreign Affairs.

3. In their respective applications, the individual applicants alleged that they had been victims of the violent crackdown on the anti-government demonstrations which took place in Bucharest in June 1990 and claimed that no effective investigation had been carried out into those events. With reference to the same events, the applicant association complained about the length of the criminal proceedings which it had joined as a civil party.

4. The applications were allocated to the Third Section of the Court (Rule 52 § 1 of the Rules of Court). On 3 February 2009 the Chamber decided to join applications nos. 45886/07 and 32431/08 and to communicate them to the Government. On 15 March 2011 it decided to give notice also of application no. 10865/09 to the Government.

5. Following the withdrawal of Mr Corneliu Bîrsan, the judge elected in respect of Romania then in post, the Government appointed Mr Florin Streteanu to sit as an *ad hoc* judge (Article 26 § 4 of the Convention and Rule 29 § 1 of the Rules of Court).

6. On 13 November 2012, a Chamber of the Third Section, composed of judges Josep Casadevall, Egbert Myjer, Alvina Gyulumyan, Ján Šikuta, Ineta Ziemele, Luis López Guerra and Florin Streteanu, *ad hoc* judge, and Santiago Quesada, Section Registrar, decided to join the three applications and declared them admissible as to the complaints under Article 2 of the Convention in respect of Mrs Anca Mocanu, Article 3 of the Convention in respect of Mr Marin Stoica and Article 6 § 1 of the Convention in respect of the applicant association, and declared the remainder of the application inadmissible. Application no. 45886/07 was declared inadmissible in respect of Mr Teodor Mărieş. The Chamber concluded, unanimously, that there had been a violation of the procedural aspect of Article 2 of the Convention in respect of Mrs Anca Mocanu and a violation of Article 6 § 1 of the Convention in respect of the applicant association, and held that there was no need to examine separately the complaint under Article 34 of the Convention. It also concluded, by five votes to two, that there had been no violation of the procedural aspect of Article 3 of the Convention in respect of Mr Marin Stoica.

7. On 12 February 2013 Mr Marin Stoica requested the referral of the case to the Grand Chamber in accordance with Article 43 of the Convention and Rule 73. On 29 April 2013 the panel of the Grand Chamber granted that request.

8. The composition of the Grand Chamber was determined according to the provisions of Article 26 §§ 4 and 5 of the Convention and Rule 24.

9. Mr Marin Stoica, the applicant association and the Government all filed further written observations (Rule 59 § 1). In addition, third-party observations were received from the international non-governmental

organisation Redress, which had been given leave by the President to intervene in the written procedure (Article 36 § 2 of the Convention and Rule 44 § 3).

10. A hearing was held in public in the Human Rights Building, Strasbourg, on 2 October 2013 (Rule 59 § 3).

There appeared before the Court:

(a) for the Government

Ms	C. BRUMAR,	*Agent*,
Ms	G. MUNTEANU,	*Counsel*;

(b) for the applicants:

Ms	D.O. HATNEANU, lawyer,	
Mr	A. POPESCU, lawyer,	
Ms	I. SFÎRĂIALĂ, lawyer,	*Counsel,*
Mr	T. MĂRIEŞ,	*President of the applicant association,*
Mr	M. STOICA	*Applicant.*

The Court heard addresses first by Ms Hatneanu and Ms Sfîrăială, then by Ms Brumar and Ms Munteanu, and lastly by Mr Popescu and Mr Mărieş, as well as their answers to questions put by the judges.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

11. Mrs Anca Mocanu and Mr Marin Stoica were born in 1970 and 1948 respectively. They live in Bucharest.

12. The Association "21 December 1989" (*Asociaţia "21 Decembrie 1989"*) was set up on 9 February 1990 and is based in Bucharest.

13. The applicant association brings together mainly individuals who were injured during the violent suppression of the anti-totalitarian demonstrations which took place in Romania in December 1989 and the relatives of persons who died during those events. It was one of the groups which supported the anti-government demonstrations held in Bucharest between April and June 1990, at which demonstrators called, *inter alia*, for the identification of those responsible for the violence committed in December 1989.

A. The events of 13 to 15 June 1990

1. Overview of the main events

14. The main facts concerning the crackdown on anti-government demonstrations from 13 to 15 June 1990 were described in the decisions of 16 September 1998 (see paragraphs 99-110 below) and 17 June 2009 (see paragraphs 152-163 below), issued by the prosecutor's office at the Supreme Court of Justice (which in 2003 became the High Court of Cassation and Justice), and in the decisions to commit for trial (*rechizitoriu*) issued by the same prosecutor's office on 18 May 2000 and 27 July 2007.

15. On 13 June 1990 the security forces' intervention against the demonstrators who were occupying University Square and other areas of the capital resulted in several civilian casualties, including Mrs Anca Mocanu's husband, Mr Velicu-Valentin Mocanu, who was killed by a shot fired from the headquarters of the Ministry of the Interior.

16. In the evening of 13 June 1990 Mr Marin Stoica and other persons, some but not all of whom were demonstrators, were arrested and ill-treated by uniformed police officers and men in civilian clothing, in the area around the headquarters of the State television service and in the basement of that building.

17. On 14 June 1990 thousands of miners were transported to Bucharest, essentially from the Jiu Valley (*Valea Jiului*) mining region, to take part in the crackdown on the demonstrators.

18. At 6.30 a.m. on 14 June 1990 the President of Romania addressed the miners, who had arrived on the square in front of the Government building, inviting them to go to University Square, occupy it and defend it against the demonstrators; they subsequently did so.

19. The violent events of 13 and 14 June 1990 resulted in more than a thousand victims, whose names appear in a list attached to the decision issued on 29 April 2008 by the military section of the prosecutor's office at the High Court of Cassation and Justice.

20. The headquarters of several political parties and other institutions, including those of the applicant association, were attacked and ransacked. The latter association subsequently joined the criminal proceedings as a civil party.

21. The criminal proceedings into the unlawful killing by gunfire of Mr Velicu-Valentin Mocanu are still pending. The investigation opened on 13 June 1990 into the ill-treatment allegedly inflicted on Mr Marin Stoica was closed by a decision not to bring a prosecution, dated 17 June 2009, subsequently upheld by a judgment of the High Court of Cassation and Justice of 9 March 2011.

22. The facts as set out by the prosecutor's office at the High Court of Cassation and Justice in its decisions of 16 September 1998 and 17 June 2009 and in the decisions to commit for trial of 18 May 2000 and 27 July 2007 may be summarised as follows.

2. *The demonstrations held in the first months of 1990*

23. University Square in Bucharest was considered a symbolic location for the fight against the totalitarian regime of Nicolae Ceauşescu, given the large number of persons who had died or were injured there as a result of the armed repression initiated by the regime on 21 December 1989. It was therefore on this Square that several associations – including the applicant association – called on their members to attend protest events in the first months of 1990.

24. Thus, the first demonstrations against the provisional government formed after the fall of the Ceauşescu regime took place on University Square in Bucharest on 12 and 24 January 1990, as indicated in the decision issued on 17 June 2009 by the prosecutor's office at the High Court of Cassation and Justice. That decision also states that a counter-demonstration was organised by the National Salvation Front (*Frontul Salvării Naţionale*, the "FSN") on 29 January 1990. On that occasion, miners from the coal-mining regions of the Jiu Valley, Maramureş and other areas appeared in Bucharest. The headquarters of the National Liberal Party were vandalised at that time.

25. From 25 February 1990, demonstrations were held every Sunday. According to the decision to commit for trial of 27 July 2007, they were intended to denounce the non-democratic attitude of those in power, who were accused of having "betrayed the ideals of the revolution", and sought to alert the population to the threat of a new dictatorial regime.

26. Election campaigns were subsequently launched for parliamentary elections and the office of President of the Republic, to be held on 20 May 1990.

27. It was in this context that unauthorised "marathon demonstrations" (*manifestaţii maraton*) began on 22 April 1990 on University Square, at the initiative of the Students' League and other associations, including the applicant association. These demonstrations lasted fifty-two days, during which the demonstrators occupied University Square. The decisions of 16 September 1998 and 17 June 2009 indicate that the demonstrators, who had gathered in large numbers, were not violent and were essentially demanding that persons who had exercised power during the totalitarian regime be excluded from political life. They also called for a politically independent television station.

28. They called further for identification of those responsible for the armed repression of December 1989 and demanded the resignation of the country's leaders (particularly the Minister of the Interior), whom they

considered responsible for the repression of the anti-communist demonstrations in December 1989.

29. On 22 April 1990 fourteen demonstrators were arrested by the police on the ground that the demonstration had not been authorised. Faced with the reaction of the public, who had arrived to boost the number of demonstrators on University Square, the police released the fourteen arrested demonstrators. The authorities did not use force again over the following days, although the Bucharest City Council had still not authorised the gathering.

30. Negotiations between the demonstrators and the provisional government resulted in stalemate.

31. On 20 May 1990 the presidential and parliamentary elections took place. The FSN and its leader, who was standing for President, won the elections.

32. Following those elections the protests continued on University Square, but were reduced from their original scale. Of the approximately 260 persons still present, 118 had gone on hunger strike.

3. The meeting held by the executive on 11 June 1990

33. On the evening of 11 June 1990 the new President elect of Romania and his Prime Minister convened a government meeting, attended by the Minister of the Interior and his deputy, the Minister of Defence, the director of the Romanian Intelligence Service (*Serviciul Român de Informaţii,* "the SRI"), the first deputy president of the ruling party (the FSN), and the Procurator General of Romania. This is established in the prosecution service's decisions of 16 September 1998 and 17 June 2009.

34. At that meeting it was decided to take measures to clear University Square on 13 June 1990. In addition, it was proposed that the State organs, namely the police and army, would be assisted by some 5,000 mobilised civilians. Implementation of this measure was entrusted to the first deputy president of the FSN. Two members of that party's steering committee opposed the measure, but without success. According to the decision of 17 June 2009, an action plan drawn up by General C. was approved by the Prime Minister.

35. On the same evening the Procurator General's Office (*Procuratura Generală*) broadcast a statement on State television calling on the government to take measures so that vehicles could circulate again in University Square.

36. At a meeting held on the same evening with the participation of the Minister of the Interior, the head of the SRI and the head of police, General D.C. set out the plans for evacuation of University Square by the police and gendarmerie, in collaboration with civilian forces. Under this plan, the action was "to begin at 4 a.m. on 13 June 1990 by cordoning off the Square, arresting the demonstrators and re-establishing public order".

4. The sequence of events on 13 June 1990

37. At about 4.30 a.m. on 13 June 1990 members of the police and gendarmerie brutally charged the demonstrators on University Square. The arrested demonstrators were driven away and locked up at the Bucharest municipal police station. The 263 arrested individuals (or 262, according to the decision to commit for trial of 18 May 2000) included students from the Architecture Institute, who had been in the premises of their establishment, located on University Square, and who had not taken part in the demonstrations. The decision of 17 June 2009 indicated that the 263 persons who had been arrested were taken to the Măgurele barracks after being held in the police cells.

38. The police operation led to protests by many people, who demanded that the arrested demonstrators be released. According to the decision of 16 September 1998, those persons launched violent attacks on the security forces, hurling projectiles and setting cars on fire. According to the decision to commit for trial of 18 May 2000, those actions were the work of a few aggressive individuals who had infiltrated groups of peaceful demonstrators.

39. At about 10 a.m., workers from the IMGB factories in Bucharest headed en masse for University Square to help the police arrest the demonstrators. According to the decision of 16 September 1998, they acted in a chaotic and heavy-handed manner, hitting out blindly and making no distinction between demonstrators and mere passers-by.

40. In the afternoon of 13 June 1990 the demonstrations intensified around the television building, University Square, the Ministry of the Interior and the municipal police station, all locations where, according to the demonstrators, the arrested persons could be held prisoner.

41. Following those incidents, the army intervened and several armoured vehicles were sent to the headquarters of the Ministry of the Interior.

42. According to a report by the Ministry of the Interior, referred to by the Government in their observations, at about 6 p.m. the headquarters of the Ministry of the Interior were surrounded by between 4,000 and 5,000 demonstrators; on the orders of Generals A.G. and C.M., servicemen posted inside the Ministry fired at the ceilings of the entrance halls with a view to dispersing the demonstrators.

43. Three persons were killed by the shots fired in the Ministry of the Interior.

44. It was in those circumstances that, at about 6 p.m., when he was a few metres away from one of the doors of the Ministry, the first applicant’s husband was killed by a bullet which hit the back of his head after having ricocheted. Those events are described in detail in the decisions of 18 May 2000 and 27 July 2007 committing for trial the Minister of the Interior at the relevant time, a general and three colonels. According to the first decision to commit for trial, the applicant’s husband and the other victims, who were returning from their workplaces on that day, were

unarmed and had not previously taken part in the marathon demonstrations on University Square. Mere spectators of the events, they had been killed by bullets which had ricocheted.

45. The security forces shot and killed a fourth person in another district of Bucharest. Another died shortly after having been stabbed in the area around the television headquarters.

46. On 13 June 1990 no servicemen were subjected to violence by the demonstrators, as attested by the decision to commit for trial of 27 July 2007. According to that document, the army had fired 1,466 bullets from inside the Ministry of the Interior headquarters on that date.

47. In addition, other persons, including Mr Marin Stoica, were beaten and detained by police officers and civilians in the headquarters of the State television station, in the circumstances described below.

48. The headquarters of the State television station were at that time guarded by 82 servicemen, backed by 14 armed vehicles, and subsequently reinforced by other groups of armed forces, the largest of which contained 156 servicemen (who arrived at 7 p.m.), a detachment of parachutists (7.30 p.m.), 646 servicemen (8 p.m.), 118 parachutists (11 p.m.) and 360 servicemen with 13 other armed vehicles (11 p.m.).

49. At about 1 a.m. the demonstrators were chased out of the television headquarters following this mass intervention.

5. Circumstances specific to Mr Marin Stoica

50. Towards the end of the afternoon on 13 June 1990, while he was walking to his workplace along a street near the State television headquarters, the applicant was brutally arrested by a group of armed individuals and taken by force into the television building. In sight of the police officers and servicemen present, civilians struck and bound him, then took him to the basement of the building. He was then led into a television studio, where several dozen other persons were already present. They were filmed in the presence of the then director of the State television station. The recordings were broadcast during the night of 13 to 14 June 1990, accompanied by commentary which described the persons concerned as employees of foreign secret services who had threatened to destroy the television premises and equipment.

51. In the course of the same night the applicant was beaten, struck on the head with blunt objects and threatened with firearms until he lost consciousness.

52. He woke up at around 4.30 a.m. in the Floreasca Hospital in Bucharest. According to the forensic medical report drawn up on 18 October 2002, the medical certificate issued by the hospital's emergency surgery department stated that the applicant had been admitted at about 4.30 a.m. on 14 June 1990 and diagnosed as suffering from bruising on the

left side of the abdomen and ribcage, abrasions on the left side of his ribcage resulting from an assault, and craniocerebral trauma.

53. Fearing further ill-treatment, he fled from the hospital, which was surrounded by police officers, at about 6.30 a.m.

54. His identity papers had been confiscated during the night of 13 to 14 June 1990. Three months later he was invited to collect them from the Directorate of Criminal Investigations at the General Inspectorate of Police. In the meantime, he had remained shut away at home for fear of being arrested again, tortured and imprisoned.

6. The miners' arrival in Bucharest

55. According to the decision of 16 September 1998, witness M.I., an engineer, who at the relevant time was head of department at the Craiova agency of the national railway company (*Regionala CFR Craiova*), had stated that, on the evening of 13 June 1990, the director of that agency had ordered that the scheduled trains be cancelled and that four train convoys, or a total of 57 wagons, be made available to the miners at Petroşani station, in the heart of the Jiu Valley mining area.

56. M.I. had added that the order seemed to him unlawful and that he had attempted to prevent the miners' transportation to Bucharest by cutting the electricity provision to the railway line on the journey indicated. He had stated that, faced with his insubordination, the director of the Craiova CFR agency had ordered that he be replaced and had the railway line restored to use by about 9 p.m. It appears that M.I. was subsequently dismissed and brought before the prosecution service.

57. According to the decision issued on 10 March 2009 by the prosecutor's office at the High Court of Cassation and Justice, on 14 June 1990, eleven trains – a total of 120 wagons – transporting workers, especially miners, had travelled to Bucharest from several industrial regions around the country. The first had reached Bucharest at 3.45 a.m., the last at 7.08 p.m.

58. The decision of 16 September 1998 states that the miners had been informed that they were to help the police re-establish public order in Bucharest, and that they were armed with axes, chains, sticks and metal cables.

59. The decision of 10 March 2009 indicates that the miners had been mobilised by the leaders of their trade union. Questioned as a witness, the president of the Federation of Miners' Unions, who became mayor of Lupeni in 1998, stated that five trains carrying the miners had arrived at Bucharest station at about 1 a.m. on 14 June 1990, that the miners had been greeted by the deputy Minister for Mines and a Director General from that Ministry, and that these two senior government officials had led them to University Square.

7. The sequence of events on 14 June 1990

60. On the morning of 14 June 1990 groups of miners first stopped at Victory Square (*Piaţa Victoriei*), at the Government headquarters.

61. At about 6.30 a.m. the Head of State addressed the miners who were gathered in front of the Government building, inviting them to cooperate with the security forces and to restore order on University Square and in other areas where incidents had occurred. In this speech, which is reproduced in full in the decision of 17 June 2009, he urged them to head towards University Square and occupy it, informing them that they would be confronted with "openly fascist elements who had committed acts of vandalism" by setting fire to the headquarters of the Ministry of the Interior and of the Police and "besieging the television building".

62. Immediately afterwards groups of miners were led "by unidentified persons" to the headquarters of opposition parties and associations perceived as hostile to the authorities.

63. The miners were flanked by troops from the Ministry of the Interior, with whom they formed "mixed teams", and set out to look for demonstrators. The decision of 17 June 2009 indicates that "acts of extreme cruelty [took place] on this occasion, with violence being used indiscriminately against demonstrators and Bucharest residents who were totally unconnected with the demonstrations". The decision of 10 March 2009 indicates that the miners also attacked the homes of persons of Roma ethnicity. According to that decision, the miners had "selection criteria" for identifying those persons who, in their opinion, were suspected of taking part in the University Square demonstrations, and attacked "as a general rule, Roma, students, intellectuals, journalists and anyone who did not recognise their legitimacy".

64. The groups of miners and the other persons accompanying them ransacked the headquarters of the National Farmers' Party (*Partidul Naţional Ţărănesc Creştin şi Democrat*) and the National Liberal Party, and the headquarters of other legal entities, such as the Association of Former Political Prisoners (*Asociaţia Foştilor Deţinuţi Politici*), the League for the Protection of Human Rights (*Liga pentru Apărarea Drepturilor Omului*) and the Association "21 December 1989" (the applicant association).

65. According to the decision of 16 September 1998, no one present in the headquarters of those political parties and associations at that time was spared by the miners. All were attacked and had their possessions confiscated. Many were apprehended and handed over to the police – who were there "as though by coincidence" – and detained in an entirely unlawful manner.

66. Other groups of miners had gone to University Square. On arrival, they broke into the University premises and the Architecture Institute, located on University Square. They attacked the staff and students whom they encountered there, subjecting them to violence and humiliating acts.

The miners apprehended everyone on the premises and handed them over to the police and gendarmes. The arrested persons were taken by the law-enforcement forces to police stations or to the Băneasa and Măgurele military barracks.

67. The miners then moved into the streets surrounding University Square and continued their activities there.

68. According to the decision of 17 June 2009, 1,021 individuals – including 63 who were then underage – were apprehended in those circumstances. 182 of them were placed in pre-trial detention, 88 received an administrative penalty and 706 persons were released "after checks".

69. The decision of 16 September 1998 states that "the miners [ended] their law-enforcement activities on 15 June 1990, after the President of Romania had thanked them publicly for what they had done in the capital, and authorised them to return to their work".

70. That decision also indicates that some of those who were beaten and imprisoned were unlawfully detained for several days and that several of them were released on 19 and 20 June 1990.

71. The other persons in police custody were placed in pre-trial detention, on a decision by the prosecutor, for causing a breach of the peace; their number included the current president of the applicant association, who was subsequently acquitted of all the charges against him.

72. The decision of 17 June 2009 states that the miners acted in close collaboration with the security forces and on the instructions of the State's leaders. The relevant passages read as follows:

> "On 14 and 15 June 1990 the miners, in groups coordinated by civilians on behalf of and with the agreement of the State's leaders (*în numele şi cu acordul conducerii de stat*), committed acts in which the State's law-enforcement forces fully collaborated (*deplină cooperare*) and which caused not only physical harm to the persons who were apprehended for checks, but also significant damage to the premises of the University of Bucharest, the Architecture Institute, several political parties and civilian associations, and the homes of figures from so-called "historical" parties ...
>
> The investigations conducted by the military prosecutors have not permitted identification of the persons in civilian clothing who had infiltrated the miners' groups; the victims who were questioned had distinguished between the miners and their other attackers by describing the first as "dirty miners" and the second as "clean miners".

8. Circumstances specific to the applicant association

73. On 13 June 1990 the applicant association publicly condemned the violent interventions of the same day.

74. At about 11 p.m. the leaders of the association decided, as a security measure, to spend the night in its headquarters. Seven of them remained there during the night.

75. At 7 a.m. on 14 June 1990 a group of miners forcibly entered the applicant association's premises after breaking a window pane. In the first few minutes after entering they were not violent, and were rather reserved. Shortly afterwards an unidentified civilian, who was not a miner, arrived on the scene and began hitting one of the members of the association. The miners followed his lead, brutally attacking the seven members of the association, who were then arrested by the security forces.

76. During that day all of the association's property and documents were seized, in breach of the legal formalities, under the supervision of troops from the Ministry of Defence.

77. On 22 June 1990 the leaders of the association were able to return to the association's premises, accompanied by the police.

9. Developments subsequent to the events of 13-15 June 1990

78. The above-cited decisions of the prosecutor's office indicate that, instead of immediately returning to their homes, 958 miners remained in Bucharest, "ready to intervene should the protests recommence", notably with a view to the impending swearing-in of the newly elected President. From 16 to 19 June 1990 those miners were accommodated in military barracks in Bucharest, where they received military uniforms.

79. The decision of 16 September 1998 indicates that the investigation was unable to elucidate who had given the order to house and equip the miners, but specifies that "such a measure had to have been taken at least at Ministry of Defence level".

80. According to a press release issued by the Ministry of Health on 15 June 1990 and reproduced in the decision of 17 June 2009, during the period between 13 June and 6 a.m. on 15 June 1990, 467 persons went to hospital following the violent incidents; 112 were kept in hospital and 5 deaths were recorded.

81. According to the same decision of 17 June 2009, police officers, miners and later the military conscripts responsible for supervising the miners used excessive force against the 574 demonstrators and the other persons – including children, elderly persons and blind people – who had been arrested and detained in the Măgurele military barracks. The decision states that the detainees in those premises were subjected to violence and assaults of a "psychological, physical and sexual" nature and held in inappropriate conditions, and that they received belated and inadequate medical care.

B. The criminal investigation

82. The violent events of June 1990, in the course of which the husband of applicant Anca Mocanu was killed and Mr Marin Stoica was allegedly ill-treated, and which resulted in the ransacking of the applicant

association's headquarters, gave rise to the opening of an investigation. It was initially divided up into several hundred different case files.

83. On 29 May 2009 the military section of the prosecutor's office at the High Court of Cassation and Justice sent a letter to the Government's Agent, in which those facts were summarised as follows: "Over the period from 1990 to 1997, hundreds of complaints were registered on the rolls of the prosecutor's office at the Bucharest County Court and the district prosecutor's offices concerning the offences of theft, destruction, armed robbery, assault causing bodily harm, unlawful deprivation of liberty and other offences committed in the context of the acts of violence committed by miners in Bucharest on 14 and 15 June 1990. In the majority of those cases, it having proved impossible to identify the perpetrators, a decision was issued not to bring a prosecution."

84. No decision to discontinue the proceedings was communicated to Mrs Anca Mocanu or to the applicant association, which had joined the proceedings as a civil party.

