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

THIRD SECTION

CASE OF STOICA v. ROMANIA

(Application no. 42722/02)

JUDGMENT

STRASBOURG

4 March 2008

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

In the case of Stoica v. Romania,

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

Josep Casadevall, *President,*
Corneliu Bîrsan,
Boštjan M. Zupančič,
Alvina Gyulumyan,
Egbert Myjer,
Ineta Ziemele,
Luis López Guerra, *judges,*
and Santiago Quesada, *Section Registrar*,

Having deliberated in private on 12 February 2008,

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

PROCEDURE

1. The case originated in an application (no. 42722/02) against Romania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Romanian national of Roma origin, Mr Constantin Decebal Stoica ("the applicant"), on 19 November 2002.

2. The applicant was represented by his parents, Mrs Floarea Stoica and Mr Marin Dumitru Stoica, the European Roma Rights Center ("the ERRC") in Budapest, Hungary and the Roma Center for Social Intervention and Studies ("the Romani CRISS") in Bucharest. The Romanian Government ("the Government") were represented by their Agent, Mr R.-H. Radu, from the Ministry of Foreign Affairs.

3. The applicant alleged, in particular, under Article 3, that he had been ill-treated by police officers and that the ensuing investigation into the incidents had not been effective. He further alleged that the impugned events and the flaws in the investigation had been motivated by racial prejudice, in breach of Article 14 taken in conjunction with Article 3. Under Article 6 § 1 of the Convention, he also complained that he had no access to court to obtain redress for the alleged ill-treatment inflicted on him by the police officers. Lastly, the applicant alleged that no effective remedy was available to him to challenge the prosecutor's decision in the case.

4. On 8 November 2005 the Court decided to give notice of the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1987 and lives in Gulia, a village with an 80% Roma population in the commune of Dolhasca, Suceava county.

A. The ill-treatment inflicted on the applicant

6. On 3 April 2001 the deputy mayor, four police officers from the Dolhasca Police Force and their chief, six public guards from Dolhasca and a driver, left in three cars to enforce a by-law against owners whose cattle were grazing on public pasture. Three of the public guards were wearing black uniforms with hoods and carrying truncheons. At around 8 pm, on their way back to Dolhasca Police Station, they entered C.C.'s bar in Gulia to check the owner's documents. A conflict arose between the authorities and the 20-30 Roma gathered in front of the bar. The parties' submissions differ as to the sequence of events.

1. Applicant's version of the facts

7. F.L., a villager of Roma origin, was just leaving the bar as the police entered. Sergeant D.T. asked him whether he was a "Gypsy (*ţigan*) or Romanian". When F.L. answered that he was a Gypsy, the deputy mayor asked the police officers and the public guards to teach him and the other Roma "a lesson". The police and public guards started beating F.L. and other Roma who happened to be in the vicinity of the bar.

8. The applicant, who had just bought something from a nearby shop, ran away with other children, but was tripped up by D.T. who started beating, kicking and hitting him on the back of his head and pushed him into a ditch. The applicant told D.T. that he had just undergone head surgery and that the beating could endanger his life. D.T. continued beating him until the applicant lost consciousness. Several persons, including the applicant's schoolmates witnessed the incident. The deputy mayor and police officers were heard shouting racist remarks.

9. The officials left the premises, leaving the applicant unconscious on the ground. A.S., V.D. and I.C., witnesses to the incident, carried him to his parents' home.

2. Government's version of the facts

10. The deputy mayor entered C.C.'s bar with a police officer and complained about the insalubrious conditions in the premises and that C.C. allowed people to drink excessively.

11. C.C. asked his customers to leave the bar. During the discussions with the authorities, C.C. and his wife urged their customers, who were gathered in front of the bar, to antagonise the officials. The customers became aggressive. The police officers surrounded the deputy mayor in order to protect him. The officials returned quickly to their cars and left the premises immediately. The deputy mayor's car, which was the last to leave, was attacked by the locals with bats.

B. Applicant's medical examination

12. On the evening of 3 April 2001 the applicant was taken by his parents to Sfânta Maria Hospital in Iaşi.

13. On 6 April 2001 he was examined by a doctor from the Iaşi Forensic Institute. The certificate issued recorded the following:

> "- On the exterior upper side of the left elbow: a discontinuous excoriation of 1,2x1 cm with red haematic crust.
>
> - The space between the scapula and the vertebras: purple transversal linear ecchymoses, ranging from 9x3,2 cm to 5,52x2,8 cm, two on the right side, one on the left side.
>
> - On the exterior side of the right arm: one red transversal linear ecchymosis of 5,5x2 cm.
>
> - The subject states that he is experiencing pain in the right parietal epicranius but there are no visible exterior post-traumatic lesions...
>
> Conclusion
>
> Stoica Constantin presents with ecchymoses, thoracic concussion and excoriation, inflicted by a linear blunt instrument, which could date from 3 April 2001.
>
> He needs three to five days of medical care to recover."

14. With regard to his medical history, the applicant was diagnosed with brain disease and was operated upon on 20 December 1999. On 12 April 2001, the Commission for the Protection of Handicapped Persons established that he had a first-degree disability which required permanent supervision and a personal assistant.

C. Investigations into the incidents

15. On 4 April 2001, the 3 April incidents between the Roma and the authorities were discussed in the Mayor's office with representatives of the Prefect's Office, the Government and the Roma Party. Several persons gave evidence, including the applicant's mother and eyewitnesses.

On 5 April 2001 a report was sent to the Suceava Police Inspectorate ("the Suceava Police").

16. On 9 April 2001 the Romani CRISS, acting on behalf of the applicant, asked the commander of the Suceava Police to open criminal investigations into the incidents. The same day, they expressed their concern to the Prefect about the racist motivation behind the incidents.

