

FORMER SECOND SECTION
CASE OF MOLDOVAN AND OTHERS v. ROMANIA

(Applications nos. 41138/98 and 64320/01)

JUDGMENT No. 1

(friendly settlement)

STRASBOURG

5 July 2005

This judgment is final (as regards the applicants Valentina Rostaş, Lucreţia Rostaş, Silvia Moldovan, Eleonora Rostaş, Octavian Rostaş, Bazil Moldovan, Ghioloanca Lăcătuş, Adrian Moldovan, Lucreţia Moldovan, Maria Lăcătuş, Ferdinand Lăcătuş, Adrian Moldovan, Petru “Gălbiniuş” Lăcătuş, Petru “Petrişor” Lăcătuş, Persida Dorina Rostaş, Mariana Moldovan, Bazil-Sami Lăcătuş and Lucaci Moldovan) but it may be subject to editorial revision.

In the case of Moldovan and Others v. Romania,

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

Mr J.-P. COSTA, *President,*

Mr L. LOUCAIDES,

Mr C. BÎRSAN,

Mr K. JUNGWIERT,

Mr V. BUTKEVYCH,

Mrs W. THOMASSEN,

Mrs A. MULARONI, *judges,*

and Mrs S. DOLLÉ, *Section Registrar,*

Having deliberated in private on 3 June 2003 and on 16 June 2005

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

PROCEDURE

1. The case originated in two applications (nos. 41138/98 and 64320/01) against Romania lodged respectively with the European Commission of Human Rights (“the Commission”) under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) on 14 April 1997, and with the European Court of Human Rights on 9 May 2000. The applicants are twenty-five Romanian nationals of Roma origin: the first applicant, Iulius Moldovan, was born in 1959; the second applicant, Melenuţa Moldovan, was born in 1963; the third applicant, Valentina Rostaş, was born in 1964; the fourth applicant, Lucreţia Rostaş, was born in 1950; the fifth applicant, Silvia Moldovan, was born in 1955; the sixth applicant, Eleonora Rostaş, was born in 1956; the seventh applicant, Octavian Rostaş, was born in 1958; the eighth applicant, Bazil Moldovan, was born in 1943; the ninth applicant, Maria Moldovan, was born in 1940; the tenth applicant, Ghioloanca

Lăcătuș, was born in 1933; the eleventh applicant, Adrian Moldovan (resident at Hădăreni, no. 195 A), was born in 1943; the twelfth applicant, Lucreția Moldovan, wife of the eighth applicant, was born on an unknown date; the thirteenth applicant, Maria Lăcătuș, wife of the nineteenth applicant, was born in 1959; the dates of birth of the fourteenth, fifteenth, sixteenth, seventeenth, eighteenth and nineteenth applicants - Otilia Rostaș, Ferdinand Lăcătuș, Adrian Moldovan (resident at Hădăreni, no. 170), Petru “Gălbiniș” Lăcătuș (resident at Hădăreni, no. 51), Petru “Petrișor” Lăcătuș (resident at Hădăreni no. 115) and Petru “Gruia” Lăcătuș (resident at Hădăreni, no. 114) – are unknown; the twentieth applicant, Maria Florea Zoltan, was born in 1964; the twenty-first applicant, Persida Dorina Rostaș, was born in 1970; the twenty-second applicant, Mariana Moldovan, filed the application on behalf of her late mother, Rozalia Rostaș (dates of birth unknown); the twenty-third applicant, Bazil-Sami Lăcătuș, the son of the tenth applicant and the twenty-fourth applicant, Lucaci Moldovan, were similarly born on an unknown date, and the twenty-fifth applicant, Petru Lăcătuș (resident at Hădăreni, no. 148) was born in 1962.

2. The applicants in both applications, with the exception of the first applicant Mr Iulius Moldovan, were represented before the Court by the European Roma Rights Centre (“the ERRC”), an organisation based in Budapest, some of them having originally been represented by the first applicant. The Romanian Government (“the Government”) were represented by their Agent, Mrs R. Rizoiu, from the Ministry of Foreign Affairs.