85. Those case files were subsequently joined and the scope of the investigation was broadened from 1997 onwards, the events having been given a different legal classification involving aggravated criminal responsibility. Senior army officers and State officials were successively charged and the entire investigation was transferred to the military section of the prosecutor's office at the Supreme Court of Justice (*Parchetul de pe lângă Curtea Supremă de Justiţie - Secţia Parchetelor Militare*) as case no. 160/P/1997.

86. Between 22 October 1997 and 27 October 1999, 183 previously opened cases were joined to case no. 160/P/1997, of which 46 were joined on 22 October 1997, 90 on 16 September 1998 and 69 on 22 October 1999.

87. On 26 June 2000 the same military prosecutor's section was assigned 748 cases concerning the events of 13 to 15 June 1990, including, in particular, the unlawful deprivations of liberty on 13 June 1990.

88. In the decision of 17 June 2009, the state of the file as it existed after the joinder of all those cases is described as follows:

> "Many of the documents included in the 250 volumes of the file are photocopies which have not been stamped or have not been certified as corresponding to the original. The documents in each of those volumes are not filed by date, subject or another criterion, but in a disorderly fashion. Some of them have nothing to do with the case (for example, volume 150 contains files concerning disappearances which occurred after June 1990."

89. On 16 September 1998 case no. 160/P/1997 was split into four cases and the subsequent investigation was assigned to the military section of the prosecutor's office at the Supreme Court of Justice.

90. On 8 January 2001 three of those four cases were joined. After that date the investigation focused on two main cases.

91. The first concerned charges of incitement to or participation in aggravated unlawful killing, particularly that of Velicu-Valentin Mocanu. The persons accused of that offence were the President of Romania at the relevant time and five senior army officers, including the Minister of the Interior.

92. The decision to bring charges of 19 June 2007, and the subsequent decision to sever the charges, of 19 July 2007, state that, on orders from the then President, in the evening of 13 June and the night of 13 to 14 June 1990 the security forces and army personnel used their weapons and heavy ammunition against demonstrators, killing four persons, injuring three others and endangering the lives of other persons.

93. The charges against the former President were subsequently severed from those against the other defendants, who were high-ranking military officers, and a decision to discontinue proceedings against him was issued.

94. At 2 October 2013 this first branch of the investigation was still pending in respect of two of the officers in question, the three others having died in the meantime.

95. The other case concerning the events of June 1990, which investigated, in particular, the criminal complaint for violence lodged by Mr Marin Stoica and the ransacking of the applicant association's premises, concerned charges of incitement to commit or participation in acts of sedition (*subminarea puterii de stat*), sabotage (*actele de diversiune*), inhuman treatment (*tratamentele neomenoase*), propaganda in favour of war (*propaganda pentru război*) and genocide, within the meaning of Article 357 (a) to (c) of the Criminal Code.

96. The persons accused of those acts were the former President, several high-ranking officers and dozens of civilians. Proceedings were brought in respect of these charges against the former President on 9 September 2005 and against the former head of the SRI on 12 June 2006.

97. This second branch of the investigation was closed by a decision not to bring a prosecution, adopted on 17 June 2009. That decision was upheld by a judgment delivered on 9 March 2011 by the High Court of Cassation and Justice following an appeal by Mr Marin Stoica.

98. The main stages of the investigation are described below.

1. The decision adopted on 16 September 1998

99. On 16 September 1998 the military section of the prosecutor's office at the Supreme Court of Justice issued its decision in case no. 160/P/1997, following an investigation concerning 63 persons who had been victims of violence and unlawful arrests, including Mrs Anca Mocanu and three members of the applicant association, as well as the applicant association itself and eleven other legal entities whose premises had been ransacked during the events of 13 to 15 June 1990.

100. Three of the 63 victims listed in the table contained in the decision of 16 September 1998 had been assaulted and deprived of their liberty at the headquarters of the State television station. In the final column, indicating the stage reached in the investigations, the table notes that “the case has not been investigated” (*cauza nu este cercetată*) in respect of those three persons.

101. In its decision, the military section of the prosecutor’s office indicated that other complaints were pending before the civilian prosecutors’ offices.

102. It added that its decision also concerned “the presumed unlawful killing of about one hundred individuals during the events of 13 to 15 June 1990, [whose corpses] were allegedly incinerated or buried in common graves in cemeteries in villages near Bucharest (notably Străuleşti)”.

103. It also indicated that, to date, the investigation had been unable to identify the persons who had implemented in practice the executive’s decision to summon civilians to restore order in Bucharest. According to the prosecution service, this failing in the investigation was due to the “fact that none of the persons who held posts of responsibility at the relevant time [had] been questioned”, particularly the then President of Romania, the Prime Minister and his deputy, the Minister of the Interior, the head of the police, the director of the SRI and the Minister of Defence.

104. In its decision, the military section ordered that the case be split into four separate case files.

105. The first of those files was to focus on the continued investigation into the unlawful killing by gunfire of four civilians, including the first applicant’s husband.

106. The second file targeted those persons who had exercised functions pertaining to civilian and military command. The authorities decided to pursue the investigation in their respect, in particular for abuse of power against the public interest entailing serious consequences, an offence punishable under Article 248 § 2 of the Criminal Code, and also to investigate the fact that one social group had been enrolled alongside the security forces to combat other social groups.

107. The third file concerned the continuing investigations into the possible existence of other victims who had been killed during the violent incidents of 13-15 June 1990 (see paragraph 102 above).

108. Lastly, considering that the prosecution was statute-barred, the military section of the prosecutor’s office decided to discontinue the proceedings against unidentified members of the security forces and groups of miners in respect of the offences of armed robbery, unlawful deprivation of liberty, abusive conduct, abusive investigation, abuse of power against private interests, assault, actual bodily harm, destruction of property, theft, breaking and entering homes, malfeasance and rape, committed between 13 and 15 June 1990.

109. This part of the decision of 16 September 1998 was set aside in a decision issued on 14 October 1999 by the head of the military section of the prosecutor's office (*Şeful Secţiei Parchetelor Militare*) at the Supreme Court of Justice, which ordered that the proceedings and investigations intended to identify all the victims be resumed, specifying in that respect that it had been established that the number of victims greatly exceeded that of the injured parties listed in the impugned decision.

110. In addition, the decision of 14 October 1999 noted that the investigators had so far failed to conduct investigations into the "known collusion" between the Ministry of the Interior and the leaders of the mining companies "with a view to organising a veritable apparatus of unlawful repression", that collusion having been established, according to the decision by the evidence contained in the case file.

2. Subsequent developments in the investigation in respect of senior army officials for participation in unlawful killing

111. After the decision of 16 September 1998 the investigations into the unlawful killing of Mr Velicu-Valentin Mocanu continued under case no. 74/P/1998 (see paragraph 105 above).

112. Mrs Anca Mocanu and the two children she had had with the victim joined the proceedings as civil parties.

113. Two generals – the former Minister of the Interior and his deputy – and three senior-ranking officials were charged with the unlawful killings committed on 13 June 1990, including that of the applicant's husband, on 12, 18 and 21 January and 23 February 2000 respectively.

114. All five were committed for trial on the basis of a decision to that effect (*rechizitoriu*) of 18 May 2000, on the ground that they had called for – and, in the case of the two generals, ordered – the opening of fire with heavy ammunition, an act which resulted in the death of four individuals and caused serious injury to nine other persons.

115. By a decision of 30 June 2003, the Supreme Court of Justice remitted the case to the military section of the prosecutor's office at the Supreme Court of Justice for additional investigation intended to remedy various deficiencies, and reclassified the offence as participation in aggravated unlawful killing. It also ordered a series of investigative measures to be taken.

116. Mrs Anca Mocanu, other civil parties and the military section of the prosecutor's office appealed against that decision on points of law. Their appeals were dismissed by the High Court of Cassation and Justice (as the Supreme Court of Justice was renamed in 2003, see paragraph 14 above) in a judgment of 16 February 2004.

117. After the investigation was resumed, the proceedings against the five defendants were discontinued by a decision of 14 October 2005. That decision having been overturned on 10 September 2006, the proceedings were reopened.

118. After carrying out an additional investigation in line with the instructions set out in the judgment of 30 June 2003, the military section of the prosecutor's office at the High Court of Cassation and Justice committed the former Minister of the Interior, his deputy and two other senior army officers for trial in a decision to that effect of 27 July 2007. It discontinued proceedings against the fifth officer, who had died in the meantime.

According to the decision to commit for trial, "the lack of reaction by the public authorities" and the lack of an immediate effective investigation "[had] endangered the very existence of democracy and the rule of law".

119. By a judgment of 17 December 2007, the High Court of Cassation and Justice ordered that the case be sent back to the military section of the prosecutor's office for a breach of procedural rules, primarily on the ground that criminal proceedings against a former minister could only be brought through a special procedure requiring prior authorisation by Parliament.

120. On 15 April 2008 the military section of the prosecutor's office at the High Court of Cassation and Justice lodged an appeal on points of law against that decision, but this was dismissed on 23 June 2008.

121. On 30 April 2009 the military section of the prosecutor's office at the High Court of Cassation and Justice stated that it did not have jurisdiction to examine this branch of the case, mainly because members of the police force – including the Minister of the Interior – had become civil servants following a legislative amendment, and the military courts and prosecutors thus no longer had jurisdiction over their criminal acts, even where those had been committed while they were still military officers. It therefore relinquished jurisdiction to one of the ordinary criminal sections of the same prosecutor's office, namely the Criminal Proceedings and Criminalistics Section (*Secţia de urmărire penală şi criminalistică*).

122. By a decision of 6 June 2013, that Section discontinued the proceedings against the former minister and his deputy, who had died on 2 November 2010 and 4 February 2013 respectively.

123. By the same decision, the same Section of the prosecutor's office declared that it did not have jurisdiction in respect of the last two surviving defendants, Colonels C.V. and C.D., and referred their cases to the military prosecutor's office at the Bucharest regional military court.

124. This investigation was pending before that prosecutor's office on 2 October 2013.

3. The charges against the former President of the Republic in respect of the death of Mrs Anca Mocanu's husband

125. This part of the investigation concerned the charges against the former President of the Romanian Republic with regard to the victims who were killed or injured by gunshots fired by the army on 13 June 1990.

126. The former President of Romania, in office from 1989 to 1996 and from 2000 to 2004, was charged on 19 June 2007, by which date he was exercising the functions of senator and was a member of parliament. He was accused of having "deliberately incited servicemen to use force against the demonstrators on University Square and in other districts of the capital, an act which resulted in the death or injury by gunfire of several persons". Those facts were characterised as participation *lato sensu* in aggravated unlawful killing, a crime punishable under Articles 174, 175 (e) and 176 (b) of the Criminal Code, taken together with Article 31 § 2 of that Code.

127. On 19 July 2007 those charges were severed from case no. 74/P/1998. The investigation continued under case no. 107/P/2007.

128. In the meantime, on 20 June 2007 the Constitutional Court, ruling in a case unrelated to the present one, had delivered a judgment ruling that the military courts did not have jurisdiction to judge or prosecute civilian defendants. In consequence, by a decision of 20 July 2007 the military section of the prosecutor's office held that it did not have jurisdiction to examine case no. 107/P/2007 and relinquished jurisdiction to one of the ordinary criminal sections.

129. On 7 December 2007 the Procurator General of Romania set aside, for procedural errors, the indictment of 19 June 2007, and ordered that the investigation be resumed.

130. By a decision of 10 October 2008, the Criminal Proceedings and Criminalistics Section of the prosecutor's office at the High Court of Cassation and Justice issued a decision not to bring a prosecution, on the ground that there was no causal link between the order to evacuate University Square issued by the former President and the decision taken by three officers, with the agreement of their superiors – General A. and General C. (Minister of the Interior) – to order that fire be opened on the demonstrators.

In so ruling, the prosecutor's office held that the objectives of the action plan drawn up on 12 June 1990 had been fulfilled by 9 a.m. on the following morning, and that the following events, including the subsequent orders to open fire, had had nothing to do with that plan and could not have been foreseen by those who prepared it.

131. On 3 November 2008 Mrs Anca Mocanu and other injured parties challenged this decision not to bring a prosecution.

132. On 18 December 2009 a three-judge bench of the High Court of Cassation and Justice dismissed their appeals, finding them inadmissible, out of time or unfounded, depending on the case. It concluded that there was

no causal link between the acts imputed to the former President and the unpredictable consequences of the demonstrations which had resulted in the death of several persons. Moreover, it noted that three of the injured parties – widows or relatives of the victims who died on 13 and 14 June 1990 –, including Mrs Anca Mocanu, had stated at a hearing on 11 December 2009 that they did not intend to challenge the decision not to bring a prosecution in respect of the former President and that they wished only that those responsible for the unlawful killings be identified and that they be held liable. Following an appeal on points of law by the civil parties, that decision was upheld by a nine-judge bench of the High Court in a judgment of 25 October 2010.

4. The investigative measures regarding the circumstances of Mr Velicu-Valentin Mocanu's death

133. According to the forensic autopsy report carried out on Mrs Anca Mocanu's husband, he died as a result of gunshot wounds inflicted by a third party.

134. The applicant made her first specific request to join the proceedings as a civil party on 11 December 2000. On the same date the applicant and the other civil parties – relatives of the three other persons who had been killed during the events of 13 and 14 June 1990 – filed joint pleadings containing their observations as to the identity of those responsible for the deaths of their relatives, and their claims for compensation.

135. On 14 February 2007 the applicant was questioned for the first time by the prosecutor's office for the purposes of the investigation. Assisted by a lawyer of her own choice, she stated that her husband had not returned home on the evening of 13 June 1990, that this had worried her, that she had searched for him the following day without success, and that she had subsequently learned from the press that he had been killed by a shot to the head. No investigator or official representative had visited her, nor had she been summoned for the purposes of the investigation; only a few journalists had come to see her. She stated that, aged twenty and without employment at the relevant time, since her husband's death she had raised alone their two children, a daughter of two months (born in April 1990) and a two-year-old son.

136. The documents in the file submitted to the Court do not indicate whether Mrs Anca Mocanu was kept informed about developments in the investigation into the aggravated unlawful killing of her husband following the High Court of Cassation and Justice's judgment of 17 December 2007 ordering that the case be remitted to the prosecutor's office.

5. Subsequent developments in the investigation into charges of inhuman treatment

137. Between 26 November 1997 and 12 June 2006 criminal proceedings were brought against 37 persons – 28 civilians and 9 servicemen – essentially for acts of sedition committed in the course of the events of June 1990. The former President of Romania was among those prosecuted. He was charged on 9 June 2005 with participation in genocide (Article 357, paragraphs (a), (b) and (c) of the Criminal Code), propaganda in favour of war (Article 356), inhuman treatment (Article 358), sedition (Article 162) and acts of sabotage (Article 163).

The vast majority of the 28 civilians charged were directors of mining companies, heads of miners' trade unions and senior civil servants in the Ministry of Mines.

138. On 16 September 1998 this branch of the investigation was allocated the file number 75/P/1998 (see paragraph 106 above).

139. On 19 December 2007 the military section of the prosecutor's office at the High Court of Cassation and Justice ordered that the case in file no. 75/P/1998 be split into two parts, one concerning the criminal charges against the 28 civilians, including the former President of Romania and the former head of the SRI, and the other concerning the charges against the nine servicemen. The investigation with regard to the 28 civilians was to be pursued before the relevant civilian section of the same prosecutor's office.

140. By a decision of 27 February 2008, the head prosecutor in the military section of the prosecutor's office set aside the decision of 19 December 2007, finding that, given the close connection between the events, a single prosecutor's office, namely the relevant civilian section, was to examine the entirety of the case in respect of all of the defendants, both civilians and servicemen.

141. In line with that decision, on 29 April 2008 the military section of the prosecutor's office at the High Court of Cassation and Justice also relinquished jurisdiction to the relevant civilian section for examination of the criminal charges against the nine servicemen – including several generals, the former head of police and the former Minister of the Interior.

142. The decision of 29 April 2008 contained a list of more than a thousand victims who had been held and subjected to ill-treatment, notably in the premises of the Băneasa Officers' School and the Măgurele military unit. Mr Marin Stoica was included in this list of victims. The decision also contained a list of the legal entities which had sustained damage during the crackdown of 13 to 15 June 1990, including the applicant association.

143. That decision also referred to "identification of the approximately 100 persons who died during the events of 13‑15 June 1990".

144. It also contained a list of the State-owned companies which had provided workers for the intervention in Bucharest. That list included, in particular, 20 mining companies from all around the country and factories in 11 towns (Călăraşi, Alexandria, Alba-Iulia, Craiova, Constanţa, Deva, Giurgiu, Galaţi, Braşov, Slatina and Buzau), and three factories in Bucharest.

145. Following that decision, on 5 May 2008 the military section of the prosecutor's office sent the 209 volumes, containing a total of some 50,000 pages, from case no. 75/P/1998 to the relevant civilian section of the prosecutor's office.

146. On 26 May 2008 the section of the prosecutor's office at the High Court of Cassation and Justice which had received the entire file, namely the Criminal Proceedings and Criminalistics Section, stated that it did not have jurisdiction, and relinquished jurisdiction to another section of the same prosecutor's office, namely the Directorate for Investigating Organised Crime and Terrorism (*Direcţia de Investigare a Infracţiunilor de Criminalitate Organizată şi Terorism – the DIICOT*).

147. By a decision of 10 March 2009, the relevant directorate of the prosecutor's office at the High Court of Cassation and Justice, namely the DIICOT, decided that no prosecution would be brought against the former head of the SRI on the charge of sedition, as that offence had become time-barred, and that no prosecution would be brought against the majority of the 27 civilian defendants – directors of mining companies, heads of miners' trade unions, senior civil servants at the Ministry of Mines and in local government – on the ground that the constituent elements of the offence had not been made out.

148. In so ruling, the prosecutor's office considered that, in their respective capacities as Head of State, Minister of the Interior, deputy minister or Head of Police, some of the defendants exercised State authority, and it would have been illogical to think that they could have committed acts capable of undermining their own power. As to the miners and other workers who had travelled to Bucharest on 14 June 1990, the prosecutor's office considered that they had "turned themselves into security forces" and been persuaded that their actions served State power. In addition, it noted that their intervention had been pointless, since the operation conducted by the parachutists at the television headquarters had enabled order to be restored in the capital at about 1 a.m. on 14 June 1990.

149. The prosecution also discontinued the proceedings against three of the defendants, who had died in the meantime.

150. Lastly, the DIICOT decided to relinquish jurisdiction to the Criminal Proceedings and Criminalistics Section with regard to the remainder of the case, namely the charges of inhuman treatment, propaganda in favour of war and genocide, within the meaning of Article 357 (a) to (c) of the Criminal Code. Those facts concerned only nine

of the persons who had been charged during the period 2000-2006, including the former president.

151. On 17 June 2009 a decision was taken not to bring a prosecution in respect of those charges; its content is set out below.

6. The decision of 17 June 2009 not to bring a prosecution

152. On 17 June 2009 the prosecutor's office at the High Court of Cassation and Justice issued a decision not to bring a prosecution in the case, concerning essentially charges of inhuman treatment arising from 856 complaints by persons injured as a result of the violence committed from 13 to 15 June 1990.

153. The decision in question indicated that the former Head of State had not been examined as a defendant in the course of the investigation.

154. It gave a comprehensive description of the violence – classified as extreme cruelty – inflicted on several hundred persons.

155. It was indicated that the investigations conducted over approximately nineteen years by the civilian prosecutor's offices and, subsequently, by the military prosecuting authorities, had not made it possible to establish the identity of the perpetrators or the degree of involvement of the security forces. The relevant passage from the decision reads as follows:

> "The investigations carried out over a period of about nineteen years by the civilian prosecutors' offices and, subsequently, by the military prosecuting authorities, the findings of which are contained in case file ... have not made it possible to establish the identity of the miners who committed the attack, the degree of involvement in their actions by the security forces and members and sympathisers of the FSN and their role and degree of involvement in the acts of violence carried out against the residents of the capital on 14 and 15 June 1990."

156. This decision ordered that proceedings be discontinued against one of the defendants, who had died in the meantime, and that no prosecution would be brought (*scoatere de sub urmărire penală*) in respect of the eight remaining defendants for those offences which had become statute-barred, in particular harbouring a criminal.

157. With regard to the offences which had not become time-barred, especially those of inhuman treatment, the decision stated that there was no case to answer, since the constituent elements of the offences had not been made out or because the reality of the events complained of had not been proven.

158. In this connection, it was indicated that the then Head of State could not be criticised for any form of participation in the joint actions by the miners and the armed forces, as he had merely approved the actions which occurred on the morning of 13 June 1990 and the army's intervention in the afternoon of the same date, for the stated purpose of restoring order. It was also mentioned that there was no information (*date certe*) to

substantiate accusations against him with regard to the preparations for the miners' arrival in Bucharest and the instructions they had been given. It was noted that his request to the miners to protect the State institutions and to restore order – following which 1,021 persons had been deprived of their liberty and subjected to physical assault – could only be classified as incitement to commit assault and that criminal liability in that respect was time-barred.

159. The prosecutor's office considered that the demonstrators and other persons targeted by the miners belonged to various ethnic groups (Romanians, Roma, Hungarians) and social categories (intellectuals, students, school pupils, but also workers), and that they could not therefore be regarded as a single group or an identifiable community on objective geographical, historical, social or other grounds, and for that reason the events complained of could not be classified as genocide. Relying on the case-law of the International Criminal Court for the Former Yugoslavia, the prosecutor's office also considered that the persons deprived of liberty had not been systematically subjected to ill-treatment.

160. The decision further indicated that the speech by which the Head of State had encouraged the miners to occupy and defend University Square against the demonstrators camping out there could not be interpreted as propaganda in favour of war, as the accused had not sought to instigate a conflict of any kind, but had, on the contrary, asked the miners "to put an end to excess and acts of bloodshed".

161. It was also indicated that the miners had been motivated by simplistic personal convictions, developed on the basis of collective hysteria, which had led them to act as arbitrators of the political situation and zealous guardians of the political regime – the leaders of which had recognised them as such –, authorised to "correct" those who opposed its legitimacy. The prosecutor further noted the legal requirement that, to be punishable, the inhuman treatment had to target "individuals who [had] fallen into enemy hands" and considered that this criterion had not been met here, since the miners no longer had any enemy against whom to fight on 14 June 1990.

162. With regard to the accusations of torture, the prosecutor considered that Romanian law contained no provisions against torture at the material time.

163. The decision of 17 June 2009 analyses each of the charges in respect of each defendant, but refers to none of the victims by name and does not mention the individual acts of violence complained of by each of them, referring to an appendix which has not been submitted to the Court. It mentions the number of victims and their membership of such or such a category, noting, for example, the 425 persons who were arrested and held in the premises of the Băneasa Officers' School or the 574 demonstrators

who were arrested and imprisoned in the premises of the Măgurele military base.

7. Appeals lodged against the decision not to bring a prosecution of 17 June 2009

164. The applicant association, other legal entities and individuals lodged an appeal against the decision not to bring a prosecution of 17 June 2009, which was dismissed on 3 September 2009 by the head prosecutor of the relevant section of the prosecutor's office at the High Court of Cassation and Justice. In so ruling, the prosecutor's office considered that no actions which could classified as a crime against humanity, such as inhuman treatment or genocide, had been committed.

165. Mr Marin Stoica and four other injured parties also lodged an appeal against the same decision. It was dismissed on 6 November 2009. Mr Marin Stoica lodged on appeal on points of law before the High Court of Cassation and Justice.

166. On 9 March 2011, having dismissed the plea of *res judicata* raised by the former Head of State, the High Court of Cassation and Justice ruled on the merits of the decision not to bring a prosecution, and dismissed the applicant's appeal.

167. In its judgment, it classified the assault against the applicant as grievous bodily harm (Article 182 of the Criminal Code), unlawful arrest, ill-treatment (Article 267), torture, unjust repression and blackmail. It considered that the decision of 17 June 2009 had been correct in ruling that no prosecution was to be brought, on the ground that the offences in question had become time-barred and that torture had not been a criminal offence at the material time.

168. In contrast, it did not rule on the criminalisation of inhuman treatment (Article 358 of the Criminal Code), which had been the subject of the decision of 29 April 2008, in which the applicant was named as a victim of the inhuman treatment imputed to five generals.

8. Summary and clarifications concerning the investigative measures

169. According to the Government, the main investigative measures carried out in the period between 1990 and 2009 were as follows: more than 840 interviews with injured parties; hearing of witnesses on more than 5,724 occasions; more than 100 forensic medical reports. The results of those measures were set out in several thousand pages of documents.