17. On 18 April 2001 the Prefect informed the Romani CRISS that the Mayor's investigation of 4 April, in which his representative had also taken part, had excluded the possibility of any racist motivation being behind these incidents.

18. On 18 April 2001 the applicant's father lodged, on behalf of his son, a criminal complaint with the Bacău Military Prosecutor, against D.T., the other police officers and the deputy mayor.

19. On 5 June 2001 the Ombudsman, informed of the events by Romani CRISS, requested the opening of investigations by the Suceava Police, the Bacău Military Prosecutor, the Suceava Child Protection Agency and Suceava County Council and asked for compensation and aid for the applicant's family.

20. On 20 August 2001 the Suceava Child Protection Agency informed the Ombudsman that conciliation proceedings had been started and that 2,000,000 old Romanian lei (ROL) had been awarded to the applicant's family in aid for assistance in the psychological and medical recovery of the applicant.

21. On 29 May 2001 the Romani CRISS filed a criminal complaint with the Bacău Military Prosecutor against D.T. and the other persons allegedly responsible for the incidents, accusing them of abusive behaviour.

1. Investigations by the Suceava Police

22. The Suceava Police, hierarchically superior to Dolhasca Police Force, started the investigations into the case.

23. On 7 May 2001 evidence was heard from villagers D.D. and F.L., eyewitnesses, F.S., the applicant's mother and A.S., the father of another alleged victim.

They stated that either police officers or public guards had tripped up and then beaten the applicant.

24. Two police officers and the deputy mayor gave evidence on 8 May 2001. They stated that C.C. criticised the deputy mayor, alleging that he had won Roma votes by making false promises which he had reneged upon when elected. These words had roused the Roma gathered in front of the bar to protest against the officials, to insult them in Romani and to attack their cars as they were leaving. They stated that no villager had been beaten by any of the police officers and public guards that night and that all the officials had left the premises in a hurry by car.

25. Villager L.D. testified the same day that he had seen D.T. beating the applicant on his back and chest and that the officer had stopped when he had seen the witness approaching.

26. On 16 May 2001, the police heard evidence from the applicant. He reiterated that he had been tripped up and had fallen and that D.T. had punched him in the stomach, kicked him in the back and beaten him with a truncheon.

27. Giving evidence on the same day D.T. denied that he had beaten the applicant, declared that he had not even been carrying his truncheon that day and gave the same version of the facts as the other police and public guards.

28. Two police officers and four passers-by gave evidence that day, all stating that no violence had been used by the authorities.

29. On 1 June 2001 the Suceava Police sent its final report to the Bacău Military Prosecutor. It proposed not to press charges against the accused persons.

30. On 11 June 2001 the Suceava Police informed the Ombudsman and the Romani CRISS that the proceedings concerning the accusations of abusive behaviour against sergeant D.T. were pending, and that the final decision would be taken by the Military Prosecutor's Office.

On 11 July 2001 the Suceava Police informed the Ombudsman that the case had been sent to the Bacău Military Prosecutor with recommendation not to press charges.

2. Investigations by the Military Prosecutor

31. On 20, 21 and 31 August, 3 and 13 September 2001 the prosecutor heard evidence from several persons: C.C., the owner of the pub, and E.C., his wife, the applicant, his father, D.S., and mother, D.F., four villagers who had witnessed the conflict, the deputy mayor (twice), the eleven police officers and guards, including D.T. and four passers-by. All of them maintained the version of events they had given to the Suceava Police. The Roma involved contended, mainly, that they had seen the police officers and public guards using violence against some of the Roma children present while the officials denied the allegations. The passers-by supported the authorities' version. The school principal and the head of the Roma Party stated that the Roma refused to send their children to school after the incidents, for fear of reprisal.

32. C.C. stated the following:

> "20 to 30 Roma armed with bats, axes etc. gathered around the three cars. I yelled at the deputy mayor: 'We voted for you in the elections and now you come to kill our people!' As the situation became tenser ... I yelled at the Roma present not to come close to the three cars and then I sought to protect the deputy mayor and the other officials until they got into their cars and left for Dolhasca.

The cars were not hit, but Roma were insulting the occupants of the cars until they left. I did not see any Roma getting beaten that evening by the police or public guards, but I heard later that D.S.'s son (the applicant) had been beaten by the police officers...

While I was present, none of the police officers or public guards hit, insulted or threatened the Roma. It is not true that the conflict that evening was of a racial nature..."

33. His wife, E.C., confirmed his statements.

34. The applicant's father stated in particular that:

"Scared of what was happening in front of the pub ... my son came out [of the store] and started running home, but a public guard tripped him up and then Sergeant D.T. savagely beat him...

My son ... ran home on the evening of 3 April 2001, out of fear, although he knew that he was not allowed to run [due to his medical condition]."

35. The applicant declared that:

"Seeing what was happening, I got scared and started running home. After 4-5 steps, the police officer D.T. tripped me up, so I fell to the ground.

After I fell I saw that officer D.T. wanted to hit my head with a truncheon, so I told him 'don't hit my head, I have had head surgery'. He did not listen and hit me several times with the truncheon and with his fists and kicked me all over my body, on my back and chest."

36. On 23 August 2001 the Suceava Police informed the military prosecutor that the Dolhasca police officers had not filed a report in order to have criminal investigations started against the Roma for insulting behaviour, for the following reason:

"[T]he way in which some of the Roma acted is pure Gypsy behaviour (*pur ţigănesc*) and does not constitute the crime of insulting behaviour."

37. On 2 October 2001 the Bacău Military Prosecutor decided not to prosecute, as the evidence did not confirm the alleged violence against the applicant. The relevant parts of his decision state as follows:

"At a certain point, bothered by the [deputy mayor's] criticism, C.C. became verbally aggressive, complaining to the deputy mayor about certain aspects of his professional activity. C.C. came out of his bar and, speaking in Romani, incited the twenty-thirty Roma there present against the two officials [the deputy mayor and one of the police officers who accompanied him].

