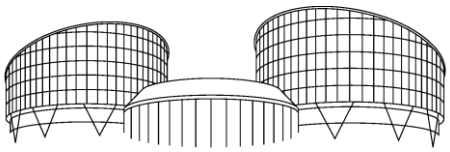

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF ANCA MOCANU AND OTHERS v. ROMANIA

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

JUDGMENT

STRASBOURG

13 November 2012

Referred to the Grand Chamber
29/04/2013

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 Mocanu and Others v. Romania,

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

Josep Casadevall, *President,*
Egbert Myjer,
Alvina Gyulumyan,
Ján Šikuta,
Ineta Ziemele,
Luis López Guerra, *judges,*
Florin Streteanu, *judge* ad hoc,
and Santiago Quesada, *Section Registrar,*

Having deliberated in private on 25 September 2012,

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

PROCEDURE

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

2. The applicants Mrs Anca Mocanu, Mr Teodor Mărieş and the applicant association were represented by Mr Ionuţ Matei, Mr Antonie Popescu and Ms Ioana Sfîrăială, lawyers practising in Bucharest. The applicant Mr Marin Stoica, who had been granted legal aid, was represented by Ms Diana Nacea, a lawyer practicing in Bucharest, until 8 December 2009. The Romanian Government ("the Government") were represented by their Agent, Mr Răzvan-Horaţiu Radu, then by Mrs Irina Cambrea, of the Ministry of Foreign Affairs.

3. Mr Corneliu Bîrsan, the judge elected in respect of Romania, withdraw from sitting in the case. The Government accordingly appointed Mr Florin Streteanu to sit as an *ad hoc* judge (Article 26 § 4 of the Convention and Rule 29 § 1 of the Rules of Court).

4. The applicants complained, in particular, about the lack of an effective investigation into the violent repression of which they had been victim during the anti-government demonstrations which took place in June 1990.

5. On 9 February 2009 the Court decided to join applications nos. 45886/07 and 32431/08 and to communicate them to the Government.

6. On 15 March 2011 the Court decided to give notice also of application no. 10865/09 to the Government.

7. Under Article 29 § 1 of the Convention, the Chamber decided to rule on the admissibility and merits of the applications at the same time.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicants Mrs Anca Mocanu and Mr Marin Stoica are two Romanian nationals who were born in 1970 and 1948 respectively and live in Bucharest.

9. The applicant Mr Teodor Mărieş is a Romanian national who was born in 1962 and lives in Bucharest. He is currently the president of the applicant association.

10. The association "21 December 1989" (*Asociaţia 21 Decembrie 1989*) is an association set up on 9 February 1990 to bring together persons who had injured and the parents of persons who had died during the violent suppression of the anti-communist demonstrations which took place in Romania in December 1989, when the then Head of State, Nicolae Ceauşescu, was deposed. The association, which defends the interests of the victims of the events of December 1989 in the criminal proceedings being conducted by the prosecutor's office at the High Court of Cassation and Justice (formerly the Supreme Court of Justice), was one of the groups which supported the anti-government demonstrations which occurred in Bucharest between April and June 1990. The demonstrators were demanding, *inter alia*, the identification of those responsible for the violence committed in December 1989.

A. The violent incidents which occurred from 13 to 15 June 1990 in Bucharest

11. On 13 June 1990 major demonstrations took place in the streets of Bucharest and, in particular, on University Square. Intervention by the security forces, ordered by the Government (as is clear from the decision issued on 17 June 2009 by the prosecutor's office at the High Court of Cassation and Justice), resulted in several civilian victims, including the husband of the applicant Anca Mocanu, Mr Velicu-Valentin Mocanu, who was killed by gunshots.

12. On 14 June 1990 thousands of miners were transported to Bucharest, essentially from the Jui Valley (*Valea Jiului*) mining region, which is situated about 300 km from Bucharest, to assist in the crackdown on the

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

13. The demonstrations ended on 15 June 1990, following the intervention by the armed forces and the miners.

14. The violence that occurred on this occasion led to multiple victims. The applicants Mr Stoica and Mr Mărieş have the status of injured parties in the criminal investigations which were subsequently conducted.

15. The headquarters of several political parties and other institutions, including those of the applicant association, were attacked and ransacked. The latter association has the status of a civil party in the criminal proceedings in question.

16. At the close of the events the then President of Romania again addressed the miners and thanked them for their support.

17. A letter of 5 June 2008, sent to the applicant association by the deputy head prosecutor in the military prosecutor's office at the High Court of Cassation and Justice, stated that "the events of 13-15 June 1990 caused the death of several persons; more than 1,000 individuals were unlawfully deprived of their liberty and submitted to ill-treatment in two barracks in Băneasa and Măgurele... The investigation also concerns the damage caused to the State, to associations, to political parties and to individuals, particularly following the transportation of miners and other large groups of people from various regions in the country..."

18. The criminal proceedings are currently pending (see the account below).

1. The circumstances behind the violent incidents

19. University Square in Bucharest was considered a symbolic location for the fight against the totalitarian regime, given the large number of persons who had died or were injured there as a result of the armed repression which began on 21 December 1989. In the first months of 1990 several citizens' associations – including the applicant association – mobilised their members to attend a protest rally against "people and mentalities considered to be close to communism" (facts as established by a decision of 16 September 1998, issued in case no. 160/P/1997 by the prosecutor's office at the Supreme Court of Justice).

20. The first demonstrations against the provisional government took place on University Square in Bucharest on 12 and 24 January 1990, according to the decision issued on 17 June 2009 by the prosecutor's office at the High Court of Cassation and Justice. The same decision stated that a counter-demonstration was organised by the National Salvation Front (*Frontul Salvării Naţionale*, the "FSN") on 29 January 1990. On that occasion, miners from the coal-mining regions of Valea Jiului, Maramureş,

Deva and other areas appeared in Bucharest for the first time. During this period the headquarters of the National Liberal Party were vandalised.

21. On 18 March 1990 Legislative Decree no. 92 of 14 March 1990 on the new electoral law was published in the Official Gazette (*Monitorul Oficial*). The legislative decree stated that persons who had committed abuse and human rights violations in the exercise of public functions, including persons who had taken part in the activities of the secret services (the former *Securitate*), were not eligible to stand for election.

22. Following this legislative decree, parliamentary and presidential election campaigns were launched for.

23. In this context, on 22 April 1990 unauthorised "marathon demonstrations" (*manifestaţii maraton*) began on University Square, at the initiative of the Students' League and other citizens' associations, including the applicant association; they lasted fifty-two days, during which the demonstrators occupied University Square. The demonstrators, who, according to the decision of 16 September 1998 were not violent, were essentially demanding that persons who had exercised power during the totalitarian regime be excluded from political life. They also called for politically independent mass media. These facts were also established in the decision of 17 June 2009.

24. The demonstrators on University Square alleged that "the [December 1989] revolution had been stolen by the FSN", called for identification of those responsible for the armed repression of December 1989 and demanded the resignation of the country's leadership, particularly the Minister of the Interior, whom they held responsible for the repression of the anti-communist demonstrations in December 1989. Those facts were established in the report of 18 May 2000 by the military prosecuting authorities at the Supreme Court of Justice. According to the decision of 17 June 2009 by the prosecutor's office at the High Court of Cassation and Justice, the demonstrators alleged that the revolution of December 1989 had been hijacked by leaders of the former Romanian Communist Party.

25. On 22 April 1990 fourteen demonstrators were arrested by the police on the ground that the demonstration had not been authorised. As established by the decision of 16 September 1998, those arrested were subjected to violence by the police. As the public had reacted to that violence by arriving to boost the number of demonstrators on University Square – about 30,000 persons, according to the prosecution submissions of 18 May 2000 – the police released the fourteen demonstrators. Over the following days, the authorities did not use force again, although the Bucharest City Council had still not authorised the gathering.

26. Negotiations between the demonstrators and the provisional government were unsuccessful.

27. On 20 May 1990 presidential and parliamentary elections took place in Romania. The FSN and its leader, a presidential candidate, won the elections.

28. The protests continued on University Square following those elections. However, the majority of citizens' and students' organisations had left the square, with the exception of a group of about 260 persons, living in tents, 118 of whom had begun a hunger strike (those facts are taken from the decision of 17 June 2009, referred to above).

29. On the evening of 11 June 1990 the new President elect of Romania and the Prime Minister convened a government meeting, attended by the Minister of the Interior and his Deputy, the Minister of Defence, the Director of the Romanian Intelligence Service (the SRI), the First Deputy President of the ruling party and representatives of the prosecutor's office at the Supreme Court of Justice (those events, and those set out below, are described in the prosecutor's decisions of 16 September 1998 and 17 June 2009).

30. On that occasion "it [was] decided to take measures to clear University Square by 13 June 1990". In addition, "it [was] envisaged that the competent bodies – the police and army – would be assisted by some 5,000 mobilised civilians". Implementation of this measure was entrusted to the first deputy president of the party in power. Two members of that party's steering committee opposed the measure, but without success. According to the decision of 17 June 2009, an action plan drawn up by General C. was approved by the Prime Minister.

31. On the same evening, the General Prosecutor's Office (*Procuratura Generală*) broadcast a statement on public television calling on the government to take measures so that traffic could circulate again in University Square.

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

2. The sequence of the violent incidents of 13 June 1990 and the circumstances affecting the three individual applicants

33. Following the meeting of senior members of the executive on 11 June 1990, at about 4.30-5 a.m. on 13 June 1990 members of the police and gendarmerie brutally attacked the demonstrators on University Square. According to the prosecution submissions of 18 May 2000 and the decision of 17 June 2009, there were 1,400 police officers and servicemen present. SRI agents had been deployed (according to the decision of 17 June 2009).

The arrested demonstrators were driven off and locked up in the premises of the Bucharest municipal police "and [were] beaten up both when being arrested and subsequently" (as stated in the decision of 16 September 1998). Again according to that decision, 262 demonstrators were thus arrested, including students from the Architecture Institute who were in the premises of their establishment, located on University Square. According to the prosecution submissions, those students had not taken part in the demonstrations. The decision of 17 June 2009 mentioned that 263 persons had been detained, adding that they had been taken to the Măgurele barracks after being held in the police cells.

34. The applicant Teodor Mărieş, who was arrested on this occasion, was taken to police station no. 4 (*Secţia 4*), where he was questioned until his release at about 6 p.m. (see paragraphs 80 et seq. below).

35. The police operation led to strong protests from many people, who demanded that the arrested demonstrators be released. "Hundreds of citizens went onto the streets of the capital and University Square and to the headquarters of the Ministry of the Interior and of the city police, and began protesting violently" against the security forces, throwing projectiles and setting fire to cars (extract from the decision of 16 September 1998).

36. At about 10 a.m., large numbers of workers from the IMGB factories in Bucharest went to University Square to help the police forces "in beating, immobilising and arresting the demonstrators"; "their actions were chaotic and heavy-handed; they hit out blindly, without distinguishing between demonstrators and mere passers-by". According to the decision of 16 September 1998, it was unknown by what means and on whose orders those workers had been mobilised. According to the prosecution submissions of 18 May 2000, they had been mobilised by N.S.D., the deputy president of the ruling party. "Unidentified" groups of workers entered the premises of Bucharest University and the Architecture Institute, assaulted the students and caused damage. Several students were apprehended by them and handed over to the police for imprisonment. Following protests by the deans of the faculties, the students were released.

37. In the afternoon of 13 June 1990 the demonstrations intensified around the television building, University Square, the Ministry of the Interior and the premises of the municipal police, all places where, according to the demonstrators, the arrested persons could have been held prisoner.

38. Following those incidents, the army intervened and ten armoured vehicles were sent into the particularly tense areas.

39. According to a report by the Ministry of the Interior, referred to by the Government in their observations, at about 6 p.m. the headquarters of the Ministry of the Interior were surrounded by 4,000-5,000 demonstrators. Since they had attempted to enter the Ministry by force and the situation had deteriorated, the servicemen opened fire towards the roofs of the halls, on

the orders of Generals A.G. and C.M., with a view to dispersing the demonstrators.

40. Gunshots directed towards the demonstrators from a first-floor balcony of the Ministry of the Interior caused the deaths of three persons.

41. It was in those circumstances that, at about 6 p.m., when he was at a distance of about 22 metres from the door of entry no. 3 of the Ministry, the first applicant's husband was killed by a ricocheting bullet which hit him in the head. Those events were described in detail in the prosecution submissions of 18 May 2000, which committed for trial the Minister of the Interior at the relevant time, a general and three officers with the rank of colonel. According to those submissions, the victims, who were returning from their workplaces, had not been armed and had not previously taken part in the "marathon demonstrations" on University Square; mere spectators of the events, they had been killed by shots which had allegedly ricocheted following the shots ordered by the accused five senior officers.

42. On 13 June 1990 no servicemen were subjected to violence by the demonstrators, as attested by the prosecution submissions of 27 July 2007. According to the same document, 1,466 cartridges were fired by the army, the police and other security forces, and a parachute unit was also involved in the public order operations.

43. The security forces caused the death by gunfire of a fourth person in the area of the "Romarta copiilor" shop. A fifth victim died after being stabbed in the television building district. A sixth victim died of a heart attack on University Square.