3. The applicants alleged, in particular, that the destruction of their property during a riot on 20 September 1993, and the ensuing consequences, disclosed a breach by the respondent State of its obligations under Articles 3, 6, 8 and 14 of the Convention, which guarantee, *inter alia*, freedom from inhuman and degrading treatment, access to a court for a fair determination of civil rights and obligations, the right to respect for private and family life and home, and freedom from discrimination in the enjoyment of Convention rights and freedoms.

4. Application no. 41138/98 was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. The applications were allocated to the Second Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

6. On 13 March 2001 the Chamber decided to join the proceedings in the applications (Rule 42 § 1).

7. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Second Section (Rule 52 § 1).

8. By a decision of 3 June 2003, the Court declared the applications partly admissible.

9. The Chamber having decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 3 *in fine*), the parties replied in writing to each other’s observations.

10. On 4 and 19 March 2004, after an exchange of correspondence, the Registrar suggested to the parties that they should attempt to reach a friendly settlement within the meaning of Article 38 § 1 (b) of the Convention. On 19 April 2004 and 18 May 2004, the following eighteen applicants and the Government, respectively, submitted formal declarations accepting a friendly settlement of the case: Bazil Sami Lăcătuș, Adrian Moldovan and his wife Silvia Moldovan, Ferdinand Lăcătuș, Ghioloanca Lăcătuș, Lucaci Moldovan, Octavian Rostaș and his wife Eleonora Rostaș, Lucreția Rostaș, Adrian Moldovan (house no. 195 A), Mariana Moldovan, Maria Lăcătuș, Petru “Gălbinaș” Lăcătuș, Persida Dorina Rostaș, Valentina Rostaș, Petru “Petrișor” Lăcătuș, Bazil Moldovan and his wife Lucreția Moldovan.

11. On 19 April 2004 the following seven applicants informed the Court that they did not wish to reach a friendly settlement in this case: Iulius Moldovan, Melenuța Moldovan, Maria Moldovan, Petru “Gruia” Lăcătuș, Petru (Dîgăla) Lăcătuș, Otilia Rostaș and Maria Floarea Zoltan. Their case is the subject of a separate judgment on the merits, adopted on the same day as the present text.

12. On 19 April 2004 the applicants’ representatives informed the Court that the applicant Silvia Moldovan had died and that her husband, Adrian Moldovan, also an applicant in this case, and their minor children, Adrian Silviu and Adriana Moldovan, wished to pursue the case on her behalf.

13. On 17 August 2004 the applicants’ representatives informed the Court that the applicant Bazil Moldovan had died and that his wife Lucreția Moldovan and their eleven children wished to continue with the case.

14. On 1 November 2004 the Court changed the composition of its Sections (Rule 25 § 1), but this case was retained by the former Second Section.

THE FACTS

15. The applicants are all Romanian nationals of Roma origin who lived in the same village. In September 1993 a row broke out between three Roma men and another villager that led to the death of the latter’s son who had tried to intervene. The three men fled to a nearby house. A large, angry crowd gathered outside, including the local police commander and several officers. The house was set on fire. Two of the men managed to escape from the house, but were pursued by the crowd and beaten to death. The third was prevented from leaving the building and died in the fire. The applicants alleged that the police had encouraged the crowd to destroy more Roma property in the village. By the following day, thirteen Roma houses had been completely destroyed and several more had been very badly damaged. Much of the applicants’ personal property was also destroyed.

16. In the aftermath of the incident the Roma residents of Hădăreni lodged a criminal complaint with the Prosecutors’ Office. The complainants identified a number of individuals responsible for what had occurred on 20 September 1993. Among those identified were several police officers.

17. In July 1994 three civilians were arrested and charged with extremely serious murder. They were released within a few hours, however, and their arrest warrants

were set aside. On account of police involvement in the incident, the case was referred to the Military Prosecutors' Office in October 1994.

18. In September 1995 all charges against the local police officers were dropped on the basis that their inability to stop the crowd had not in itself constituted participation.