Considering that the situation was likely to degenerate, as the Roma were becoming extremely aggressive and violent, and as they were armed with blunt objects, the police officers surrounded the deputy mayor to protect him, then they got into their cars and left in a hurry towards the centre of Dolhasca.

The Roma nationals (*cetăţeni)* attacked the last vehicle, where the deputy mayor was seated, with blunt objects, but no damage was caused since the vehicle was already leaving the area.

C.C. declared that he had not seen any Roma being beaten by the police that evening.

He also denied that the incidents amounted to racial conflict. His statement corroborates those of the police officers and public guards [who testified in the case].

Eyewitness statements in support of the applicant shall be disregarded as unreliable in so far as the evidence in the file shows that these persons arrived at the scene of the incidents after the three cars had left.

Moreover these witnesses' statements are contradictory and do not corroborate the statements made by [the applicant and his father] who alleged that [the applicant] had been punched, kicked and beaten with the truncheon all over his body, including on his head...

This conclusion tallies with the medical certificate in the file...

The [applicant's] witnesses' statements show that when the incident started [the applicant] ran home, against the medical recommendations that had been made to him...”

It also considered that C.C.'s statements, supported by those given by the police officers and public guards, confirmed that the conflict had not been racially motivated.

38. On 3 October the military prosecutor informed Romani CRISS of its decision, stating that “the evidence gathered showed that the applicant was not injured, insulted or threatened by the police officers”.

39. The applicant's mother and Romani CRISS contested the conclusion reached in the investigations.

40. On 14 May 2002 the prosecutor's decision was confirmed by the Military Prosecutor's Office attached to the Supreme Court of Justice, on the ground that the case indicated that no violence had been inflicted on persons of Roma origin.

3. Other complaints

41. On 19 February 2002 the applicant's father asked Romani CRISS to file a complaint with the competent authorities about some incidents that had occurred during the investigations. He alleged that, on 3 September 2001 the military prosecutor who had dealt with the case had tried to intimidate witnesses and physically assaulted the Romani CRISS representative. Consequently, some witnesses had refused to testify. Moreover, he claimed that members of the police were trying to persuade them to give up their complaints by harassing the family. On 7 December 2001 a police patrol had come to the applicant's house at around midnight but had left when told that the applicant's father was not home. In February 2002 D.T. had allegedly threatened and punched the applicant's grandfather.

42. On 19 February 2002 Romani CRISS forwarded the complaint to the Suceava Police, which dismissed it as unsubstantiated on 20 March 2002.

II. RELEVANT DOMESTIC LAW

43. The relevant provisions of the Code of Criminal Procedure and of the police and military prosecutor Ruler are set out in *Dumitru Popescu v. Romania ((no. 1)*, no. 49234/99, §§ 43-46, 26 April 2007) and *Barbu Anghelescu v. Romania* (no. 46430/99, § 40, 5 October 2004).

44. The relevant provisions of the Criminal and Civil Codes concerning the means of obtaining compensation for alleged ill-treatment are set out in *Kalanyos and Others v. Romania* ((dec.), no. 57884/00, 19 May 2005).

45. In the same decision, as well as in paragraphs 43-45 of the judgment in *Dumitru Popescu (no. 1)*, cited above there is a description of the development of the law concerning complaints against decisions of the prosecutor (Article 278 of the Code of Criminal Procedure and Article 278[1] introduced by Law no. 281/24 June 2003 applicable from 1 January 2004).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

46. The applicant complained of the ill-treatment allegedly inflicted on him on 3 April 2001 by the police and considered that the ensuing criminal investigation had not been effective. He relied on Article 3 of the Convention, which reads as follows:

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

A. Admissibility

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

B. Merits

1. The parties' submissions

48. The Government did not contest the applicant's injuries but contended that, based on the conclusion of the domestic investigations, the alleged violence had not been committed by the officials, in so far as neither the identity of the perpetrators nor the exact date on which the violence had been committed could be established with certainty.

49. Citing *Klaas v. Germany* (judgment of 22 September 1993, Series A no. 269, p. 17, § 29 *in fine*); and *Ribitsch v. Austria* (judgment of 4 December 1995, Series A no. 336, p. 24, § 32), the Government argued that it was not normally within the province of the Court to substitute its own assessment of the facts for that of the domestic courts and, as a general rule, it was for those courts to assess the evidence before them.

50. In the Government's opinion the prosecutor had been right to disregard the statements of eyewitnesses in support of the applicant as they were evidently biased and less credible. They also pointed out the contradictions between the witnesses' statements and those of the applicant.

51. Furthermore, the Government considered that the investigation carried out by the authorities had been adequate and effective. They pointed out that the prosecutors had heard testimony from the parties and witnesses, that the applicant had been examined by a doctor and that the facts had been carefully weighed. The Bacau Military Prosecutor's decision had been re-examined and confirmed by the Military Prosecutor attached to the Supreme Court of Justice.

They based their argument on the case *Velikova v. Bulgaria* (no. 41488/98, § 80, ECHR 2000-VI).

52. Moreover, the Government noted that there had been no hierarchical or institutional link between the accused police officers, all from the Dolhasca Police, and the investigators, all from the Suceava Police, and contended that the mere fact that both the prosecutor and the accused persons were part of the military forces could not in itself prove the lack of impartiality and independence of the investigators (see *Bursuc v. Romania,* no. 42066/98, §§ 103, 12 October 2004).

53. The applicant considered that the investigation files contained sufficient elements to conclude that the violence had been inflicted by the police. In his view, the decision to set aside the eyewitnesses' statements was unfounded. In any case, the authorities had failed to provide a credible alternative explanation as to the origin of his injuries. In his opinion the following elements should be taken into account as aggravating factors in the assessment of the seriousness of the ill-treatment he had been subjected to: he was 14 years old at the time; he was severely ill; in his particular condition the attack had made him seriously fear for his life; and he was of

Roma origin (in the context of the organised harassment of Roma by the Romanian authorities). He also pointed out that the authorities had acted late at night and that the use of force had been neither necessary nor proportionate in the circumstances.