44. The security forces, assisted by civilians, deprived dozens of persons of their liberty by subjecting them to acts of violence and incarcerating them with no respect for legal formalities in the premises of police stations and in the Băneasa and Măgurele military barracks. Those victims were beaten and searched, and had their belongings – which they have subsequently not been able to recover (decision of 16 September 1998) – confiscated.

45. Some of those victims were taken to the basement of the public television building (see paragraphs 91 et seq. below).

Among them, the applicant Marin Stoica was beaten and detained by the police forces.

46. The day of 13 June 1990 ended in an atmosphere of extreme tension.

3. The miners' arrival in Bucharest

47. On 16 September 1998 witness M.I., an engineer, who at the relevant time was head of department at the Craiova agency of the national railway company (*Regionala CFR Craiova*), stated in the course of the investigation that, on the evening of 13 June 1990, the director of the Craiova CFR agency had ordered that the scheduled trains be cancelled and that four train convoys, or 37 wagons, be made available to the miners at Petroşani station, in the heart of the Jiu Valley mining area. The four trains

were to be sent from Petroşani to Bucharest via Craiova (those facts were set out in the prosecution office's decision).

48. M.I. related that, having found the order unlawful, he had attempted to prevent the miners' transportation to Bucharest by cutting the electricity provision to the railway line on the journey in question. In reaction to his insubordination, the director of the Craiova CFR agency ordered that engineer M.I. be replaced and that the railway line be restored at about 9 p.m. It appears that M.I. was subsequently dismissed and reported to the prosecution service, which held on 22 August 1990 that there was no case to answer.

49. A fifth train was sent to Bucharest from Motru station.

50. According to the decision of 17 June 2009, the miners and other workers were mobilised by "the FSN's territorial branches". The mustering of the miners was then carried out by their union leaders, who informed them that they would be taken to Bucharest to help the police forces re-establish order on University Square. To that end, the miners had armed themselves with chains, axes, sticks and other blunt objects.

51. The president of the Federation of Miners' Unions, who became mayor of Lupeni in 1998, was questioned as a witness. According to the above-cited decision, he stated that the five trains carrying the miners had arrived at Bucharest station at about 1 a.m. on 14 June 1990. He alleged that the miners had been greeted by the deputy Minister of Mines and by a Director General at the same Ministry, who subsequently became the Romanian ambassador to Australia,. The two senior government representatives accompanied the miners to University Square. On the way, several "Bucharest residents" had penetrated their groups "in order to lead the miners to the headquarters of the opposition political parties" (events as described in the prosecution's decision of 16 September 1998).

4. The sequence of the violent incidents on 14 June 1990 and the ransacking of the applicant association's headquarters

52. On the morning of 14 June 1990 the groups of miners arrived initially at Victory Square (*Piaţa Victoriei*), site of the government headquarters, and then dispersed to other locations in the city.

53. At about 6.30 a.m. the President of the Republic addressed the miners who had arrived at the government headquarters, inviting them to cooperate with the security forces and to restore order on University Square and in other areas where incidents had occurred. The President's speech is reproduced in full in the decision of 17 June 2009.

54. The above-cited decision states that C.N., a former officer in the *Securitate* and then in the Romanian Intelligence Service, who retired from the secret services on 2 May 1990 and was subsequently employed as engineer at the Aninoasa mine, had accompanied the miners to Bucharest. C.N., questioned by the prosecution service as a witness, stated that on the

morning of 14 June 1990, the group of miners whom he was accompanying had joined the other miners' groups, led by the head of the union and by the head of the protection and security service (*Serviciul de protecţie de pază – SPP*), on Victory Square. The leaders present had drawn up an action plan for the miners.

55. Immediately afterwards the miners, divided into large groups, had been led "by unidentified persons" to the headquarters of the opposition parties and associations perceived as hostile to the regime. According to the decision of 16 September 1998, this deviation from the stated purpose, namely the re-establishment of order, was such as to undermine democratic institutions directly.

56. The miners were greeted by security forces from the Ministry of the Interior, with whom they formed "mixed teams" and were dispatched to seek out demonstrators (*au început perierea zonelor fierbinţi ale capitalei*). On this occasion, "actions of extreme cruelty [took place], since not only the demonstrators but also residents of the capital who had no relation to the demonstrations were assaulted" (those events are described in the decision of 17 June 2009).

57. The groups of miners and the other persons who were accompanying them allegedly ransacked the headquarters of the National Farmers' Party (*Partidul Naţional Ţărănesc Creştin şi Democrat*) and of the National Liberal Party, and the headquarters of other legal entities, such as the Association of Former Political Prisoners and the Association "21 December 1989" (the applicant association).

58. According to the decision of 16 September 1998, no one present at the headquarters of those political parties and associations was spared by the miners. All were allegedly attacked and had their possessions removed. Many were apprehended and handed over to the police, who were there "as though by coincidence". All those arrested were imprisoned without respect for the legal formalities. The victims were apparently deprived of their freedom unlawfully for several days.

59. Some of those persons were released on 19 and 20 June 1990.

60. The other persons in police custody were placed in pre-trial detention, on a decision by the prosecutor, for behaviour *contra bonos mores* and breach of the peace (*ultraj contra bunelor moravuri şi tulburarea liniştii publice*), offences punishable under Article 321 of the Criminal Code, and, in some instances, for unauthorised entry into police premises, in violation of section 2 of Legislative Decree no. 88/1990.

61. Other groups of miners had gone to University Square.

62. On arrival, one of their first actions was to break into the premises of the University and the Architecture Institute, located on University Square, where they allegedly destroyed "everything [they found]". The staff and students whom they met were allegedly also ill-treated and subjected to "acts of violence and humiliation". The miners are said to have apprehended

all of those present in those premises and handed them over to the police and gendarmes. The arrested persons were taken by the security forces to police stations or to the Băneasa and Măgurele military barracks, or to the government headquarters. The miners conducted body searches of the arrested persons. Aggravated thefts were carried out, and by this means the arrested victims were also deprived of their possessions.

63. According to the decision of 16 September 1998, "in certain cases, the confiscated goods [were] returned to their owners, which indicated close collaboration between the miners and policemen".

64. The miners allegedly then moved into the streets surrounding University Square. All of the demonstrators who had not yet fled were caught and beaten, to the extent that they had to be hospitalised for long periods. The persons apprehended by the miners were handed over to the security forces, who imprisoned them "without following the legal formalities and without distinction". People who had merely been passing through the area where the miners took control were subjected to the same fate.

65. According to the decision of 17 June 2009, 1,021 individuals were apprehended in those circumstances.

66. According to the decision of 16 September 1998, "the miners' law-enforcement activities [ended] on 15 June 1990, when the President of Romania thanked them publicly for what they had done in the capital, and permitted them to return to their workplaces".

5. The immediate consequences of the violent incidents of 13 to 15 June 1990

67. As appears from the above-mentioned two decisions of 16 September 1998 and 17 June 2009, 958 miners did not immediately return to their homes, but remained in Bucharest to "be ready to intervene should the protests recommence", particularly since the newly elected president – Ion Iliescu – was soon to be sworn in. This "shock force" was placed under the command of I.C., a trade-union leader.

68. From 16 to 19 June 1990, those 958 miners were accommodated in military barracks in Bucharest. They were provided with food and allegedly received military uniforms.

69. Once the demonstrations had ended, the miners left Bucharest. On leaving the military barracks, the miners kept their military uniforms, "taking them home as souvenirs".

70. According to the decision of 16 September 1998, the investigation was unable to elucidate who had given the order to house and equip the miners, "but such a measure could only have been taken at the Ministry of Defence, to say the least".

71. According to a press release issued by the Ministry of Health on 15 June 1990 and reproduced in the decision of 17 June 2009, during the

period between 13 and 6 a.m. on 15 June 1990, 467 persons had gone to a hospital in connection with the violent incidents; 112 had been hospitalised and 5 deaths had been recorded.

72. According to the decision of 17 June 2009, with regard to the 574 demonstrators and other persons – including children, elderly and blind people – who were arrested and placed in detention in the Măgurele military barracks, "excessive violence was used against the demonstrators, both by police officers and the miners... and subsequently by the military conscripts responsible for guarding them". According to the decision, the violence and assaults were "psychological and physical (including sexual) in nature". The detainees were housed in inappropriate conditions in a garage, and received belated and inadequate medical care.

B. Other specific circumstances concerning the applicants

1. Specific circumstances concerning the applicant association

73. On 13 June 1990 the applicant association publicly condemned the violent interventions of that same date in a press release issued at 5 p.m. and published in the newspaper *Libertatea* on 14 June 1990.

74. Towards 11 p.m. on 13 June 1990 the leaders of the association decided, as a security measure, to spend the night in its headquarters. Six of them remained there during the night of 13 to 14 June 1990. A seventh person joined them early in the morning.

75. At 7 a.m. on 14 June 1990 a group of miners broke into the premises of the applicant association after breaking a window. In the first few minutes after breaking in, those miners were not violent, and were indeed rather reserved.

76. Shortly afterwards, an unidentified civilian, who was not a miner, arrived on the scene. He began to strike A.N., one of the members of the association. The miners followed his lead and brutally attacked each of the seven members of the association who were present, including S.B. Those seven persons were then arrested.

77. During the day of 14 June 1990, all of the association's assets and documents were seized, contrary to all legal formality. The operation took place under the supervision of troops from the Ministry of Defence.

78. The seven arrested members of the association were subsequently released on an unspecified date.

79. On 22 June 1990 the leaders of the association were able to return to the association's premises, accompanied by the police. On that occasion they observed that the premises had been ransacked.

2. Specific circumstances concerning the applicant Teodor Mărieş

80. As transpires from a letter of 24 September 1990, sent by the Ministry of the Interior to the parliamentary commission of inquiry into the events of 13 to 15 June 1990, several witnesses had reported that the applicant Teodor Mărieş was the leader of a group of demonstrators on University Square during the "marathon demonstrations" which had preceded the events of 13 to 15 June 1990.

81. At 4.30 a.m. on 13 June 1990 the applicant was apprehended by armed groups while he was in front of the United States Embassy in Bucharest. He was detained for fourteen hours.

82. The applicant emphasised that on that occasion he had been subjected to acts of physical and psychological violence; he had been ill-treated, beaten and subjected to fear and terror alongside all of the other demonstrators who had been apprehended in the street and arrested.

83. Thus, State agents allegedly threatened him in order to convince him to get into their vehicle, and grabbed him like two wild beasts (*şi-au înfipt mîinile în mine ca două fiare*). He had used the term "wild beasts" in addressing his alleged attackers.

84. The applicant also alleged that he had been taken to several police stations, assaulted and threatened, and stated that he had heard two State agents discussing the order to strike him.

85. From 1 p.m. he was questioned by a prosecutor for several hours.

86. In addition, the threats had continued after his release on the evening of 13 June 1990; his home was vandalised by unknown persons who had broken in, and those threats had obliged his companion to leave the city and seek shelter elsewhere.

87. After his release on the evening of 13 June 1990 the applicant returned to the scene of the demonstrations.

88. On 18 June 1990 he was again stopped and arrested; he was subjected to questioning day and night by secret service agents and prosecutors. He was accused of breach of the peace (Article 321 of the Criminal Code – *ultrajul contra bunelor moravuri şi tulburarea liniştii publice*), instigation and public defence of offences (Article 324 of the Criminal Code – *instigare publică şi apologia infracţiunilor*), destruction of public property (*distugere în paguba avutului obştesc*) and of entering the premises of an institution without authorisation. After fourteen days he was transferred to Jilava Prison in Bucharest with twenty-eight other persons. On 5 July 1990 he began a hunger strike to protest against the conditions in which he was detained. He was held in pre-trial detention until 30 October 1990.

89. By a decision of 15 April 1991, the Bucharest County Court convicted the applicant only of the charge of entering the premises – namely the courtyard – of the public television station (an offence punishable under

Article 2 § 2 of Legislative Decree no. 88/1990) and acquitted him of all the other charges.

90. By a judgment of 24 February 1992 the Supreme Court of Justice quashed the judgment of 15 April 1991 and acquitted the applicant of all the charges, including that of entering the premises of a public institution without authorisation.

3. Specific circumstances concerning the applicant Marin Stoica

91. On 13 June 1990, while he was walking to his office along a street close to the public television headquarters, the applicant was stopped in an inappropriate manner by a group of armed individuals and taken by force into the television building. Civilians, assisted by the police officers and servicemen present in those premises bound and struck him, then took him to the basement of the building. He was then led into a television studio, where several dozen other persons were already present; they were all filmed in the presence of the then director of the public television channel. The recordings in question were broadcast during the night of 13 to 14 June 1990, accompanied by commentary indicating that they were foreign agents who had threatened to destroy the television premises and equipment.

92. In the course of the same night the applicant was beaten, struck on the head with blunt objects and threatened with firearms until he lost consciousness. He provided a detailed description of the ill-treatment to which he had been subjected in a statement made to the military prosecutor on 17 May 2005 in the context of the investigation in case no. 75/P/1998.

93. The applicant woke up around 4.30 a.m. in the Floreasca Hospital in Bucharest. According to the forensic medical report drawn up on 18 October 2002, the medical certificate issued by the hospital's emergency surgery department stated that at about 4.30 a.m. on 14 June 1990, the applicant had presented himself in the reception area. He had then been diagnosed as suffering from bruising on the left side of the abdomen and ribcage, abrasions on the left side of his ribcage resulting from an assault, and cranio-cerebral trauma.