(a) Investigative measures concerning Mr Stoica in particular

170. On 18 June 2001, when he was received by a prosecutor at the military section of the prosecutor's office at the Supreme Court of Justice, Mr Marin Stoica lodged an official complaint concerning the violence which he claimed to have been victim in the night of 13 to 14 June 1990.

171. His complaint was joined to the investigation file already opened in respect of other charges, especially inhuman treatment (case file no. 75/P/1998).

172. On 18 October 2002, for the purposes of the investigation into the alleged assault against him, the applicant underwent an examination at the State Institute of Forensic Medicine, which produced a forensic medical report. That report indicated that the injuries described in the medical file opened by the emergency unit on 14 June 1990 had required three to five days of medical treatment and had not been such as to endanger the applicant's life.

173. It was also indicated that the applicant had been hospitalised for major epileptic fits from 31 October to 28 November 1990, in February 1997, March 2002 and August 2002, and that he had been diagnosed as suffering from post-traumatic secondary epilepsy and other cerebral and vascular disorders (transient ischemic attacks, TIAs). The expert report noted that the post-traumatic epilepsy had appeared following an injury sustained in 1966.

174. On 9 and 17 May 2005 the applicant was questioned and was able to give his point of view on the events complained of and submit his claims for compensation in respect of the alleged pecuniary and non-pecuniary damage.

175. By a letter of 23 May 2005, he was informed by the military section of the prosecutor's office at the High Court of Cassation and Justice that his complaint concerning the injuries inflicted on 13 June 1990 by unidentified servicemen, which had resulted in his hospitalisation "in a coma", was being investigated in the context of case no. 75/P/1998.

176. A certificate issued on 26 April 2006 indicates that, according to the entries in the register held by the military section of the prosecutor's office at the High Court of Justice and Cassation, the applicant had been received by a prosecutor in 2002, 2003, 2004, 2005 and 2006, mainly for the purposes of the investigation or to enquire about progress in the investigation. The applicant lodged two additional complaints, on 12 September and 4 October 2006 respectively.

177. On 23 April 2007 the prosecutor questioned two witnesses indicated by the applicant.

178. When questioned on 9 May 2007 as an injured party, the applicant asked the military prosecutor to order a second forensic medical report, since he considered that the 2002 report had entirely failed to emphasise the

seriousness of the injuries sustained in 1990 and the continuing after-effects of those injuries.

179. The prosecutor ordered a new report. Among other things, he asked the forensic specialists to examine whether a causal link existed between the injury sustained by the applicant in June 1990 and the medical conditions from which he was suffering on the date on which the report was ordered.

180. During his questioning, the applicant was invited to watch a video recording of the events of 13 June 1990, including those at the headquarters of the State television station. He recognised himself, and asked that the video recording be added to the investigation file.

181. On 25 June 2007 the new medical report was added to the case file. It specified, again on the basis of the medical records drawn up on 14 June 1990, that the applicant's injuries had required three to five days of medical treatment and that they had not been life-threatening. It specified that there was no causal link between the injuries sustained in the night of 13-14 June 1990 and the applicant's medical problems, which had subsequently required numerous periods of hospitalisation.

182. On 30 October 2007, at the applicant's request, the medical observation files on his condition prepared by the emergency unit of Bucharest Hospital in 1992 were added to the file.

183. The medical board at the National Social Security Fund had previously issued the applicant with a certificate, dated 24 May 2007, indicating that he was suffering from "overall accentuated impairment" resulting in total inability to work. The relevant passages of this certificate read as follows:

> "In view of the medical records in the patient's file, the documents which have been added recently ... and the clinical psychiatric examination conducted on 24 May 2007, the specialist committee and the higher committee reach the following clinical diagnosis: mixed personality disorders, aggravated by organic causes. Acute traumatic brain injury 1990 (assault). Epilepsy with partial generalised secondary crises, confirmed clinically and by EEG, currently rare.... supraventricular incidents in his medical history (irregular heart rhythm (flutter) and atrioventricular block ..., with a return to sinus rhythm ... after cardioversion.
>
> Functional diagnosis: overall accentuated impairment.
>
> Fitness for work: totally lost, 2nd level invalidity.
>
> Adaptive incapacity: 72%"

184. In the meantime, on 10 May 2004 the prosecutor's office at the Bucharest County Court had issued a decision not to bring a prosecution in another case, following a complaint of attempted murder lodged by the applicant on the basis of the same facts.

(b) Clarifications regarding the examination of the criminal complaint, with a request to join the proceedings as a civil party, lodged by the applicant association

185. On 9 July 1990 Bucharest military unit no. 02515 sent the applicant association a letter informing it that "an inventory of the items found on 14 June 1990 [at the association's headquarters] [had] been drawn up by the representatives of the Procurator General's Office (*Procuratura Generală*) and placed, with an official report, at the headquarters of the Bucharest Prosecutor's Office (*Procuratura Municipiului Bucureşti*)".

186. On 22 July 1990 two police officers went to the applicant association's headquarters. They noted that the windows had been broken and the locks destroyed, and that the items in the headquarters had "all been ransacked". They drew up a report in the presence of the association's leaders and a witness.

187. On 26 July 1990 the applicant association lodged a criminal complaint with the Bucharest Prosecutor's Office, complaining about the ransacking of its headquarters and the attacks sustained by some of its members on 14 June 1990, and demanded the restitution of all the materials and documents which had been confiscated. It requested leave to join the criminal proceedings as a civil party.

188. On 22 October 1997 the General Inspectorate of Police sent the prosecutor's office at the Supreme Court of Justice twenty-one case files, opened following criminal complaints by several individuals and legal entities with regard to the events of 13 and 14 June 1990. Those files included case file no. 1476/P/1990, which concerned the applicant association's complaint regarding the ill-treatment inflicted on several of its members. The General Inspectorate of Police invited the prosecutor's office to inform it of the steps to be taken with a view to conducting interviews for the purpose of the investigation.

189. The applicant association contacted the prosecutor's office at the Supreme Court of Justice, subsequently the High Court of Cassation and Justice, on a regular basis for information concerning progress in the investigation or to request additional investigative measures, until the investigation was closed by the decision of 17 June 2009 not to bring a prosecution.

II. RELEVANT DOMESTIC AND INTERNATIONAL LAW AND PRACTICE

A. International legal documents

1. United Nations legal sources

190. The United Nations Committee against Torture issued General Comment No. 3 (2012) on the Implementation by States parties of Article 14 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the relevant parts of which read as follows:

> **“Obstacles to the Right to Redress**
>
> 37. A crucial component of the right to redress is the clear acknowledgement by the responsible State party that the reparative measures provided or awarded to a victim are for violations of the Convention, by action or omission. The Committee is therefore of the view that a State party may not implement development measures or provide humanitarian assistance as a substitute for redress for victims of torture or ill-treatment. The failure of a State party to provide the individual victim of torture with redress may not be justified by invoking a State’s level of development. The Committee reminds that change of government as well as successor states still have the obligations to guarantee access to the right of redress.
>
> 38. States parties to the Convention have an obligation to ensure that the right to redress is effective. Specific obstacles that impede the enjoyment of the right to redress and prevent effective implementation of article 14 include, but are not limited to: inadequate national legislation, discrimination in accessing complaints and investigation mechanisms and procedures for remedy and redress; inadequate measures to secure the custody of alleged perpetrators, state secrecy laws, evidential burdens and procedural requirements that interfere with the determination of the right to redress; statutes of limitations, amnesties and immunities; the failure to provide sufficient legal aid and protection measures for victims and witnesses; as well associated stigma, and the physical, psychological and other related effects of torture and ill-treatment. In addition, the failure of a State party to execute judgments providing reparative measures for a victim of torture, handed down by either national, international or regional courts, constitute a significant impediment to the right to redress. States parties should develop coordinated mechanisms to enable victims to execute judgments across State lines, including recognizing the validity of court orders from other States parties and assisting in locating the assets of perpetrators.
>
> 39. With regard to the obligations in article 14, States parties shall ensure both de jure and de facto access to timely and effective redress mechanisms for members of groups marginalized and/or made vulnerable, avoid measures that impede the ability of members of such groups to seek and obtain redress, and address formal or informal obstacles that they may face in obtaining redress. These may include, for example, inadequate judicial or other procedures for quantifying damages which may have a negative disparate impact on such individuals in accessing or keeping money. As the Committee has emphasized in its General Comment No. 2, “gender is a key factor. Being female intersects with other identifying characteristics or status of the person...to determine the ways that women and girls are subject to or at risk of torture or ill-treatment”. States parties shall ensure due attention to gender in providing all the

elements cited above in the process of ensuring that everybody, in particular members of groups made vulnerable, including LGBT must be treated fairly and equally and obtain fair and adequate compensation, rehabilitation and other reparative measures which respond to their specific needs

40. On account of the continuous nature of the effects of torture, statutes of limitations should not be applicable as these deprive victims of the redress, compensation, and rehabilitation due to them. For many victims, passage of time does not attenuate the harm and in some cases the harm may increase as a result of post-traumatic stress that requires medical, psychological and social support, which is often inaccessible to those whom have not received redress. States parties shall ensure that all victims of torture or ill-treatment, regardless of when the violation occurred or whether it was carried out by or with the acquiescence of a former regime, are able to access their rights to remedy and to obtain redress...”

2. *Case-law of the Inter-American Commission of Human Rights and of the Inter-American Court of Human Rights*

191. International case-law provides examples of cases where the alleged victims of mass violations of fundamental rights, such as the right to life and the right not to be subjected to ill-treatment, have been authorised to wait many years before bringing proceedings at national level and subsequently applying to the international courts, although the admissibility criteria for their applications, with regard to exhaustion of domestic remedies and time-limits for submitting complaints, were similar to those provided for by the Convention (see, *inter alia*, Inter-American Commission on Human Rights, *Community of Rio Negro of the Maya Indigenous People and its Members v. Guatemala,* report no. 13/2008 of 5 March 2008, application no. 844/05; Inter-American Court of Human Rights (“IACtHR”),; “*Las Dos Erres” Massacre v. Guatemala*, 24 November 2009 and IACtHR, and *García Lucero et al. v. Chile,* 28 August 2013).

192. The relevant parts of the first case cited above (*Community of Rio Negro of the Maya Indigenous People and its Members,* §§ 88-89) read as follows:

“The rule of a reasonable time for filing petitions with the inter-American human rights system must be analyzed in each case, mindful of the activity of the victims’ next-of-kin to seek justice, the conduct of the state, and the situation and context in which the alleged violation occurred. Therefore, in view of the context and characteristics of the instant case, as well as of the fact that several investigations and judicial proceedings are still pending, the Commission considers that the petition was presented within a reasonable time, and that the admissibility requirement referring to the time for submission has been met.”

B. Provisions concerning the statutory limitation of criminal liability

193. Article 121 of the Criminal Code, in force at the material time, is worded as follows:

"The statutory limitation of criminal liability does not apply to crimes against peace and humanity."

194. Article 122, in force at the material time, governs the statutory limitation periods in respect of criminal liability. The relevant parts are worded as follows:

"Criminal liability shall be statute-barred after:

(a) fifteen years, where the law provides for a maximum sentence of life imprisonment or fifteen years' imprisonment for the offence committed;

(b) ten years, where the law provides for a maximum sentence of more than ten years' and less than fifteen years' imprisonment for the offence committed;

(c) eight years, where the law provides for a maximum sentence of more than five years' and less than ten years' imprisonment;

(d) five years, where the law provides for a maximum sentence of more than one year's and less than five years' imprisonment for the offence committed;

(e) three years, where the law provides for a maximum sentence not exceeding one year's imprisonment or a fine for the offence committed.

These limitation periods shall start to run from the date on which the offence was committed..."

195. Article 123 lays down a ground for interrupting the limitation period, namely the carrying out of any act that, under the law, must be notified to the accused.

196. Article 124, as in force at the material time, governs the special limitation period. The relevant parts are worded as follows:

"Criminal liability shall be time-barred regardless of how many interruptions have occurred, if the time-limit provided for in Article 122 is exceeded by half of the period in question."

C. Article 358 of the Criminal Code and case-law concerning its application

197. Article 358 of the Criminal Code read as follows:

Inhuman treatment (*Tratamentele neomenoase*)

"1. The fact of inflicting inhuman treatment on wounded or ill persons, on civilian health personnel or members of the Red Cross or other similar organisations, on the shipwrecked, on prisoners of war and, in general, on any other person who has fallen into enemy hands (*şi în general a oricărei persoane căzute sub puterea adversarului*), or of subjecting them to medical or scientific experiments which are not justified by medical treatment administered for their benefit, shall be punishable by a prison sentence of between five and twenty years and the deprivation of certain rights.

2. The fact of committing the following acts against the persons mentioned in the previous paragraph shall be punishable by the same penalty:

(a) forcible conscription in the enemy's armed forces;

(b) hostage-taking;

(c) deportation;

(d) forcible transfer (*dislocarea*) or deprivation of liberty without a legal basis;

(e) conviction or execution, without prior judgment by a court established by law in compliance with the basic requirements of due process as provided for by law.

3. The torture, mutilation or extermination of the persons mentioned in the first paragraph shall be punishable by life imprisonment or a prison sentence of between fifteen and twenty-five years and the deprivation of certain rights.

4. Where the offences punishable under this Article are committed in wartime, the applicable penalty shall be life imprisonment."

198. By judgment no. 2579, delivered on 7 July 2009, the High Court of Cassation and Justice upheld a decision on the applicability of Article 358 of the Criminal Code – a provision which penalises inhuman treatment – adopted by the military court of appeal in a case concerning the arrest and death in prison in 1948 of an opponent of the totalitarian regime which had then just been established in Romania. The relevant passages of that judgment read as follows:

"By a judgment of 28 January 2009, the Military Court of Appeal decided ... to allow the appeal by the appellant ... against the decision ... not to bring a prosecution, issued in respect of D. Z. and the staff of the Medical Service of the Ministry of the Interior (in 1948) with regard to the crime of inhuman treatment, penalised by Article 358 of the Criminal Code...

... the case was sent to the Military Prosecutor's Office at the Military Court of Appeal with a view to the opening of criminal proceedings (*în vederea începerii urmăririi penale*) for the reasons, facts and circumstances established by means of the evidence set out in the judgment...

In so ruling, the Court of Appeal noted that: ...

Relying on the definition of inhuman treatment given by the European Court [of Human Rights], the High Court notes in the instant case that, in 1948, the period in which the events coming under Article 358 of the Criminal Code were committed, there existed a situation of conflict – a precondition [for this crime to be established] – between the authorities of the Communist State, who not only tolerated but even authorised "State agents" to behave like genuine torturers, and the victims of this regime of physical and psychological repression. In those circumstances, there is nothing to prevent the accused from being the subject of an investigation in relation to this offence.

The *actus reus* of the offence of inhuman treatment as applicable in this case consists in subjecting injured or ill persons to inhuman treatment, that is, treatment which is difficult to endure physically and is humiliating.

In consequence, the Military Court of Appeal was correct in ordering that the case be sent back to the prosecutor's office so that proceedings could be brought, including in respect of this crime, the respondents Z. and D. having ordered the arrest of D.A. on 21 April 1948 on the charge of undermining State security, based on an anonymous denunciation and in the absence of any evidence that that offence had been committed."

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 2 AND 3 OF THE CONVENTION

199. Mrs Anca Mocanu and Mr Marin Stoica alleged that the respondent State had failed in its obligations under the procedural aspect of Articles 2 and 3 of the Convention. They alleged that those provisions required the State to conduct an effective, impartial and thorough investigation capable of leading to the identification and punishment of those responsible for the armed repression of the demonstrations of 13 and 14 June 1990, in the course of which Mr Velicu-Valentin Mocanu, the first applicant's husband, was killed by gunfire and the second applicant was subjected to ill-treatment.

The relevant parts of Article 2 provide:

Article 2

"1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally..."

Article 3 provides:

Article 3

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

A. The Court's jurisdiction *ratione temporis*

200. The Court notes that the respondent Government made no plea before the Grand Chamber as to the Court's lack of jurisdiction *ratione temporis*. However, they submitted that the Court could examine the complaints brought before it only in so far as they related to the period after 20 June 1994, the date on which the Convention entered into force in respect of Romania.

201. The Court reiterates that it has to satisfy itself that it has jurisdiction in any case brought before it, and is therefore obliged to examine the question of its jurisdiction at every stage of the proceedings even where no objection has been raised in this respect (see *Blečić v. Croatia* [GC], no. 59532/00, § 67, ECHR 2006-III).

1. The Chamber judgment

202. The Chamber held that the procedural obligation to conduct an effective investigation arising out of Articles 2 and 3 of the Convention had evolved into a separate and autonomous duty which could be considered

capable of binding the State even when the infringement of life or of personal integrity occurred before the entry into force of the Convention with regard to that State. In so ruling, it reiterated the principles outlined in the *Šilih v. Slovenia* judgment ([GC], no. 71463/01, §§ 159-163, 9 April 2009) and subsequently applied in cases brought against Romania in which the events of December 1989 were in issue (see *Agache and Others v. Romania*, no. 2712/02, §§ 70-73, 20 October 2009; *Şandru and Others v. Romania*, no. 22465/03, § 59, 8 December 2009; and *Association "21 December 1989" and Others v. Romania*, nos. 33810/07 and 18817/08, §§ 114-118, 24 May 2011).

203. It also considered that, in order for this procedural obligation to be applicable, it must be established that a significant proportion of the procedural steps were or ought to have been implemented following ratification of the Convention by the country concerned. Applying those principles in this case, the Chamber noted that the criminal proceedings concerning the violent suppression of the demonstrations of June 1990 had been instituted in 1990, that they had continued after 20 June 1994 and that a significant proportion of the procedural measures had been carried out after that date.

204. The Chamber therefore declared that it had jurisdiction *ratione temporis* to examine the allegation of a procedural violation of Articles 2 and 3 of the Convention, dismissing the objection which had been raised by the Government in this connection with regard to Mr Stoica's application alone.

2. The Court's assessment

205. In *Janowiec and Others v. Russia* ([GC], nos. 55508/07 and 29520/09, §§ 128-151, 21 October 2013), the Court provided additional clarifications on the temporal limitations of its jurisdiction – previously defined in the *Šilih* judgment (cited above, §§ 162-163) – with regard to the procedural obligation to investigate deaths or ill-treatment which occurred prior to the entry into force of the Convention in respect of the respondent State (the "critical date").

206. It found, in essence, that this temporal jurisdiction was strictly limited to procedural acts which were or ought to have been implemented after the entry into force of the Convention in respect of the respondent State, and that it was subject to the existence of a genuine connection between the event giving rise to the procedural obligation under Articles 2 and 3 and the entry into force of the Convention. It added that such a connection was primarily defined by the temporal proximity between the triggering event and the critical date, which could be separated only by a reasonably short lapse of time that should not normally exceed ten years (see *Janowiec and Others,* cited above, § 146); at the same time, the Court specified that this time period was not in itself decisive. In this regard, it

indicated that this connection could be established only if much of the investigation – that is, the undertaking of a significant proportion of the procedural steps to determine the cause of death and hold those responsible to account – took place or ought to have taken place in the period following the entry into force of the Convention (see *Janowiec and Others,* cited above, § 147).

207. In the instant case, the Court reiterates that the complaints in respect of the procedural aspect of Articles 2 and 3 of the Convention concern the investigation into the armed repression conducted on 13 and 14 June 1990 against the anti-government demonstrations, and that this repression cost the life of the first applicant's husband and interfered with the second applicant's physical integrity. That investigation began in 1990, shortly after those events, giving rise, *inter alia,* to investigative measures, the primary aim of which was to identify the victims who had been killed by gunfire, including the first applicant's husband.

208. It should thus be noted that four years passed between the triggering event and the Convention's entry into force in respect of Romania, on 20 June 1994. This lapse of time is relatively short. It is less than ten years and less than the time periods in issue in similar cases examined by the Court (see *Şandru and Others,* cited above, §§ 55-59; *Paçacı and Others v. Turkey*, no. 3064/07, §§ 63-66, 8 November 2011; and *Jularić v. Croatia*, no. 20106/06, §§ 45-51, 20 January 2011).

209. Prior to the critical date, few procedural acts were carried out in the context of the investigation. It was after that date, and especially from 1997 onwards, that the investigation took shape through the joinder of dozens of cases which had previously been dispersed and the bringing of charges against senior military and civilian figures. Equally, the prosecutors' decisions to commit for trial and judicial decisions concerning this case were all issued after the critical date (see, *inter alia*, the decision to commit for trial of 18 May 2000, the Supreme Court of Justice's judgment of 30 June 2003, the decision to commit for trial of 27 July 2007 and the High Court of Cassation and Justice's judgments of 17 December 2007 and 9 March 2011).

210. In other words, the majority of the proceedings and the most important procedural measures were carried out after the critical date.

211. Consequently, the Court finds that it has jurisdiction *ratione temporis* to examine the complaints raised by Mrs Anca Mocanu and Mr Marin Stoica under the procedural aspect of Articles 2 and 3 of the Convention, in so far as those complaints relate to the criminal investigation conducted in the present case after the entry into force of the Convention in respect of Romania.

B. Objection of failure to exhaust domestic remedies

212. The Government, alleging that the applicants had not brought an action in tort against the State, repeated the objection of failure to exhaust domestic remedies submitted by them to the Chamber in respect both of the complaint lodged by Mrs Anca Mocanu under Article 2 and that lodged by Mr Marin Stoica under Article 3.

1. The Chamber judgment

213. After pointing out that the Court had already dismissed a similar objection in its *Association "21 December 1989" and Others* judgment (cited above, §§ 119-125) and that the State's obligations under Articles 2 and 3 of the Convention could not be satisfied merely by an award of damages, the Chamber also dismissed the objection raised by the Government in this case. In addition, it considered that a single final judgment by a first-instance court did not demonstrate with sufficient certainty the existence of effective and accessible domestic remedies for complaints similar to those of the applicants.

2. The Government's submissions

214. According to the Government, an action for damages based on the provisions of Articles 998 and 999 of the former Civil Code, and seeking to establish the State's civil liability in tort on account of the lack of an effective investigation into the events of June 1990, would have enabled the two applicants to obtain fair compensation for the alleged damage and acknowledgement of a violation of the rights guaranteed by the Convention.

215. In support of that argument, the Government indicated that the domestic courts had found in favour of other persons who were in similar situations to the applicants. In this connection, they referred to the decision which they had already mentioned in their observations before the Chamber.

216. The decision in question, which the Government had cited in order to demonstrate the effectiveness of this remedy, was a judgment of 12 June 2008 by which the Bucharest Fifth District Court had ordered the Ministry of Finance to pay compensation to a claimant for the shortcomings in an investigation opened following the repression of the demonstrations held in Bucharest in December 1989. The Government had indicated before the Chamber that the fact that they were submitting only one example of a judicial decision of this type could be explained by the absence of other proceedings for the same purpose.

217. The Government further referred to the judgment in *Floarea Pop v. Romania* (no. 63101/00, 6 April 2010), while distinguishing the present case from those of *Branko Tomašić and Others v. Croatia* (no. 46598/06, 15 January 2009) and *Kats and Others v. Ukraine* (no. 29971/04, 18 December 2008). They alleged that, contrary to the remedies in issue in

these two cases, the remedy in issue here would have provided satisfaction to the applicants in respect of the procedural aspect of Articles 2 and 3 also, since the domestic courts had jurisdiction to examine possible breaches in that regard.

3. The applicants' submissions

218. In his submissions to the Grand Chamber, Mr Marin Stoica alleged that an action in tort did not constitute an adequate remedy in that it could not oblige those responsible for the investigation to establish what had happened, and that the prospects of success for such an action were purely hypothetical. In consequence, the exhaustion of this remedy had not been necessary.

219. Mrs Anca Mocanu made no comment on this point before the Grand Chamber. In her observations before the Chamber, she had submitted that the decision cited by the Government did not warrant the conclusion that this was an effective remedy, since the court concerned had not obliged the relevant authorities to expedite the criminal proceedings in question. In addition, she alleged that the case had been generated by the Government for the purposes in hand, namely the proceedings before the Court. She had added that nothing could dispense the State from its obligation to conduct an effective investigation as required by Article 2 of the Convention.