54. In so far as the investigations carried out were concerned, the applicant submitted that they had failed to comply with the standards set out by the Court in the case of *Assenov and Others*, and that they had taken too long (see *Assenov and Others v. Bulgaria*, judgment of 28 October 1998, *Reports of Judgments and Decisions* 1998-VIII).

55. In his view, the Suceava Police could not have been impartial in their investigation as they were the hierarchical superior of the Dolhasca Police. Furthermore, he doubted the impartiality of the military prosecutor.

56. The applicant reiterated that in the decision of 2 October 2001 the Bacau Military Prosecutor had merely summarised the police officers' statements, which were sometimes identical to the last word, and had disregarded, without plausible reason, the eyewitnesses' statements. He also argued that only a few of the Roma present had been asked to testify and that some of them had been intimidated by the police and prevented from giving testimony.

57. Lastly, the applicant noted that although the police officers had declared that they had been attacked by Roma armed with bats, no official investigation into the allegations had been opened. He concluded that these statements had merely been an attempt to justify the police actions.

2. The Court's assessment

58. The Court notes from the outset that it is common ground that the applicant suffered injuries on or around the date of the incidents. However, the parties disagreed on whether or not the injuries were caused by police officers.

59. The Court reiterates that Article 3 enshrines one of the fundamental values of democratic society. Even in the most difficult of circumstances, such as the fight against terrorism or crime, the Convention prohibits in absolute terms torture or inhuman or degrading treatment or punishment. Unlike most of the substantive clauses of the Convention and of Protocols Nos. 1 and 4, Article 3 makes no provision for exceptions and no derogation from it is permissible under Article 15 of the Convention even in the event of a public emergency threatening the life of the nation (see *Assenov and Others*, cited above, p. 3288, § 93).

60. Ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum depends on all the circumstances of the case, such as the duration of the treatment, its physical or mental effects and, in some cases, the sex, age and state of health of the victim (see *Ireland v. the United Kingdom*, judgment of 18 January 1978, Series A no. 25, p. 65, § 162; *Kudła v. Poland* [GC],

no. 30210/96, § 91, ECHR 2000-XI; and *Peers v. Greece*, no. 28524/95, § 67, ECHR 2001-III). The Court has considered treatment to be "inhuman" because, *inter alia*, it was premeditated, was applied for hours at a stretch and caused either actual bodily injury or intense physical and mental suffering. It has deemed treatment to be "degrading" because it was such as to arouse in the victims feelings of fear, anguish and inferiority capable of humiliating and debasing them (see *Kudła*, cited above, § 92).

61. In considering whether a particular form of treatment is "degrading" within the meaning of Article 3, the Court will have regard to whether its object is to humiliate and debase the person concerned and whether, as far as the consequences are concerned, it adversely affected his or her personality in a manner incompatible with Article 3 (see *Raninen v. Finland*, judgment of 16 December 1997, *Reports* 1997-VIII, pp. 2821, § 55). However, the absence of any such purpose cannot conclusively rule out a finding of a violation of Article 3 (see *Peers*, cited above, § 74). The suffering and humiliation involved must in any event go beyond that inevitable element of suffering or humiliation connected with a given form of legitimate treatment or punishment.

62. The Court considers that the degree of bruising found by the doctor who examined the applicant (see paragraph 13 above) indicates that the latter's injuries, whether caused by the police or by someone else, were sufficiently serious to amount to ill-treatment within the scope of Article 3 (see, for example, *A. v. the United Kingdom*, judgment of 23 September 1998, *Reports* 1998-VI, p. 2699, § 21, and *Ribitsch,* cited above, pp. 9 and 26, §§ 13 and 39).

It remains to be considered whether the State should be held responsible under Article 3 in respect of these injuries.

63. The Court reiterates its jurisprudence confirming the standard of proof "beyond reasonable doubt" in its assessment of evidence (see *Avşar v. Turkey*, no. 25657/94, § 282, ECHR 2001). Such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact.

64. The Court is sensitive to the subsidiary nature of its role and recognises that it must be cautious in taking on the role of a first-instance tribunal of fact, where this is not rendered unavoidable by the circumstances of a particular case (see, for example, *McKerr v. the United Kingdom* (dec.), no. 28883/95, 4 April 2000). Nonetheless, where allegations are made under Article 3 of the Convention the Court must apply a particularly thorough scrutiny (see *Cobzaru v. Romania*, no. 48254/99, § 65, 26 July 2007) even if certain domestic proceedings and investigations have already taken place.

65. In the present case the Court notes that the applicant was admitted to the hospital soon after the events and that the medical report indicated the injuries sustained. The applicant filed a criminal complaint against police officers who he accused of having beaten him. His declarations are coherent

and supported by the medical report and some witness testimonies. It is, nonetheless, true that the witnesses gave conflicting testimonies; all the officials and some of the passers-by denied that any violence had occurred while all the villagers stated that it had. Lastly, the criminal investigation conducted in the case concluded that the officers were not responsible for the injuries.

66. There had been no official admission of any act of violence against the applicant.

67. However, the Court reiterates that where an individual raises an arguable claim that he has been seriously ill-treated by the police or other such agents of the State unlawfully and in breach of Article 3, that provision, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within their jurisdiction the rights and freedoms defined in ... [the] Convention", requires by implication that there should be an effective official investigation. This investigation, as with that under Article 2, should be capable of leading to the identification and punishment of those responsible. If this were not the case, the general legal prohibition of torture and inhuman and degrading treatment and punishment, despite its fundamental importance, would be ineffective in practice and it would be possible in some cases for agents of the State to abuse the rights of those within their control with virtual impunity (see *Assenov and Others*, cited above, § 102).

