



## The investigation into the crackdown on demonstrations in Bucharest in June 1990 was defective and inadequate

In today's Grand Chamber judgment in the case of [Mocanu and Others v. Romania](#) (application nos. 10865/09, 45886/07 and 32431/08), which is final<sup>1</sup>, the European Court of Human Rights held, by a majority, that there had been:

**a violation of the procedural aspect of Article 2 (right to life - investigation) of the European Convention on Human Rights in respect of Ms Mocanu;**

**a violation of the procedural aspect of Article 3 (prohibition of inhuman and degrading treatment - investigation) of the Convention in respect of Mr Stoica; and, unanimously, that there had been**

**a violation of Article 6 § 1 (right to a fair hearing within a reasonable time) in respect of the Association "21 December 1989".**

The case concerned the investigation and the length of the proceedings which followed the violent crackdown on anti-government demonstrations in Bucharest in June 1990. During the crackdown, Ms Mocanu's husband was killed by gunfire and Mr Stoica was arrested and ill-treated by the police.

The Court accepted that, in exceptional circumstances, the psychological consequences of ill-treatment inflicted by State agents could undermine victims' capacity to complain about treatment inflicted on them and could constitute a significant impediment to their right to redress. Mr Stoica, like the majority of the victims, had found the courage to lodge a complaint only several years after the events, when the investigation which had already been opened of the authorities' own motion seemed to be making progress. The Court therefore considered that, in the exceptional circumstances of this case, Mr Stoica's vulnerability and his feeling of powerlessness amounted to a plausible and acceptable explanation for the fact that he had not lodged a complaint until 2001, more than ten years after the events.

The Court found that the authorities responsible for the investigation had not taken all the measures which could have led to the identification and punishment of those responsible for the violent events and that the applicants had not had the benefit of an effective investigation for the purposes of the Convention.

While acknowledging that the case was indisputably complex, the Court considered that the importance of the political stakes for Romanian society should have led the Romanian authorities to deal with the case promptly and without delay in order to avoid any appearance of collusion in or tolerance of unlawful acts.

### Principal facts

The applicants are Ms Mocanu and Mr Stoica, two Romanian nationals, who were born in 1970 and 1948 respectively and live in Bucharest (Romania), and the Association "21 December 1989", a legal entity registered under Romanian law and based in Bucharest. The association brings together individuals who were injured during the violent crackdown on anti-government demonstrations which took place in December 1989 and the relatives of persons who died during those events.

<sup>1</sup> Grand Chamber judgments are final (Article 44 of the Convention).

All final judgments are transmitted to the Committee of Ministers of the Council of Europe for supervision of their execution. Further information about the execution process can be found here: [www.coe.int/t/dghl/monitoring/execution](http://www.coe.int/t/dghl/monitoring/execution)

On 13 June 1990 the security forces intervened against demonstrators who were occupying University Square in Bucharest and other areas of the capital. This resulted in several civilian casualties, including Ms Mocanu's husband, who was killed by a shot fired from the headquarters of the Ministry of the Interior. During the evening Mr Stoica and some other people were arrested and ill-treated by uniformed police officers and men in civilian clothing in the area around the headquarters of the State television station and in the basement of that building.

On 14 June 1990 thousands of workers, particularly miners from several industrial regions around the country, were transported by train to Bucharest to take part in the crackdown on the demonstrators. Eleven trains to Bucharest were laid on. The miners had been informed that they were to assist the police in restoring law and order in Bucharest. They were armed with axes, chains, cudgels and metal cables.

The violent events of 13 and 14 June 1990 resulted in more than a thousand victims, and the headquarters of several political parties and associations, including those of the Association "21 December 1989", were ransacked.

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

## Complaints, procedure and composition of the Court

Relying on Articles 2 (right to life) and 3 (prohibition of torture or inhuman and degrading treatment) of the European Convention of the Human Rights, Ms Mocanu and Mr Stoica submitted that Romania had failed in its obligations to conduct an effective, impartial and thorough investigation capable of leading to the identification and punishment of those responsible for the armed repression.