4. The Court's assessment

(a) General principles

220. It is a fundamental feature of the machinery of protection established by the Convention that it is subsidiary to the national systems safeguarding human rights. This Court is concerned with the supervision of the implementation by Contracting States of their obligations under the Convention. It should not take on the role of Contracting States, whose responsibility it is to ensure that the fundamental rights and freedoms enshrined therein are respected and protected on a domestic level. The rule of exhaustion of domestic remedies is based on the assumption – reflected in Article 13 of the Convention, with which it has close affinity – that there is an effective remedy available in respect of the alleged violation. The rule is therefore an indispensable part of the functioning of this system of protection (*Vučković and Others v. Serbia* [GC], no. 17153/11, § 69, 25 March 2014).

221. States are dispensed from answering before an international body for their acts before they have had an opportunity to put matters right through their own legal system, and those who wish to invoke the supervisory jurisdiction of the Court as concerns complaints against a State are thus obliged to use first the remedies provided by the national legal system (see, among many authorities, *Akdivar and Others v. Turkey*,

16 September 1996, § 65, *Reports* 1996-IV; and *Vučković and Others*, cited above, § 70).

222. The obligation to exhaust domestic remedies therefore requires an applicant to make normal use of remedies which are available and sufficient in respect of his or her Convention grievances. The existence of the remedies in question must be sufficiently certain not only in theory but in practice, failing which they will lack the requisite accessibility and effectiveness (see *Akdivar and Others*, cited above, § 66; and *Vučković and Others*, cited above, § 71). To be effective, a remedy must be capable of directly redressing the impugned state of affairs and must offer reasonable prospects of success (see *Balogh v. Hungary*, no. 47940/99, § 30, 20 July 2004; and *Sejdovic v. Italy* [GC], no. 56581/00, § 46, ECHR 2006-II).

223. On the contrary, there is no obligation to have recourse to remedies which are inadequate or ineffective (see *Akdivar and Others,* cited above, § 67, and *Vučković and Others*, cited above, § 73). However, the existence of mere doubts as to the prospects of success of a particular remedy which is not obviously futile is not a valid reason for failing to exhaust that avenue of redress (see *Akdivar and Others*, cited above, § 71; *Scoppola v. Italy (no. 2)* [GC], no. 10249/03, § 70, 17 September 2009; and *Vučković and Others*, cited above, § 74).

224. The Court has, however, also frequently underlined the need to apply the exhaustion rule with some degree of flexibility and without excessive formalism (see *Ringeisen v. Austria*, 16 July 1971, § 89, Series A no. 13; *Akdivar and Others*, cited above, § 69; and *Vučković and Others*, cited above, § 76). The Court has therefore specified that the application of the rule must make due allowance for the fact that it is being applied in the context of machinery for the protection of human rights that the Contracting Parties have agreed to set up and without excessive formalism. It has therefore recognised that the rule of exhaustion is not capable of being applied automatically (see *Akdivar and Others,* cited above, § 69; and *Kurić and Others v. Slovenia* [GC], no. 26828/06, § 286, ECHR 2012 (extracts)).

225. As regards the burden of proof, it is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one, available in theory and in practice at the relevant time. Once this burden has been satisfied, it falls to the applicant to establish that the remedy advanced by the Government was in fact exhausted, or was for some reason inadequate and ineffective in the particular circumstances of the case, or that there existed special circumstances absolving him or her from this requirement (see *Akdivar and Others*, cited above, § 68; *Demopoulos and Others v. Turkey* (dec.) [GC], nos. 46113/99 et al, § 69, ECHR 2010; *McFarlane v. Ireland* [GC], no. 31333/06, § 107, 10 September 2010; and *Vučković and Others*, cited above, § 77).

226. In those circumstances, in ruling on the issue of whether an applicant has met this admissibility criterion having regard to the specific circumstances of his or her case, the Court must first identify the act of the respondent State's authorities complained of by the applicant (see *Haralambie v. Romania*, no. 21737/03, § 70, 27 October 2009).

227. In this connection, the Court has held that, in the area of unlawful use of force by State agents – and not mere fault, omission or negligence –, civil or administrative proceedings aimed solely at awarding damages, rather than ensuring the identification and punishment of those responsible, were not adequate and effective remedies capable of providing redress for complaints based on the substantive aspect of Articles 2 and 3 of the Convention (see, *inter alia*, *Yaşa v. Turkey*, 2 September 1998, § 74, *Reports* 1998-VI).

228. Lastly, in several cases lodged against Romania, the Court has dismissed similar objections raised by the Government based on the same final judgment dating from 2008 that they rely upon in the present case (see *Association "21 December 1989" and Others,* cited above, §§ 119-125; *Lăpuşan and Others v. Romania*, nos. 29007/06, 30552/06, 31323/06, 31920/06, 34485/06, 38960/06, 38996/06, 39027/06 and 39067/06, § 69, 8 March 2011; and *Pastor and Ţiclete v. Romania*, nos. 30911/06 and 40967/06, § 58, 19 April 2011).

229. In the judgments in question, the Court dismissed the objections of non-exhaustion on the ground that the availability of the remedy referred to by the Government was not certain in practice. Indeed, the Government had been able to submit only one example of a final judgment allowing an action engaging the State's civil liability on account of the failure to conduct an effective investigation into the deaths by shooting committed in December 1989.

(b) Application of the above principles to the present case

230. In the present case, the Court notes that Mrs Anca Mocanu and Mr Marin Stoica alleged that the State had failed to comply with the obligations imposed on it under the procedural aspect of Articles 2 and 3 of the Convention to conduct an effective investigation capable of leading to the identification and punishment of those responsible for the armed repression of the demonstrations of 13 and 14 June 1990, in the course of which Mr Velicu-Valentin Mocanu, the first applicant's husband, was killed by gunfire and the second applicant was subjected to ill-treatment.

231. In this connection, it notes that the investigation concerning the first applicant has been pending before the domestic authorities and courts for more than twenty-three years, while the branch of the investigation concerning the second applicant was terminated by a judgment delivered on 9 March 2011.

232. However, the Government have not specified in what way an action in tort against the State in respect of the failure to conduct an effective investigation into the events of June 1990, the subject matter of the present applications, could have provided redress for the applicants, by ensuring the effectiveness of that investigation, closing the alleged gaps in it, or, at the very least, expediting it.

233. The Court notes that the only judicial decision produced by the Government merely awarded damages to an injured party concerned by the investigation into the events of December 1989 which was uncompleted at the time that that decision was delivered (see *Association "21 December 1989" and Others,* cited above, §§ 119 and 136).

234. The Contracting Parties' obligation under Articles 2 and 3 of the Convention to conduct an investigation capable of leading to the identification and punishment of those responsible in cases of assault could be rendered illusory if, in respect of complaints under those Articles, an applicant were required to bring an action leading only to an award of damages (see *Isayeva and Others v. Russia*, nos. 57947/00, 57948/00 and 57949/00, § 149, 24 February 2005).

235. For the reasons set out above, the Court considers that the remedy put forward by the Government is not sufficient, in that it is not capable of providing redress for the situation complained of by the applicants.

236. It follows that the preliminary objection is unfounded and must therefore be dismissed.

C. The allegation that Mr Stoica's complaint was lodged out of time

237. Without explicitly reiterating the preliminary objection that they had raised before the Chamber, the Government alleged, with regard to the complaint lodged under Article 3 by Mr Marin Stoica, that he ought to have displayed diligence, firstly in submitting his criminal complaint to the domestic authorities, and secondly in introducing his application before the Court.

1. The Chamber judgment

238. The Chamber considered that this second objection – alleging that Mr Stoica had lodged his criminal complaint with the relevant authorities out of time – should be joined to the examination of the merits of the complaint alleging a violation of the procedural aspect of Article 3 of the Convention, and declared the complaint admissible.

2. The Government's submissions

239. The Government indicated that the criminal investigation into the violent acts committed on 13 and 14 June 1990 had been opened in 1990 and observed that, in spite of the opening of this investigation and the difficulties encountered by the authorities in identifying all the victims, the applicant did not join the proceedings until 2001.

240. In this regard, the Government considered that it was unacceptable for a presumed victim to benefit from steps taken by other persons to obtain the opening of an investigation without calling into question the fundamental principle of the Convention mechanism, namely exhaustion of domestic remedies, focused on the individual dimension of the right of petition.

241. Referring to the cases of *Toader and Mihaela Toma v. Romania* (no. 34403/05, (dec.), 18 September 2012) and *Petyo Popov v. Bulgaria* (no. 75022/01, 22 January 2009), the Government pointed out that the Court had criticised the conduct of applicants who had failed to bring their complaints concerning violations of Article 3 of the Convention before the domestic prosecuting authorities in due form.

242. In so far as the applicant sought to justify his passivity by an alleged vulnerability which prevented him from joining the investigation proceedings, the Government observed that the violence to which the applicant claimed to have been subjected in June 1990 had required only three to five days of medical care, that he had not been hospitalised for long and that he had not submitted medical certificates attesting to a physical or psychological impairment having a causal link with the events complained of.

243. The Government added that, after 1990, the social and political climate had been favourable to the victims and that the fears referred to by the applicant were accordingly unfounded. In this connection, they submitted that the Court had taken victims' vulnerability into account only in extremely critical situations, where the applicants had expressed well-founded fears in the light of the national context.

244. Referring to the cases of *Narin v. Turkey* (no. 18907/02, 15 December 2009) and *Frandes v. Romania* ((dec.), no. 35802/05, 17 May 2011), the Government submitted that the Court, called on to assess the diligence shown by parties in applying to it, had considered that applications could be rejected as out of time even in cases concerning continuing situations. The Government considered that this rule applied to the situation of applicants who, like Mr Stoica in the instant case, had delayed excessively or without apparent reason before applying to the Court after realising that the investigation conducted by the authorities was losing effectiveness, or after the point that they ought to have realised this. In their opinion, Mr Stoica's situation was very different from that of the applicants in the case of *Er and Others v. Turkey* (no. 23016/04, 31 July 2012), as the

applicant in the present case had been able at any moment to contact the authorities, who had not attempted to hide the facts or deny the circumstances.

3. The applicant's submissions

245. The applicant explained that he had waited until 18 June 2001 before lodging a criminal complaint with regard to his experiences during the night of 13 to 14 June 1990 on account of the scale of the repression conducted by the authorities at that time, in which he among more than a thousand others had been a victim. He considered that the investigation in issue here did not concern ordinary incidents of unlawful use of force by State agents, but rather mass violations of human rights, orchestrated by the highest State authorities.

In this connection, he alleged that, following the events of June 1990, he was in such a state of distress that he had hardly been able to leave his house for three months, for fear of the oppressive authorities, and that his mental and physical health had subsequently deteriorated to such an extent that he had sustained permanent psychological problems.

246. He pleaded that, in such circumstances, only a prompt reaction by the judicial authorities could have reassured him and encouraged him to lodge a complaint. He alleged that no such reaction had been forthcoming until 2000 and submitted that he had lodged a complaint at that point on learning that, for the first time, high-ranking State officials had been charged and committed for trial.

247. He observed that his complaint had not been dismissed as out of time by the national authorities, that it had been joined immediately to the wider investigation file opened into the impugned events, and that it had given rise to investigative acts in his respect without any allegations of passivity being made.

248. He considered that his failure to lodge a complaint before 2001 had not compromised the effectiveness of the investigation in any way. In this respect, he submitted that the authorities could have identified him from the video recordings that the State television service had made of the events which occurred in its own headquarters, or from the medical records drawn up, *inter alia*, during the night of 13 to 14 June 1990 by the emergency ward in which he was hospitalised.

In addition, he noted that the fourth point of the operative provisions in the decision to commit for trial of 18 May 2000 ordered that the investigation be continued into the deprivation of liberty inflicted on 1,300 persons by servicemen and miners from the morning of 13 June 1990 onwards, and also into the assaults sustained by hundreds of persons during the same period.

249. He claimed to have played a very active part in the investigation from 2001 onwards and to have regularly requested information on progress in the proceedings, submitting as evidence the entries made in the register of the military section of the prosecutor's office at the High Court of Cassation and Justice.

250. Lastly, he considered that lodging a complaint more rapidly would have had no impact on the outcome of that investigation, since the decision not to bring a prosecution, issued on 17 June 2009, also concerned those victims who had had the courage to lodge a complaint prior to 2001.

4. The third party's observations

251. According to the non-government organisation Redress, the third-party intervener, the adverse psychological effects of ill-treatment on victims' capacity to complain represented a significant obstacle to redress. The reality of this phenomenon had been recognised, *inter alia*, by the United Nations Committee against Torture (General Comment no. 3, 2012, § 38, cited above).

252. Moreover, the Court had admitted that where abuses were perpetrated by State agents, their psychological effects could be even greater (*Tyrer v. the United Kingdom,* 25 April 1978, § 33, Series A no. 26).

253. Scientific research showed that the experience of ill-treatment at the hands of social and political institutions charged with responsibility for ensuring individuals' safety and well-being could have particular psychological consequences which could explain a delay in making a complaint, or not making a complaint at all (they referred, among other sources, to L. Piwowarczyk, A. Moreno, M. Grodin, *Health Care of Torture Survivors*, Journal of the American Medical Association, vol. 284 (2000), pp. 539-41). From a psychological perspective, the cause of this attitude was to be found in the shattering of the victims' ability to trust others, especially State agents. The victims of State agents felt more vulnerable than those of ordinary criminals, since they had little or no hope that the authorities would investigate their case, *a fortiori* where the State continued to repress peaceful demonstrations or showed no signs of pursuing an effective investigation (A. Burnett, M. Peel, *The Health of Survivors of Torture and Organised Violence,* British Medical Journal, vol. 322 (2001), pp. 606-09).

254. This research also indicated that victims who did not identify as activists or demonstrators suffered from ill-treatment more greatly, and could even be disproportionally impacted by the violence inflicted.

255. Given the difficult situation of victims, both in terms of their vulnerability and the obstacles to obtaining access to evidence, there was an increased tendency on the part of national courts to take these realities into account and to block limitation periods when agreeing to rule on complaints lodged many years after the events complained of by persons who had been

tortured (District Court of The Hague, *Wisah Binti Silan and Others v. the Netherlands*, 14 September 2011, paras. 4.15-4.18, Nederlandse Jurisprudentie 2012, no. 578; High Court (England and Wales), *Mutua and Others v. Foreign and Commonwealth Office*, 5 October 2012, [2012] EWHC 2678 (QB); and the House of Lords (United Kingdom), *A. v. Hoare*, 30 January 2008, [2008] UKHL 6, paras. 44-49).

5. *The Court's assessment*

256. The Court notes that the Government referred to the applicant's tardiness in lodging a complaint with the domestic authorities concerning the events at the origin of this application. In this context, they also referred to the duty of diligence on persons wishing to apply to the Court.

257. The Court considers that the issue of the diligence incumbent on the applicant is closely linked to that of any tardiness in lodging a criminal complaint within the domestic legal system. Taken together, these arguments may be regarded as an objection alleging a failure to comply with the six-month time-limit under Article 35 § 1 of the Convention. This objection must therefore now be examined (see *Micu v. Romania*, no. 29883/06, § 108, 8 February 2011).

(a) General principles

258. The Court reiterates that the six-month time-limit provided for by Article 35 § 1 of the Convention has a number of aims. Its primary purpose is to maintain legal certainty by ensuring that cases raising issues under the Convention are examined within a reasonable time, and to prevent the authorities and other persons concerned from being kept in a state of uncertainty for a long period of time (see *Sabri Güneş v. Turkey* [GC], no. 27396/06, § 39, 29 June 2012; *El Masri v. "the former Yugoslav Republic of Macedonia"* [GC], no. 39630/09, § 135, ECHR 2012; and *Bayram and Yıldırım v. Turkey* (dec.), no. 38587/97, ECHR 2002-III). That rule marks out the temporal limit of the supervision exercised by the Court and signals, both to individuals and State authorities, the period beyond which such supervision is no longer possible (see *Walker v. the United Kingdom* (dec.), no. 34979/97, ECHR 2000-I; *Sabri Güneş*, cited above, § 40; and *El Masri*, cited above, § 135).

259. As a rule, the six-month period runs from the date of the final decision in the process of exhaustion of domestic remedies. Where it is clear from the outset, however, that no effective remedy is available to the applicant, the period runs from the date of the acts or measures complained of, or from the date of knowledge of that act or its effect on or prejudice to the applicant (see, among other authorities, *Dennis and Others v. the United Kingdom* (dec.), no. 76573/01, 2 July 2002; *Sabri Güneş*, cited above, § 54; and *El Masri*, cited above, § 136).

260. Article 35 § 1 cannot be interpreted in a manner which would require an applicant to seize the Court of his complaint before his position in connection with the matter has been finally settled at the domestic level, otherwise the principle of subsidiarity would be breached. Where an applicant avails himself of an apparently existing remedy and only subsequently becomes aware of circumstances which render the remedy ineffective, it may be appropriate for the purposes of Article 35 § 1 to take the start of the six-month period from the date when the applicant first became or ought to have become aware of those circumstances (see *Paul and Audrey Edwards v. the United Kingdom* (dec.), no. 46477/99, 4 June 2001, and *El Masri*, cited above, § 136).

261. In cases of a continuing situation, the period starts to run afresh each day and it is in general only when that situation ends that the six-month period actually starts to run (see *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, § 159, ECHR-2009, and *Sabri Güneş*, cited above, § 54).

262. However, not all continuing situations are the same. Where time is of the essence in resolving the issues in a case, there is a burden on the applicant to ensure that his or her claims are raised before the Court with the necessary expedition to ensure that they may be properly, and fairly, resolved (see *Varnava and Others*, cited above, § 160). This is particularly true with respect to complaints relating to any obligation under the Convention to investigate certain events. As the passage of time leads to the deterioration of evidence, time has an effect not only on the fulfilment of the State's obligation to investigate but also on the meaningfulness and effectiveness of the Court's own examination of the case. An applicant has to become active once it is clear that no effective investigation will be provided, in other words once it becomes apparent that the respondent State will not fulfil its obligation under the Convention (see *Chiragov and Others v. Armenia* (dec.) [GC], no. 13216/05, § 136, 14 December 2011, and *Sargsyan v. Azerbaijan* (dec.) [GC], no. 40167/06, § 135, 14 December 2011, both referring to *Varnava and Others*, cited above, § 161).

263. The Court has already held that, in cases concerning an investigation into ill-treatment, as in those concerning an investigation into the suspicious death of a relative, applicants are expected to take steps to keep track of the investigation's progress, or lack thereof, and to lodge their applications with due expedition once they are, or should have become, aware of the lack of any effective criminal investigation (see the decisions in *Bulut and Yavuz,* cited above; *Bayram and Yıldırım,* cited above; *Frandes,* cited above, §§ 18-23; and *Atallah v. France* (dec.), no. 51987/07, 30 August 2011).

264. It follows that the obligation of diligence incumbent on applicants contains two distinct but closely linked aspects: on the one hand, the applicants must contact the domestic authorities promptly concerning progress in the investigation – which implies the need to apply to them with diligence, since any delay risks compromising the effectiveness of the investigation – and, on the other, they must lodge their application promptly with the Court as soon as they become aware or should have become aware that the investigation is not effective (see *Nasirkhayeva v. Russia* (dec.), no. 1721/07, 31 May 2011; *Akhvlediani and Others v. Georgia* (dec.), no. 22026/10, §§ 23-29, 9 April 2013; and *Gusar v. Moldova* (dec.), no. 37204/02, §§ 14-17, 30 April 2013).

265. That being so, the Court reiterates that the first aspect of the duty of diligence – that is, the obligation to apply promptly to the domestic authorities – must be assessed in the light of the circumstances of the case. In this regard, it has held that applicants' delay in lodging a complaint is not decisive where the authorities ought to have been aware that an individual could have been subjected to ill-treatment – particularly in the case of assault which occurs in the presence of police officers – as the authorities' duty to investigate arises even in the absence of an express complaint (see *Velev v. Bulgaria*, no. 43531/08, §§ 59-60, 16 April 2013). Nor does such a delay affect the admissibility of the application where the applicant was in a particularly vulnerable situation, having regard to the complexity of the case and the nature of the alleged human rights violations at stake, and where it was reasonable for the applicant to wait for developments that could have resolved crucial factual or legal issues (see *El Masri*, cited above, § 142).

266. With regard to the second aspect of this duty of diligence – that is, the duty on the applicant to lodge an application with the Court as soon as he realises, or ought to have realised, that the investigation is not effective –, the Court has stated that the issue of identifying the exact point in time that this stage occurs necessarily depends on the circumstances of the case and that it is difficult to determine it with precision (see the decision in *Nasirkhayeva*, cited above).

267. In establishing the extent of this duty of diligence on applicants who wish to complain about the lack of an effective investigation into deaths or ill-treatment, the Court has been largely guided in recent years by the case-law on the duty of diligence imposed on applicants who complain about the disappearance of individuals in a context of international conflict or state of emergency within a country (see *Varnava and Others*, cited above, § 165, ECHR 2009; *Yetişen and Others v. Turkey,* no. 21099/06, §§ 72-85, 10 July 2012; and *Er and Others,* cited above, § 52), despite the differences between those two types of situation.

268. Thus, the Court has rejected as out of time applications where there had been excessive or unexplained delay on the part of applicants once they had, or ought to have, become aware that no investigation had been

instigated or that the investigation had lapsed into inaction or become ineffective and, in any of those eventualities, there was no immediate, realistic prospect of an effective investigation being provided in the future (see, *inter alia*, *Narin v. Turkey*, cited above, § 51; *Aydinlar and Others v. Turkey* (dec.), no. 3575/05, 9 March 2010; and the decision in *Frandes,* cited above, §§ 18-23).

In other words, the Court has considered it indispensable that persons who wish to bring a complaint about the ineffectiveness or lack of such investigation before the Court do not delay unduly in lodging their application. Where there has been a considerable lapse of time, and there have been significant delays and lulls in investigative activity, there will come a time when the relatives must realise that no effective investigation has been, or will be, provided.

269. The Court has held, however, that so long as there is some meaningful contact between relatives and authorities concerning complaints and requests for information, or some indication, or realistic possibility, of progress in investigative measures, considerations of undue delay by the applicants will not generally arise (see *Varnava and Others*, cited above, § 165).

(b) Application of the above principles to the present case

270. The Court notes that the alleged attack on the applicant at the State television headquarters, in the presence of police officers and servicemen, took place in the night of 13 to 14 June 1990. A criminal investigation was opened shortly afterwards. On 18 June 2001, more than eleven years after the events, the applicant lodged a criminal complaint with a prosecutor at the military section of the prosecutor's office at the Supreme Court of Justice (see paragraph 170 above). On 25 June 2008, more than eighteen years after the events, the applicant lodged his application with the Strasbourg Court. On 17 June 2009 the prosecutor's office at the High Court of Cassation and Justice decided to discontinue the proceedings against the surviving defendants either on the ground that the offences had become statute-barred or that there was no case to answer (see paragraphs 156-162 above). On 9 March 2011 the High Court of Cassation and Justice dismissed the applicant's appeal against that decision (see paragraph 166 above).

271. The Court further notes that, in their objection, the Government criticises the applicant's inactivity from 1990 to 2001.

272. From the point of view of the six-month rule, the Court has to ascertain whether the applicant, at the time of lodging his application with the Court, had been aware, or should have been aware, for more than six months, of the lack of any effective criminal investigation. His inactivity before lodging a criminal complaint at the domestic level is not as such relevant for the assessment of the fulfilment of the six-month requirement. However, if the Court were to conclude that before the applicant petitioned

the competent domestic authorities he was already aware, or ought to have been aware, of the lack of any effective criminal investigation, it is obvious that his subsequent application with the Court has *a fortiori* been lodged out of time (see the decisions in *Bayram and Yıldırım,* cited above, and *Bulut and Yavuz*, cited above), unless new evidence or information arose in the meantime which would have given rise to a fresh obligation on the authorities to take further investigative measures (see *Brecknell v. the United Kingdom*, no. 32457/04, § 71, 27 November 2007, and *Gürtekin and Others v. Cyprus* (dec.), nos. 60441/13, 68206/13 and 68667/13, 11 March 2014).