19. In August 1997 the Public Prosecutor issued an indictment against eleven civilians. A criminal trial, in conjunction with a civil action, began the following November. At the trial a succession of witnesses testified to the active involvement of the police in the killings and burnings.

20. Judgment in the criminal case was delivered on 17 July 1998. The court found that the accused had acted jointly, in different ways, to eliminate the Roma from their village. The preliminary investigation was deemed to have been inadequate. Five villagers were convicted of extremely serious murder and twelve villagers, including the former five, were convicted of other offences. The court sentenced them to between one and seven years' imprisonment.

21. The prosecution appealed against the leniency of the sentences. The appellate court convicted a sixth villager of extremely serious murder and increased the sentence of one of the defendants; the other defendants had their sentences reduced. In November 1999 the Supreme Court upheld the convictions for the destruction of property but reduced the charge of extremely serious murder to one of serious murder for three of the defendants.

22. In 2000 two of the convicted villagers received a presidential pardon.

23. Shortly after the attack on Roma property, the Romanian Government allocated 25,000,000 Romanian lei (ROL)^[1] for the reconstruction of the houses damaged or destroyed. Only four houses were rebuilt with these funds. In November 1994 the Government allocated a further ROL 32,000,000^[2] and four more houses were rebuilt. The applicants have submitted photographs to show that these houses were very badly rebuilt.

24. Three houses have not been rebuilt to date.

25. The Mureş Regional Court delivered its judgment in the civil case on 12 May 2003. The court awarded the applicants pecuniary damages for the destruction of the houses, noting that during the events on 20 September 1993 eighteen houses belonging to the Roma population in Hădăreni had been totally or partially destroyed and that three Roma had been killed, a criminal court having found twelve villagers guilty of these acts. Basing its decision on an expert report, the court awarded pecuniary damages for those houses which had not been rebuilt in the meantime, and maintenance allowances for the children of the Roma killed during the riots. On the basis of an expert report, the court awarded pecuniary damages in respect of the partial or total destruction of the houses of the fifth, ninth, fifteenth, seventeenth, eighteenth and nineteenth applicants. The applicants' claims for loss of personal property and for non-pecuniary damages were all dismissed as unsubstantiated.

26. On 24 February 2004 the Târgu-Mureş Court of Appeal awarded the applicants non-pecuniary damages. Appeal proceedings are currently pending before the Supreme Court.

27. The applicants submitted that in general, following the events of September 1993, they were forced to live in hen-houses, pigsties, (Rozalia Rostaş), windowless cellars (Bazil and Lucreția Moldovan) or in extremely cold and deplorable conditions: sixteen people in one room with no heating, seven people in one room with a mud floor, families sleeping on mud or concrete floors without adequate clothing, heat or blankets (Ghioloanca Lăcătuş, Maria Lăcătuş, Octavian and Eleonora Rostaş, Petru (Petrişor) Lăcătuş, Valentina Rostaş), thirty-one victims of the riots in one house (Ferdinand Lăcătuş, Lucaci Moldovan, Rozalia Rostaş, Adrian and Silvia Moldovan), fourteen persons crowded into two small rooms with no electricity and inadequate heating (Ferdinand Lăcătuş), twelve persons lived for a year in a summer kitchen without a proper roof, door or windows (Adrian Moldovan), etc. These conditions lasted for several years and in some cases were still continuing.

28. As a result, many applicants and their families fell ill. In particular, Octavian Rostaş developed an ulcer; Eleonora Rostaş developed hepatitis; Bazil Moldovan developed hepatitis and Lucreția Moldovan spondylosis; Rozalia Rostaş developed a heart condition and died of a heart attack in 1998; Adrian Moldovan developed diabetes; Valentina Rostaş's daughter developed meningitis because of a severe cold caught on the night of the arson attack and because the applicant did not have money for treatment. She is now mentally retarded.

THE LAW

I. EIGHTEEN APPLICANTS

A. The friendly-settlement declarations

29. By letters of 18 May and 19 October 2004 the Government made the following declaration:

“1. I declare that the Government of Romania offer to pay *ex gratia* to the applicants mentioned in the annex to this declaration an all-inclusive amount of EUR 262,000 (two hundred and sixty-two thousand euros) with a view to securing a friendly settlement of their applications registered under Nos. 41138/98 and 64320/01. The individual awards are set out in the annex to this declaration.