Relying on Article 6 § 1 (right to a fair hearing within a reasonable time), the Association "21 December 1989" 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 assault on its members.

Ms Mocanu, Mr Stoica and the Association "21 December 1989" lodged their applications with the European Court of Human Rights on 28 January 2009, 25 June 2008 and 13 July 2007 respectively.

In its Chamber [judgment](#) of 13 November 2012, the Court held unanimously that there had been a violation of the procedural aspect of Article 2 of the Convention in respect of Ms Mocanu and a violation of Article 6 § 1 in respect of the association, and concluded by five votes to two that there had been no violation of the procedural aspect of Article 3 in respect of Mr Stoica.

Mr Stoica requested the referral of the case to the Grand Chamber in accordance with Article 43 of the Convention (referral to the Grand Chamber). On 29 April 2013 the panel of the Grand Chamber granted that request. A [hearing](#) was held on 2 October 2013.

Judgment was given by the Grand Chamber of 17 judges, composed as follows:

Dean **Spielmann** (Luxembourg), *President*,  
Guido **Raimondi** (Italy),  
Mark **Villiger** (Liechtenstein),  
Isabelle **Berro-Lefèvre** (Monaco),  
Peer **Lorenzen** (Denmark),  
Mirjana **Lazarova Trajkovska** ("the Former Yugoslav Republic of Macedonia"),  
Ledi **Bianku** (Albania),

Nona Tsotsoria (Georgia),  
Ann Power-Forde (Ireland),  
Işıl Karakaş (Turkey),  
Nebojša Vučinić (Montenegro),  
Paulo Pinto de Albuquerque (Portugal),  
Paul Lemmens (Belgium),  
Aleš Pejchal (the Czech Republic),  
Johannes Silvis (the Netherlands),  
Krzysztof Wojtyczek (Poland) and,  
Florin Streteanu (Romania), *ad hoc Judge*,

and also Johan Callewaert, *Deputy Grand Chamber Registrar*.

## Decision of the Court

### Articles 2 and 3

In response to the Government, which criticised Mr Stoica's inactivity in failing to lodge a complaint with the authorities until 2001, that is, more than ten years after the events, the Court acknowledged that the psychological effects of ill-treatment inflicted by State agents could also undermine victims' capacity to complain about treatment inflicted on them, and could thus constitute a significant impediment to the right to redress of victims of torture and other ill-treatment. It noted that, like Mr Stoica, the majority of the victims had only found the courage to lodge a complaint after the investigation, already opened on the authorities' own motion, seemed to be making progress. The Court considered that, in the exceptional circumstances of this case, Mr Stoica's vulnerability and his feeling of powerlessness amounted to a plausible and acceptable explanation for the fact that he had not lodged a complaint until 2001, more than ten years after the events. Mr Stoica had not therefore failed in his duty of diligence in this respect.

A criminal investigation had been opened of the authorities' own motion into the death by gunfire of Ms Mocanu's husband and other persons, and into the ill-treatment inflicted on several individuals, including Mr Stoica, in the same circumstances. This investigation was initially divided up into several hundred separate case files, and subsequently brought together before being again split into several branches. Given that all of these cases originated in the same events, the Court considered that it was essentially dealing with one and the same investigation.

The Court noted that this investigation was still pending in respect of Ms Mocanu and that it had been terminated in respect of Mr Stoica by a judgment delivered on 9 March 2011 by the High Court of Cassation and Justice.

With regard to the independence of the investigation, the Court noted that between 1997 and early 2008 the investigation had been entrusted to military prosecutors who were officers in a relationship of subordination within the military hierarchy. This circumstance had already led the Court to conclude that there had been a violation of the procedural aspect of Articles 2 and 3 in previous cases against Romania. The number of violations found in those cases was a matter of particular concern and cast serious doubt on the objectivity and impartiality of the investigations that the military prosecutors were called upon to conduct.