273. Given that he formally lodged his complaint while being interviewed by a prosecutor at the military section of the prosecutor's office at the Supreme Court of Justice, there is evidence that the applicant was keeping track of developments in the criminal investigation prior to 18 June 2001. He justified his reluctance to lodge a complaint by his vulnerability, which was explained not only by the deterioration in his health following the ill-treatment allegedly sustained in June 1990, but also by the feeling of powerlessness which he experienced on account of the large number of victims of the repression conducted by the security forces and the judicial authorities' failure to react in a prompt manner, capable of reassuring him and encouraging him to come forward.

274. Like the United Nations Committee against Torture, quoted by the third-party intervener, the Court acknowledges that the psychological effects of ill-treatment inflicted by State agents may also undermine victims' capacity to complain about treatment inflicted on them, and may thus constitute a significant impediment to the right to redress of victims of torture and other ill-treatment (see General Comment no. 3, 2012, § 38, at paragraph 190 above). Such factors may have the effect of rendering the victim incapable of taking the necessary steps to bring proceedings against the perpetrator without delay. Accordingly, as the third-party intervener pointed out, these factors are increasingly taken into account at national level, leading to a certain flexibility with regard to the limitation periods applicable to claims for reparation in respect of claims for compensation for personal injury (see paragraph 255 above).

275. The Court observes that very few victims of the events of 13 to 15 June 1990 lodged a complaint in the first few years (see paragraph 99 above). It does indeed appear that the majority of them found the courage to lodge a complaint only after the developments in the investigation arising from the decision of 16 September 1998 and the decision to commit for trial of 18 May 2000. The Court can only conclude, having regard to the exceptional circumstances in issue, that the applicant was in a situation in which it was not unreasonable for him to wait for developments that could have resolved crucial factual or legal issues (see, by contrast, the decision in *Akhvlediani and Others,* cited above, § 27).

Regard being had to the foregoing, the Court considers that the applicant's vulnerability and his feeling of powerlessness, which he shared with numerous other victims who, like him, waited for many years before lodging a complaint, amount to a plausible and acceptable explanation for his inactivity from 1990 to 2001.

276. The Court also notes that certain other elements – particularly the video recording made by the State television service and the confiscation of identity documents belonging to the applicant and other persons who were held and filmed at the television station – indicate that the authorities knew or could have discovered without any real difficulties at least some of the names of the victims of the abuses committed on 13 June 1990 in the premises of the State television service and the surrounding area, and those committed over the following night, in the presence of the numerous servicemen who were gradually deployed there (see *Velev,* cited above, §§ 59-60). Furthermore, the decision of 14 October 1999 and the decision to commit for trial of 18 May 2000 had ordered the investigators to identify all of those victims.

277. Moreover, the Court notes that the decision of 17 June 2009 not to bring a prosecution, upheld by the judgment of the High Court of Cassation and Justice of 9 March 2011, applied to all of the victims. The conclusion adopted with regard to the statutory limitation of criminal liability applied equally to those victims who had lodged complaints in the days following their assault and to those who, like the applicant, had complained at a later date.

278. In those circumstances, it cannot be concluded that Mr Marin Stoica's delay in lodging his complaint was capable of undermining the effectiveness of the investigation (see, by contrast, the decision in *Nasirkhayeva,* cited above).

In any event, the applicant's complaint was added to investigation case file no. 75/P/1998, which concerned a large number of victims of the events of 13 to 15 June 1990. The Court also notes that the decision of 29 April 2008, by which the military section of the prosecutor's office stated that it did not have jurisdiction and referred the case to the ordinary criminal section for examination – *inter alia* – of the charges of inhuman treatment made against the highest-ranking army officers and the State leaders of the time, included the names of more than a thousand victims (see paragraph 143 above). Thus, the investigation was undertaken in entirely exceptional circumstances.

279. Moreover, the Court notes that from 2001 onwards, there was meaningful contact between the applicant and the authorities with regard to the former's complaint and his requests for information, which he submitted annually by going to the prosecutor's office in person to enquire about progress in the investigation. In addition, there were tangible indications that the investigation was progressing, particularly the successive decisions

to bring charges against high-ranking civilian and military figures and the investigative measures in respect of the applicant, including the two forensic medical examinations which were carried out.

280. Having regard to the developments in the investigation subsequent to 2001, its scope and its complexity, all of which are accepted by the Government, the Court considers that after having lodged his complaint with the competent domestic authorities, the applicant could legitimately have believed that the investigation was effective and could reasonably have awaited its outcome, so long as there was a realistic possibility that the investigative measures were moving forward (see, *mutatis mutandis, Palić v. Bosnia and Herzegovina*, no. 4704/04, § 52, 15 February 2011).

281. The applicant lodged his application with the Court on 25 June 2008, more than seven years after he had lodged his criminal complaint with the prosecuting authorities. The investigation was still pending at that time, and investigative steps had been taken. For the reasons indicated above (see paragraph 279), which remained valid at least until the time when the applicant lodged his application before the Court, he cannot be criticised for having waited too long.

282. Moreover, the Court notes that the final domestic decision in the applicant's case is the above-mentioned judgment of 9 March 2011.

283. In the light of the foregoing, the Court considers that the application has not been lodged out of time. The Government's objection must therefore be dismissed.

D. Alleged violation of Articles 2 and 3 of the Convention

1. The Chamber judgment

284. The Chamber examined separately the merits of the complaints under Articles 2 and 3 of the Convention. It concluded that there had been a violation of the procedural aspect of Article 2 in respect of Mrs Anca Mocanu and that there had been no violation of the procedural aspect of Article 3 of the Convention in respect of Mr Marin Stoica.

(a) The part of the judgment concerning Mrs Anca Mocanu

285. With regard to Mrs Anca Mocanu, the Chamber noted that the criminal investigation into the unlawful killing of the applicant's husband had been opened in 1990 and that it was still pending more than twenty years later. It concluded that the investigation had not complied with the requirement of promptness.

286. It also noted that in 1994 the case was pending before the military prosecuting authorities, which was not an independent investigative body, and that the shortcomings in the investigation, acknowledged by the national courts themselves, had not subsequently been remedied.

287. It also observed that Mrs Anca Mocanu had been given access to the investigation belatedly, and that she had not been correctly informed about its progress.

288. Further, the Chamber considered that what was at stake in this case – that is, the right of the numerous victims to know what had happened and, by implication, the right to an effective judicial investigation and, where appropriate, compensation – were of such importance for Romanian society that they ought to have prompted the domestic authorities to deal with the case speedily and without unnecessary delay, in order to prevent any appearance of impunity for certain acts.

289. In view of these considerations, the Chamber concluded that there had been a violation of the procedural aspect of Article 2 of the Convention.

(b) The part of the judgment concerning Mr Marin Stoica

290. With regard to Mr Marin Stoica, the Chamber considered that, just as it was imperative that the relevant domestic authorities launched an investigation and took measures as soon as allegations of ill-treatment were brought to their attention, it was also incumbent on the persons concerned to display diligence and initiative. Thus, the Chamber attached particular importance to the fact that the applicant had not brought his complaint concerning the violence to which he was subjected on 13 June 1990 to the authorities' attention until eleven years after those events.

291. It noted that the complaint in question had been joined to case file no. 75/P/1998, which concerned, *inter alia*, the investigation into the charges of inhuman treatment, and that, in the context of that case, several investigative acts, including two forensic medical examinations, were carried out in respect of the applicant.

292. However, it noted that the case file indicated that, when the applicant lodged his complaint, certain offences – notably assault and wrongful conduct – had already become statute-barred, in application of domestic law.

293. Although the Chamber could accept that in situations of mass violations of fundamental rights it was appropriate to take account of victims' vulnerability, especially a possible inability to lodge complaints for fear of reprisals, it found no convincing argument that would justify the applicant's passivity and decision to wait eleven years before submitting his complaint to the relevant authorities.

294. Accordingly, the Chamber concluded that there had been no violation of the procedural aspect of Article 3 of the Convention.

2. The applicants' arguments

295. The applicants alleged that the procedural aspect of Articles 2 and 3 of the Convention had been breached in this case. They considered that the duty to investigate of their own motion contained in those Convention

provisions was incumbent on the authorities under both domestic and international law. That duty was all the stronger in that the present case did not concern ordinary incidents of unlawful use of force by State agents, but a conflict which was fuelled by the authorities then in power and which set various groups of the population – including ethnic groups – against one another.

296. In this connection, they emphasised that, having regard to the high number of victims of the impugned events, the investigations which concerned them as victims related to crimes that were not subject to statutory limitation, such as genocide or inhuman treatment. They argued that this imposed on the authorities an even greater duty to investigate, which they had not fulfilled.

Mrs Anca Mocanu indicated also that she had not been informed of progress in the investigation after 2009.

297. Mr Marin Stoica considered that the Court ought to examine the entirety of the investigation in the present case, in which senior State officials had been charged, and that it should not limit itself to examining that part of the investigation concerning the violence inflicted on him. He submitted that, for the purpose of evaluating the case under the procedural aspect of Article 3, the investigation ought not to be broken up and that the acts of violence to which he had been subjected could not be viewed in isolation.

298. Mr Stoica submitted that those events – on which the investigation ought to have shed light – were particularly significant in Romania's recent history, since they had occurred in the context of the transition towards a democratic society and were part of a process which dated back to the dictator's fall in December 1989. Adding that those events had affected very many people, the applicant considered that the investigation in question had been the only means for Romanian society to discover the truth about this episode in the country's recent history, a factor which ought to have prompted the competent authorities to take appropriate action, something they had failed to do.

299. In this connection, he submitted in particular that, by closing the investigation into inhuman treatment on the ground that the constituent elements of the offence had not been made out, the prosecutor in his decision not to bring a prosecution of 17 June 2009 had incorrectly interpreted the law, since his conclusion was not consistent with the High Court of Cassation and Justice's relevant case-law.

300. In addition, with regard to the offences under investigation which had become time-barred, he considered that the limitation period ought to have been suspended as long as the accused leaders held high-ranking public office.

301. Lastly, the applicant submitted that, having regard to the special features of the case, his lateness in bringing a complaint was irrelevant in examining the complaint alleging a violation of the procedural aspect of Article 3 and that it had not been such as to obstruct the investigation. In this connection, he noted that the decision of 14 October 1999 and the fourth point of the decision to commit for trial of 18 May 2000 placed an obligation on the investigators to identify all the victims of the repression. He also alleged that the authorities had been informed directly about his case.

3. *The Government's arguments*

(a) With regard to Mrs Anca Mocanu

302. Referring to certain investigative measures in the domestic proceedings, the Government alleged that the national authorities had complied with their obligation to conduct an effective investigation into the circumstances of the death of Mrs Anca Mocanu's husband, all necessary procedural acts to establish the truth about that death – and particularly the factual circumstances in which it occurred – having been carried out in the context of that investigation.

303. They specified that the judicial authorities had been obliged to separate the investigation into several cases, depending on the accused, the offences or the civil parties concerned, given the complexity of the events which took place in June 1990 in Bucharest, and that for the same reason they had had to bring together a complex body of evidence, including more than 5,700 witness statements.

304. In this connection, they invited the Court to take into consideration the unusual nature of the investigation, which was due not only to the large number of persons involved, but also to the fact that it concerned a sensitive historical event for Romania. They emphasised that the applicants' particular situations represented only one part of the vast nexus of events which occurred at the time of the large-scale demonstrations held in Bucharest and which had led to acts of violence, and that those situations could not therefore be analysed in isolation from the general context of the case file.

305. They submitted that there had not been any period of inactivity imputable to the authorities from 2000 to date.

306. They also specified that they did not challenge the Chamber's findings with regard to the length of the investigations, but added that this was explained by the need to remedy the initial shortcomings in the investigation and the wish to ensure that the applicant was involved in the proceedings.

(b) With regard to Mr Marin Stoica

307. With regard to Mr Marin Stoica, the Government indicated that the authorities had encountered difficulties in identifying all of the victims and involving them in the proceedings, given that they had not all lodged a complaint promptly.

308. They alleged that the criminal investigation had correctly concluded that criminal liability had become statute-barred, as the ill-treatment inflicted on the applicant did not fall within the category of crimes against humanity. They stressed that that conclusion was not intended to introduce a climate of impunity for the tragic events of 1990, but to apply the procedural rules of domestic law, particularly the reasonable limitation periods, which ranged from three to fifteen years.

309. There were no particular circumstances in this case which would justify imposing on the authorities an enhanced duty to investigate.

310. Furthermore, in the case of multiple violations of fundamental rights, the overall truth was not necessarily established by clarifying each individual situation. In those circumstances, an investigation could attain its objective – establishing the overall truth – even where it was obstructed in a particular individual case by the failure of the victim concerned to take any action.

4. The third party's comments

311. The third-party intervener indicated that over the past ten years European and international law had attached increasing importance to the fight against impunity in respect of torture and cruel, inhuman or degrading treatment or sentences, and to the recognition of the right of victims to an effective remedy and to redress. In this regard, it referred to several international texts, in particular the Guidelines of the Committee of Ministers of the Council of Europe on eradicating impunity for serious human rights violations (adopted on 30 March 2011). According to those Guidelines, "the fact that the victim wishes not to lodge an official complaint, later withdraws such a complaint or decides to discontinue the proceedings does not absolve the authorities from their obligation to carry out an effective investigation, if there are reasons to believe that a serious human rights violation has occurred".

312. The third-party intervener emphasised that Article 3 of the Convention required States to put in place criminal laws which effectively punished serious human rights violations by appropriate sanctions (it referred to the judgments in *M.C. v. Bulgaria*, no. 39272/98, § 150, ECHR 2003-XII; *Çamdereli v. Turkey*, no. 28433/02, § 38, 17 July 2008; and *Gäfgen v. Germany* [GC], no. 22978/05, § 117, ECHR 2010). It concluded that the statutory limitation periods should be adapted to the special features of such cases, which were characterised, *inter alia*, by the victims'

vulnerability, particularly in the event of ill-treatment inflicted by State agents.

313. Relying on a case brought before the ICTY (Trial Chamber, *Prosecutor v. Furundžija*, case no. IT-95-17/1-T, judgment of 10 December 1998), it submitted that the inapplicability of statutory limitation of criminal liability with regard to war crimes and crimes against humanity was a unanimously recognised principle, but that it was not, however, limited to this type of crimes. It added that the United Nations Human Rights Committee shared this position in so far as it concerned flagrant violations of fundamental rights, and that the Committee had also stated that statutes of limitations should not be applicable to other forms of ill-treatment (General Comment no. 3, 2012, § 40, see paragraph 190 above).

5. *The Court's assessment*

(a) General principles

314. The Court will examine together the complaints submitted by Mrs Anca Mocanu and by Mr Marin Stoica under Articles 2 and 3 of the Convention, in the light of the converging principles deriving from both those provisions, principles which are well-established and have been summarised, *inter alia*, in the judgments in *Nachova and Others v. Bulgaria* ([GC], nos. 43577/98 and 43579/98, §§ 110 and 112-113, ECHR 2005-VII); *Ramsahai and Others v. the Netherlands* ([GC], no. 52391/99, §§ 324-325, ECHR 2007-II); *Al-Skeini and Others v. the United Kingdom* ([GC], no. 55721/07, §§ 162-167, ECHR 2011); and *El Masri* (cited above, §§ 182-185).

315. The Court has already stated that, in interpreting Articles 2 and 3, it must be guided by the knowledge that the object and purpose of the Convention as an instrument for the protection of individual human beings requires that its provisions be interpreted and applied so as to make its safeguards practical and effective.

It reiterates that Article 3, like Article 2, must be regarded as one of the most fundamental provisions of the Convention and as enshrining core values of the democratic societies making up the Council of Europe (see *Soering v. the United Kingdom*, judgment of 7 July 1989, Series A no. 161, p. 34, § 88). In contrast to the other provisions in the Convention, it is cast in absolute terms, without exception or proviso, or the possibility of derogation under Article 15 of the Convention (see *Al-Skeini and Others,* cited above, § 162).

316. The general legal prohibition of arbitrary killing and torture and inhuman or degrading treatment or punishment by agents of the State would be ineffective in practice if there existed no procedure either for reviewing the lawfulness of the use of lethal force by State authorities, or for investigating arbitrary killings and allegations of ill-treatment of persons

held by them (see *Al-Skeini and Others,* cited above, § 163, and *El Masri,* cited above, § 182).

317. Thus, having regard to the general duty on the State under Article 1 of the Convention to "secure to everyone within their jurisdiction the rights and freedoms defined in [the] Convention", the provisions of Articles 2 and 3 require by implication that there should be some form of effective official investigation, both when individuals have been killed as a result of the use of force by, *inter alia*, agents of the State (see *McCann and Others v. the United Kingdom*, 27 September 1995, § 161, Series A no. 324), and where an individual makes a credible assertion that he has suffered treatment infringing Article 3 of the Convention at the hands, *inter alia,* of the police or other similar authorities (see *Assenov and Others v. Bulgaria*, 28 October 1998, § 102, *Reports* 1998-VIII).

318. The essential purpose of such an investigation is to secure the effective implementation of the domestic laws safeguarding the right to life and prohibiting torture and inhuman or degrading treatment and punishment in cases involving State agents or bodies, and to ensure their accountability for deaths and ill-treatment occurring under their responsibility (see *Nachova and Others,* cited above, § 110, and *Ahmet Özkan and Others v. Turkey*, no. 21689/93, §§ 310 and 358, 6 April 2004).

319. The Court has already held that the procedural obligation under Articles 2 and 3 continues to apply in difficult security conditions, including in a context of armed conflict. Even where the events leading to the duty to investigate occur in a context of generalised violence and investigators are confronted with obstacles and constraints which compel the use of less effective measures of investigation or cause an investigation to be delayed, the fact remains that Articles 2 and 3 entail that all reasonable steps must be taken to ensure that an effective and independent investigation is conducted (see *Al-Skeini and Others,* cited above, § 164).

320. Generally speaking, for an investigation to be effective, the persons responsible for carrying it out must be independent from those targeted by it. This means not only a lack of hierarchical or institutional connection but also a practical independence (see *Nachova and Others,* cited above, § 110, and *Halat v. Turkey*, no. 23607/08, § 51, 8 November 2011).

321. Whatever mode is employed, the authorities must act of their own motion. In addition, in order to be effective, the investigation must be capable of leading to the identification and punishment of those responsible. It should also be broad enough to permit the investigating authorities to take into consideration not only the actions of the State agents who directly and unlawfully used lethal force, but also all the surrounding circumstances (see *Al-Skeini and Others,* cited above, § 163).

322. Although this is not an obligation of result, but of means, any deficiency in the investigation which undermines its ability to establish the circumstances of the case or the person responsible will risk falling foul of the required standard of effectiveness (see *El Masri,* cited above, § 183).

323. A requirement of promptness and reasonable expedition is implicit in this context. While there may be obstacles or difficulties which prevent progress in an investigation in a particular situation, a prompt response by the authorities in investigating a use of lethal force or allegations of ill-treatment may generally be regarded as essential 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 *McKerr v. the United Kingdom*, no. 28883/95, § 114, ECHR 2001-III).

324. In all cases, the next of kin of the victim must be involved in the procedure to the extent necessary to safeguard his or her legitimate interests. Equally, with regard to Article 3 of the Convention, the victim should be able to participate effectively in the investigation (see *McKerr*, cited above, § 115).

325. Lastly, the investigation must be thorough, which means that the authorities must always make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation (see *El Masri,* cited above, § 183).

326. The Court has also held that in cases concerning torture or ill-treatment inflicted by State agents, criminal proceedings ought not to be discontinued on account of a limitation period, and also that amnesties and pardons should not be tolerated in such cases (see *Abdülsamet Yaman v. Turkey*, no. 32446/96, § 55, 2 November 2004; *Yeter v. Turkey*, no. 33750/03, § 70, 13 January 2009; and *Association "21 December 1989" and Others*, cited above, § 144). Furthermore, the manner in which the limitation period is applied must be compatible with the requirements of the Convention. It is therefore difficult to accept inflexible limitation periods admitting of no exceptions (see, *mutatis mutandis, Röman v. Finland*, no. 13072/05, § 50, 29 January 2013).

(b) Application of the above principles to the present case

327. In the present case, the Court notes that a criminal investigation was opened of the authorities' own motion shortly after the events of June 1990. From the outset, that investigation concerned the death by gunfire of Mrs Anca Mocanu's husband and other persons, and also the ill-treatment inflicted on other individuals in the same circumstances.

The Court also notes that this investigation was initially divided up into several hundred separate case files (see paragraphs 82-87 above), and that it was subsequently brought together before being again split on several occasions into four, two and then three branches.

328. It appears from the decision issued on 14 October 1999 by the military section of the prosecutor's office at the Supreme Court of Justice that that investigation was also tasked with identifying all of the victims of the repression carried out from 13 to 15 June 1990. It therefore concerned Mr Marin Stoica, at least with effect from 18 June 2001, the date on which he officially lodged a complaint.

The Court notes that a very high number of case files were opened at national level. However, given that all of these cases originated in the same events – which indeed resulted in their being regrouped by a decision of the prosecutor's office at the Supreme Court of Justice into one single case in 1997 – the Court considers that it is essentially dealing with one and the same investigation. Even if the Court considered that the case concerns two distinct investigations, one in respect of Mrs Anca Mocanu and the other in respect of Mr Marin Stoica, its findings as to their effectiveness would be the same, for the reasons set out below.

329. The Court notes that this investigation is still pending in respect of Mrs Anca Mocanu. The judgment adopted by the High Court of Cassation and Justice on 17 December 2007, returning to the prosecutor's office the file on the charges initially brought against five army officers, is the most recent judicial decision delivered in respect of the first applicant.

330. The Court notes that the part of the investigation concerning Mr Marin Stoica and implicating 37 high-ranking civilian and military officials – including a former Head of State and two former Ministers of the Interior and of Defence – was terminated by a judgment delivered on 9 March 2011 by the High Court of Cassation and Justice.

331. It reiterates that its competence *ratione temporis* permits it to consider only that part of the investigation which occurred after 20 June 1994, the date on which the Convention entered into force in respect of Romania (see paragraph 211 above). Accordingly, it will examine whether, after that date, the investigation conducted in the present case met the criteria of effectiveness set out above.

i. Independence of the investigation

332. The Court notes that from 1997, a few years after the date on which the Convention entered into force in respect of Romania, until early 2008 the case was pending before the military section of the prosecutor's office at the Supreme Court of Justice (from 2003, the High Court of Cassation and Justice). It also notes that, with regard to Mrs Anca Mocanu, the investigation is still pending before the military prosecutor's office, after the ordinary prosecutor's office declined jurisdiction on 6 June 2013 (see paragraph 123 above).

333. In this connection, the Grand Chamber endorses the Chamber's finding that the investigation was entrusted to military prosecutors who, like the accused (two of whom were generals), were officers in a relationship of

subordination within the military hierarchy, a finding which has already led the Court to conclude that there has been a violation of the procedural aspect of Article 2 and Article 3 of the Convention in previous cases against Romania (see *Barbu Anghelescu v. Romania*, no. 46430/99, § 67, 5 October 2004; *Bursuc v. Romania*, no. 42066/98, § 107, 12 October 2004; and, more recently, *Şandru and Others*, cited above, § 74; *Association "21 December 1989" and Others*, cited above, § 137; and *Crăiniceanu and Frumuşanu v. Romania*, no. 12442/04, § 92, 24 April 2012).

334. The number of violations found in cases similar to the present case is a matter of particular concern and casts serious doubt on the objectivity and impartiality of the investigations that the military prosecutors are called upon to conduct (see, mutatis mutandis, *Nachova and Others*, cited above, § 117). The Government have not put forward any fact or argument capable of persuading the Court to conclude otherwise in the present case.

ii. Expedition and adequacy of the investigation

335. The Court notes that the investigation concerning Mrs Anca Mocanu has been pending for more than twenty-three years, and for more than nineteen years since the Convention was ratified by Romania. Over this period, three of the five high-ranking army officers implicated in the killing of the applicant's husband have died.

336. It also notes, in respect of Mr Marin Stoica, that the relevant investigation was terminated by a judgment delivered on 9 March 2011, twenty-one years after the opening of the investigation and ten years after the official lodging of the applicant's complaint and its joinder to the investigation case file.

337. Yet the very passage of time is liable not only to undermine an investigation, but also to compromise definitively its chances of being completed (see *M.B. v. Romania*, no. 43982/06, § 64, 3 November 2011).