This sum, which also covers legal expenses connected with the case, shall be free of any tax that may be applicable and shall be paid in euros, to be converted into Romanian lei at the rate applicable at the date of payment, to a bank account named by the applicants and/or their duly authorised representatives. This sum shall be payable within three months from the date of the notification of the judgment delivered by the Court pursuant to Article 39 of the European Convention on Human Rights. From the expiry of the above-mentioned three months until settlement, simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points. This payment will constitute the final settlement of the case, including the applicants' civil claims before the domestic courts.

2. The Government sincerely regret the failure of the criminal investigation to clarify fully the circumstances which led to the destruction of the applicants' homes and possessions, which left them living in improper conditions thus obliging a number of them to leave their village, and rendered difficult the applicants' possibility of filing a civil action. It also regrets the length of the civil proceedings before the domestic courts and certain remarks made by some authorities as to the applicants' Roma origin.

3. It is accepted that such events pose problems under Articles 3, 6 and 8 and of the Convention and, given the consequences of the destruction of the homes and the ensuing emotional suffering, exceptional issues may arise under Article 3 of the Convention, as well as under Article 14. The Government undertake to issue appropriate instructions and to adopt all necessary measures to ensure that the individual rights guaranteed by these Articles are respected in the future. In particular, the Government undertake to adopt the following general measures:

- enhancing the educational programs for preventing and fighting discrimination against Roma within the school curricula in the Hădăreni community, Mureș County;
- drawing up programs for public information and for removing the stereotypes, prejudices and practices towards the Roma community in the Mureș public institutions competent for the Hădăreni community;
- initiating programs of legal education together with the members of the Roma communities;
- supporting positive changes in the public opinion of the Hădăreni community concerning Roma, on the basis of tolerance and the principle of social solidarity;
- stimulating Roma participation in the economic, social, educational, cultural and political life of the local community in Mureș County, by promoting mutual assistance and community development projects;
- implementing programs to rehabilitate housing and the environment in the community;
- identifying, preventing and actively solving conflicts likely to generate family, community or inter-ethnic violence.

Furthermore, the Government undertake to prevent similar problems arising in the future by carrying out adequate and effective investigations and by adopting social, economic, educational and political policies in the future to improve the conditions of the Roma community, in accordance with the existing strategy of the Government in this respect. In particular, it shall undertake general measures as required by the specific needs of the Hădăreni community in order to facilitate the general settlement of the case, also taking into account the steps which have already been taken with this aim, namely the rebuilding of some of the destroyed houses.

4. The Government consider that the supervision by the Committee of Ministers of the Council of Europe of the execution of Court judgments concerning Romania in these cases is an appropriate mechanism for ensuring that improvements will continue to be made in this context.

5. Finally, the Government undertake not to request the reference of the case to the Grand Chamber pursuant to Article 43 § 1 of the Convention after the delivery of the Court's judgment."

30. By letters of 19 April and 19 October 2004 the applicants' representatives submitted the following declaration:

"1. We note that the Government of Romania are prepared to adopt a general strategy for improving the situation of the Roma community and to pay us *ex gratia* the sum of EUR 262,000 (two hundred and sixty-two thousand euros) with a view to securing a friendly settlement of our applications registered under Nos. 41138/98 and 64320/01, the individual payments being shown in the annex to this declaration.

This sum, which is to cover any pecuniary and non-pecuniary damage as well as legal costs and expenses connected with the case, shall be paid in euros, to be converted into Romanian lei at the rate applicable at the date of payment, to a bank account to be named by us. The sum shall be payable free of any taxes which may be applicable, within three months from the date of the judgment delivered by the Court pursuant to Article 39 of the European Convention on Human Rights. From the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

2. We accept the proposal and waive any further claims against Romania in respect of the facts of these applications. We declare that this constitutes a final settlement of the cases, including our domestic civil claims.