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

95. As his identity papers had been taken from him in the course of the events of 13 to 14 June 1990, he was invited to collect them three months later from the Directorate of Criminal Investigations at the General Inspectorate of Police. In the meantime, he had remained shut away at home for fear of being re-arrested, tortured and imprisoned.

C. The criminal investigation

96. The investigation into the violent suppression of the anti-government demonstrations of June 1990, in the course of which the husband of

applicant Anca Mocanu was killed and of which the two other individual applicants were allegedly victims, and which resulted in the ransacking of the applicant association's headquarters, began in 1990, initially in the context of different case files – more than one thousand, according to the Government.

97. In the letter of 29 May 2009 sent to the Government Agent by the military prosecuting authorities at the High Court of Cassation and Justice, the facts are summarised as follows: "With regard to the period 1990-1997, we note that hundreds of cases were registered on the rolls of the prosecutor's office at the Bucharest County Court and the district prosecutor's offices as complaints concerning the offences of theft, destruction, armed robbery, breach of personal integrity, unlawful deprivation of liberty, and other offences, acts committed in the context of the miners' actions in Bucharest on 14 and 15 June 1990. In the majority of those cases, it having proved impossible to identify the perpetrators, the proceedings were discontinued."

98. No decision to discontinue the proceedings was communicated to the applicant Anca Mocanu.

99. Those cases were subsequently joined and the context of the investigation was broadened in 1997 and subsequent years, the events having been given another legal classification implying aggravated criminal responsibility. From 1997 senior army officers and State officials were successively accused and the investigation was transferred to the military prosecutor's office as case no. 160/P/1997.

100. According to the Government, 183 previously opened cases were joined to case no. 160/P/1997 between 22 October 1997 and 27 October 1999.

101. On 16 September 1998 a further 98 case files were joined to the main file. On 26 June 2000 the military prosecuting authorities assumed responsibility for 748 cases concerning the events of 13 to 15 June 2009, including the complaints of wrongful deprivation of liberty on 13 June 1990, as stated in the decision of 17 June 2009.

102. From 16 September 1998, case no. 160/P/1997 was split into four cases and the investigation was continued at the military prosecutor's office at the Supreme Court of Justice (see paragraphs 108 et seq. below).

103. From 8 January 2001 three of those four cases were joined. After that date the investigation into the violent suppression of the demonstrations of 13 and 14 June 1990 was thus divided between two main case files.

104. The first of those cases concerned accusations of instigation of or participation in aggravated manslaughter, including that of the victim Velicu-Valentin Mocanu.

105. Those accusations were made against the President of Romania at the relevant time and against five senior army officers, including the then Minister of the Interior. The indictment states that "following orders given

by [the former president] and measures taken in the exercise of his functions, or exceeding them, in the evening and night of 13 to 14 June 1990 the security forces and army personnel used the arms issued to them and military ammunition against demonstrators, actions which resulted in the murder of four persons, injuries to three others and endangering of the lives of other persons" (extract from the decision of 19 July 2007, issued in case no. 74/P/1998, under which the accusations against the former President and against the other accused, high-ranking military officers, were severed from the main file).

This branch of the investigation is described below in paragraphs 117 et seq.

106. The other case into the events of June 1990, including the criminal complaints regarding the violence to which the applicants Marin Stoica and Teodor Măriș were subjected and the ransacking of the applicant association's premises, concerned the accusations of instigation of or participation in the acts of undermining State power, sabotage and genocide, as set out in Article 357 (a) to (c) of the Criminal Code, and inhuman treatment, as well as propaganda in favour of war (Article 356).

107. Those accusations were brought against the former President, the former head of the SRI and several high-ranking army officers and several dozen civilians. The decision by the military prosecuting authorities at the High Court of Cassation and Justice in case no. 75/P/1998 indicates that criminal proceedings were brought (*s-a început urmărirea penală*) against I.I., the former President, on 9 September 2005 and against V.M., former head of the SRI, on 12 June 2006, in respect of those charges.

This branch of the investigation is described below in paragraphs 148 et seq.

1. The decision of 16 September 1998 by the military prosecuting authorities at the Supreme Court of Justice

108. On 16 September 1998 the military prosecutor's office at the Supreme Court of Justice issued its decision in case no. 160/P/1997, following the investigation into the criminal complaints filed by sixty-three persons, victims of violence and unlawful arrests, including three members of the applicant association, and twelve legal persons, the premises of which had been ransacked during the events of 13 to 15 June 1990. The victims indicated on the attached list of complaints included Mr Velicu-Valentin Mocanu and the applicant association.

109. The military prosecutor's office indicated that other complaints (*o altă parte a plângerilor*) were pending before the ordinary prosecutors' offices, including complaints about the death of two persons. In addition, it stated that, by decisions of 30 April, 4 and 5 May 1998, three miners, Nicolae C., Gavril N. and Petru G., had been charged with attacks against the headquarters of certain institutions and certain political parties, offences

punishable under Article 2 of Legislative Decree no. 88/1990. The Court has not been informed of the outcome of those proceedings.

110. The military prosecutor's office added that its decision also concerned "the suspicions of the murder of about one hundred individuals during the events of 13 to 15 June 1990, [whose corpses] were allegedly incinerated or buried in common graves in cemeteries in villages near Bucharest (particularly in Străuleşti)".

111. It also indicated that, to date, the investigation had not been able to identify the persons who had effectively implemented the executive's decision to call for civilian assistance in restoring order in Bucharest. According to the prosecution service, this shortcoming was due to the "fact that none of the persons who had held posts of responsibility at the relevant time [had] been questioned", particularly the then President of Romania, the Prime Minister and his Deputy, the Minister of the Interior, the head of the police, the head of the SRI and the Minister of Defence.

112. By the above-mentioned decision, the military prosecuting authorities at the High Court of Justice ordered that the case be severed and that the investigation be continued into abuse of power against the public interest having serious consequences (*abuz în serviciu contra interesului public, în forma consecinţelor grave*). It also mentioned the need to investigate the fact that a social category had been enrolled alongside the security forces to combat other social categories, an offence punishable under Article 248 § 2 of the Criminal Code and subject to a punishment of five to fifteen years' imprisonment, and to investigate the assault on democratic institutions represented by the attacks against the headquarters of certain institutions and certain political parties, offences punishable under Article 2 of Legislative Decree no. 88/1990.

113. In addition, the prosecutor's office ordered that the case be severed and the investigation continued into the homicide by firearms of four civilians, including the applicant's husband.

114. It also ordered that the case be severed and to continue the investigations into the possible existence of other victims, namely persons deceased during the violent incidents of 13-15 June 1990.

115. Lastly, the prosecutor's office decided to stay, on the ground that the period of limitation had expired, the proceedings in respect of all the offences of armed robbery, unlawful deprivation of liberty, abusive conduct, abusive investigation, abuse of power against private interests, assaults, infringement of physical integrity, destruction of property, theft, violation of the home, failure to carry out obligations arising from one's post and rapes, committed between 13 and 15 June 1990 by unidentified persons belonging both to the security forces and to the groups of miners.

116. This part of the decision of 16 September 1998 was set aside by the decision of the military prosecutor's office at the Supreme Court of Justice,

issued on 14 October 1999. It ordered that the proceedings be resumed in this respect.

2. Subsequent developments in the investigation into accusations of participation in homicide in respect of senior army officials

117. After the decision of 16 September 1998 the investigations into the homicide of Mr Velicu-Valentin Mocanu continued under case no. 74/P/1998.

118. The applicant Anca Mocanu and the two children from her relationship with the victim also joined the proceedings as a civil party.

119. Two generals, including the former Minister of the Interior, and three senior-ranking officials were charged with the murders of 13 June 1990, including that of the applicant's husband. The five senior army officers were indicted on 12, 18 and 21 January and on 23 February 2000.

120. All five were committed for trial on the basis of a prosecutor's report recommending trial, dated 18 May 2000. At the same time, the investigation concerning the unlawful deprivation of liberty of 1,300 individuals by the security forces and the miners from 13 June 1990 was severed from case no. 74/P/1998.

121. By a decision of 30 June 2003, the Supreme Court of Justice ordered that the case be sent back to the prosecutor's office for additional investigation on account of various shortcomings, and that the offences be re-classified as participation *lato sensu* in aggravated homicide (*participaţie improprie la omor calificat şi omor deosebit de grav*), crimes punishable by Articles 174, 175 (e) and 176 (b) in conjunction with Article 31 § 2 of the Criminal Code. The Supreme Court also listed a series of investigative measures that were to be taken.

122. Applicant Anca Mocanu's appeal on points of law against that decision was dismissed by the High Court of Cassation and Justice in a judgment of 16 February 2004.

123. By a decision of 14 October 2005, the criminal proceedings against the five defendants were abandoned. That decision was set aside on 10 September 2006 and, in consequence, the criminal proceedings resumed.

124. In a report recommending trial dated 27 July 2007, the prosecutor's office at the High Court of Cassation and Justice committed for trial the former Minister of the Interior, a general and two other senior army officers. It discontinued the proceedings against the fifth officer, who had since deceased.

125. In a judgment of 17 December 2007, the High Court of Cassation and Justice ordered that the case be sent back to the prosecutor's office for a breach of procedural rules, principally on the ground that criminal proceedings against a former minister had to comply with a special procedure for prior parliamentary authorisation (as for ministers in office)

as also indicated in decision no. 665/2007 of the Constitutional Court, which had found the provisions of the Ministerial Responsibility Act, which did not require prior authorisation in respect of former ministers, to be discriminatory and thus unconstitutional.

126. On 15 April 2008 the prosecutor's office at the High Court of Cassation and Justice lodged an appeal on points of law (*recurs*) against that decision, which was dismissed on 23 June 2008.

127. According to the Government, the investigation resumed on 30 April 2009.

128. The Government further maintained that the murder investigation in respect of the senior army officers is still pending before the prosecutor's office.

(a) The accusations against the former President of Romania

129. By a decision of 19 June 2007, issued by the military prosecuting authorities at the High Court of Cassation and Justice in case no. 74/P/1998, the former President of Romania, in office from 1989 to 1996 and from 2000 to 2004, was also charged. The offences with which he was charged were characterised as participation *lato sensu* in aggravated homicide, crimes punishable under Articles 174, 175 (e) and 176 (b) of the Criminal Code, taken together with Article 31 § 2 of that Code.

130. On 22 June 2007 the defendant was summoned to appear before the prosecutor's office, but he did not reply to this summons. He was then summoned for 26 June 2007. He did not appear on that date either, but informed the prosecutor's office that he would appear on the following day, at noon on 27 June 2007.

131. At 6 p.m. on 27 June 2007 the defendant came to the prosecutor's office, accompanied by his lawyer. The prosecutor transmitted to him the evidence which justified the opening of the criminal proceedings (*începerea urmăririi penale*).

132. A decision of 19 July 2007 stated that he was accused of having, on 13 June 1990 and in his capacity as President of Romania, ordered the Army Chief of Staff and the Minister of the Interior to take measures against the demonstrators, using armed servicemen and military vehicles at several locations in the capital, especially the headquarters of the public television channel, the SRI and the Minister of the Interior. He had allegedly also ordered the use of toxic gas and tear gas. As a result of the crackdown, four persons had been killed, including Mr Velicu-Valentin Mocanu, and the lives of other persons had been endangered.

133. On 19 July 2007 the accusations against the former President were severed from case no. 74/P/1998 and the investigation continued under case no. 107/P/2007.

134. Following a judgment issued on 20 June 2007 by the Constitutional Court, ruling out the jurisdiction of the military courts to judge or prosecute

civilian defendants, the military prosecuting authorities at the High Court of Cassation held that it did not have jurisdiction and, by decisions of 19 and 20 July 2007 respectively, sent cases nos. 74/P/1998 and 107/P/2007 to the ordinary prosecutor's office for further investigation.

On 27 July 2007 the military prosecuting authorities transmitted case no. 107/P/2007, made up of 253 pages, to the relevant department of the prosecutor's office at the High Court of Cassation and Justice.

135. On 7 December 2007 the Prosecutor General of Romania set aside, for procedural errors, the decision of 19 June 2007 to bring charges and ordered that the investigation be resumed.

136. The breaches of procedure identified in the decision of 7 December 2007 were the following: failure to indicate the time at which the opening of criminal proceedings had been ordered; failure to register the decision to open proceedings in a special register as provided for by Article 228 of the Code of Criminal Procedure; addition of the date by hand, the remainder of the decision having been typed up on a computer; lack of jurisdiction of the prosecutor who issued the decision of 19 June 2007, since he had issued the decision of 10 September 2006 setting aside the finding that there was no case to answer, dated 14 October 2005.

137. By a decision of 10 October 2008, the proceedings were discontinued on the ground that there was no causal link between the order to empty University Square, given by the former President, and the initiative taken by three officers with the agreement of their superiors, General A. and General C., Minister of the Interior, to open fire on the demonstrators.

138. The prosecutor's office considered that the objectives of the action plan drawn up on 12 June 1990 had been fulfilled by 9 a.m. on the following day, and that the subsequent events, namely the ransacking and destruction of various institutional headquarters and the later decisions to open fire had not been any part of the said plan.

139. The decision stated that Mr Mocanu, then aged 22, had been killed at about 6.30 p.m. on 13 June 1990 at the headquarters of the Ministry of the Interior by a gunshot which had struck his head after having ricocheted, shots having been fired on the orders of General A. That order had been approved by the Minister of the Interior and executed by officers T.S. and C.D., who had distributed weapons and ammunition to the six servicemen who had fired the shots.