338. While acknowledging that the case is indisputably complex, as the Government have themselves emphasised, the Court considers that the political and societal stakes referred to by the latter cannot justify such a long period. On the contrary, the importance of those stakes for Romanian society should have led the authorities to deal with the case promptly and without delay in order to avoid any appearance of collusion in or tolerance of unlawful acts (see, *inter alia*, *Lăpuşan and Others v. Romania*, nos. 29007/06, 30552/06, 31323/06, 31920/06, 34485/06, 38960/06, 38996/06, 39027/06 and 39067/06, § 94, 8 March 2011, concerning a lapse of more than sixteen years since the opening of an investigation intended to lead to the identification and punishment of those responsible for repression of the anti-communist demonstrations of 1989, and more than eleven years since the entry into force of the Convention).

339. The Court observes, however, that lengthy periods of inactivity occurred in the investigation in the present case, both at the initial stages and in recent years. It notes, in particular, that no significant progress was made in the investigation from 20 June 1994, date of the Convention's entry into force, to 22 October 1997, the date on which joinder began of the numerous files which had been opened separately but which were part of the same factual context as that in which the present applications originated. It was only after that date that the prosecutor's office began to conduct a wider investigation into all of the circumstances surrounding the concerted use of force by State agents against the civilian population (see *Al-Skeini and Others,* cited above, § 163).

340. Furthermore, the Court notes that the decision of 16 September 1998 mentions that no investigative measure into the complaints of the persons assaulted at the State television headquarters had been conducted prior to that date (see paragraph 100 above).

341. In addition, the only procedural acts carried out in the case concerning Mrs Anca Mocanu since the last referral to the prosecutor's office, ordered on 17 December 2007, are the decision to discontinue proceedings, issued on 6 June 2013 in respect of two co-defendants who had died in the meantime, and two statements declining jurisdiction, issued on 30 April 2009 and 6 June 2013 respectively.

342. The Court also notes that the national authorities themselves found numerous shortcomings in the investigation. Thus, the decision adopted on 16 September 1998 by the prosecutor's office at the Supreme Court of Justice indicated that none of the individuals who had held high office at the relevant time – in particular, the Head of State, the Prime Minister and his deputy, the Minister of the Interior and the Head of Police – had yet been questioned.

343. Further, the subsequent investigation did not enable all the defects to be remedied, as the Supreme Court of Justice and the High Court of Cassation and Justice noted in their respective decisions of 30 June 2003 and 17 December 2007, referring to the shortcomings in the previous proceedings.

344. Moreover, the Court notes that the investigation – severed since 1998 from the rest of the case – into the violence inflicted on numerous demonstrators and other persons who had been present by chance at the scene of the crackdown was terminated by the decision not to bring a prosecution, issued on 17 June 2009 and upheld by the judgment of 9 March 2011. Those persons included Mr Marin Stoica, who, having lodged a complaint in 2001, had to wait ten years for the investigation to be completed. However, in spite of the length of time involved and the investigative acts carried out in respect of the applicant and listed by the Government, none of the above-cited decisions succeeded in establishing

the circumstances of the ill-treatment which the applicant and other persons claimed to have sustained at the State television headquarters.

345. The decision adopted by the prosecutor's office on 17 June 2009 indicated in substance that it had been impossible to establish the assailants' identity and the security forces' degree of involvement at the close of the investigations carried out by the civilian and then the military prosecution services. However, the authorities did not indicate what evidence had been used with a view to establishing the facts and for what tangible reasons their actions had not produced results. Moreover, at domestic level they had never called into question the applicant's conduct in respect of the investigation, and had failed to make any comment concerning the date on which the applicant lodged his complaint.

346. The Court notes that this branch of the investigation was terminated essentially on account of the statutory limitation of criminal liability. In this connection, it reiterates that the procedural obligations arising under Articles 2 and 3 of the Convention can hardly be considered to have been met where an investigation is terminated, as in the present case, through statutory limitation of criminal liability resulting from the authorities' inactivity (see *Association "21 December 1989" and Others*, cited above, § 144).

347. With regard to the other major finding of the investigation, namely the conclusion that the constituent elements of inhuman treatment, punishable under Article 358 of the Romanian Criminal Code, had not been made out in respect of Mr Stoica, the Court considers that the conformity of the prosecutor's interpretation with the relevant domestic case-law is open to doubt, in view of the judgment delivered by the High Court of Cassation and Justice on 7 July 2009. Moreover, the Government have not adduced other examples of case-law in support of the decision given in this case. The Court also considers that the conclusion to the effect that the miners no longer had an enemy against whom to fight on 14 June 1990 (see paragraph 161 above) appears doubtful, since it manifestly disregards the violence which occurred on 13 June 1990 in the presence of large numbers of servicemen, equipped with heavy ammunition and tanks, as attested to in the above-cited decision itself. Furthermore, this conclusion is contrary to the facts established by the same decision, which describes in detail the acts of violence perpetrated on 14 June 1990 by the miners, who targeted, without distinction, the demonstrators, students who were present in the university premises and passers-by. In addition, in its judgment of 9 March 2011 dismissing Mr Marin Stoica's appeal against the decision not to bring a prosecution, the High Court of Cassation and Justice made no assessment whatsoever of the question of the applicability of Article 358 of the Criminal Code, and merely verified how the rules on statutory limitation had been applied in this case.

348. Accordingly, it appears that the authorities responsible for the investigation in this case did not take all the measures reasonably capable of leading to the identification and punishment of those responsible.

iii. The first applicant's involvement in the investigation

349. With regard to the obligation to involve victims' relatives in the proceedings, the Court observes that Mrs Anca Mocanu was not informed of progress in the investigation prior to the decision of 18 May 2000 committing for trial the persons accused of killing her husband.

350. Moreover, the Court notes that the applicant was questioned by the prosecutor for the first time on 14 February 2007, almost seventeen years after the events, and that, following the High Court of Cassation and Justice's judgment of 17 December 2007, she was no longer informed about developments in the investigation.

351. The Court is not therefore persuaded that Mrs Anca Mocanu's interests in participating in the investigation were sufficiently protected (see *Association "21 December 1989" and Others*, cited above, § 141).

iv. Conclusion

352. In the light of the foregoing, the Court considers that Mrs Anca Mocanu did not have the benefit of an effective investigation as required by Article 2 of the Convention, and that Mr Marin Stoica was also deprived of an effective investigation for the purposes of Article 3.

353. There has, accordingly, been a breach of the procedural aspect of those provisions.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

354. The applicant association complained of the length of the criminal proceedings which it had joined as a civil party in order to claim reparation for the damage caused by the ransacking of its headquarters on 14 June 1990, the destruction of its property and the assaults on its members.

355. It alleged on that account a violation of Article 6 § 1 of the Convention, the relevant part of which provides:

> "In the determination of his civil rights and obligations ... everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ..."

A. The Chamber judgment

356. The Chamber considered that the length of the impugned proceedings had been excessive and found a violation of Article 6 § 1.

B. The parties’ submissions

357. The applicant association stated that it had welcomed the Chamber judgment.

358. The Government stated that they did not contest, in principle, the Chamber’s conclusions as to the length of the criminal proceedings which the applicant association had joined as a civil party.

C. The Court’s assessment

359. The Grand Chamber sees no reason to depart from the Chamber’s finding. Like the Chamber, it observes that on 26 July 1990 the association had lodged an official complaint with a request to join the proceedings as a civil party, referring to the damage sustained by it during the events of 13 to 15 June 1990. That criminal complaint was examined as part of the investigation which was closed by the decision of 17 June 2009 not to bring a prosecution. The proceedings with regard to the applicant association thus lasted almost nineteen years.

360. The Court’s competence *ratione temporis* being limited, the Chamber had been able to examine the complaint about the length of proceedings only in so far as it concerned the period after 20 June 1994, the date on which the Convention entered into force in respect of Romania. The length of the proceedings to be taken into account was therefore fifteen years.

361. The Court reiterates that it has found a violation of Article 6 § 1 of the Convention on numerous occasions in cases raising similar issues to those in the instant case (see *Frydlender v. France* [GC], no. 30979/96, § 46, ECHR 2000-VII, and, in particular, *Gheorghe and Maria Mihaela Dumitrescu v. Romania*, no. 6373, §§ 26-28, 29 July 2008, also concerning the length of criminal proceedings to which a civil party had been joined).

362. After examining all the evidence submitted to it, the Court considers that there are no reasons justifying a different conclusion in the present case.

363. In the light of the criteria established in its case-law and having regard to all the circumstances of the case, the Court considers that the length of the impugned proceedings was excessive and failed to meet the “reasonable time” requirement.

364. There has accordingly been a violation of Article 6 § 1 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

365. 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 alleged by Mrs Anca Mocanu

1. The parties' submissions

366. Before the Chamber the applicant had claimed 200,000 euros (EUR) in respect of the non-pecuniary damage allegedly sustained on account of the excessive length of the investigation into the killing of her husband, then aged 22. She submitted that she herself had been aged 20 at the time, and had found herself alone with their two children, one aged two years and the other a few months old. She indicated that over the following twenty years, during which she had waited for the investigation to be terminated and those responsible for her husband's death to be identified, she had been obliged to provide for her own needs and those of her children, working as a cleaner and enduring wretched living conditions. She had also claimed EUR 100,000 in respect of pecuniary damage, without explaining its exact nature.

367. Considering those claims for just satisfaction to be excessive and unsubstantiated, the Government had invited the Court to dismiss them.

2. The Chamber judgment

368. With regard to the sum claimed in respect of pecuniary damage, the Chamber found no causal link between the violation found and the alleged pecuniary damage. Accordingly, it rejected that claim.

369. In contrast, it considered that just satisfaction should be awarded on account of the fact that the domestic authorities had failed to investigate the killing of the applicant's husband with the degree of diligence required by Article 2 of the Convention. It awarded the applicant EUR 30,000 under this head.

370. In addition, the Chamber reiterated that the application of the principle of *restitutio in integrum* implied that the applicants were put, as far as possible, in the same situation as that in which they would have found themselves had there not been a breach of the requirements of the Convention and concluded that the respondent State was to take the necessary measures to expedite the investigation into the killing of Mr Velicu-Valentin Mocanu, so that a decision which met the requirements of the Convention could be given.

3. The Court's assessment

371. Having regard to the foregoing, to the reasons set out by the Chamber and to the fact that the applicant did not change the claim initially submitted to the Chamber, the Court considers that the applicant sustained significant non-pecuniary damage arising from the violation of the procedural aspect of Article 2. It awards her the sum of EUR 30,000 in this respect.

B. Damage alleged by Mr Marin Stoica

372. The applicant had claimed EUR 200,000 before the Chamber in respect of non-pecuniary damage.

373. Considering this claim excessive, the Government had submitted that the finding of a violation would constitute in itself sufficient just satisfaction in respect of the alleged non-pecuniary damage.

374. The Chamber having held that there had been no violation of the Convention in respect of Mr Stoica, it had not examined the claim for just satisfaction submitted by him.

375. The Court considers that Mr Stoica undeniably sustained non-pecuniary damage. Taking into account the violation of Article 3 found in respect of the applicant and ruling on an equitable basis as required by Article 41 of the Convention, the Court awards him EUR 15,000 in respect of non-pecuniary damage.

C. The applicant association's claim

376. The Chamber concluded that the applicant association had not submitted a claim for just satisfaction within the time allowed.

377. During the proceedings before the Grand Chamber, the association resubmitted to the Court a fax which it had sent on 22 December 2009, stating that this constituted a claim for just satisfaction.

378. The Court notes that, through this unsigned request, the applicant association claimed compensation amounting to EUR 42,519, allegedly corresponding to the amount, adjusted for inflation, of the pecuniary damage which it had sustained on account of the ransacking of its headquarters, and stated that it wished to use this sum, *inter alia*, for "the restoration of [his] health [*sic*]". As this claim is confused, it cannot be taken into consideration. Even supposing that it could be considered as a properly submitted claim for just satisfaction, it relates solely to pecuniary damage that is unconnected to the finding of a violation of Article 6 of the Convention arising from the excessive length of the proceedings.

379. The Court therefore rejects the applicant association's claim.

D. Costs and expenses

1. Costs and expenses in respect of the applications by Mrs Anca Mocanu and the applicant association (nos. 10865/09 and 45886/07)

380. The applicants claimed the sum of EUR 18,050 in respect of the costs and expenses incurred in the proceedings before the Court, of which EUR 2,800 related to the proceedings before the Grand Chamber, including the fees for their three lawyers.

381. The Government considered, with regard to the proceedings before the Chamber, that this claim was out of time, as it had not been submitted within the time allowed.

382. They also considered that, with regard to the proceedings before the Grand Chamber, this claim was excessive, and pointed out that it was not accompanied by any supporting documentation.

383. The Chamber concluded that the applicants had not submitted a claim for just satisfaction within the time allowed.

384. According to the Court's established case-law, an award can be made in respect of costs and expenses only in so far as they have been actually and necessarily incurred and are reasonable as to quantum (see *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 54, ECHR 2000-XI).

385. In the present case, regard being had to the documents in its possession and its case-law, the Court considers it reasonable to award the sum of EUR 2,800 claimed for the costs and expenses incurred in the proceedings before the Grand Chamber, this being the only claim submitted in a timely manner. From that amount must be deducted the sum of EUR 600 already paid jointly to two of the applicants' three lawyers by the Council of Europe by way of legal aid.

2. Costs and expenses in respect of the application by Mr Marin Stoica (no. 32431/08)

386. The applicant claimed EUR 11,507.39 in respect of the costs and expenses incurred in the proceedings before the Grand Chamber, namely EUR 10,394 in lawyer's fees, EUR 300 in postal charges and EUR 813.39 for the travel costs incurred by the applicant and his lawyer in attending the hearing before the Grand Chamber.

387. The Government considered that the time spent by the applicant's lawyer in preparing the request for referral to the Grand Chamber, namely 15 hours, was unreasonable. They made the same comments in respect of the time spent in preparing the applicant's additional observations – 20 hours – and the 15 hours spent in preparing counsel's address.

388. In addition, the Government submitted that the costs incurred by the applicant to attend the hearing had not been necessary, given that only his lawyer's presence had been justified. They opposed the claim for reimbursement of the applicant's travel costs.

389. In the present case, regard being had to the documents in its possession and its case-law, the Court considers it reasonable to award the sum of EUR 11,507.39 claimed for the costs and expenses incurred in the proceedings before it, to be paid directly to Ms Hatneanu. From that amount must be deducted the sum of EUR 1,638.47 already paid by the Council of Europe by way of legal aid, and covering the travel costs incurred by the applicant and his lawyer.

E. Default interest

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

FOR THESE REASONS, THE COURT

1. *Holds*, by sixteen votes to one, that it has jurisdiction *ratione temporis* to examine the complaints raised by Mrs Anca Mocanu and Mr Marin Stoica under the procedural aspect of Articles 2 and 3 of the Convention, in so far as those complaints relate to the criminal investigation conducted in the present case after the entry into force of the Convention in respect of Romania;

2. *Dismisses*, by sixteen votes to one, the Government's objection of non-exhaustion of the domestic remedies raised in respect of the individual applicants;

3. *Dismisses*, by fourteen votes to three, the Government's objection alleging that the application lodged by Mr Marin Stoica is out of time;

4. *Holds*, by sixteen votes to one, that there has been a violation of the procedural aspect of Article 2 of the Convention in respect of Mrs Anca Mocanu;

5. *Holds*, by fourteen votes to three, that there has been a violation of the procedural aspect of Article 3 of the Convention in respect of Mr Marin Stoica;

6. *Holds*, unanimously, that there has been a violation of Article 6 § 1 of the Convention in respect of the applicant association;

7. *Holds*, by sixteen votes to one, that the respondent State is to pay Mrs Anca Mocanu, within three months, EUR 30,000 (thirty thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;

8. *Holds*, by fourteen votes to three, that the respondent State is to pay Mr Marin Stoica, within three months, EUR 15,000 (fifteen thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;

9. *Holds*, unanimously, that the respondent State is to pay, within three months, EUR 2,200 (two thousand two hundred euros) plus any tax that may be chargeable to the applicants, in respect of the costs and expenses incurred by Mrs Anca Mocanu and by the applicant association, corresponding to applications nos. 10865/09 and 45886/07;

10. *Holds*, by sixteen votes to one, that the respondent State is to pay, within three months, EUR 9,868.92 (nine thousand, eight hundred and sixty-eight euros and ninety-two cents) plus any tax that may be chargeable to the applicant, in respect of the costs and expenses incurred by Mr Marin Stoica (application no. 32431/08), to be paid directly to Ms D.O. Hatneanu;

11. *Holds*, unanimously, 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;

12. *Dismisses*, unanimously, the remainder of the applicants’ claim for just satisfaction.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 17 September 2014.

Johan Callewaert	Dean Spielmann
Deputy to the Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following separate opinions are annexed to this judgment:

– Concurring opinion of Judge Pinto de Albuquerque, joined by Judge Vučinić;

– Partly dissenting opinion of Judge Silvis, joined by Judge Streteanu;

– Partly dissenting opinion of Judge Wojtyczek.

D.S.
J.C.

CONCURRING OPINION OF JUDGE PINTO DE ALBUQUERQUE, JOINED BY JUDGE VUČINIĆ

1. The main issue in the Anca Mocanu and Others case is the applicability of the statute of limitations to the events which occurred during the transitional period to democracy in Romania, and more specifically the events which occurred in Bucharest in June 1990. Having accepted the competence ratione temporis of the European Court of Human Rights ("the Court"), as well as the unfounded nature of the Government's objections regarding non-exhaustion of domestic remedies and tardiness on the part of Mr Stoica in lodging his application, I also agree with the Grand Chamber's criticism of the shortcomings in the domestic proceedings regarding the death of Mr Mocanu, the unlawful detention and torture of Mr Stoica and the damage caused to the applicant association through the ransacking of its headquarters and the unlawful seizure of its property and documents[1].

The purpose of this opinion is limited to the submission that the prosecution of the massive human-rights violations which occurred in Romania in the transitional period to democracy, including those which took place in June 1990, is not time-barred, and those violations should therefore continue to be ex officio investigated, duly prosecuted and punished according to the rules of international and national law. In other words, this opinion seeks to clarify the somewhat timid terms used by the Grand Chamber in paragraphs 346 and 347 of the judgment.

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[1] On the Court's competence *ratione temporis* with regard to incidents which occurred in the transitional period in Romania, see *Agache and Others v. Romania*, no. 2712/02, §§ 69-73, 20 October 2009; *Şandru and Others v. Romania*, no. 22465/03, §§ 57-59, 8 December 2009; and *"Association 21 December 1989" and Others v. Romania*, nos. 33810/07 and 18817/08, §§ 86-88, 24 May 2011, based on *Šilih v. Slovenia* [GC], no. 71463/01, §§ 159-163, 9 April 2009. Since the Convention provides for procedural obligations which are separate and autonomous from substantive obligations, the logical consequence is that the Court has competence *ratione temporis* whenever these procedural obligations have been or ought to have been carried out after the critical date. This case-law is not new, in view of the principle established both by the Permanent Court of International Justice in *Mavrommatis Palestine Concessions (1924), PCIJ Series A No 2*, p. 35, and in *Electricity Company of Sofia and Bulgaria (Belgium v Bulgaria) (1939), PCIJ Series A/B No 77*, p. 82, and by the International Court of Justice in *Right of Passage (Portugal/India), ICJ Reports 1960*, p. 35 ("The Permanent Court thus drew a distinction between the situations or facts which constitute the source of the rights claimed by one of the Parties and the situations or facts which are the source of the dispute. Only the latter are to be taken into account for the purpose of applying the Declaration accepting the jurisdiction of the Court"), and *Case Concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Preliminary Objections) (1996) ICJ Reports*, paragraph 34. Hence, *Šilih* is not so distant from the principle set out in general international law. And, as in *Šilih*, the death of Mr Mocanu, the ill-treatment of Mr Stoica and the ransacking of the applicant association's headquarters did not constitute "the source of the dispute"; instead, they were "the source of the rights claimed" by the applicants, and therefore came under the jurisdiction *ratione temporis* of this Court.

The nature of the statute of limitations in criminal law

2. The statute of limitations bars the prosecution and conviction of an alleged criminal offender and, where he or she has been convicted at final instance, the service of his or her sentence. This is not a merely procedural defence, as it might seem at first glance. Since it sits, with equal force, alongside the conditions of the existence of a criminal offence, it shares the substantive nature of the constituent elements of the offence, with the logical consequence of the full applicability of Article 7 of the European Convention on Human Rights ("the Convention"), including the strict construction of the statute of limitations, the prohibition of its retroactive application to the detriment of the defendant and its retroactive application to his or her benefit. In other words, the statute of limitations has, in the light of the Convention, a mixed nature, being both procedural and substantive at the same time[2].

3. As a matter of principle, only a purely retributivist criminal system, which pursues atonement for the offender's guilty act at any cost, would not provide for statutory limitations, the opposite solution being favoured by a criminal system based on positive special prevention (i.e. resocialisation of the offender), which aims at preparing the offender to lead a law-abiding life in the community after release[3]. Criminal punishment of the offender many years after the commission of the crime, when the personal circumstances of the alleged offender have changed, is counter-productive in terms of preparing the offender to lead a law-abiding life in society. In addition, tardy punishment of the alleged offender is per se incompatible with the pursuit of negative special prevention (i.e. incapacitation of the offender), which is intended to avoid future breaches of the law by the sentenced person, by keeping him or her away from the community. Furthermore, it has no deterrent effect on would-be offenders and, a fortiori, no impact on reinforcement of the social strength of the breached norm. The

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[2] See *K.-H.W. v. Germany* [GC], no. 37201/97, §§ 107-112, ECHR 2001-II (extracts); *Kononov v. Latvia* [GC], no. 36376/04, §§ 228-233, ECHR 2010; and the joint partly dissenting opinion of Judges Pinto de Albuquerque and Turković, joined to *Matytsina v. Russia*, no. 58428/10, 27 March 2014. Among legal scholars, see Delmas-Marty, "La responsabilité pénale en échec (prescription, amnistie, immunités)", in Cassese and Delmas-Marty, *Crimes internationaux et juridictions internationales*, 2002, p. 617, and Lambert Abdelgawad and Martin-Chenut, "La prescription en droit international: vers une imprescriptibilité de certains crimes", in Ruiz Fabri *et al.*, *La clémence saisie par le droit*, 2007, p. 151.

[3] In *Vinter and Others v. the United Kingdom* [GC], nos. 66069/09, 130/10 and 3896/10, §§ 113-118, ECHR 2013, the Court endorsed the international consensus on the obligation of resocialisation of offenders sentenced to prison terms, which is based, among other sources, on Article 10 (3) of the International Covenant on Civil and Political Rights, Article 5 (6) of the American Convention on Human Rights and Article 40 (1) of the United Nations Convention on the Rights of the Child.

deterrent effect of punishment not only diminishes over time, it comes to naught. Thus, neither positive general prevention (i.e. reinforcement of the breached norm), which aims at strengthening social acceptance and compliance with the breached provision, nor negative general prevention (i.e. the deterrent effect on would-be offenders) justify punishment without any limit of time.

If the legitimate purposes of criminal punishment in a democratic society are at odds with the very idea of imprescriptible offences, the principle of legal certainty, which constitutes the core of any legal system in a democratic society, goes even further, and requires that the alleged offender must at a certain point in time be left alone, without the perpetual threat of State prosecution behind him or her. Regardless of the degree of State responsibility for the tardiness of a criminal investigation, there must come a day when society's claims against an offender cease to be legitimate. Otherwise, the alleged offender would become a mere object of the executive's power, sacrificed on the altar of an illusory absolute justice which reflects nothing but blind retributivism. Any State interference with liberty must be limited by the principles of proportionality and necessity, of which the principle of the least intrusive interference is one of the corollaries. Perpetual hounding of a suspected individual goes well beyond that limit, and represents, in principle, a disproportionate interference with liberty.

Lastly, the prosecution and conviction of the alleged offender many years after the deeds of which he or she is accused is highly problematic from the perspective of the principle of a fair trial, mainly in view of irresoluble practical problems related to the reliability of the evidence as time elapses[4]. These evidentiary problems affect not only the prosecution's case, but also the possibility of mounting an effective defence.