68. The Court notes that a criminal investigation was carried out in the case. It remains to be assessed whether it was effective, as required by Article 3.

69. From the outset, the Court notes that the investigations lasted for one year, and considers that this length is not in itself problematic (see paragraph 54 above).

70. As to the effectiveness of the investigations, the Court notes the following.

71. Although twenty to thirty villagers were present during the incidents, only three testified before the Suceava Police and five testified before the military prosecutor. All police officers and public guards present gave evidence.

72. There is no explanation as to why the other villagers did not testify during the investigation. They were either not called to testify, or, as the applicant claims, they were intimidated by the police. Either way, the fact that they did not give testimony casts doubt as to how thoroughly the police investigated the case.

73. The Court is also concerned about the way the villagers' statements were discarded by the military prosecutor.

Firstly, according to the Government (see paragraph 50 above) the prosecutor was right to discard those statements as they were evidently biased and less credible. However, the Court cannot but notice that the

prosecutor did not explain why the villagers' statements would be less credible than those of the police officers, as all participants could be considered equally biased due to their opposing positions in the proceedings (alleged victims against alleged perpetrators).

74. Moreover, the prosecutor's conclusion that those villagers had not been present during the incident is contradicted by the evidence in the case, including these persons' statements before the same prosecutor.

75. The Court also considers that the alleged contradictions between the applicant's statements and those of the witnesses were not adequately examined by the prosecutor, who only noted, briefly, the differences concerning the applicant being allegedly beaten over the head. He failed to address the common points of the statements, including of those that the prosecutor relied on (see paragraphs 32 and 37 above), from which it could have been inferred that the applicant had in fact sustained injuries all over his body.

76. Lastly, the Court considers as does the applicant that the fact that the police officers did not report the Roma's alleged insulting behaviour sheds doubt on their version of the facts.

The police officers' explanation for their reference to the "pure Gypsy" behaviour will be examined below (see paragraphs 111-132 below).

77. Another point of concern is the fact that the investigators limited themselves to exonerating the police officers and thus failed to identify those responsible for the applicant's injuries. This is particularly serious bearing in mind that the applicant was a minor at the date of the events and also severely disabled.

78. It is true that if the violence had not been perpetrated by police officers but by a private individual, the criminal prosecution of the person responsible could only have been started at the request of the victim (*plângere prealabilă*, Article 180 of the Romanian Criminal Code). However, no such complaint could be lodged if the police did not identify the alleged perpetrators of the crimes. Therefore, in the case under review, the applicant could not immediately lodge a criminal complaint against those who had allegedly beaten him.

79. Lastly, the Court recalls that it has already established that the applicable law at the date of the facts made the hierarchical and institutional independence of the military prosecutor doubtful (see *Barbu Anghelescu,* §§ 40-30 and 70; *Bursuc,* §§ 104 and 107; and *Dumitru Popescu (no. 1),* §§ 74-78, judgments cited above).

80. In the light of the above and on the basis of all the material placed before it, the Court considers that the Government have not satisfactorily established that the applicant's injuries were caused otherwise than by the treatment inflicted on him by the police officers, and concludes that these injuries were the result of inhuman and degrading treatment (see also

Cobzaru, cited above, § 74). Accordingly, there has been a violation of Article 3 of the Convention.

81. Having regard to the above-mentioned deficiencies identified in the investigation, the Court also concludes that the State authorities failed to conduct a proper investigation into the applicant's allegations of ill-treatment (see also *Cobzaru*, cited above, § 75). Thus, there has been a violation of Article 3 of the Convention also under its procedural head.

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

82. The applicant further complained that, because of the decision not to prosecute of 2 October 2001, he could not file a civil action for compensation against the police officer who had beaten him. He relied on Article 6 § 1 of the Convention, which reads as follows:

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

A. The parties' submissions

83. The Government submitted that the investigations conducted by the authorities in the case had been effective and that the police officers accused of ill-treatment had been exonerated based on all the evidence adduced in the file.

84. They contended that after the decision of the prosecutor of 2 October 2001, the applicant could have lodged an action with the civil courts, based on Articles 998-999 of the Civil Code. Such an action would have had prospects of success, since the civil courts were not bound by the prosecutor's decision. It would have allowed the applicant to establish the police officers' civil responsibility.

85. Relying on the case *Van Oosterwijck v. Belgium* (judgment of 6 November 1980, Series A no. 40, pp. 18-19, § 37), they pointed out that the applicant's negative opinion of the prospects of success alone could not of itself justify or excuse failure to exercise a remedy.

86. The applicant contended that the findings of a criminal investigation were binding on the civil courts in so far as they concerned the existence of the facts alleged, the person responsible and his or her liability, which rendered such remedy ineffective in his particular case.

B. The Court's assessment

87. The Court reiterates that the purpose of the exhaustion rule is to afford the Contracting States the opportunity of preventing or putting right the violations alleged against them before those allegations are submitted to

it (see, among many other authorities, *Selmouni v. France* [GC], no. 25803/94, § 74, ECHR 1999-IV).

88. The Court makes reference to its findings under Article 13 below, according to which the appeal before the courts against the prosecutor's decision is an effective remedy in this case (see paragraphs 99-110 below).

89. In these circumstances, the Court considers that the applicant should have challenged the prosecutor's decision of 2 October 2001 and that it is not for this Court to speculate either on the outcome of such appeal or on its influence on the civil courts called to settle the compensation (see, *mutatis mutandis*, *Moldovan and Others (no. 2)*, nos. 41138/98 and 64320/01, § 120, ECHR 2005-VII (extracts); *Menesheva v. Russia*, no. 59261/00, § 76, 9 March 2006; and *Corsacov v. Moldova*, no. 18944/02, § 82, 4 April 2006).