140. On 3 November 2008 the applicant challenged this decision to discontinue the proceedings.

141. Subsequent developments in this part of the proceedings have not been communicated to the Court.

(b) The investigative measures into the circumstance of the death of Velicu-Valentin Mocanu

142. According to the forensic autopsy report, the applicant's husband died violently, as a result of gunshot wounds.

143. On 11 December 2000 the applicant lodged her first specific request to join the proceedings as a civil party. On the same date the applicant party and other civil parties, namely the parents of the three other persons who were killed during the events of 13 and 14 June 1990, jointly filed pleadings containing their opinion as to the persons responsible for the deaths of their relatives, and their claims for compensation.

144. On 14 February 2007 the applicant was questioned for the first time by the prosecutor's office for the purposes of the investigation. Assisted by a lawyer of her own choice, she stated that, concerned by her husband's failure to return home in the evening of 13 June 1990, she had searched for him the following day, without success. She had subsequently learned from newspapers that he had been killed by a shot to the head. No investigator or official representative had visited her, nor had she been summoned for the purposes of the investigation at any later date; only a few journalists had come to see her. Aged twenty and without employment at the relevant time, she had been left to bring up alone the two children she had had with her deceased husband, namely a daughter of two months (born in April 1990) and a two-year-old son.

145. The applicant indicated in her statement that she had never previously been questioned in the context of the investigation. She reiterated that she was seeking the criminal conviction of the persons responsible for her husband's death, and asked to be joined to the proceedings as a civil party.

146. According to a letter of 6 July 2011 from the prosecutor's office at the High Court of Cassation and Justice to the Agent of the Government Agent, a new investigation file concerning the victim Velicu-Valentin Mocanu was opened under number 676/P/2011.

147. The documents in the file submitted to the Court do not indicate whether Anca Mocanu was informed about developments in the investigation into the aggravated manslaughter of her husband following the High Court of Cassation and Justice's judgment of 17 December 2007 ordering that the case be sent back to the prosecutor's office for procedural defects.

3. The investigation into the accusations of inhuman treatment, undermining State power, propaganda in favour of war and genocide

148. Criminal proceedings against 37 persons, namely 28 civilians and 9 servicemen, were brought by the military prosecutor's office between

26 November 1997 and 12 June 2006, mainly on a charge of undermining State power.

149. Those defendants included the former President of Romania. He was charged on 9 September 2005 with participation in genocide (Article 357, paragraphs (a), (b) and (c) of the Criminal Code), propaganda in favour of war (Article 356 of the Criminal Code), inhuman treatment (Article 358 of the Criminal Code), undermining State power (Article 162 of the Criminal Code) and acts of sabotage (*actele de diversiune*) (Article 163 of the Criminal Code).

Among those 37 accused, the former head of the SRI was also charged with instigation or participation in genocide (Article 357, paragraphs (a), (b) and (c) of the Criminal Code), inhuman treatment, undermining State power and acts of sabotage.

150. On 19 December 2007 the military prosecutor's office ordered that case file no. 75/P/1998 was to be severed with regard to the criminal accusations against, on the one hand, twenty-eight civilians – including the former President of Romania and the former head of the secret services – and, on the other, nine servicemen, on charges of undermining State power in violation of Article 162 of the Criminal Code. By virtue of the decision to sever the cases, the investigation with regard to the twenty-eight civilians was to continue before the relevant civilian prosecutor's office. By a decision of 27 February 2008, the head prosecutor at the military prosecutor's office set aside the decision of 19 December 2007, finding that, given the close connection between the events, a single prosecutor's office, namely the civilian prosecutor's office, was to examine the entirety of the case in respect of all the accused, both civilians and servicemen.

151. By a decision of 28 December 2007 in case no. 222/P/2007, the military prosecutor's office relinquished jurisdiction to the civilian prosecutor's office with regard to the criminal accusations against twenty-eight civilians, including the former President of the Romania and the former head of the secret services.

152. On 4 February 2008 forty volumes, containing a total of 10,717 pages and concerning cases nos. 75/P/1998 and 222/P/2007, were sent to the relevant section of the prosecutor's office at the High Court of Cassation and Justice.

153. Following the decision of 27 February 2008 by the head prosecutor at the military prosecutor's office (see paragraph 150 above), on 29 April 2008 the military prosecuting authorities at the High Court of Cassation relinquished jurisdiction to the civilian prosecutor's office with regard to examination of the criminal accusations against nine servicemen – including several generals, the former head of police and the former Minister of the Interior – concerning the crackdown of 13 to 15 June 1990.

154. The decision of 29 April 2008 included a list of more than a thousand victims who were held and subjected to ill-treatment in the

premises of the Băneasa Military School for Serving Officers and the Măgurele military unit, and in other locations.

155. The applicants Teodor Mărieş and Marin Stoica were included in this list of injured parties.

156. The decision also contained a list of the legal entities which had been attacked during the crackdown of 13 to 15 June 1990, one of which was the applicant association.

157. The above-mentioned decision also concerned case no. 160/P/1997 with regard to the "identification of the 100 persons who died during the events of 13-15 June 1990".

158. The decision stated that the investigation had also examined the losses for the national economy arising from the transportation and accommodation of the persons summoned to Bucharest from 13 to 15 June 1990, and the salaries that they had been paid, even though they had not been at their place of employment. The decision also contained a list of the public companies which had provided workers for the intervention in Bucharest, including the mines in Lupeni, Petrila, Aninoasa, Bărbăteni, Barza, Petroşani, Dâlga, Vulcan, Valea de Brazi, Paroşeni, Motru, Baia de Arieş, Aiud, Roşa Montană, Câmpulung, Filipeştii de Pădure, Şotânga, Albeni, Ţebea and Comăneşti, the factories in Călăraşi, Alexandria, Alba-Iulia, Craiova, Constanţa, Deva, Giurgiu, Galaţi, Braşov, Slatina and Buzau, and the IMGB factories and Adesgo and APACA companies in Bucharest.

159. On 5 May 2008 209 volumes, containing a total of some 50,000 pages and concerning case no. 75/P/1998, were sent to the relevant section of the prosecutor' office at the High Court of Cassation and Justice.

160. By a decision of 10 March 2009, the prosecutor's office at the High Court of Cassation and Justice dismissed the case in the part concerning the accusations of undermining State power because they were time-barred, and relinquished jurisdiction with regard to examination of the accusations of acts of sabotage, propaganda in favour of war, genocide in the forms provided for by Article 357 (a) to (c) of the Criminal Code, and inhuman treatment.

161. On 17 June 2009 a finding was issued that there was no case to answer with regard to the remainder of the accusations (see paragraphs 185 et seq. below).

(a) Investigative measures concerning Mr Stoica in particular

162. On an unspecified date in 2001 the applicant's complaint was joined to the investigation file into the accusations of inhuman treatment, undermining State power, propaganda in favour of war and genocide (case no. 75/P/1998).

163. On 18 October 2002 the applicant underwent an examination at the public institute of forensic medicine, for the purposes of the investigation into the assault allegedly sustained on 13 and 14 June 1990. According to

the forensic medical report, a medical certificate issued by a hospital emergency surgical unit stated that, at about 4.30 a.m. on 14 June 1990, the applicant had come to the hospital reception and been diagnosed as suffering from abdominal and thoracic bruising on the left side, abrasions to the left side of the thorax as a result of an assault, and cranio-cerebral trauma.

The report also noted that those injuries had required three to five days of medical treatment and had not been such as to endanger the applicant's life.

164. The expert report further indicated that, during the period from 31 October to 28 November 1990, in February 1997 and in March and August 2002, the applicant had been hospitalised for major epilepsy fits and that the following diagnosis was given: secondary epilepsy – post-traumatic – and other cerebral and vascular disorders (transient ischemic attacks, TIAs). The expert report noted that the post-traumatic epilepsy had appeared following an injury sustained in 1966.

165. On 9 and 17 May 2005 the applicant was questioned; he gave his opinion on the events and submitted his claims for compensation in respect of the alleged pecuniary and non-pecuniary damage.

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

167. On 12 September and 4 October 2006 the applicant filed two additional criminal complaints.

168. On 23 April 2007 the prosecutor questioned the witnesses indicated by the applicant, namely S.G. and V.E.

169. When questioned on 9 May 2007 as an injured party, the applicant asked the prosecutor to order a second forensic medical report since, he alleged, the 2002 report failed entirely to emphasise the seriousness of the injuries sustained in 1990 and the seriousness of the continuing after-effects of that injury.

170. On that occasion, a video recording made during the events of 13 June 1990, including those at the headquarters of the public television station, was shown to the applicant. He recognised himself, and asked that the video recording be added to the investigation file.

171. On 9 May 2007 the applicant formally joined the proceedings as a civil party.

172. Also on 9 May 2007, the prosecutor commissioned a new report, given that the applicant had challenged the conclusions of the forensic medical report drawn up in 2002. Among other things, he asked the forensic specialists to establish whether the injuries sustained by the applicant on 13 June 1990 had been life-threatening and whether there had been a causal

link between those injuries and the medical conditions from which he was suffering on the date on which the report was commissioned.

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

174. On 30 October 2007, following requests by the applicant, the observation files about him and completed by the emergency unit of Bucharest Bagdasar Arseni Hospital in 1992, were added to the file.

175. On 8 February 2008 the applicant submitted several documents to the case file.

176. In a further development, on 10 May 2004 the prosecutor's office at the Bucharest County Court issued a finding, subsequently upheld, that there was no case to answer in respect of a complaint lodged by the applicant, on the basis of the same facts, alleging attempted murder.

(b) Particular aspects of the investigation concerning the criminal complaint by the applicant association, with a request to join the proceedings as a civil party

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

178. On 22 July 1990 two police officers went to the applicant association's headquarters and recorded the damage, namely the broken windows and locks, and "all of the destroyed objects". They drew up a report in the presence of the association's leaders and a witness.

179. On the same day, three of the association's leaders and one of its members drew up an inventory of the missing equipment, primarily typewriters, photocopiers and a computer, and a descriptive list of the destroyed furniture and other objects.

180. On 23 July 1990 a prosecutor from the Bucharest Prosecutor's Office brought to the applicant association's headquarters seven typewriters, four photocopiers and a computer. The report mentioned that two of the photocopiers were unusable, as were the computer and one of the typewriters.

181. On 26 July 1990 the applicant association submitted a criminal complaint to the Bucharest Prosecutor's Office about the ransacking of the association's headquarters and the assault of certain of its members on

14 June 1990. It also demanded the restitution of all the assets which had been taken away, including documents, and asked to join the criminal proceedings as a civil party. It further requested an expert report evaluating the assets that had been destroyed or stolen, and cited five witnesses, calling for them to be questioned.

182. On 22 October 1997 the General Inspectorate of Police sent the prosecutor's office at the Supreme Court of Justice twenty-one case files, opened following criminal complaints by several individuals and legal entities with regard to ill-treatment and destruction during the period of 13 to 15 June 1990. Those files included case file no. 1476/P/1990 from the prosecutor's office at the Bucharest County Court, concerning the applicant association's complaint regarding the ill-treatment inflicted on several of its members. The file contained 66 pages. In the same letter, the General Inspectorate of Police invited the prosecutor's office to inform it of "the steps to be taken to carry out interviews for the purpose of the investigation".

183. According to the decision of 17 June 2009, three other packages containing 69, 46 and 98 files had also been taken over by the military prosecutor's office and joined by decisions of 22 October 1997, 16 September 1998 and 22 October 1999 respectively.

184. The applicant association periodically applied to the prosecutor's office at the Supreme Court of Justice (subsequently the High Court of Cassation and Justice) for information on progress in the investigation or to request further investigation.

(c) The finding of 17 June 2009 that there was no case to answer

185. On 17 June 2009 the prosecutor's office at the High Court of Cassation and Justice issued a decision in the case concerning inhuman treatment, undermining State power, propaganda in favour of war, and genocide.

186. That decision gave a comprehensive description of the violence, classified as extreme cruelty, to which several hundred demonstrators had been subjected by the miners, acting jointly with the security forces.

187. The decision also established that, following investigations conducted over about nineteen years by the civilian prosecutor's offices and, subsequently, by the military prosecuting authorities, it had not been possible to establish either the identity of the attackers or the degree of involvement of the security forces. The relevant extract of the decision reads as follows:

> "Following the investigations carried out over a period of about nineteen years by the civilian prosecutors' offices and, subsequently, by the military prosecuting authorities, investigations which are contained in case file no. 175/P/1998, it has been impossible to establish the identity of the attacking miners, the degree of involvement in their actions by the security forces and members and sympathisers of the FSN and

their role and participation in the actions of 14 and 15 June 1990, conducted against the capital's residents."

188. The decision ordered a finding that there was no case to answer (*scoatere de sub urmărire penală*) in respect of all the accusations, essentially because they had become time-barred.

189. With regard to the accusations of propaganda in favour of war, inhuman treatment and genocide, which were not time-barred, the decision held that there was no case to answer since the essential elements of the offences had not been demonstrated.