4. In sum, the principles of legal certainty, a fair trial and the resocialisation of offenders sentenced to criminal penalties are not compatible with the prosecution and punishment of criminal offences without any limit of time. Thus, criminal offences should be prosecuted and punished within reasonable time-limits. In the case of final judgments, the above-mentioned principles of legal certainty and resocialisation of offenders sentenced to criminal penalties apply. Hence, criminal penalties should be served within reasonable time-limits after a final sentence has been handed down. In both cases, time-limits must be commensurate with the seriousness of the offences in question.

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[4] See *Stubbings and Others v. the United Kingdom*, 22 October 1996, § 51, Reports of Judgments and Decisions 1996-IV, and *Brecknell v. the United Kingdom*, no. 32457/04, § 69, 27 November 2007.

The running of a statutory limitation period may evidently be suspended during the period in which accountability is impossible and no effective judicial remedy is available[5]. Some procedural events, such as notification of charges to an alleged offender, may even interrupt the running of a statutory limitation period, with the effect that the time which has elapsed is not counted, and the limitation period begins to run anew from the date of the interruption. In any case, a maximum period of time, irrespective of the number of interruptions and suspensions, should be provided by law.

The international obligation to punish crimes against humanity without any limit of time

5. Nevertheless, in view of a broad and recent consensus, the criminal punishability of crimes against humanity without any time-limit can be considered as a principle of customary international law, binding on all States[6]. Such a principle of international criminal law was set out in Article 29 of the Rome Statute of the International Criminal Court (1998)[7], which followed similar principles, established by the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity (1968)[8], the European Convention on the Non-Applicability of Statutory Limitation to Crimes against Humanity and War Crimes (1974)[9] and ECOSOC Resolution 1158 (XLI), adopted in 1966[10].

[5] Article 17 (2) of the Declaration on the Protection of all Persons from Enforced Disappearance, adopted by General Assembly resolution 47/133 of 18 December 1992, and Principle 23 of the Updated Set of principles for the protection and promotion of human rights through action to combat impunity, E/CN.4/2005/102/Add.1, 8 February 2005.

[6] See the opinion of Judges Vučinić and Pinto de Albuquerque in *Perinçek v. Switzerland*, no. 27510/08, 17 December 2013. Legal scholars agree (see Bourdon, *La cour penale internationale*, 2000, p. 125, Van den Wyngaert and Dugard, “Non-applicability of statute of limitations”, in Cassesse et al., *The Rome Statute of the International Criminal Court, A commentary*, 2002, p. 879, and Lambert Abdelgawad and Martin-Chenut, “La prescription en droit international: vers une imprescriptibilité de certains crimes”, in Ruiz Fabri et al., *La clémence saisie par le droit*, 2007, p. 120).

[7] This Statute was adopted on 17 July 1998 by the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court and opened for signature on that date. It entered into force on 1 July 2002. Romania signed it on 7 July 1999 and ratified it on 11 April 2002. There are currently 122 States Parties.

[8] This Convention was adopted by General Assembly resolution 2391 (XXIII) on 26 November 1968. Romania ratified it on 15 September 1969. It came into force on 11 November 1970. There are currently 54 States Parties.

[9] This Convention was opened for signature on 25 January 1974 and entered into force on 27 June 2003. It was signed by Romania on 20 November 1997 and ratified on 8 June 2000. There are currently 7 States Parties. While the United Nations Convention of 1968 provided for its own retroactivity, the European Convention of 1974 and the Rome Statute chose the opposite approach.

[10] The Resolution set out “the principle that there is no period of limitation for war crimes and crimes against humanity” in international law and urged all States “to take any

After some hesitation during the 1970s and 1980s, States had massively adhered to the principle of the imprescriptibility of the crime of genocide and of crimes against humanity by the end of the twentieth century[11]. No such limitation was provided for international crimes in the Nuremberg and Tokyo Charters, the Statutes of the ad hoc tribunals or the Special Court of Sierra Leone. The precedent of the Rome provision was Article II (5) of Control Council law no. 10, which stated explicitly that "the accused shall not be entitled to the benefits of any statute of limitation in respect from 30 January 1933 to 1 July 1945"[12]. In recent years, State practice has confirmed the choice made in Rome, since similar provisions were included in Article 17.1 of the UNTAET Regulation 2000/15[13], Article 17 (d) of the Statute of the Iraqi Special Tribunal (2003)[14] and Articles 4 and 5 of the Law on the establishment of Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes committed during the period of Democratic Kampuchea (2004)[15].

6. The principle which has emerged has a twofold consequence. Firstly, States have a duty to cooperate with international and mixed courts, and particularly with the International Criminal Court, in the prosecution of these crimes, and may not invoke provisions of national law on statutes of limitation to bar surrender to international and mixed courts or deny a request of assistance to them[16]. Secondly, States have an additional obligation to remove from their national legislations any system of statutory limitation periods which is incompatible with the rule on the imprescriptibility of the crime of genocide, crimes against humanity and certain war crimes[17]. States should do their utmost to bring their national

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measures necessary to prevent the application of statutory limitations to war crimes and crimes against humanity".

[11] This also applies to, if not all, at least some war crimes. The International Committee of the Red Cross (ICRC) presented in 2005 a Study on Customary International Humanitarian Law (Henckaerts and Doswald-Beck (eds.), *Customary International Humanitarian Law*, 2 Volumes, Cambridge University Press & ICRC, 2005). The Study contains a list of customary rules of international humanitarian law. Rule 160 reads: Statutes of limitation may not apply to war crimes. The summary refers that State practice establishes this rule as a norm of customary international law applicable in relation to war crimes committed in both international and non-international armed conflicts.

[12] The French Court of Cassation affirmed that same principle in *Fédération nationale des déportés et internes résistants et patriotes et al. c. Barbie* (1984).

[13] Prosecution of the crime of genocide, war crimes, crimes against humanity and torture is not subject to time constraints.

[14] Prosecution of the crime of genocide, crimes against humanity, war crimes and violations of certain Iraqi laws listed in Article 14 of the Statute is not barred by any time-limits.

[15] Prosecution of the crime of genocide and crimes against humanity is not subject to any statute of limitations. Murder, torture and religious persecution is submitted to an extended period of 20 years.

[16] Article 93 (3) of the Rome Statute.

[17] Commission on Human Rights Resolution 2005/81, paragraph 4. "Acknowledges that under the Rome Statute genocide, crimes against humanity and war crimes are not subject

legal systems into line with their international obligations, and may not hide behind the former to flout the latter.

7. States have taken a more reserved position on the much-debated issue of the inapplicability of the statute of limitations to torture. This is due not only to considerations based on the weighting of the principles of legal certainty and a fair trial and the purposes of criminal punishment against the need for a firm criminal policy of accountability for torture, but also to the uncertain conceptual borders of the crime of torture, especially when contrasted with the concepts of inhuman and degrading ill-treatment. Although it is undisputed that there exists a universal consensus on the criminalisation of torture, it has not yet been established in international law that the prosecution and punishment of this offence must not be subject to statutory limitations. Only Article 8 (2) of the Arab Charter on Human Rights (2004) provides for such a principle. Principle 6 of the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, adopted by General Assembly resolution 60/147 of 16 December 2005, establishes that "statutes of limitations shall not apply to gross violations of international human-rights law and serious violations of international humanitarian law which constitute crimes under international law", which might include torture. The Committee against Torture (CAT) repeatedly stresses that, under the Convention against Torture[18], the crime of torture should not be subject to any limitation period[19]. The same position is taken by the Human Rights Committee (UNHRC)[20]. The UN Special Rapporteur on the promotion and

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to any statutes of limitations and prosecutions of persons accused of these crimes shall not be subject to any immunity, and urges States, in accordance with their obligations under applicable international law, to remove remaining statutes of limitations on such crimes and to ensure, if provided for by their obligations under international law, that official *immunities rationae materiae* do not encompass them."

[18] This Convention was adopted by General Assembly resolution 39/46 on 10 December 1984 and entered into force on 26 June 1987. Romania ratified it on 18 December 1990. There are currently 155 States Parties.

[19] CAT, Conclusions and recommendations, Turkey, CAT/C/CR/30/5, 27 May 2003, paragraph 7 (c); Slovenia, CAT/C/CR/30/4, 27 May 2003, paragraphs 5 b and 6 b; Chile, CAT/C/CR/32/5, 14 May 2004, paragraph 7 (f); Denmark, CAT/C/DNK/CO/5, 16 July 2007, paragraph 11; Japan, CAT/C/JPN/CO/1, Section C; Jordan, CAT/C/JOR/CO/2, 25 May 2010, paragraph 9; Bulgaria, CAT/C/BGR/CO/4-5, 14 December 2011, paragraph 8; Armenia, CAT/C/ARM/CO/3, 6 July 2012, paragraph 10; and General Comment No. 3, 2012, CAT/C/GC/3, paragraph 40.

[20] UNHRC, Concluding observations: Ecuador, A/53/40, 15 September 1998, paragraph 280 ("torture, enforced disappearances and extrajudicial executions"); Argentina, CCPR/CO/70/ARG, 15 November 2000, paragraph 9 ("Gross violations of civil and political rights during military rule"); Panama, CCPR/C/PAN/CO/3, 17 April 2008, paragraph 7 ("offences involving serious human-rights violations"); and El Salvador, CCPR/C/SLV/CO/6, 18 November 2010, paragraph 6 ("torture and enforced disappearance… serious human-rights violations"). Referring to torture and similar cruel,

protection of human rights and fundamental freedoms while countering terrorism (2010)[21], the UN Special Rapporteur on Torture (2009)[22] and the UN Independent Expert to update the Set of principles to combat impunity (2005)[23] share the same view. Among scholars, the imprescriptibility of torture has been sustained, for example, by Principle 7 of the Brussels Principles against impunity and for international justice, adopted by the "Brussels Group for International Justice" (2002), and Principle 6 of the Princeton Principles on universal jurisdiction (2001)[24].

In the European and American legal space, these soft-law instruments have been reinforced by judgments from regional international human-rights courts. Both the Court's judgments[25] and those of the Inter-American Court of Human Rights[26] have reiterated that criminal proceedings and sentencing

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inhuman and degrading treatment, summary and arbitrary killing, enforced disappearances and crimes against humanity, UNHRC General Comment No. 31, CCPR/C/2 1/Rev. 1/Add. 13, paragraph 18, takes a more nuanced position, by stating that "Other impediments to the establishment of legal responsibility should also be removed, such as the defence of obedience to superior orders or unreasonably short periods of statutory limitation in cases where such limitations are applicable."

[21] Report of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism, Mission to Peru, A/HRC/16/51/Add 3, 15 December 2010, paragraphs 17, 18 and 43(c).

[22] Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Mission to the Republic of Moldova, A/HRC/10/44/ADU.3, 12 February 2009, paragraph 81, and Follow-up to the recommendations made, A/HRC/19/61/Add.3, 1 March 2012, paragraphs 78 and 116.

[23] Promotion and Protection of Human Rights, impunity, Report of the independent expert to update the set of principles to combat impunity, E/CN.4/2005/102, 18 February 2005, paragraph 47.

[24] In this context, a right to the truth has been invoked by the United Nations High Commissioner for Human Rights (see "Study on the right to the truth", E/CN.4/2006/91) 2006, which concluded that "the right to the truth about gross human-rights violations and serious violations of human-rights law is an inalienable and autonomous right" and "should be considered as a non-derogable right and not be subject to limitations." Accordingly, "amnesties or similar measures and restrictions to the right to seek information must never be used to limit, deny or impair the right to the truth."

[25] See *Abdülsamet Yaman v. Turkey*, no. 32446/96, § 55, 2 November 2004; *Yeter v. Turkey*, no. 33750/03, § 70, 13 January 2009; and *İzci v. Turkey*, no. 42606/05, § 73, 23 July 2013.

[26] See *Barrios Altos v. Peru Judgment of 14 March 2001, Series C, No. 75*, paragraph 41 (referring to serious human-rights violations, such as torture, extrajudicial, summary or arbitrary execution and forced disappearance), reiterated repeatedly in *Rochela Massacre v. Colombia Judgment of 11 May 2007, Series C, No. 163*, paragraph 294; *Case of Ticona Estrada et al. v. Bolivia. Merits, Reparations, and Costs. Judgment of November 27, 2008. Series C No. 191*, paragraph 147; *Los Dos Erres Massacre v. Guatemala, Judgment (Preliminary Objection, Merits, Reparation and Costs) of 24 November 2009*, paragraph 233; *Case of Anzualdo Castro v. Peru. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 22, 2009. Series C No. 202*, paragraph 182; and *Case Gomes Lund et al. (Guerrilla do Araguaia") v. Brazil. Preliminary Objections, Merits, Reparations and Costs. Judgment of 24 November 2010*, paragraph 172. This

in torture cases should not be time-barred. The International Criminal Tribunal for the Former Yugoslavia (ICTY) also made a statement to that effect[27]. In view of these judicial precedents, and the above-mentioned provision of the Arab Charter on Human Rights, the principle of the imprescriptibility of the crime of torture can be said to have crystallised into an international treaty obligation in three regional systems, namely the Arab, the European and the American ones, but without yet having attained the legal strength of customary international law[28].

The application of criminal law by the national authorities

8. The respondent State accepts that the offences in relation to the death by gunshot of Mr Mocanu are not subject to statutory limitation, in accordance with Article 121(2)(b) of the Romanian Criminal Code: "prescription does not remove liability concerning the offences provided for by Articles 174-176 of the Criminal Code and intentional crimes resulting in the death of the victim."[29] Furthermore, it does not contest the Chamber's conclusions as to the length of the proceedings brought by the applicant association as a civil party.[30]

9. Like many others before him, Mr Stoica complained in 2001 about the crimes of which he had been a victim. In line with the views of the prosecutor's office at the Bucharest County Court, the respondent State argued that his complaint has been time-barred since 16 June 1998 (that is, a limitation period of eight years in respect of the crime of attempted homicide), 16 June 1995 (five years in respect of the offence of abusive conduct) and 16 June 1998 (eight years in respect of the offence of aggravated theft). This submission is not convincing.

The national judicial and prosecutorial authorities did not agree on the legal classification of the various acts of repression committed in June 1990, which were given very different legal classifications by the various domestic authorities responsible for the investigation, such as sedition,

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position was seconded by the Inter-American Commission on Human Rights (Case 10480 (El Salvador), Report of 27 January 1999, paragraph 113 (referring to torture, summary executions and forced disappearances).

[27] See *Prosecutor v. Furundzija*, 16 November 1998, IT-95-17/1-T, paragraphs 155 and 157. The appeals chamber judgment of 21 July 2000, paragraph 111, confirmed the first-instance reasoning.

[28] It is to be noted that the concept of torture does not have the exact same content in these three regional human-rights systems, which makes it even more difficult to attain the level of a universal customary rule. In addition, domestic criminal laws vary significantly with regard to the statute of limitations applicable to the crime of torture among States which criminalise this offence autonomously, most of them preferring long statutory periods to imprescriptibility.

[29] See page 6 of the Government's submissions to the Grand Chamber, 1 July 2013.

[30] See page 23 of the Government's submissions to the Grand Chamber, 1 July 2013.

sabotage, propaganda in favour of war, genocide, incitement to or participation in unlawful aggravated killing, inhuman treatment, torture, unjust repression, blackmail, abuse of power against the public interest entailing serious consequences, armed robbery, unlawful deprivation of liberty, abusive conduct, abusive investigation, abuse of power against private interests, assault, actual bodily harm, grievous bodily harm, destruction of property, theft, breaking and entering homes, malfeasance and rape, among others (see paragraphs 83, 91, 106, 108, 113, 115, 126, 137, 147, 150, 156-159 and 167 of the judgment).

In the particular case of Mr Stoica, there was nothing to prevent the crimes of which he had been a victim from being investigated ex officio and in a timely manner, since the State had all the evidentiary elements necessary to identify him as one of the victims of the brutal events in the basement of the television building[31]. Moreover, neither the judgment of 9 March 2011 nor the decision to discontinue proceedings of 17 June 2009 indicated whether the time-limit for prosecution had expired before or after his complaint had been lodged. Most importantly, the judgment of 9 March 2011, while dismissing Mr Stoica's appeal, did not even rule on the definition and applicability of the most serious crime imputed to the defendants, namely inhuman treatment (Article 358 of the Romanian Criminal Code), which had nonetheless been the subject of the decision to terminate proceedings of 17 June 2009 and the decision of non-jurisdiction of 29 April 2008.

Finally, the decision of 17 June 2009 to discontinue proceedings on the basis that the essential elements of the crime of inhuman treatment had not been present in this case, since the enemies of the security forces and miners, namely the demonstrators, had already been annihilated or neutralised on 14 June 1990 (see paragraph 161 of the judgment), bluntly contradicts the reality of the facts (see paragraphs 60-72 and 347 of the judgment). These inadmissible contradictions and omissions call for a review of the case in the light of the respondent State's international obligations.

The assessment of the facts under international law

10. The crackdown on Romanian civil society between 13 and 15 June 1990 was wild and barbaric, leaving many demonstrators, passers-by and residents of Bucharest dead and severely ill-treated. Approximately 100 persons died during the events and more than one thousand were subjected to severe ill-treatment (see paragraphs 142 and 143 of the judgment). These facts were also set out in the decision by the prosecutor's

[31] I refer to a video recording, filmed by the authorities themselves, of the events in the basement of the State television station on 13 June 1990, and to the victim's identity documents, which were confiscated on that occasion.

office of 17 June 2009, which comprehensively describes “acts of extreme cruelty”, with “violence being used indiscriminately against demonstrators and Bucharest residents who were totally unconnected with the demonstrations” and “demonstrators being brutally assaulted” (see paragraphs 63 and 154 of the judgment). The element of mass murder, torture, persecution and inhumane acts against civilian victims is present in the case at hand[32].

11. The applicant Mr Stoica was attacked without any justification and suffered severe injuries, as evidenced in the medical reports joined to the case file. These refer to an adaptive incapacity of 72% and a total loss of capacity for work, on account of an “aggravated overall deficiency”. These injuries were committed by armed agents of the respondent State, with the involvement of the then director of the State television station, police officers and servicemen (see paragraph 50 of the judgment). This incident involving Mr Stoica fits into a pattern of more than one thousand civilian victims of organised State repression by “mixed teams” of civilians and servicemen (see paragraph 63 of the judgment)[33]. The same conclusion applies to the killing of Mr Mocanu and the ransacking of the applicant association’ offices, the brutal beating of its leaders and the unlawful seizure of its property and documents (see paragraphs 64 and 65 of the judgment).

12. In fact, the Romanian government meticulously organised and thoroughly implemented a policy of repression against the demonstrators and opponents who called for political reform in 1990. The brutality of the repression has been underlined both in domestic decisions and by the Court

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[32] The fact of committing murder, torture, persecution and inhumane acts has always been considered as an element of the notion of crimes against humanity (see Article 6 (c) of the International Military Tribunal (IMT) Charter; Article 5 (c) of the International Military Tribunal for the Far East (IMTFE) Charter; Article 2 § 1 (c) of Control Council Law no. 10; Article 5 of the Statute of the ICTY; Article 3 of the Statute of the International Criminal Tribunal for Rwanda (ICTR); Article 18 of the 1996 Draft Code of Crimes against the Peace and Security of Mankind; and Article 7 § 1 of the Statute of the International Criminal Court (Rome Statute). In Rome, sexual crimes other than rape, forced disappearance and apartheid were added to the usual list.

[33] The fact of committing an attack against the civilian population has been stressed as the basic element of the notion of crimes against humanity since at least the common declaration of France, United Kingdom and Russia of 24 May 1915, on the attacks of the Turkish Government against their own population of Armenian origin. Article 6 (c) of the IMT Charter, Article 5 (c) of the IMTFE Charter, Article 2, § 1 (c) of Control Council Law no. 10, Article 5 of the Statute of the ICTY, Article 3 of the Statute of the ICTR and Article 7 § 1 of the Rome Statute codified this element. References to an attack against the civilian population on national, political, ethnic, racial or religious grounds have been interpreted as not excluding attacks on civilians without discriminatory intention, with the exception of persecutions (see, for example, *Duško Tadić*, 15 July 1999, IT-94-1, §§ 283, 292 and 305; *Tihomir Blaškić*, 3 March 2000, IT-95-14, §§ 244 and 260; and *Dario Kordić and Mario Čerkez*, 26 February 2001, IT-95-14/2, § 186). The attack may include any civilian population, including third parties to a conflict (*Dragoljub Kunarac et al.*, 22 February 2001, IT-96-23&23/1, § 423).

(“brutal charge”, “hitting out blindly”, “brutally arrested”, “brutally attacking”, “violence and assaults of a psychological, physical and sexual nature”; see paragraphs 37, 39, 50, 75 and 81 of the judgment)[34]. This repressive policy involved the police, the army and mobilised civilians, and was carried out using tanks and heavy ammunition, although the demonstrations were being held for peaceful political purposes (see paragraph 27 of the judgment)[35]. The mobilisation, transportation to and accommodation in Bucharest of 5,000 miners and other workers, armed with axes, chains, sticks and metal cables, was in itself the central part of this plan (see paragraphs 34, 36, 58, 78 and 110 of the judgment). The element of a widespread and systematic repressive State policy is clearly present in the case under review[36].

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[34] For a description of the transitional period experienced by Romanian society from December 1989 to September 1991 and references to the “massive use of lethal force against the civilian population” during the “anti-government demonstrations preceding the transition from a totalitarian regime to a more democratic regime”, see *Şandru and Others*, cited above, *“Association 21 December 1989” and Others*, cited above, and *Crăiniceanu and Frumuşanu v. Romania*, no. 12442/04, 24 April 2012.

[35] The demonstrators’ most important demands were related to implementation of the so-called Proclamation of Timişoara, and namely one of its main objectives: the exclusion of former leaders of the Communist regime from political life (see paragraph 27 of the judgment). To peaceful, political protest the Government offered a heavy-handed, armed response. The link to an armed conflict as an element of the notion of crimes against humanity, which resulted from Article 6 (c) of the IMT Charter, Article 5 (c) of the IMTFE Charter and Article 5 of Statute of the ICTY, was abandoned by Article 2 § 1 (c) of Control Council Law no. 10, Article 3 of the Statute of the ICTR, Article 18 of the 1996 Draft Code of Crimes against the Peace and Security of Mankind and Article 7 § 1 of the Rome Statute. As the ICTY appeals chamber concluded in *Duško Tadić*, 2 October 1995, IT-94-1, § 141, “customary international law may not require a connection between crimes against humanity and any conflict at all”. The same position was taken by the ICTR in *Jean-Paul Akayeasu*, 2 September 1998, ICTR-96-4, § 565, and *Ignace Bagilishema*, 7 June 2011, ICTR-95-1, § 74.

[36] That a widespread and/or systematic attack is an element of the notion of crimes against humanity, which implies the existence of a plan, a *complot*, an organised action, was already noted at the “Constantinople trials” of 1919 (see the separate opinion of Judges Vučinić and Pinto de Albuquerque in *Perinçek v. Switzerland*, cited above), and later included in Article 3 of the Statute of the ICTR, Article 18 of the 1996 Draft Code of Crimes against the Peace and Security of Mankind and Article 7 § 1 of the Rome Statute. Such an attack is not limited to the use of military force and may include every sort of ill-treatment inflicted on the civilian population (see ICTR appeals chamber, *Duško Tadić*, 15 July 1999, IT-94-1, § 251, and *Dragoljub Kunarac et al.*, 12 June 2002, IT-96-23&23/1, § 86). The widespread character of the attack implies its massive nature and a multiplicity of victims, resulting from the cumulative effect of a series of individual acts or the singular effect of one single act of extraordinary magnitude, but excluding in principle an isolated act, except when it occurs in the context of a more general attack (see, *inter alia*, *Duško Tadić*, 7 May 1997, IT-94-1, § 648; *Tihomir Blaškić*, 3 March 2000, IT-95-14, § 206; *Dragoljub Kunarac et al.*, 22 February 2001, IT-96-23&23/1, § 429; *Jean-Paul Akayesu*, 2 September 1998, ICTR-95-1, § 123; and *George Rutaganda*, 6 December 1999, ICTR-96-3, § 69). The systematic character of the attack implies a minimum of planning and

13. Most decisive of all is the fact that this repression, involving such a large array of human and material means, was prepared and "planned" during meetings attended by the country's highest State officials (see paragraphs 33-36 of the judgment). These officials took the decision to launch a policy aimed at stifling the opposition at any cost and carried it out cold-bloodedly. The barbaric attack on civilians which followed was not only foreseen by those who had delineated the repressive policy, but was intended to achieve the political purposes of the then ruling elite and to ensure its survival. The existence of the subjective element of the crimes against humanity cannot be questioned in the present case[37].