90. It follows that this complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

91. The applicant also complained that the authorities' failure to carry out an effective investigation capable of providing redress for the ill-treatment suffered by the applicant constituted a violation of Article 13 of the Convention. Furthermore, he complained that he could not effectively challenge, before a court, the decision not to prosecute taken by the military prosecutor in favour of the police officer who had allegedly injured him.

Article 13 reads as follows:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

92. The Court notes that this complaint has two distinct branches: the ineffectiveness of the criminal investigation and the lack of appeal against the military prosecutor's decision. It will deal with each one separately.

A. Effectiveness of the investigation

1. Admissibility

93. The Court notes that these aspects of the complaint are linked to the complaint examined under the procedural head of Article 3 and must therefore likewise be declared admissible.

2. Merits

94. As to the merits, the Court recalls that it has concluded that there was a procedural violation of Article 3 in respect of the same aspects (see

paragraph 81 above). Therefore, it does not deem it necessary in the present case to make a separate finding under Article 13 of the Convention for this branch of the complaint (see, *mutatis mutandis*, *Šečić v. Croatia* no. 40116/02, § 61, ECHR 2007-...).

B. Appeal against the prosecutor's decision

95. The Court considers that a separate issue arises under Article 13 in so far as the applicant complained that he could not lodge a complaint against the prosecutor's decision not to institute criminal proceedings, in particular bearing in mind the fact that the applicant alleged that the prosecutor's decision prevented him from seeking damages before the civil courts. This matter has not been examined under the procedural head of Article 3, above.

The Court will therefore examine it further.

1. The parties' submissions

96. The Government pleaded non-exhaustion of domestic remedies as the applicant had not availed himself of the possibility of challenging, before a court, the military prosecutor's decision not to prosecute. They noted that this new appeal, provided by Article 278^1 of the Code of Criminal Procedure, had been introduced by Law no. 281 of 24 June 2003 and had been available to the applicant from 1 July 2003.

97. Citing *Brusco v. Italy* ((dec.), no. 69789/01, ECHR 2001-IX) and *Nogolica v. Croatia* ((dec.), no. 77784/01, ECHR 2002-VIII), they considered that the applicant had to exhaust this remedy, although it had been available only after the present application had been lodged with the Court.

98. The applicant submitted that there were no special circumstances in his case that would allow for an exception to the rule that the remedy must exist prior to the lodging of the application. He further claimed that the Government had not proved the effectiveness of this remedy.

2. The Court's assessment

a) Admissibility

99. The Court considers that the Government's argument raises issues as to the effectiveness, from the applicant's perspective, of complaining against the prosecutor's decision. It is thus closely linked to the merits of the complaint under examination. Therefore the Court joins the preliminary objection to the merits of the applicant's complaint.

100. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that

it is not inadmissible on any other grounds. It must therefore be declared admissible.

b) Merits

101. As the Court has held on many occasions, Article 13 of the Convention guarantees the availability, at the national level, of a remedy to enforce the substance of Convention rights and freedoms in whatever form they might happen to be secured in the domestic legal order. The effect of Article 13 of the Convention is thus to require the provision of a domestic remedy to deal with the substance of an "arguable claim" under the Convention and to grant appropriate relief, although Contracting States are afforded some discretion as to the manner in which they conform to their Convention obligations under this provision. The scope of the obligation under Article 13 of the Convention varies depending on the nature of the applicant's complaint under the Convention. Nevertheless, the remedy required by Article 13 must be "effective" in practice as well as in law (see *Aksoy v. Turkey* judgment of 18 December 1996, *Reports* 1996-VI, p. 2285, § 95; *Aydın v. Turkey*, judgment of 25 September 1997, *Reports* 1997-VI, pp. 1895-96, § 103; and *Kaya v. Turkey*, judgment of 19 February 1998, *Reports* 1998-I, pp. 329-30, § 106).

102. In view of the Court's findings with regard to Article 3 above, this complaint is clearly "arguable" for the purposes of Article 13 (see *Boyle and Rice v. the United Kingdom*, judgment of 27 April 1988, Series A no. 131, § 52). Thus, it remains to be established whether the applicant had an effective remedy available in Romanian law so as to challenge the prosecutor's decision not to indict the police officers.

103. The Court recalls that in the present case the incidents between the applicant and the police took place on 3 April 2001, the criminal complaint was lodged on the 18 April 2001 and the Military Prosecutor decided not to prosecute on 2 October 2001, decision confirmed by the hierarchically superior Prosecutor's Office on 15 May 2002. On 1 January 2004, Law no. 281/2003 became applicable.

104. The Court reiterates that the rule on the 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 breach in the domestic system. In this way, it is an important aspect of the principle that the machinery of protection established by the Convention is subsidiary to the national systems safeguarding human rights (see the *Akdivar and Others v. Turkey* judgment of 16 September 1996, *Reports* 1996-IV, p. 1210, § 65, and the *Aksoy*, cited above, p. 2275, § 51).

It is true that in order for the exhaustion rule to come into operation, the effective remedy must exist at the date when the application is lodged with the Court. However this rule is subject to exceptions which might be

justified by the specific circumstances of each case (see *Baumann v. France*, no 33592/96, 22 May 2001, § 47, unreported, *Brusco*, cited above). The Court has accepted that this was the case when at the national level a new law, specifically designed to provide direct redress to violations of fundamental procedural rights, was introduced with retroactive effect and put thus an end to a structural problem that existed in the national legal system before its adoption (see *Içyer v. Turkey* (dec.), no. 18888/02, §§ 83-84, ECHR 2006-I; *Charzyński v. Poland* (dec.), no. 15212/03, §§ 40-41, ECHR 2005-V; and *mutatis mutandis Ismayilov v. Azerbaijan*, no. 4439/04, § 38, 17 January 2008).