190. Thus, it was indicated that the then Head of State could not be charged with any form of participation in the joint actions by the miners and the armed forces, since he had approved only the actions which occurred on the morning of 13 June 1990 and the army's intervention in the afternoon of the same date, for the stated purpose of restoring order. The decision also stated that there was no information (*date certe*) to substantiate accusations against him with regard to the preparations for the miners' arrival in Bucharest and the instructions they had been given. Concerning his request to the miners to protect the institutions of State and to restore order, following which 1,021 persons had been deprived of their liberty and subjected to assaults on their physical integrity, the decision specified that this could only be classified as incitement to assault and that criminal liability in that respect was now time-barred. Lastly, it indicated that the speech encouraging the miners to occupy and defend University Square against the demonstrators camping there could not be interpreted as propaganda in favour of war, on the ground that the then Head of State had not sought to instigate a conflict of any kind, but had, on the contrary, asked the miners to put an end to excess and acts of bloodshed (*dar chiar a solicitat minerilor să elimine excesele şi actele sângeroase*).

191. The decision further noted that the miners had been motivated by simplistic personal convictions, developed on the basis of contagious over-excitement. Those convictions had led them to act as arbitrators of the political situation and voluntary guardians of the political regime, "correcting" those who opposed it, and the authorities had accepted them as such. Thus, according to the decision, the legal requirement that the inhuman treatment target "individuals who fall into enemy hands" was not met in this case, according to the prosecutor, since the miners no longer had any enemy to fight against on 14 June 1990.

192. With regard to the accusations of torture, the decision stated that, prior to 9 November 1990, i.e., at the material time, the legislation contained no provisions against torture.

(d) Attempts by the applicants Anca Mocanu and Marin Stoica to have the decision of 17 June 2009 set aside

193. According to the Government, on 18 December 2009 an application by Anca Mocanu to have set aside the decision of 17 June 2009 to discontinue proceedings was rejected as out of time by a decision of the High Court of Cassation and Justice.

194. The applicant Marin Stoica lodged a separate appeal against the same decision to discontinue proceedings.

195. On 9 March 2011 the High Court of Cassation and Justice dismissed the plea of *res judicata* raised by the defendant I.I., and the applicant's appeal. The High Court ruled on the merits of the decision to discontinue proceedings on the ground that they were time-barred.

4. Summary of the investigative measures

196. According to the Government, the main investigative measures carried out during the period between 1990 and 2009 were as follows: more than 840 interviews with injured parties; hearing of witnesses on more than 5,724 occasions; more than 100 forensic medical reports.

197. Those measures gave rise to several thousand pages of documents.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The legislative provisions

198. The relevant provisions of the Criminal Code governing participation *lato sensu* (*participaţia improprie*), contained in Article 31 of the Criminal Code, are worded as follows:

> "Inciting, facilitating or helping, in any manner, with intent, the commission by another person who is not criminally liable, of an act provided for in the criminal law, shall be sanctioned by the penalty laid down in the law for that act."

199. According to Law no. 27/2012 on Amendment of the Criminal Code, published in the Official Gazette of 20 March 2012, criminal liability for intentional homicide is not subject to statutory limitation. That law is also applicable to homicides which had not become time-barred on the date of its entry into force.

B. Constitutional Court decisions nos. 610/2007 and 665/2007

200. Decision no. 610/2007 of the Constitutional Court, dated 20 June 2007, concerned an objection of constitutionality raised with regard to a transitional provision of Law no. 356/2006 on reform of the Code of Criminal Procedure and the laws on organisation of the courts. Under that law, jurisdiction to examine criminal accusations concerning related acts

committed jointly by civilians and servicemen lay with the ordinary civilian prosecutors' offices and courts, and no longer with the military prosecutors' offices and courts as in the period prior to the legislative reform. However, the new law provided that the military prosecutors' offices and courts would continue to have jurisdiction to examine investigations which were pending on the date on which the law entered into force and which involved both civilian and military co-defendants. By decision no. 610/2007, the Constitutional Court declared that transitional provision to be unconstitutional.

201. Decision no. 665/2007 of 5 July 2007 by the Constitutional Court concerned an objection of constitutionality raised with regard to section 23 of Law no. 115/1999 on ministerial responsibility. That section provided that the criminal proceedings and trial of former ministers for offences committed while they were in office were to follow the rules of ordinary law, and did not require the prior authorisation laid down by the special procedure. By this decision, the Constitutional Court found that provision to be unconstitutional, and considered that the special procedure provided in Law no. 115/1999 ought also to be applied to former ministers.

THE LAW

I. THE JOINDER OF THE THREE CASES

202. The Court notes that the joint applications registered under the numbers 45886/07 and 32431/08 and the application registered under the number 10865/09 concern the same factual circumstances and raise similar legal issues. Consequently, it considers it appropriate to join also the third application to the other two applications, in accordance with Rule 42 § 1 of the Rules of Court.

II. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

203. The applicant Mrs Anca Mocanu complained of the lack of an effective, impartial and thorough investigation capable of leading to the identification and punishment of those responsible for the violent crackdown on the demonstrations of 13 and 14 June 1990, during which her husband, Mr Velicu-Valentin Mocanu, was killed by gunshots. She also complained about the slowness of the proceedings.

204. She relied in that connection on Article 2 of the Convention in its procedural aspect and Article 6 of the Convention.

205. The Court considers that the questions raised fall to be examined under the procedural limb of Article 2 of the Convention. It does not

consider it necessary to examine the case also under Article 6 of the Convention.

206. The relevant provision reads:

Article 2

"1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:

(a) in defence of any person from unlawful violence;

(b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

(c) in action lawfully taken for the purpose of quelling a riot or insurrection."

A. Admissibility

207. The Government objected that the applicant had failed to exhaust domestic remedies. They alleged that the applicant had failed to avail herself of the remedies available in respect of her complaint concerning the length of the investigation. In their opinion, it had been open to her to bring before the civil courts an action for damages against the national authorities for the delay in the investigation directly, based on the provisions of Articles 998 and 999 of the Civil Code on civil liability in tort. To demonstrate the effectiveness of this remedy, the Government submitted a judgment of 12 June 2008, by which the Bucharest Fifth District Court had ordered the Ministry of Finance to pay a claimant compensation for the shortcomings in the investigation opened following the repression of the demonstrations held in Bucharest in December 1989. They argued that, although they were submitting only one example of a judicial decision of this type, this was due to the absence of other proceedings for that purpose.

208. In the applicant's opinion, the example put forward by the Government did not warrant the conclusion that this was an effective remedy, since the court had not obliged the relevant authorities to expedite the criminal proceedings in question. In addition, the applicant considered that this was a case produced by the Government for the purposes in hand, namely the proceedings before the Court. She further added that nothing could release the State from its obligation to conduct an effective investigation as required by Article 2 of the Convention.

209. The Court reiterates that it had already dismissed a similar objection in its judgment in the case of *Association "21 December 1989" and Others* (nos. 33810/07 and 18817/08, §§ 119-125, 24 May 2011). It also reiterates that the obligation to exhaust domestic remedies, as required

by Article 35 § 1 of the Convention, concerns remedies which are accessible to applicants and which are capable of remedying the situation of which they complain. The existence of such remedies must be sufficiently certain not only in theory but also in practice, failing which they will lack the requisite accessibility and effectiveness. Lastly, it falls to the respondent State to establish that these various conditions are satisfied (see *Selmouni v. France* [GC], no. 25803/94, § 75, ECHR 1999-V).

210. In this connection the Court does not consider that a single final judgment by a court of first instance demonstrates with sufficient certainty the existence of effective and accessible domestic remedies for complaints such as the applicants' (see *Selçuk and Asker v. Turkey*, 24 April 1998, § 68, *Reports of Judgments and Decisions* 1998-II).

211. It further reiterated that the obligations of the State under Article 2 cannot be satisfied merely by awarding damages (see, for example, the judgment in *Yaşa v. Turkey*, 2 September 1998, § 74, *Reports* 1998-VI, and *Dzieciak v. Poland*, no. 77766/01, § 80, 9 December 2008). Lastly, the investigations required under Articles 2 and 3 of the Convention must be capable of leading to the identification of those who could be held responsible.

212. It follows that the Government's objection cannot be allowed.

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

B. Merits

1. *The parties' submissions*

213. The applicant complained about the slow pace of the investigation, which is still pending more than twenty years after the events, in spite of the public interest in identifying the perpetrators of the crackdown on the demonstrations of 13 and 14 June 1990, which resulted in multiple victims and deaths, including that of her husband, Mr Velicu-Valentin Mocanu.

214. She complained, in particular, about the existence of periods of inactivity during the investigation, the decisions to decline jurisdiction and the shortcomings and lack of impartiality in the investigation, resulting, according to the applicant, from the fact that some of the accused held senior public office and had prevented the investigations from progressing.

215. The Government requested that the Court take into account the very specific context, as they alleged, in which the investigation into the circumstances of the death of the applicant's husband had been conducted.

In this regard, they were of the opinion that the applicant's situation as an injured party could not be analysed separately from that of the other injured

parties and civil parties in the above-mentioned case, nor in isolation from the general context of the case, which was intended to shed light on the situation of more than 1,300 victims and about 100 deceased person, and to identify those responsible.

216. The Government further argued that the investigation in question was exceptional, not only with regard to the large number of persons involved, but also the sensitive historical nature of the event which had given rise to it. In their opinion, the applicant's specific situation was only one element in a wide-ranging tissue of events and individuals who had been victims of violence on the occasion of the massive demonstrations which took place in Bucharest.

217. Further, according to the Government, the criminal prosecuting authorities had carried out parallel investigations, in the context of four case files, into the offences of aggravated homicide, propaganda in favour of war, genocide, inhuman treatment, undermining State power, acts of sabotage, undermining the national economy, destruction and other crimes.

218. In the Government's opinion, the length of this investigation was justified, firstly, by the number of injured persons, all of whom had to undergo forensic medical examinations, be identified and questioned, and be given the possibility of seeking evidence from the authorities; further, by the number of suspects; lastly, by the number of witnesses, and by the difficulties involved in comparing witness statements, in person and on paper, for the purpose of establishing the truth.

In addition, the Government indicated that it had been necessary to conduct on-site research and medical examinations, to examine documents and video recordings, and to carry out an identification parade for the purpose of confirming the suspects' identities.

219. The Government concluded that the obligation to conduct an effective investigation had been complied with in this case, provided that it was an obligation to show diligence rather than of results. They argued that the investigation in the case, as conducted from 2000 to date, included all of the procedural acts necessary to establish the truth and that there had been no period of inactivity that was imputable to the authorities.

2. Reminder of the principles deriving from the case-law

220. The Court will examine the effectiveness of the investigation conducted in this case in the light of its well-established principles in this area, summarised, *inter alia*, in the judgments in the cases of *Güleç v. Turkey* (27 July 1998, §§ 77-78, *Reports* 1998-IV), *Isayeva and Others v. Russia* (nos. 57947/00, 57948/00 and 57949/00, §§ 208-213, 24 February 2005) and *Association "21 December 1989" and Others* (cited above, § 114).

221. It reiterates that the procedural obligations arising from Article 2 require that an effective investigation be carried out when individuals have

been killed as a result of the use of force, in particular by agents of the State. This requires a thorough, impartial and careful examination of the circumstances surrounding the killings, in order to be able to identify those responsible. This is not an obligation of result, but of means. The authorities must have taken reasonable steps to secure the evidence concerning the incident. A requirement of promptness and reasonable expedition is implicit in this context. Equally, it is necessary that the persons responsible for and carrying out the investigation be independent from those implicated in the events. This means not only a lack of hierarchical or institutional connection but also a practical independence (see *Isayeva and Others*, cited above, §§ 210-211).

222. In addition, the Court points out that it has already held that, even where there may be obstacles or difficulties which prevent progress in an investigation in a particular situation, a prompt response by the authorities is vital in maintaining public confidence in their adherence to the rule of law. Any deficiency in the investigation which undermines its capability of establishing the circumstances of the case or the person responsible is liable to fall foul of the required measure of effectiveness (see *Association "21 December 1989" and Others*, cited above, § 134).

223. For the same reasons, there must be a sufficient element of public scrutiny of the investigation or its results to secure accountability in practice as well as in theory. The degree of public scrutiny required may well vary from case to case. In all cases, however, the next-of-kin of the victim must be involved in the procedure to the extent necessary to safeguard his or her legitimate interests (see *McKerr v. the United Kingdom*, no. 28883/95, § 115, ECHR 2001-III).

224. More particularly, in the event of gross violations of human rights as fundamental as that of the right to life, the Court has emphasised the importance of the right or victims and their families and heirs, and of society as a whole (see *Şandru and Others v. Romania*, no. 22465/03, § 79, 8 December 2009), to be informed of the truth regarding the circumstances of those events, which implies the right to an effective judicial investigation (see *Association "21 December 1989" and Others*, cited above, § 144).

In the context of States which have gone through a transition to a democratic regime, it is legitimate for a State governed by the rule of law to bring criminal proceedings against persons who have committed crimes under a former regime (see, *mutatis mutandis*, *Streletz, Kessler and Krenz v. Germany* [GC], nos. 34044/96, 35532/97 and 44801/98, §§ 80-81, ECHR 2001-II).

Accordingly, in cases of use of lethal force against the civilian population during anti-governmental demonstrations preceding the transition from a totalitarian system to a more democratic system, the Court cannot consider that an effective criminal investigation has been conducted where the investigation is terminated by the application of the limitation

period on criminal liability, where it is the authorities themselves who have remained inactive. Furthermore, as the Court has noted in previous cases, amnesty or pardon are generally incompatible with the States' duty to investigate acts of torture and to combat impunity in respect of international crimes (see *Association "21 December 1989" and Others*, cited above, § 144).