14. Whatever their legal classification in domestic law at the relevant time, the events referred to above represent massive violations of the right to life, the right to physical and sexual integrity, the right to property and other fundamental human rights of the Romanian citizens and legal persons who were victims of a State policy of repression of political opponents of the then Government. In legal terminology, these facts have only one designation. The events of June 1990 amount to a crime against humanity, committed as part of a widespread and systematic attack directed against a civilian population.

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organisation, although this plan need not necessarily be declared expressly or even stated clearly and precisely and may be surmised from the occurrence of a series of events, such as the mobilisation of armed forces, excluding in principle fortuitous or spontaneous acts of violence (see *Goran Jelisić*, 14 December 1999, IT-95-10, § 53; *Tihomir Blaškić*, 3 March 2000, IT-95-14, §§ 203-207; and *Dragoljub Kunarac et al.*, 22 February 2001, IT-96-23&23/1, § 428-429). In spite of the alternative formulation of these two characteristics of an attack in Article 7 § 1 of the Rome Statute, its definition of "attack" in § 2 (a) of the same Article underlines the connection to a "policy" in any case ("pursuant to or in furtherance of a State or organisational policy to commit such attack").

[37] Subjectively, perpetrators of crimes against humanity must have knowledge of the general context in which the assault occurred and the connection between their actions and that context, but they do not have to have full knowledge of all details of the attack (see *Kayishema and Ruzindana*, 21 May 1999, ICTR-95-1, § 133; *Dragoljub Kunarac et al.*, 22 February 2001, IT-96-23&23/1, § 592; *Germain Katanaga and Mathieu Ngudjolo Chui*, 30 September 2008, ICC-01/04-01/07, § 417; and *Omar Al Bashir*, 4 March 2009, ICC-02/05-01/09, § 87). From the evidence in the file, it follows that both the members of the Government and the senior military officials involved in the preparation and execution of the assault on University Square, the headquarters of opposition parties and other legal entities and in other areas of the city did indeed have such knowledge, and deliberately and wilfully pursued the attack against the civilian population. In fact, similar violent actions by the miners had already occurred in the recent past in Bucharest, and therefore the authorities were well aware of what would happen if they were again "mobilised" (see paragraph 24). It is to be highlighted that, after "inviting them to cooperate with the security forces and to restore order", the then President of the respondent State "thanked" the miners for their chaotic and violent actions and "authorised" them to leave the city on 15 June 1990 (see paragraphs 61 and 69 of the judgment). These words speak for themselves, and show *urbi et orbi* who had effective control of the miners' actions.

The respondent State's international obligations

15. On 7 July 2009 the High Court of Cassation and Justice confirmed, in an exemplary demonstration of commitment to the rule of law, a decision on the applicability of Article 358 of the Romanian Criminal Code to the arrest and death in 1948 of a political opponent of the totalitarian regime, interpreting "inhuman treatment" as "treatment which is difficult to endure physically and is humiliating". The same commitment must be shown in the present case, where the investigated facts are much more serious, and the respondent State has not yet complied with its international obligations[38].

16. Romania ratified, on 15 September 1969, the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, which came into force on 11 November 1970. Thus, Romania had, at the time of the facts of the present case, an international obligation not to apply statutory limitations to war crimes and crimes against humanity[39]. This obligation was reinforced by the procedural obligations deriving from Article 2 and 3 of the Convention, after its entry into force in Romania.

17. The issue now is to determine the facts of the case correctly in criminal-law terms, which the highest domestic judicial and prosecutorial authorities have so far failed to do. Manipulation of the legal classification of the events, in order to submit them to time limitations that would not apply if they had been correctly classified, defeats the very object and purpose of both Articles 2 and 3 of the Convention and Article 1 of the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity. Here lies the crux of the case. As demonstrated above, all of the evidence in the case file points to the existence of the constituent elements of a crime against humanity, committed by senior officers of the Romanian State, including members of the then Government and high-ranking military officials. It is up to the respondent State to fulfil its international obligation and to bring to justice those responsible for the widespread and systematic attack against the Romanian civilian population, and especially those who committed these crimes while exercising their civil authority or their military command. Moreover, in order to implement fully the Grand Chamber's judgment, the respondent State should also establish an effective official mechanism to compensate the victims of the massive human-rights violations and their

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[38] In spite of certain laudable statements by several prosecutorial and judicial authorities in Romania, such as those transcribed in paragraphs 110 and 118 of the judgment, justice has not yet been done.

[39] The respondent State accepts that "non-applicability of statutory limitation is exceptional and is, in principle, reserved for offences under international criminal law (genocide, crimes against humanity and war crimes)" (see page 23 of the Government's submissions to the Grand Chamber, 1 July 2013).

families which occurred during that transitional period, in view of the significant number of pending cases before the Court and the considerable number of other victims of these same events[40].

Conclusion

18. Time exonerates neither the Romanian State from its international obligations nor the individual offenders from their criminal liability. The procedural obligations deriving from Article 2 and 3 of the Convention require a fair trial of those responsible for the crimes against humanity committed against Romanian civilians in the tortuous transitional period to democracy. While it is impossible to punish every perpetrator of crimes against humanity, criminal trials, particularly of those who held positions of civil authority and military command, are demonstrative of the judiciary's maturity and ability to deal with past errors, and simultaneously reinforce its standing among national citizens and international organisations. This is not simply a question of the justice which must be done towards Mrs Mocanu, whose unarmed husband was killed without even having taken part in the demonstrations and whose two children, aged two months and two years at the time, had no opportunity to know their father (see paragraphs 44 and 135 of the judgment), towards Mr Stoica, a simple passer-by who is named in the domestic proceedings as a party injured by the crime of "inhuman treatment" for which five senior army officers were investigated and accused (see paragraph 168 of the judgment), and, last but not least, towards the applicant association, whose leaders were "brutally" attacked, whose offices were vandalised and whose property and documents were seized in breach of legal formalities (see paragraphs 75-76 of the judgment). It is much more than that. Justice must be done towards all those Romanian citizens who had to endure organised and inhuman State repression in hard transitional times in order to achieve a fully democratic political regime.

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[40] In *"Association 21 December 1989" and Others*, cited above, § 194, the Court had already ordered that "the respondent State must put an end to the situation identified in the present case and found by it to have been in breach of the Convention, concerning the right of the many persons affected, such as the individual applicants, to an effective investigation which is not terminated by application of the statutory limitation of criminal liability, and in view also of the importance to Romanian society of knowing the truth about the events of December 1989. The respondent State must therefore introduce an appropriate remedy in order to comply with the requirements of Article 46 of the Convention." The same applies to the events of June 1990.

PARTLY DISSENTING OPINION OF JUDGE SILVIS, JOINED BY JUDGE STRETEANU

1. This case concerns the crackdown on anti-government demonstrations from 13 to 15 June 1990 in the Romanian capital, which resulted in several civilian casualties, including the first applicant's husband, Mr Velicu Valentin Mocanu, who was killed by a shot fired from the headquarters of the Ministry of the Interior. Mr Marin Stoica, the second applicant, and other persons were arrested and ill-treated by uniformed police officers and men in civilian clothing in the area around the headquarters of the State television service and in the basement of that building. I agree with the finding in the judgment concerning a violation of the procedural aspect of Article 2 of the Convention in respect of Mrs Anca Mocanu. It is the Court's established case-law that the procedural obligation to carry out an effective investigation under Article 2 constitutes a separate and autonomous duty on Contracting States. It can therefore be considered an independent obligation arising out of Article 2, capable of binding the State even when the substantive aspect of Article 2 is outside of the Court's jurisdiction, by reason of *ratione temporis* (see *Šilih v. Slovenia* [GC], no. 71463/01, § 159, 9 April 2009). However, I cannot follow the majority in its conclusion that the applicant Mr Stoica lodged his application concerning a procedural violation of Article 3 of the Convention in due time.

2. The applicant Mr Marin Stoica lodged his first complaint at domestic level eleven years after the events took place. On 25 June 2008, more than eighteen years after the events, the applicant lodged his application with the Strasbourg Court. With regard to his application, the Chamber had previously considered that, just as it was imperative that the relevant domestic authorities launched an investigation and took measures as soon as allegations of ill-treatment were brought to their attention, it was also incumbent on the persons concerned to display diligence and initiative. Thus, the Chamber attached particular importance to the fact that the applicant had not brought his complaint concerning the violence to which he was subjected on 13 June 1990 to the authorities' attention until eleven years after those events. Although the Chamber could accept that in situations of mass violations of fundamental rights it was appropriate to take account of victims' vulnerability, especially a possible inability to lodge complaints for fear of reprisals, it found no convincing argument that would justify the applicant's passivity and decision to wait eleven years before submitting his complaint to the relevant authorities. Accordingly, the Chamber concluded that there had been no violation of the procedural aspect of Article 3 of the Convention. In contrast, the Grand Chamber considers that the applicant's vulnerability and his feeling of powerlessness,

which he shared with numerous other victims who, like him, waited for many years before lodging a complaint, amount to a plausible and acceptable explanation for his inactivity from 1990 to 2001.

3. Where time is of the essence in resolving the issues in a case, there is a burden on the applicant to ensure that his or her claims are raised before the Court with the necessary expedition to ensure that they may be properly, and fairly, resolved (see *Varnava and Others* [GC], cited by the Court, § 160). This is particularly true with respect to complaints relating to any obligation under the Convention to investigate certain events. As the passage of time can lead to the deterioration of evidence, time has an effect not only on the fulfilment of the State's obligation to investigate but also on the meaningfulness and effectiveness of the Court's own examination of the case. I do not share the view that when it becomes, *ex post facto*, probable that the tardiness of a complaint has not led to a deterioration in the quality of the Court's examination, this would excuse the failure to display diligence in lodging a complaint in due time.

4. In a number of cases the Court has rejected as out of time applications where there had been an excessive or unexplained delay on the part of applicants once they had, or ought to have, become aware that no investigation had been instigated or that the investigation had lapsed into inaction or become ineffective and, in any of those scenarios, that there was no immediate, realistic prospect of an effective investigation being provided in the future (see, *inter alia*, *Narin v. Turkey*, cited by the Court, § 51; *Aydinlar and Others v. Turkey* (dec.), no. 3575/05, 9 March 2010; and the decision in *Frandes*, cited by the Court, §§ 18-23). The Court accepts that there is evidence that the applicant was keeping track of developments in the criminal investigation prior to 18 June 2001.

5. It is understandable that, following the events of June 1990, the applicant was in such a state of distress that he was initially afraid of the oppressive authorities. However, the reason given for not filing complaints on the domestic level for a number of years after 1994, that is, when Romania had already become a Party to the Convention, was a lack of confidence in the effectiveness of the ongoing investigations. That state of affairs should normally have triggered the beginning of the six-month rule on filing a complaint with the Court. An applicant has to become active once it is clear that no effective investigation will be provided, in other words, once it becomes apparent that the respondent State will not fulfil its obligation under the Convention (see *Chiragov and Others v. Armenia* (dec.) [GC], no. 13216/05, § 136, 14 December 2011, and *Sargsyan v. Azerbaijan* (dec.) [GC], no. 40167/06, § 135, 14 December 2011, both referring to *Varnava and Others*, cited by the Court, § 161). I find it hard to

understand that the Court can only conclude, having regard to the exceptional circumstances in issue, that the applicant was in a situation in which it was not unreasonable for him to wait for developments that could have resolved crucial factual or legal issues. Such a conclusion seems hardly compatible with the degree of diligence incumbent on the applicant; nor does it promote meaningful and effective examination of such cases by the Court.

PARTLY DISSENTING OPINION OF JUDGE WOJTYCZEK

(Translation)

1. I do not share the majority's opinion that the Court has jurisdiction *ratione temporis* to examine the complaints under the procedural aspect of Articles 2 and 3 of the Convention. In my opinion, these two complaints fall outside the temporal scope of the Convention and the part of the application based on these two Articles ought to have been declared inadmissible for this reason. Consequently, it is not necessary to dismiss, or even to examine the objections raised by the Government. Given that Articles 2 and 3 of the Convention are not applicable in this case, the respondent State could not have breached those provisions. In addition, in the absence of a violation of the Convention, there is no need to award compensation under this head.

2. I have no doubt that the facts as established by the Court in the present case represent very serious violations of human rights, and that those violations must not on any account go unpunished. Prosecution of those responsible is not only a moral duty, but also a legal obligation under national law. Moreover, I note that Romania ratified the International Covenant on Civil and Political Rights on 9 December 1974. The various complaints put forward fall within the temporal scope of that Covenant. While the European Court of Human Rights does not have jurisdiction to ensure compliance with this Pact, nor to rule on possible violations of its provisions, in a separate opinion one may nonetheless point out that the facts established in the present case amount to a violation of the obligations arising from it. However, these various rules of international law cannot in themselves extend the temporal scope of the Convention for the Protection of Human Rights and Fundamental Freedoms.

3. I set out my position concerning the temporal scope of the Convention in my separate opinion joined to the judgment delivered by the Grand Chamber in the case of *Janowiec and Others v. Russia* ([GC], nos. 55508/07 and 29520/09, 21 October 2013). I reaffirm my position, and also my agreement with the ideas expressed in the dissenting opinion expressed by Judges Bratza and Türmen, joined to the judgment in *Šilih v. Slovenia* [GC] (no. 71463/01, 9 April 2009). In the present case, I should like to make some additional clarifications on this matter.

4. In my opinion, a precise analysis requires that a distinction be made between two concepts: the temporal scope of a treaty (in other words, its temporal ambit) and the jurisdiction *ratione temporis* of the body responsible for verifying compliance with it. The temporal scope of a treaty is a matter of substantive law, while the extent of an international body's

jurisdiction *ratione temporis* is governed by the rules on jurisdiction. The jurisdiction *ratione temporis* of an international court does not necessary coincide with the temporal scope of the treaty which it is required to apply. A legal rule defining the extent of the jurisdiction of an international court may indeed restrict this jurisdiction with regard to events which fell within the temporal scope of the treaty in respect of which it is required to verify compliance. It would be more correct to refer in point no. 1 of the operative provisions to the concept of the Convention's temporal scope.

5. The Court has on numerous occasions affirmed, rightly, that the Convention does not operate in a legal vacuum, and that it must be interpreted in the context of the other rules of international law. The various rules which make up the external context for interpretation of a treaty do not always have the same weight, or the same role in the system of international law. In fact, the rules of treaty law occupy a special position, in that they are meta-regulatory in nature and guarantee the coherence of international law. Before resorting in this case to the substantive rules applicable in interpreting and applying the Convention, due account should first have been given to the various metarules governing treaties, particularly those concerning their entry into force, their binding force, their interpretation, their application and the Convention's temporal and territorial scope.

The main rules of the law of treaties were codified by the Vienna Convention on the Law of Treaties. Although this treaty does not apply, as such, to the Convention for the Protection of Human Rights and Fundamental Freedoms, it codifies the rules of customary international law which are applicable in this case. Article 28 of the Vienna Convention sets out the principle that treaties do not have retroactive effect in the following terms: "Unless a different intention appears from the treaty or is otherwise established, its provisions do not bind a party in relation to any act or fact which took place or any situation which ceased to exist before the date of the entry into force of the treaty with respect to that party". Although the non-retroactive effect of treaties is not an absolute principle, the parties' wish to give retroactive effect to a convention rule must be expressed with sufficient clarity. Moreover, it must be emphasised that the exact meaning of the principle that a law must not be applied with retroactive effect may be open to discussion, and that it is not always easy in practice to apply the rule laid down by Article 28 of the Vienna Convention.

6. The Court has expressly acknowledged the principle that the Convention does not have retroactive effect, and has applied it coherently for many years. There was initially no doubt that the Convention could not impose an obligation to carry out an investigation into events which occurred prior to its entry into force with regard to the respondent State. The Court confirmed this case-law with regard to Romania in the case of

Moldovan and Others and Rostaş and Others v. Romania ((dec.), nos. 41138/98 and 64320/01, 13 March 2001). The approach changed completely with the above-cited *Šilih* judgment. That judgment partly accepts the retroactive application of the Convention to events which occurred prior to the date of its ratification by the respondent State, by laying down the principle that, subject to certain conditions, the Convention imposes an obligation to investigate such events.

Here we should note, in passing, the Court's decision in the case of *Bălăşoiu v. Romania* (no. 37424/97, 2 September 2003). The approach taken was a departure from the well-established case-law, but no grounds were given for it and the decision in question did not lay down any general rule in this area. The rule prohibiting retroactive effect was subsequently complied with and upheld in other cases examined by the Court prior to 9 April 2009.

In this context, it is clear that the Court's consistent case-law, maintained until the *Šilih* judgment, gave the States a legitimate expectation concerning the definition of the Convention's temporal scope. This consistency in the case-law created a situation in the relations between the High Contracting Parties and the Court that was comparable, albeit somewhat different, to the expectations protected in inter-State relations under the principle of estoppel. The States which ratified the Convention before the date of the *Šilih* judgment did so taking into consideration the fact that they would not have to answer for violations committed prior to the date on which the Convention entered into force in their respect, and that the Convention did not impose on them an obligation to investigate events which occurred prior to that date. This was the case, in particular, for Romania, which ratified the Convention on 20 June 1994. The States Parties could in consequence devise actions to ensure protection of human rights, notably by determining priorities and assigning the necessary resources. Until the *Šilih* judgment, it was impossible for the High Contracting Parties to foresee that they could be held responsible for acts and omissions in the area of investigations into events which occurred before the date of the Convention's entry into force in their respect. The *Šilih* judgment led to a situation in which States' responsibility was engaged for acts and omissions which had been considered as falling outside the temporal scope of the Convention as it was interpreted and applied at the moment of these acts and omissions.

7. The supporters of an approach which allows exceptions to the principle that the Convention does not have retroactive effect emphasise the need for an evolutive interpretation of the Convention in such a way as gradually to extend human-rights protection. However, the issue of the content of protected rights is completely different from that of their temporal scope. Equally, a wide interpretation of the content of protected rights cannot be compared to extension into the past of protection for those

same rights. Amendments through the case-law to a treaty's temporal scope for the purpose of giving it retroactive effect have serious implications for the effectiveness of international law.

The principle of non-retroactivity of legal norms is an essential guarantee of legal certainty and a fundamental condition for confidence in the law and for a rational policy of human-rights protection. We must reject the idea that protection of legal certainty in international law should serve only individuals, and not States. Effective protection of human rights in Europe requires a minimum level of trust in the relationship between States and the international bodies responsible for implementing the treaties in this area. It also requires loyalty on the part of those bodies. Attribution of retroactive effect to a treaty by means of the case-law, following several decades of well-established case-law upholding the principle that the treaty is not to be applied retroactively, may undermine the trust that is necessary for the effective functioning of this international instrument. States whose acts or omissions were not considered at the relevant time as contrary to the Convention are today held responsible for them. Such an approach does not encourage States to respect international law. It also raises the question of the legitimacy of the international court, exposing it to the – legitimate – criticism that it is exercising judicial activism.

8. It should be added that the position adopted in the *Šilih* judgment has never been explained, or justified, from the perspective of the rules of the law of treaties. This case-law contributes to the fragmentation of international law which has been criticised in the legal scholarship. Further, this fragmentation does not concern the substantive law, but relates to the fundamental meta-rules of international law and may lead to the development of systems which derogate from the universal law of treaties.

In addition, as was quite rightly emphasised by Judge Lorenzen in his concurring opinion attached to the *Šilih* judgment, the criteria established in that judgment are not clear. Moreover, the (above-cited) *Janowiec* judgment did nothing to clarify them. In those circumstances, it is frequently difficult to ascertain whether given events which occurred prior to the Convention's entry into force in respect of a given State give rise to the obligation to investigate and prosecute. This produces a situation of judicial uncertainty, both for individuals and for States. As the *Janowiec* case shows, the engendering of excessive hopes with regard to the protection of human rights, prompted by the "fuzziness of the law", may lead to the erosion of the legitimacy of the entire system of human-rights protection in Europe. If the Convention is to remain a living and effective instrument, it seems that the optimal solution for resolving the various problems created by the *Šilih* case-law consists in returning to a strict application of the law of treaties, the primary condition for judicial certainty and the foreseeability of the law.

Without these, it is difficult to develop large-scale policies in the area of human-rights protection in the States Parties.

9. I fully accept the idea that Articles 2 and 3 of the Convention contain a substantive aspect and a procedural aspect, and that the latter differs from the former. However, I agree with the opinion of Judges Bratza and Türmen to the effect that the procedural aspect is not detachable from the acts constitutive of a violation of the substantive limb of the articles in question (see their separate opinion, cited above). The obligation to carry out an investigation is separate from, but instrumental and subsidiary to, the substantive protection. The procedural obligations are an instrument for implementation of the substantive obligations. They can only take effect in respect of events which occurred after the date on which the Convention entered into force in respect of the respondent State. Indeed, the Court is conscious of the link between these two aspects of protection when it states that "there must exist a genuine connection between the death and the entry into force of the Convention in respect of the respondent State for the procedural obligations imposed by Article 2 to come into effect" (see *Šilih*, cited above, § 163). If the procedural limb were genuinely fully independent from the substantive limb and if the obligation to investigate events prior to the entry into force of the Convention in respect of the respondent State did not give rise to an issue having regard to the principle of the non-retroactive effect of treaties, then why set out all these reservations and list the various conditions for the obligation in question?

10. It is also appropriate to specify that the issue of a violation of Article 6 of the Convention is framed in different terms. Many countries accept the principle that changes made to procedural law may apply to pending proceedings. The High Contracting Parties have had to apply the Article 6 safeguards as soon as they became applicable, especially the obligation to comply with the reasonable-time requirement in cases which were pending when the Convention entered into force. The applicability of Article 6 in the present case does not in any way mean that that provision has retroactive effect. The complaints raised under Article 6 of the Convention remain within the Convention's temporal scope. I voted with the majority on this question.

11. The majority emphasises the fact that "in cases concerning torture or ill-treatment inflicted by State agents, criminal proceedings ought not to be discontinued on account of a limitation period, and also that amnesties and pardons should not be tolerated in such cases" (see paragraph 326 of the judgment). I would note here a certain incoherence with the positions taken in the judgments in the cases of *Janowiec* (cited above) and *Margus v. Croatia* ([GC], no. 4455/10, 27 May 2014). In the *Janowiec* judgment –

which, it should be remembered, concerns war crimes – “[the Court] emphasise[d] the fundamental difference between having the possibility to prosecute an individual for a serious crime under international law where circumstances allow it, and being obliged to do so by the Convention” (see paragraph 151) and accepted the idea that the passage of time could extinguish the obligation to investigate and prosecute. In the case of *Margus*, the Court took a highly nuanced position on the question of amnesties, stating that “[a] growing tendency in international law is to see such amnesties as unacceptable because they are incompatible with the unanimously recognised obligation of States to prosecute and punish grave breaches of fundamental human rights. Even if it were to be accepted that amnesties are possible where there are some particular circumstances, such as a reconciliation process and/or a form of compensation to the victims, the amnesty granted to the applicant in the instant case would still not be acceptable since there is nothing to indicate that there were any such circumstances” (see paragraph 139). I do not see how the opinions expressed in these two latter judgments can be reconciled with the position adopted in the present case and set out above. The Court’s precise position on the issues of limitation and amnesty has thus yet to be clarified.

I subscribe fully to the idea that the crimes committed by the totalitarian and authoritarian regimes must be prosecuted, and the perpetrators brought to justice. However, I consider that the position taken by the majority in this case concerning the issue of limitations and amnesties is too rigid. The category of “ill-treatment” encompasses very different actions. Legitimate considerations of rational penal policy may justify limitation or amnesty, at least for acts of lesser seriousness.

12. The protection of human rights on the basis of the Convention for the Protection of Human Rights and Fundamental Freedoms has its limits and its lacunae. They are to be regretted, but we must accept them. It is for the High Contracting Parties to correct them by means of new treaties.