105. Turning to the present case, the Court has already established that before the amendments to the Code of Criminal Procedure of 2003 (Law no. 281/2003), the interested parties had no effective possibility of challenging the prosecutor's decision before a court (see *Rupa v. Romania* (dec.), no. 58478/00, 14 December 2004; and *Kalanyos and Others*, cited above).

106. However, after the introduction of the above amendments persons in the applicant's situation could avail themselves of the new remedy introduced by Law no. 281/2003 which set a one-year time-limit for interested parties to appeal against a prosecutor's decision taken before the entry into force of this Law. The newly introduced provision describes in details the procedure to be followed before the courts and the applicable time-limits. It gives the courts the power to control the investigation carried out by the prosecutor in the case, and to hear evidence.

107. The Court notes that this new provision has removed the obstacles that were decisive when the Court found that the complaint mechanism available before the 2003 amendments did not comply with all the requirements of an effective remedy (see also, *mutatis mutandis, Nogolica*, cited above). Moreover the new appeal was specifically designed to provide direct redress for similar complaints to the one raised by the applicant.

108. Furthermore this appeal became applicable less than three years from the date of the incidents. The Court considers that this period is not lengthy enough to seriously alter the recollection of facts by those involved and thus to reduce the effectiveness of the courts' examination of facts (see, *mutatis mutandis, Dumitru Popescu (no. 1)*, cited above, § 56).

109. In the light of these circumstances and recalling the subsidiary character of the Convention machinery, the Court considers that the applicant should have challenged before the courts the prosecutor's decision in the case once the remedy provided by Law no. 281/2003 came into force.

110. Accordingly, the Court considers that in the present case there has been no violation of Article 13 of the Convention in so far as it refers to the impossibility of lodging an appeal against the military prosecutor's decision not to press charges.

IV. ALLEGED VIOLATION OF ARTICLE 14 TAKEN IN CONJUNCTION WITH ARTICLES 3 AND 13 OF THE CONVENTION

111. The applicant complained that the ill-treatment that he had suffered and the decision not to prosecute the police officer who had beaten him had been predominantly due to his Roma ethnicity, contrary to the principle of non-discrimination set forth in Article 14 of the Convention taken together with Articles 3 and 13.

Article 14 of the Convention reads as follows:

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

A. The parties' submissions

112. The Government considered that nothing in the file could prove discrimination against the applicant. They contended that the alleged flaws in the criminal investigations had not been caused by the applicant's ethnicity.

113. Lastly, they contended that the word "Gypsy" had a pejorative connotation only in certain contexts, and, even then mainly in the oral language.

114. The applicant made reference to the broader situation of Roma in Romania, as reflected in various reports by NGOs, the Council of Europe and the European Commission (for a summary of these reports, see *Cobzaru*, cited above, §§ 44-52). He also contended that the word "*ţigan*" was offensive, in particular when used to differentiate the person from a person of Romanian ethnicity, as it had happened in this case (see paragraph 7 above).

115. The applicant also contended that racist remarks in official police documents had gone unnoticed by the prosecutors (see paragraph 36 above) and considered that the Prefect was undully quick in ruling out a racist motive behind the incidents (see paragraph 17 above).

B. The Court's assessment

1. Admissibility

116. The Court notes that this complaint is linked to those examined under Articles 3 and 13 and must therefore likewise be declared admissible.

2. Merits

117. The Court's case-law on Article 14 establishes that discrimination means treating differently, without an objective and reasonable justification, persons in relevantly similar situations (*Willis v. the United Kingdom*, no. 36042/97, § 48, ECHR 2002-IV). Racial violence is a particular affront to human dignity and, in view of its perilous consequences, requires from the authorities special vigilance and a vigorous reaction. It is for this reason that the authorities must use all available means to combat racism and racist violence, thereby reinforcing democracy's vision of a society in which diversity is not perceived as a threat but as a source of its enrichment (see *Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, § 145, ECHR 2005-VII).

118. Faced with the applicant's complaint of a violation of Article 14, as formulated, the Court's task is to establish whether or not racism was a causal factor in the impugned conduct of the authorities during the events and the ensuing investigation, so as to give rise to a breach of Article 14 of the Convention taken in conjunction with Article 3.

119. The Court will start by looking into the alleged racial motives behind the conduct of the investigations. In this context, it reiterates that when investigating violent incidents, State authorities have the additional duty to take all reasonable steps to unmask any racist motive and to establish whether or not ethnic hatred or prejudice may have played a role in the events. Treating racially induced violence and brutality on an equal footing with cases that have no racist overtones would be turning a blind eye to the specific nature of acts that are particularly destructive of fundamental rights. A failure to make a distinction in the way in which situations that are essentially different are handled may constitute unjustified treatment irreconcilable with Article 14 of the Convention.

Admittedly, proving racial motivation will often be extremely difficult in practice. The respondent State's obligation to investigate possible racist overtones to a violent act is an obligation to use best endeavours and not absolute; the authorities must do what is reasonable in the circumstances of the case (see *Nachova and Others*, § 160, and *Šečić*, §§ 66-67, judgments cited above).

120. In the present case, the military prosecutor addressed, to a certain extent, the potential racist implications of the incidents. It remains to be seen if the authorities used best endeavours to assess the racist aspects of the case.

121. The Court notes that the military prosecutor concluded that there had been no racial aspect to the incidents, based solely on C.C.'s and the police officers' estimation of the conflict. He disregarded the fact that the same witnesses had declared that C.C. had complained to the deputy mayor that he had come before elections to win Roma votes and had reneged on his

promises when elected. The Court considers that this remark cannot be regarded as completely racially neutral.

Moreover, it finds problematic the fact that only the villagers, mainly Roma, were considered to be biased in their statements during the criminal investigations, while the police officers' statements were integrated into the military prosecutor's reasoning and conclusion (see paragraph 73 above).