3. Application of these principles to the present case

225. In the instant case, the Court notes that, shortly after the events of June 1990 an investigation was opened as a matter of course. Begun in 1990, the criminal proceedings concerning Mr Velicu-Valentin Mocanu's death on 13 June 1990 are still pending, that is, more than twenty years later.

226. The Court reiterates that its competence *ratione temporis* enables it to take into consideration only the period after 20 June 1994, the date of the Convention's entry into force in respect of Romania.

227. It notes that in 1994 the case was pending before the military prosecuting authorities. In this connection, it observes that the investigation was entrusted to military prosecutors who, like the accused, were in a relationship of subordination within the military hierarchy (see *Şandru and Others*, cited above, § 74, and *Association "21 December 1989" and Others*, cited above, § 137).

228. It further notes that the shortcomings in the investigation were recognised by the national authorities themselves. Thus, the decision issued on 16 September 1998 by the prosecutor's office at the Supreme Court of Justice indicated that, by that date, the investigation had failed to identify the persons who had given practical effect to the executive's decision to call on civilian assistance to restore order in Bucharest. This shortcoming in the investigation was due to the "fact that none of the persons who had held positions of responsibility at the relevant time [had] been questioned", in particular the then President of Romania, the Prime Minister and Deputy Prime Minister, the Minister of the Interior, the head of police, the head of the SRI and the Minister of Defence (see paragraph 111 above).

However, the subsequent investigation had not enabled all the defects to be remedied, as was noted in the decision of the Supreme Court of Justice dated 30 June 2003 (see paragraph 121 above) and that of the High Court of Cassation and Justice, dated 17 December 2007 (see paragraph 125 above), which had drawn attention to the shortcomings in the previous proceedings.

229. With regard to the obligation to involve victims' next-of-kin in the proceedings, the Court notes that the applicant Anca Mocanu was not informed of the investigation's progress prior to the prosecutor's report of 18 May 2000 remitting the defendants for trial of the murder of her husband by gunshots, that she was questioned by the prosecutor for the first time on 14 February 2007, i.e., almost seventeen years after the events (see

paragraph 144 above), and that, following the decision of the High Court of Cassation and Justice on 17 December 2007, she was no longer kept informed about the investigation (see paragraph 147 above).

The Court is not therefore convinced that the interests of applicant Anca Mocanu in being involved in the investigation were sufficiently protected (see *Association "21 December 1989" and Others*, cited above, § 141).

230. In addition, its importance for Romanian society, which consisted in the right of the numerous victims to know what had happened, implying the right to an effective judicial investigation and a possible right to compensation, ought to have prompted the domestic authorities to deal with the case speedily and without unnecessary delay, in order to prevent any appearance of impunity for certain acts (see *Şandru and Others*, cited above, § 79, and *Association "21 December 1989" and Others*, cited above, §§ 104 and 130).

231. In contrast to the above-cited case of *Şandru and Others*, in which the proceedings were terminated by a final judicial decision, the Court noted in the instant case that, in respect of the applicant Anca Mocanu, on 6 July 2011 the case was still pending before the prosecutor's office (see paragraph 146 above), after two remittals ordered by the country's highest court for shortcomings or procedural errors.

The Court reiterates in this respect that the procedural obligations arising from Article 2 of the Convention can hardly be considered to have been met where the victims' families or heirs have been unable to gain access to proceedings before an independent court charged with examining the facts (see *Association "21 December 1989" and Others*, cited above, § 143).

232. In the light of the above considerations, the Court finds that the domestic authorities did not act with the level of diligence required under Article 2 of the Convention in respect of Mrs Anca Mocanu. Accordingly, it finds that there has been a violation of this article in its procedural aspect.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

233. The applicants Mr Marin Stoica and Mr Teodor Mărieş complained of the lack of an effective, impartial and thorough investigation capable of leading to the identification and punishment of those responsible for the violent repression of the demonstrations of 13 and 14 June 1990, in the course of which they had been subjected to ill-treatment.

They relied in that connection on Article 3 of the Convention. This provision reads as follows:

Article 3

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

234. The Government raised several preliminary objections in this regard.

235. They challenged the Court's competence *ratione temporis* to examine these applications under the procedural limb of Article 3 of the Convention. They also argued that the domestic remedies had not been exhausted, and alleged that the applicant Teodor Mărieș lacked victim status.

A. Admissibility

1. *On the objection of incompatibility* ratione temporis

236. As the events in question and the opening of the investigations had occurred prior to ratification of the Convention by Romania on 20 June 1994, the Government considered that the Court did not have jurisdiction *ratione temporis* to examine the complaint under the procedural aspect of Article 3 of the Convention.

237. The applicants submitted in reply that the procedural obligation arising from Article 3 was distinct from and independent of the obligations arising from its substantive limb. They referred in this connection to the cases of *Şandru and Others,* cited above, and *Lăpuşan and Others v. Romania* (nos. 29007/06, 30552/06, 31323/06, 31920/06, 34485/06, 38960/06, 38996/06, 39027/06 and 39067/06, § 61, 8 March 2011), in which the Court found that it had jurisdiction *ratione temporis* to examine similar complaints concerning the lack of effectiveness of a criminal investigation into the armed crackdown on demonstrations which took place in December 1989.

238. The Court reiterates the principles laid down in its judgment in the case of *Šilih v. Slovenia* ([GC], no. 71463/01, §§ 159-163, 9 April 2009), which were applied more recently in another similar case against Romania (namely *Association "21 December 1989" and Others*, cited above).

It further reiterates that the procedural obligation to carry out an investigation under Articles 2 and 3 has evolved into a separate and autonomous duty and may be considered to be a "detachable obligation" capable of binding the State even when the infringement of the right to life or to personal integrity took place before the entry into force of the Convention with regard to that State. However, in order for the said procedural obligations to be applicable, it must be established that a significant proportion of the procedural steps were or ought to have been carried out since ratification of the Convention by the country concerned.

239. In the instant case, the Court observes that the criminal proceedings concerning the violent suppression of the demonstrations of June 1990, begun in 1990, continued after 20 June 1994, the date on which the Convention was ratified by Romania. It was after that date that a

prosecutor's report was drawn up with regard to the deaths of several persons on that occasion (see paragraph 120), and that several judicial decisions were issued (see paragraphs 125 et seq.). To date, the investigation is still pending before the prosecutor's office. It follows that a significant proportion of the procedural measures were carried out, and must still be implemented, after ratification of the Convention.

240. The same is true with regard to the allegations of ill-treatment made by the applicants Marin Stoica and Teodor Mărieş, who were involved in the investigation as injured parties from 2002; the prosecutor's and court decisions concerning them were issued between 2005 and 2011.

241. In consequence, the Court finds that it has jurisdiction *ratione temporis* to examine the allegation of a violation of Article 3 under its procedural aspect (see, *mutatis mutandis*, *Agache and Others v. Romania*, no. 2712/02, §§ 70-73, 20 October 2009, and *Şandru and Others*, cited above, § 59).

242. The Government's objection cannot therefore be allowed.

2. The objection that Mr Teodor Mărieş was not a victim

243. The Government considered that the applicant Teodor Mărieş had not submitted to the domestic authorities an arguable complaint alleging prohibited treatment towards him during the events of 13 and 14 June 1990. The applicant had not been injured and had willingly taken part in the demonstrations on the dates in question.

244. The Government were of the opinion that the only relevant events in that connection concerned the fact of his being taken under escort to the police station and the time spent at the Bucharest central police headquarters and at the police station.

245. With regard to the allegations concerning his journey under escort to the police station, the Government submitted that the applicant had not been subjected to any inhuman or degrading treatment. In their opinion, the threats allegedly made by State agents in persuading the applicant to get into their vehicle had to be analysed in the light of the applicant's attitude towards those alleged threats. In this connection, the Government stated that the applicant had recounted using the term "wild beasts" to address his alleged assailants, having an opportunity to leave their vehicle and having aggressively reproached the senior police officers monitoring the events about the methods being used to clear University Square. According to the Government, this conduct by the applicant in response to the alleged threats was such as to prove the absence of any attitude on the part of the State agents that was likely to arouse any "fear" or "anguish" (see *Labita v. Italy* [GC], no. 26772/95, § 120, ECHR 2000-IV).

246. With regard to the applicant's allegations that the State agents had grabbed him like "wild beasts", the Government firstly pointed to the absence of any evidence in support of his allegations and, alternatively, to

the applicant's lack of precision as to the physical consequences of such conduct. In the Government's view, it followed that it was reasonable to consider that the degree of severity of the alleged conduct imputed to the State agents had been insufficient to give rise to a minimum level of physical or psychological suffering for the applicant. This was all the more probable, in their opinion, in that the applicant had provided no details on this particular point, although he had opted, in recounting the events, to do so in a very explicit and very detailed way, describing his various states of mind and his physical condition.

247. As to the allegations concerning the time which the applicant had spent in the Bucharest central police headquarters and the police station, the Government submitted that the public officials who saw the applicant on that occasion had either ignored him or had been respectful towards him. With regard to the applicant's account of the State agents' dialogue concerning the order to strike him, the Government invited the Court to analyse this as merely unsubstantiated claims by the applicant and, in the alternative, to note the absence of any physical or psychological effect on him.

248. Lastly, with regard to his questioning by the prosecutor, the Government considered that this had lasted two hours. In their opinion, such a time span could not be considered as implying treatment contrary to Article 3 of the Convention.

249. In conclusion, the Government submitted that the factual situation as described by the applicant did not require the opening of an effective official investigation into the violence to which he was allegedly subjected on 13 and 14 June 1990.

250. The applicant argued that he had victim status with regard to the absence of an effective investigation into the violence to which he claimed to have been subjected. In this connection, he alleged that he had been subjected to acts of physical and psychological violence in that he had been ill-treated, beaten and subjected to a regime of fear and terror, alongside all the other demonstrators arrested in the streets in June 1990. He reiterated that he had been arrested at 4.30 a.m. on 13 June 1990, when he and other demonstrators had been outside the United States Embassy in Bucharest, and that he had been taken to various police premises, assaulted and threatened verbally.

251. He further alleged that he had continued to be threatened after his release on the evening of 13 June 1990, that his house had been ransacked by unknown persons who had broken in and that those threats had obliged his companion to leave the city to take shelter elsewhere.

252. The Court reiterates that the procedural obligation under Article 3 of the Convention was applicable where the complaint concerning the existence of prohibited treatment was "arguable" (see *Chiriţă v. Romania* (dec.), no. 37147/02, 6 September 2007).

253. In this connection, it reiterates that allegations of ill-treatment must be supported by appropriate evidence (see *Selmouni*, cited above, § 88, and *Gäfgen v. Germany* [GC], no. 22978/05, § 92, ECHR 2010-...).

254. In the instant case, the Court notes that it is not disputed that the applicant was arrested together with other demonstrators in Bucharest at about 4.30 a.m. on 13 June 1990 and taken to several police premises. On the other hand, he claims to have been assaulted and verbally threatened, which is contested by the Government, who allege that the account given by the applicant himself of his angry reactions demonstrate that he could not have been afraid.

255. The Court notes, however, that the applicant did not submit any medical certificate attesting to physical or psychological after-effects (see, *mutatis mutandis*, *Melinte v. Romania*, no. 43247/02, §§ 33-36, 9 November 2006, and *Erdoğan Yağız*, no. 27473/02, §§ 43-44, 6 March 2007). It notes that he has also failed to demonstrate that he complained to the authorities prior to 2005 in order to provide them with a detailed description of his suffering (see *Association "21 December 1989" and Others*, cited above, § 158).

256. Having regard to the circumstances of the present case, particularly the absence of evidence concerning the physical and mental effects on the applicant's person resulting from the impugned acts, taken together with the delay in lodging his complaint with the domestic authorities, the Court considers that the latter did not fail in the procedural obligation arising from Article 3 of the Convention in respect of the applicant.

257. In the light of the foregoing, Mr Mărieş's complaint must therefore be declared inadmissible as being manifestly ill-founded, in application of Article 35 §§ 3 and 4 of the Convention.

3. The objections of failure to exhaust domestic remedies

258. The Government also pleaded a failure to exhaust domestic remedies with regard to Mr Stoica's application, for the same reasons as those indicated with regard to the application lodged by Mrs Anca Mocanu.

259. The Court reiterates its conclusions concerning the similar objection raised with regard to the application by Mrs Anca Mocanu (see paragraph 212 above). The Government's objection cannot therefore be allowed.

260. In addition, the Government raised a second objection on non-exhaustion in respect of Mr Stoica, on the ground that he had been too tardy in lodging a criminal complaint with the authorities, i.e. not until 2001, or eleven years after the ill-treatment to which he had allegedly been subjected.

261. The Court considers that the arguments in support of the Government objection raise questions that are closely linked to the legal merits of the applicant's complaint, and cannot be dissociated from

examination of that complaint. The Court consequently considers that they should be examined under the substantive provision of the Convention relied on by the applicant (see, *mutatis mutandis*, *Rupa v. Romania (no. 1)*, no. 58478/00, § 90, 16 December 2008).