With regard to the promptness and adequacy of the investigation, the Court noted that the investigation concerning Ms Mocanu had been pending for more than 23 years in total (almost 20 years since the Convention entered into force in respect of Romania, on 20 June 1994), and that, in respect of Mr Stoica, it had been terminated by a judgment delivered on 9 March 2011, twenty-one years after the investigation had been opened. The Court reiterated that adjournments and delays

were liable not only to undermine an investigation, but could also compromise definitively its chances of being completed.

While acknowledging the indisputable complexity of the case, the Court considered that the political and societal stakes referred to by the Government could not justify such a long period. The importance of those stakes for Romanian society should have led the Romanian authorities to deal with the case promptly in order to avoid any appearance of collusion in or tolerance of unlawful acts.

The Court also noted that lengthy periods of inactivity occurred in the investigation and that no significant progress was made from 20 June 1994 (date of ratification of the European Convention of Human Rights in respect of Romania) to 22 October 1997, when the authorities began to join the numerous files which had been opened separately. It was after that late date that the prosecutor's office began to conduct a wider investigation into all of the circumstances surrounding the use of force by State agents against the civilian population.

The Court further noted that there had been numerous shortcomings in the investigation, identified by the authorities themselves.

Thus, with regard to Mr Stoica, the decision by the prosecutor's office on 17 June 2009 not to bring a prosecution indicated that, at the close of the investigations carried out by the civilian and then the military prosecution services, it had been impossible to establish the assailants' identity and the security forces' degree of involvement; however, the authorities had failed to indicate for what tangible reasons their actions had not produced results. This branch of the investigation had been terminated essentially on account of the statutory limitation of criminal liability resulting from the authorities' inactivity. In its judgment of 9 March 2011 confirming the decision not to bring a prosecution, the High Court of Cassation and Justice dismissed Mr Stoica's appeal without examining whether the constituent elements of inhuman treatment, an offence not subject to statutory limitation, had been made out in the circumstances of this case.

With regard to Ms Mocanu, who, as a close relative, ought to have been associated with the proceedings, the Court observed that she had been questioned by the prosecutor for the first time on 14 February 2007, almost 17 years after the events, and that she had no longer been informed about developments in the investigation following the High Court of Cassation and Justice's judgment of 17 December 2007, which had ordered that the case be sent back to the military section of the prosecutor's office for a breach of procedural rules.

The Court considered that neither Ms Mocanu nor Mr Stoica had had the benefit of an effective investigation as required by Articles 2 and 3, and held that there had been a violation of the procedural aspect of those two Articles.

#### [Article 6 § 1](#)

The Court noted that on 26 July 1990 the Association "21 December 1989" 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 complaint was examined as part of the investigation which was terminated by the decision of 17 June 2009 not to bring a prosecution, and it thus lasted almost 19 years. Like the Chamber in its judgment of 13 November 2012, the Court considered that the length of the impugned proceedings had been excessive and held that there had been a violation of Article 6 § 1.

#### [Just satisfaction \(Article 41\)](#)

The Court held that Romania was to pay 30,000 euros (EUR) to Ms Mocanu and EUR 15,000 to Mr Stoica in respect of non-pecuniary damage; it was also to pay Ms Mocanu and the Association

“21 December 1989” EUR 2,200 in respect of costs and expenses and EUR 9,868.92 to Mr Stoica under the same head.

## Separate opinions

Judge Pinto de Albuquerque expressed a concurring opinion, joined by Judge Vučinić. Judge Silvis, expressed a partly dissenting opinion joined by Judge Streteanu, and Judge Wojtyczek expressed a partly dissenting opinion. These opinions are annexed to the judgment.

*The judgment is available in English and French.*

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