122. The Court is dissatisfied that the military prosecutor did not address in any way the remarks from the Suceava Police report describing the villagers' alleged aggressive behaviour as "purely Gypsy", although such remarks are clearly stereotypical.

123. The Court is also concerned, as is the applicant, with the levity with which the Prefect concluded that the incidents of 3 April 2001 had had no racist motivation.

124. Consequently, the Court considers that the authorities did not do everything in their power to investigate the possible racist motives behind the conflict.

125. The Court will further look into the implication of this finding for the examination of the allegations of a "substantive" violation of Article 14.

126. The Court reiterates that in assessing evidence it has adopted the standard of proof "beyond reasonable doubt" (see paragraph 63 above); nonetheless, it has not excluded the possibility that in certain cases of alleged discrimination it may require the respondent Government to disprove an arguable allegation of discrimination and – if they fail to do so – find a violation of Article 14 of the Convention on that basis (see *Nachova and Others*, cited above, § 157, and *Bekos and Koutropoulos v. Greece*, no. 15250/02, § 65, ECHR 2005-XIII (extracts)).

127. Lastly, the Court acknowledges that where it is alleged – as here – that a violent act was motivated by racial prejudice, shifting the burden of proof to the respondent Government might amount to requiring the latter to prove the absence of a particular subjective attitude on the part of the person concerned (see *Nachova and Others*, § 157, and *Bekos and Koutropoulos*, § 65, judgments cited above).

128. In the present case it is not disputed that the incidents of 3 April 2001 took place between Roma villagers and police forces. The applicant himself is of Roma origin. The police officers stopped in front of a pub owned by C.C., a Roma ethnic, and the dispute that arose, as related by the villagers or, to a certain extent, as reported by the police officers, were not racially neutral. The Court reiterates that the villagers claimed the police officers were asking F.L. whether he was "Gypsy or Romanian" before beating him, at the deputy mayor's request to teach the Roma "a lesson" (see paragraph 7 above).

Likewise, C.C.'s dispute with the deputy mayor that evening, had at its core racist elements.

Furthermore, the Court considers that the remarks from the Suceava Police report describing the villagers' alleged aggressive behaviour as "pure Gypsy", are clearly stereotypical and prove that the police officers were not racially neutral, either during the incidents or throughout the investigation.

129. The Court finds thus no reason to consider that the applicant's aggression by the police officers was removed from this racist context.

130. For all these reasons, the Court considers that the burden of proof lies on the Government, regard having had to all the evidence of discrimination ignored by the police and the military prosecutor and the above conclusion of a racially biased investigation into the incidents.

131. Therefore, in the present case the evidence indicating the racial motives behind the police officers' actions is clear and neither the prosecutor in charge with the criminal investigation nor the Government could explain in any other way the incidents or, to that end, put forward any arguments showing that the incidents were racially neutral.

132. There has accordingly been a violation of Article 14 of the Convention taken in conjunction with Article 3.

133. Lastly, having regard to the finding under Article 13 of the Convention, (see paragraph 94 above), the Court considers that no particular issue arises under Article 14 taken in conjunction with Article 13.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

134. 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

135. The applicant claimed 1,000 euros (EUR) in respect of pecuniary damage, that is, the money his family had spent on his repeated hospitalisations after the beating of 3 April 2001.

He also claimed EUR 70,000 in respect of non-pecuniary damage.

136. The Government requested the Court to dismiss the applicant's claims for just satisfaction. They considered that the State's responsibility could not be engaged for the hospitalisation costs and that the claims in respect of non-pecuniary damage were exaggerated and unsubstantiated.

137. The Court notes that the applicant's claims for pecuniary damages are unsubstantiated and rejects them accordingly.

138. On the other hand, it awards the applicant EUR 15,000 in respect of non-pecuniary damage.

B. Costs and expenses

139. The ERRC claimed EUR 2,278 for the costs and expenses incurred before the Court, namely the preparation of the case, 10 hours of reviewing previous submissions, research on case-law, contacts with partners and client and 22 hours of drafting submissions to the Court. They asked that the award be paid directly to them, in a separate account.

140. The Government contended that the contract signed by the applicant with ERRC had not set the hourly fees.

141. The Court reiterates that in order for costs and expenses to be reimbursed under Article 41, it must be established that they were actually and necessarily incurred and were reasonable as to quantum (see, for example, *Nilsen and Johnsen v. Norway* [GC], no. 23118/93, § 62, ECHR 1999-VIII, and *Boicenco v. Moldova*, no. 41088/05, § 176, 11 July 2006). In accordance with Rule 60 § 2 of the Rules of Court, itemised particulars of all claims must be submitted, failing which the Chamber may reject the claim in whole or in part.

142. In the present case, having regard to the above criteria, to the itemised list submitted by the applicant's representative and to the number and complexity of issues dealt with and the substantial input of ERRC, the Court awards the requested amount, that is EUR 2,278 to be paid to a bank account indicated by the applicant's representative.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaints concerning Articles 3 and 13, alone or combined with Article 14 of the Convention admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 3 of the Convention both under its substantive and procedural limbs;

3. *Holds* that there has been no violation of Article 13 of the Convention in so far as it concerns the possibility for the applicant to challenge the military prosecutor's final decision;

4. *Holds* that there has been a violation of Article 14 taken in conjunction with Article 3 of the Convention;

5. *Holds* that there is no need to examine the complaint under Article 13, alone or in conjunction with Article 14 of the Convention, concerning the lack of an effective investigation;

6. *Holds*
(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 15,000 (fifteen thousand euros) in respect of non-pecuniary damage plus any tax that may be chargeable, to be converted into the respondent's State national currency;
(b) that the respondent State is to pay the applicant's representative, ERRC, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 2,278 (two thousand two hundred and seventy-eight euros) in costs and expenses plus any tax that may be chargeable;
(c) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

7. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 4 March 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President