4. Conclusion as to the admissibility of Mr Stoica's complaint

262. The Court notes that Mr Marin Stoica's 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

263. The applicant Marin Stoica complained of the slowness of the investigation, alleging, in particular, that a long video recording provided evidence of the violence inflicted on him in the premises of the State television station and that it contained sufficient details to enable the perpetrators and witnesses to be identified. Yet, to date, no decisions by the prosecuting authorities or the courts had sought to establish the circumstances in which the ill-treatment had allegedly been inflicted, in respect of the applicant and many other persons, in the television station premises.

264. With regard to the applicant Marin Stoica in particular, the Government submitted that he had taken the first steps to assert his status as an injured party during the events of 13 and 14 June 1990 in 2001, through pleadings and requests sent to the presidential administration, the Ministry of Justice, the police and the prosecutor's office, asking the Romanian State to award him compensation and an increase in his pension. The first steps that could be characterised as criminal complaints dated to 9 May, 10 July and 6 August 2003, as was clear from the decision issued on 10 May 2004 by the prosecutor's office at the Bucharest County Court.

265. The Government added that no request by the applicant concerning the taking of evidence, such as the questioning of witnesses and the ordering of a new medical examination, had been refused. They thus considered that, in this applicant's case, the prosecutor's office had acted with diligence and accepted all of the latter's requests in an attempt to obtain all useful and relevant evidence in the case.

266. The Court reiterates that, where an individual makes a credible assertion that he has suffered treatment infringing Article 3 of the Convention at the hands of the police or other similar State authorities, this 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 some form of effective official investigation. As with an

investigation under Article 2, such an investigation should be capable of leading to the identification and punishment of those responsible (see *Labita*, cited above, § 131).

267. Just as it is imperative that the relevant domestic authorities launch an investigation and take measures as soon as allegations of ill-treatment are brought to their attention, it is also incumbent on the persons concerned to make proof of a certain amount of diligence and initiative (see, *mutatis mutandis, Frandeş v. Romania* (dec.), no. 35802/05, 17 May 2011).

268. In the instant case, the Court observes that the applicant Marin Stoica was the victim of violence on 13 June 1990. He alleges that he was invited by the police to collect his identity papers three months after the events in question and that, in the meantime, he had remained shut away at home, for fear of being re-arrested, tortured and imprisoned (see paragraph 95 above). It notes, however, that he did not lodge a complaint on that occasion.

269. The first steps by the applicant to have recognised his status as an injured party in the events of 13 and 14 June 1990 were taken only in 2001, when he requested that the Romanian State pay him compensation.

270. Having regard to all of the material in the case file, the Court attaches particular importance to the fact that the applicant did not bring his complaint alleging violent treatment on 13 June 1990 to the authorities' attention until eleven years after those events.

271. Admittedly, his complaint was joined to case file no. 75/P/1998, which included, *inter alia*, the investigation into the accusations of inhuman treatment (see paragraph 162 above). In the context of that case, several investigative acts, including two forensic medical examinations, were carried out in respect of the applicant. The case was then closed, primarily because the time-limit for prosecution had expired with regard to the offences of assault or abusive conduct alleged by the applicant. With regard to the accusation of ill-treatment, the decision of 17 June 2009 specified that the legal requirement, namely that the inhuman treatment was inflicted on "persons who had fallen into enemy hands" had not been met in this case (see paragraph 191 above).

It follows that, under the domestic law, at the time that the applicant's complaint was lodged the time-limit for prosecution of the offences of assault or abusive conduct had already expired.

272. While the Court can accept that in situations of mass violations of fundamental rights it is appropriate to take account of victims' vulnerability, especially their inability, in certain cases, to lodge complaints on account of a fear of reprisals, it finds, in the instant case, no convincing argument that would justify the applicant's passivity and decision to wait eleven years before submitting his complaint to the relevant authorities.

273. Consequently, and having regard to the specific circumstances of the case, especially the applicant's passivity over an extremely long period,

the Court considers that there has been no violation of Article 3 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION AS SUBMITTED BY THE APPLICANT ASSOCIATION

274. The applicant association complained about the length of the criminal proceedings in which it is a civil party, and claimed compensation for the damage caused on 14 June 1990 by the ransacking of its headquarters, the destruction of its assets and the assaults against its members.

275. It alleged in that respect that there had been a violation of Article 6 of the Convention, the relevant part of which reads as follows:

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

A. Admissibility

276. The Court considers that this complaint cannot be declared manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established. It must therefore be declared admissible.

B. Merits

277. The Court notes that the association lodged a formal criminal complaint on 26 July 1990, with a request to join the proceedings as a civil party in respect of the damage sustained by it during the events of 13 to 15 June 1990. That complaint was investigated in the context of the investigation which ended by the finding of 17 June 2009 that there was no case to answer. The investigation thus lasted almost nineteen years.

278. As regards its competence *ratione temporis*, the Court can take cognisance of the complaint relating to the length of the criminal proceedings only for the period subsequent to 20 June 1994, the date on which the Convention entered into force in respect of Romania. The length of the proceedings to be taken into consideration is, therefore, fifteen years.

279. The Court points out that it has concluded on many occasions, in cases raising issues similar to those raised here, that there has been a violation of Article 6 § 1 of the Convention (see *Frydlender v. France* [GC], no. 30979/96, ECHR 2000-VII, and *Săileanu v. Romania*, no. 46268/06, § 50, 2 February 2010).

280. After examining all the evidence submitted to it, the Court considers that the Government have advanced no fact or argument justifying a different conclusion in the present case.

281. Having regard to its case-law on the subject, the Court holds that the length of the proceedings in issue was excessive and did not satisfy the "reasonable time" requirement.

Accordingly, there has been a violation of Article 6 § 1 as regards the applicant association's complaint.

IV. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

282. Relying on Article 8 of the Convention, the applicant Teodor Mărieş complained that he had been subjected to secret surveillance measures, and particularly telephone tapping. He alleged that those measures represented a means of pressure by the authorities in relation to his activities as president of an association campaigning for an effective investigation into the death or injury of a large number of persons in December 1989.

283. The relevant passages of Article 35 § 2 of the Convention are worded as follows:

> "2. The Court shall not deal with any application submitted under Article 34 that
>
> ...
>
> (b) is substantially the same as a matter that has already been examined by the Court ..., and contains no relevant new information."

284. The Court reiterates that, in verifying whether two cases are essentially the same, it takes into account the identity of the parties in both proceedings, the legal provisions on which they are based, the nature of the complaints and the compensation which they seek to obtain (see, *mutatis mutandis*, *Smirnova and Smirnova v. Russia* (dec.), nos. 46133/99 and 48183/99, 3 October 2002; *Folgerø and Others v. Norway* (dec.), no. 15472/02, 14 February 2006; and *Verein gegen Tierfabriken Schweiz (VgT) v. Switzerland (no. 2)* [GC], no. 32772/02, § 63, ECHR 2009-...).

285. In the instant case, the Court notes that the applicant has previously lodged another application before it, registered as no. 33810/07, raising, under Article 8, a complaint similar to that raised in the context of the present application, which is registered as number 45886/07. The previous application, adducing evidence which has also been submitted in the instant case, resulted in the finding of a violation of Article 8 (see *Association "21 December 1989" and Others*, cited above, §§ 161-176).

286. The Court must therefore determine whether, in the present case, the application is "substantially the same" as the matter submitted to it in application no. 33810/07.

287. It notes that, by comparison with his previous application, the applicant has not submitted to the Court in the context of his complaint under Article 8 in the present application any evidence that would constitute a new fact within the meaning of Article 35 § 2 (b) of the Convention (see, *a contrario*, *Delgado v. France*, no. 38437/97, Commission decision of 9 September 1998, and *C.G. and Others v. Bulgaria* (dec.), no. 1365/07, 13 March 2007).

288. It follows that since this complaint is "essentially the same" as that submitted previously to the Court by the applicant Teodor Mărieș, it falls within the ambit of Article 35 § 2 (b) of the Convention must therefore be rejected, pursuant to Article 35 §§ 2 and 4.

V. ALLEGED VIOLATION OF ARTICLE 34 OF THE CONVENTION

289. Relying on Article 34 of the Convention, the applicants alleged that the authorities threatened them and exerted pressure so that they would withdraw their applications before the Court, and that they did not have access to the documents in the investigation file.

290. Having regard to its finding in relation to the procedural limb of Article 2 (see paragraph 232 above), the Court considers that there is no need to examine further whether there has in the instant case been a violation of these provisions (see *Association "21 December 1989" and Others*, cited above, § 181).

VI. OTHER ALLEGED VIOLATIONS

291. Under Article 5 of the Convention, Marin Stoica alleged that he had been wrongfully arrested on 13 June 1990. Under the same provision, Teodor Mărieș alleged that he had been unlawfully deprived of his liberty from 18 June to 30 October 1990. He further alleged that he was subjected to ill-treatment during the same period.

292. The Court points out that the Convention entered into force with respect to Romania on 20 June 1994.

293. It follows that these complaints are incompatible *ratione temporis* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4.

VII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

294. 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. Mrs Anca Mocanu's claim for just satisfaction

295. The Court first reiterates that a judgment in which it finds a breach imposes on the respondent State a legal obligation to put an end to the breach and make reparation for its consequences in such a way as to restore as far as possible the situation existing before the breach. The Contracting States that are parties to a case are in principle free to choose the means whereby they will comply with a judgment in which the Court has found a breach. If the nature of the breach allows of *restitutio in integrum*, it is for the respondent State to effect it. If, on the other hand, national law does not allow – or allows only partial – reparation to be made for the consequences of the breach, Article 41 empowers the Court to afford the injured party such satisfaction as appears to it to be appropriate (see *Sfrijan v. Romania*, no. 20366/04, § 44, 22 November 2007).

Thus, for example, in the event of a violation of Article 6 of the Convention, application of the principle of *restitutio in integrum* implies that the applicants are put, as far as possible, in the closest situation to that in which they would have found themselves had there not been a breach of the requirements of that provision (see *Sfrijan*, cited above, §§ 45-48).

296. In the instant case, the Court reiterates that it has found a procedural violation of Article 2 of the Convention on account of the failure to conduct an effective investigation into the death of the applicant's husband. Accordingly, the respondent State must take the necessary measures to expedite the investigation into the murder of Mr Velicu-Valentin Mocanu, so that a decision which meets the requirements of the Convention can be issued (see *Association "21 December 1989" and Others*, cited above, § 202).

297. The applicant claimed 200,000 euros (EUR) in respect of the non-pecuniary damage which she had sustained as a result of the excessive length of the investigation into the murder of her husband. She stated that, following the latter's death at the age of 22, when she herself was aged 20, she had found herself alone with two children, one aged 2 years and the other a few months. For the following twenty years, during which she had awaited completion of the investigation and identification of those responsible for her husband's murder, she had been obliged to provide for her own needs and those of her children, working as a cleaner and enduring wretched living conditions.

298. She also claimed EUR 100,000 in respect of non-pecuniary damage, without explaining its nature.

299. The Government considered those claims for just satisfaction excessive and unsubstantiated, and invited the Court to dismiss them.

300. The Court finds no causal link between the violation found and the pecuniary damage alleged, and dismisses this claim.

301. However, it considers that the applicant should be awarded compensation for the non-pecuniary damage resulting from the fact that the domestic authorities failed to deal with the case concerning the death of the applicant's husband by gunshot with the level of diligence required by Article 2 of the Convention.

On the basis of the evidence before it, in particular the fact that the investigation is still pending, the Court considers that the violation of the procedural limb of Article 2 has caused the applicant substantial non-pecuniary damage such as distress and frustration. Ruling on an equitable basis, it awards the applicant EUR 30,000 under that head.

B. The applicant association

302. The applicant association did not submit a claim for just satisfaction within the time allowed.

C. Costs and expenses

303. The applicants did not make any claim for reimbursement of costs and expenses.

D. Default interest

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

FOR THESE REASONS, THE COURT

1. *Decides*, unanimously, to join the applications;

2. *Declares*, unanimously, the applications admissible as regards the complaints under Article 2 of the Convention, as regards the applicant Anca Mocanu, Article 3 of the Convention as regards the applicant Marin Stoica and Article 6 § 1 of the Convention as regards the applicant association, and inadmissible for the remainder;

3. *Holds*, unanimously, that there has been a violation of Article 2 under its procedural limb as regards the applicant Anca Mocanu;

4. *Holds*, by five votes to two, that that there has been no violation of Article 3 of the Convention as regards the applicant Marin Stoica;

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

6. *Holds*, unanimously, that there is no need to examine the complaint under Article 34 of the Convention;

7. *Holds*, unanimously,
(a) that the respondent State is to pay the applicant Anca Mocanu, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 30,000 (thirty thousand euros) in respect of non-pecuniary damage, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable;
(b) 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;

8. *Dismisses*, by five votes to two, the remainder of the claim for just satisfaction.

Done in French, and notified in writing on 13 November 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following separate opinions are annexed to this judgment:
– concurring opinion of Judge Streteanu;
– dissenting opinion of Judge Ziemele joined by Judge Šikuta.

J.C.M.
S.Q.

CONCURRING OPINION OF JUDGE STRETEANU

I voted with the majority in finding no violation of Article 3 as regards the applicant Marin Stoica, and I concur with the conclusions set out in the judgment. Nonetheless, I should like to emphasise certain points to which I attach particular importance.