3. This declaration is made in the context of a friendly settlement which the Government and we have reached.

4. We further undertake not to request that the case be referred to the Grand Chamber under Article 43 § 1 of the Convention after delivery of the Court's judgment."

B. The Court's assessment

31. The Court takes note of the agreement reached between the parties (Article 39 of the Convention). It is satisfied that the settlement is based on respect for human rights as defined in the Convention or its Protocols (Article 37 § 1 *in fine* of the Convention and Rule 62 § 3 of the Rules of Court).

32. Accordingly, the cases, insofar as they concern Bazil Sami Lăcătuș, Adrian Moldovan and his wife Silvia Moldovan, Ferdinand Lăcătuș, Ghioloanca Lăcătuș, Lucaci Moldovan, Octavian Rostaș and his wife Eleonora Rostaș, Lucreția Rostaș, Adrian Moldovan (house no. 195 A), Mariana Moldovan, Maria Lăcătuș, Petru (Gălbinaș) Lăcătuș, Persida Dorina Rostaș, Valentina Rostaș, Petru (Petrișor) Lăcătuș, Bazil Moldovan and his wife Lucreția Moldovan, should be struck out of the list. (The individual payments are indicated in the appendix.)

II. THE REMAINING SEVEN APPLICANTS

33. The Court notes that the applicants Iulius Moldovan, Melenuța Moldovan, Maria Moldovan, Petru (Gruia) Lăcătuș, Petru (Dîgăla) Lăcătuș, Otilia Rostaș and Maria

Floarea Zoltan did not wish to reach a friendly settlement in the case. It decides to adjourn for a separate examination on the merits the complaints introduced by them.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to strike the cases out of the list in so far as it concerns Bazil Sami Lăcătuș, Adrian Moldovan and his wife Silvia Moldovan, Ferdinand Lăcătuș, Ghioloanca Lăcătuș, Lucaci Moldovan, Octavian Rostaș and his wife Eleonora Rostaș, Lucreția Rostaș, Adrian Moldovan (house no. 195 A), Mariana Moldovan, Maria Lăcătuș, Petru (Gălbinuș) Lăcătuș, Persida Dorina Rostaș, Valentina Rostaș, Petru (Petrișor) Lăcătuș, Bazil Moldovan and his wife Lucreția Moldovan;
2. *Takes note* of the parties' undertakings not to request a rehearing of the case before the Grand Chamber;
3. *Decides* to sever and adjourn the applications, in so far as they concern Iulius Moldovan, Melenuța Moldovan, Maria Moldovan, Petru (Gruia) Lăcătuș, Petru (Dîgăla) Lăcătuș, Otilia Rostaș and Maria Floarea Zoltan.

Done in English, and notified in writing on 5 July 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ J.-P. COSTA

Registrar President

APPENDIX

	Applicants	Amounts
1.	Bazil Sami LĂCĂTUȘ	11,000 euros
2.	Adrian and Silvia MOLDOVAN (no. 170)	27, 000 euros
3.	Ferdinand LĂCĂTUȘ	19,000 euros
4.	Ghioloanca LĂCĂTUȘ	18,000 euros
5.	Lucaci MOLDOVAN	23,000 euros
6.	Octavian and Eleonora ROSTAȘ	24,000 euros
7.	Lucreția ROSTAȘ	18,000 euros
8.	Adrian MOLDOVAN (no. 195A)	16,000 euros
9.	Rozalia ROSTAȘ (Mariana MOLDOVAN)	13,000 euros
10.	Maria LĂCĂTUȘ	13,000 euros
11.	Petru (Gălbinuș) LĂCĂTUȘ	13,000 euros
12.	Persida Dorina ROSTAȘ	13,000 euros
13.	Valentina ROSTAȘ	13,000 euros
14.	Petru (Petrișor) LĂCĂTUȘ	13,000 euros
15.	Bazil and Lucreția MOLDOVAN	28,000 euros
16.	Silvia MOLDOVAN (see no. 2)	-
17.	Eleonora ROSTAȘ (see no. 6)	-
18.	Lucreția MOLDOVAN (see no. 15)	-

Total EUR 262,000