The Court has consistently ruled in relation to Article 3 of the Convention that, where an individual makes a credible assertion that he has been subjected by State agents to treatment that is in breach of Article 3, the relevant authorities must carry out "an effective official investigation" capable of establishing the facts and identifying and punishing those responsible (see *Assenov and Others v. Bulgaria*, 28 October 1998, § 102, *Reports of Judgments and Decisions* 1998-VIII, and *Şerban v. Romania*, no. 11014/05, § 80, 10 January 2012). In addition, this requirement of promptness and reasonable expedition in the obligation to carry out an investigation exists even where it concerns acts committed by private individuals (see *Ebcin v. Turkey*, no. 19506/05, § 56, 1 February 2011). Lastly, the Court has stated that it is not in principle acceptable that the conduct and outcome of such proceedings are hindered, *inter alia*, by expiry of the time-limit for criminal prosecution on account of judicial procrastination, incompatible with the requirement of promptness and reasonable diligence implicit in this context (see *Okkalı v. Turkey*, no. 52067/99, § 76, ECHR 2006-XII; *Türkmen v. Turkey*, no. 43124/98, 19 December 2006; *Hüseyin Şimşek v. Turkey*, no. 68881/01, § 67, 20 May 2008, and *Şerban*, cited above, § 80).

One can therefore speak of a fundamental obligation arising from the procedural limb of Article 3 – once a case concerning treatment contrary to this provision has been submitted to the judicial authorities, they must show promptness in carrying out the investigation in order to avoid a situation where criminal liability becomes time-barred. However, where the applicant seeks to apply to the judicial authorities only after the limitation period has expired, what can the judicial authorities do to fulfil this obligation under Article 3? Since the statute of limitations prevents prosecution of the case, the proceedings cannot continue. In consequence, the only obligation on the authorities in such a case is that of ensuring that the offences are correctly classified in law, and that the limitation period has expired in relation to this classification. This is what precisely what the authorities did in this case. Given that, under Romanian law, offences involving violence are classified in relation to the duration of any medical treatment required for injuries sustained, the prosecutor ordered a fresh medical report and asked the pathologists to determine whether the injuries sustained by the applicant had been life-threatening and whether there was a causal link between those injuries and the medical conditions from which he suffered at the date when that report was commissioned (see paragraph 172 of the judgment). Had the

medical report confirmed one of these hypotheses, a more serious classification (serious bodily injury or attempted murder) could have been given to the offences, which would have allowed for a longer limitation period. In the present case, given that the second medical report upheld the conclusions reached in the first, the prosecutor was obliged to maintain the classification given to the offence and to take account of the fact that the limitation period had expired.

Another question could possibly be raised in this connection. In cases such as this one, are there reasons for ruling out limitation *de plano*? In other words, is it possible to extend the scope of offences which are not subject to statutory limitation to include offences such as those of which this applicant was a victim? Some of the Court's recent judgments seem to indicate that this question may be answered in the affirmative. The Court has ruled that, in the event of widespread use of lethal force against the civilian population during anti-Government demonstrations preceding the transition from a totalitarian regime to a more democratic system, the Court cannot accept that an investigation has been effective where it is terminated as a result of the statutory limitation of criminal liability, when it is the authorities themselves who have remained inactive (see *Association "21 December 1989" and Others v. Romania*, nos. 33810/07 and 18817/08, § 144, 24 May 2011). In addition, the Court has emphasised that an amnesty and pardon are generally incompatible with the duty incumbent on the States to investigate acts of torture and to combat impunity for international crimes (see *Ould Dah v. France* (dec.), no. 13113/03, 17 March 2009, and *Abdülsamet Yaman v. Turkey*, no. 32446/96, § 55, 2 November 2004). I do not believe, however, that this case-law imposes on the States an obligation to rule out *de plano* statutory liability for offences which could come within the scope of Article 3. In my opinion, the Court's judgment in *Association "21 December 1989" and Others v. Romania* does not oblige the legislature to remove the statutory limitation in respect of murder. Consistently with its previous case-law, the Court has merely emphasised that an investigation which is carried out while the statutory time-limit is running, and which is essentially characterised by the authorities' passivity, cannot be described as effective. At the same time, the fact that an investigation results in convictions prior to expiry of the limitation period does not necessarily mean that it has been effective (see *Şandru and Others v. Romania*, no. 22465/03, §§ 73-80, 8 December 2009). Lastly, imprescriptibility must remain exceptional in nature - that is, it must in principle be reserved for crimes forming part of international criminal law (genocide, crimes against humanity, war crimes). Consequently, conduct is either classified as an international crime, in which case it is not subject to statutory limitation, or it remains subject to the ordinary rules of law. It is difficult to imagine the creation of an autonomous category of criminal offences of such gravity that they lie somewhere between crimes forming part of international law and

ordinary criminal offences, but to which the imprescriptibility pertaining to international crimes is applied. Such a category, which would be identified solely by the context of the offences (widespread use of lethal force against the civilian population during social unrest characterising a change of political regime) lacks the precision required by criminal law.

Lastly, in spite of certain similarities with statutory limitation, there are reasons why amnesty and pardon differ from it. This is because they express the will of the State to waive the right to prosecute an individual or to oblige him or her to serve the sentence that has been imposed. Where such a waiver concerns a criminal offence for which there is an obligation to conduct an effective investigation, amnesty or pardon become tools enabling the State to escape its obligation to investigate. This explains the incompatibility of decisions on amnesty or pardon with the obligations arising from Article 3. Unlike amnesty and pardon, which always originate in the will of the State, statutory limitation does not necessarily indicate unwillingness on the part of the State to discharge its obligations under Article 3 or negligence in fulfilling them. Statutory limitation may be due to the passivity of the authorities, or to the passivity of the victim, who fails to submit a complaint to the authorities. In the first example, statutory limitation does indeed reveal a breach by the State of its obligations, while in the second case it is difficult to ascribe blame to the authorities. It is for this reason that the possibility of applying a time-bar to prosecution of conduct which may come within the scope of Article 3 is not in itself incompatible with the obligations arising from that provision. The Court has therefore no ground for ruling out statutory limitation *de plano* with regard to this category of offences, but it must verify on a case by case basis whether the statutory limitation is indicative of passivity on the part of the judicial authorities, or whether it is entirely attributable to the applicant.

DISSENTING OPINION OF JUDGE ZIEMELE, JOINED BY JUDGE ŠIKUTA

1. It is to be recalled that the Court has always maintained that "In cases of wilful ill-treatment by State agents in breach of Article 3, the Court has repeatedly found that two measures are necessary to provide sufficient redress. Firstly, the State authorities must have conducted a thorough and effective investigation capable of leading to the identification and punishment of those responsible (see, *inter alia*, *Krastanov v. Bulgaria*, no. 50222/99, § 48, 30 September 2004; *Çamdereli v. Turkey*, no. 28433/02, §§ 28-29, 17 July 2008; and *Vladimir Romanov v. Russia*, no. 41461/02, §§ 79 and 81, 24 July 2008, cited above). Secondly, an award of compensation to the applicant is required where appropriate (see *Vladimir Romanov v. Russia*, cited above, § 79, and, *mutatis mutandis*, *Aksoy v. Turkey*, 18 December 1996, § 98, *Reports of Judgments and Decisions* 1996-VI, and *Abdülsamet Yaman v. Turkey*, no. 32446/96, § 53, 2 November 2004 (both in the context of Article 13)) or, at least, the possibility of seeking and obtaining compensation for the damage which the applicant sustained as a result of the ill-treatment (compare, *mutatis mutandis*, *Nikolova and Velichkova v. Bulgaria*, no. 7888/03, § 56, 20 December 2007 (concerning a breach of Article 2); *Çamdereli v. Turkey*, cited above, § 29; and *Yeter v. Turkey*, no. 33750/03, § 58, 13 January 2009). The Court has explained that: "As regards the requirement of a thorough and effective investigation, 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. Such an investigation, as with one under Article 2, should be capable of leading to the identification and punishment of those responsible (see, *inter alia*, *Assenov and Others v. Bulgaria*, 28 October 1998, § 102, *Reports* 1998-VIII; *Labita v. Italy* [GC], no. 26772/95, § 131, ECHR 2000-IV; *Çamdereli v. Turkey*, cited above, §§ 36-37; and *Vladimir Romanov v. Russia*, cited above, § 81). For an investigation to be effective in practice it is a prerequisite that the State has enacted criminal-law provisions penalising practices that are contrary to Article 3 (compare, *mutatis mutandis*, *M.C. v. Bulgaria*, no. 39272/98, §§ 150, 153 and 166, ECHR 2003-XII; *Nikolova and Velichkova v. Bulgaria*, cited above, § 57; and *Çamdereli v. Turkey*, cited above, § 38)." The fact that such an investigation ends with prescription requires a serious analysis on the part of the Court as to the compatibility of such an outcome with the requirements of Article 3. Be that as it may, the case at issue is even more serious, since

the events of 13 and 14 June 1990 are part of the process through which Romania overthrew the former totalitarian regime. In the case before us, we are still in the context of the events following the fall of Nicolae Ceauşescu in December 1989. Uncertainty and unrest reign in the country. The population continues to break away from the old political power and the demonstrations on University Square demonstrate the struggle for a new democratic regime. In my view, these are special circumstances, as is evident from the reaction of the so-called transitional government, which decided to suppress peaceful demonstrations by any means.

2. The Chamber has decided that if measures taken to suppress peaceful demonstrations lead to the death of a civilian, as was the case for the husband of the first applicant, that situation should most probably not end with prescription or statutory limitation. In any event, the proceedings in the *Mocanu v. Romania* case are still pending. It is to be assumed that even if the proceedings had ended as a result of prescription, the Chamber would not have considered that to be an appropriate outcome in view of the obligations arising from Article 2.

3. The Chamber has also decided that where someone like Mr Stoica has accidentally been a victim of the use of force by State agents suppressing peaceful demonstrations, he should follow the usual avenues of criminal procedure, which include the applicability of the rules governing prescription. As the Chamber emphasises, while recognising that victims of such events may be vulnerable and that this may lead to certain delays in the bringing of their complaints to the attention of the authorities, the Chamber cannot accept that it was appropriate for Mr Stoica to lodge his grievances with the authorities as late as 2001 (see paragraphs 270-272 of the judgment). The Chamber dismisses the fact that the authorities themselves accepted the applicant's complaint and joined it to criminal case file no. 75/P/1998. It accepts that the investigation into actions which led to the injury of civilians as part of the suppression of peaceful demonstrations can end with prescription, as has apparently been the case here (see paragraph 271).

4. Firstly, I cannot share the Chamber's approach in disregarding all the investigative actions taken by the authorities following the lodging of the complaint by Mr Stoica in 2001. The Chamber thereby validates the authorities' contradictory and unclear behaviour with regard to Mr Stoica's specific situation and to the entire episode of abuse of power by the State authorities in suppressing demonstrations. The Chamber also accepts that an ineffective investigation can end with prescription, as occurred in this case through the High Court of Cassation's decision of 17 June 2009 (see paragraphs 187-188). This approach on the part of the Chamber is contrary to the Court's case-law, which does not accept that a State can excuse its inaction through the intervention of prescription, pardon or amnesty; this is especially so where the State has used massive force to oppress peaceful

and democratic demonstrations (see paragraph 261). Yes, there was a delay in Mr Stoica's actions, but there were more serious delays and inefficiencies in the actions of the Romanian authorities, in circumstances where they were under a special obligation to shed light on what happened at a time when the Romanian people were fighting for a free and democratic government. In such a context, with all due respect, this is no longer a simple issue of criminal law and of the investigation of the straightforward crime of assault, where criminal responsibility might be time-barred after three years in accordance with domestic criminal law. On the contrary, the incident involving Mr Stoica was part of a pattern of gross violations of human rights.

5. Secondly, where we are in the context of the gross human rights violations which typically accompany a change of political regime, the Court has emphasised the particular importance of a proper investigation, charged with establishing the truth. Such an investigation may not end with prescription (see *Association "21 December 1989" and Others v. Romania*, nos. 33810/07 and 18817/08, § 144, 24 May 2011). This approach by the Court is in line with the United Nations' Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, adopted and proclaimed by General Assembly resolution no. 60/147 of 16 December 2005. The United Nations has drawn up a detailed list which discloses the essence of the obligation to avoid impunity for gross human rights violations. The following principles can be mentioned: "(4.) In cases of gross violations of international human rights law [and serious violations of international humanitarian law constituting crimes under international law], States have the duty to investigate and, if there is sufficient evidence, the duty to submit to prosecution the person allegedly responsible for the violations and, if found guilty, the duty to punish her or him…", "(6.) Where so provided for in an applicable treaty or contained in other international legal obligations, statutes of limitations shall not apply to gross violations of international human rights law [and serious violations of international humanitarian law which constitute crimes under international law]. (7.) Domestic statutes of limitations for other types of violations that do not constitute crimes under international law, including those time limitations applicable to civil claims and other procedures, should not be unduly restrictive." The Court has endorsed a similar approach, especially in the related case of *Association "21 December 1989" and Others v. Romania*, delivered on 24 May 2011 and cited above.

6. In sum, I cannot accept that the Chamber applies a different approach in relation to two victims of the same events. Even the Romanian authorities did not refuse to begin an investigation into Mr Stoica's complaints, although they were submitted in 2001. It is not for the European Court of

Human Rights to take a different decision in that regard. In my view, there has been a violation of Article 3 in relation to Mr Stoica.