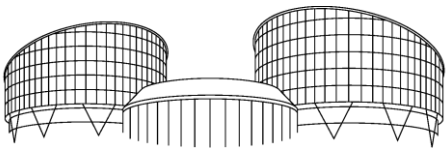

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF VLAD AND OTHERS v. ROMANIA

(Applications nos. 40756/06, 41508/07 and 50806/07)

JUDGMENT

STRASBOURG

26 November 2013

FINAL

26/02/2014

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Vlad and others v. Romania,

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

Josep Casadevall, President,
Alvina Gyulumyan,
Corneliu Bîrsan,
Ján Šikuta,
Luis López Guerra,
Nona Tsotsoria,
Kristina Pardalos, judges,

and Santiago Quesada, Section Registrar,

Having deliberated in private on 5 November 2013,

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

PROCEDURE

1. The case originated in three applications (nos. 40756/06, 41508/07 and 50806/07) against Romania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by three Romanian nationals, Mr Mihai Vlad, Mr Flaviu Plaţa and Mrs Vasilica Bratu ("the applicants"), on 5 October 2006, 14 September 2007 and 9 November 2007, respectively.

2. Mr Vlad (application no. 40756/06) was represented before the Court by Mr Bogdan Dorin Duda, a lawyer practising in Bucharest. The Romanian Government ("the Government") were represented by their Agent, Ms Irina Cambrea, from the Ministry of Foreign Affairs.

3. On 21 October 2011, 16 December 2011 and 16 December 2010 respectively, the applications were communicated to the Government with regard to the complaints concerning the length of the proceedings and the alleged lack of remedies in that respect.

4. On 4 July 2012 the Court (Third section) decided to join the applications and to grant them priority under Rule 41 of the Rules of the Court. It also informed the Government of the Court's intention to apply Article 46 § 1 of the Convention. For this purpose, the parties were invited to comment on the possible systemic nature of the length of civil and criminal proceedings before the Romanian courts and the absence of remedies in that regard.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. Application no. 40756/06, lodged by Mr Mihai Vlad

5. The applicant was born in 1945 and lives in Bucharest.

6. On 30 January 1994 he was taken into police custody on suspicion of first-degree murder. On the next day, the Public Prosecutor's Office attached to the Timiş County Court opened a criminal investigation and authorised his continued detention.

7. On 18 November 1994 the applicant was brought to trial on indictment on charges of first-degree murder and aggravated theft.

8. From February to December 1995 monthly hearings before the Timiş County Court were scheduled to hear evidence from prosecution witnesses.

9. On 13 December 1995 the court remitted the case to the prosecution authorities for further investigation. On 22 April 1996 this decision was reversed on appeal by the Timişoara Court of Appeal, which found that the criminal investigation was complete and that the trial should continue before the first-instance court.

10. When the proceedings were resumed, the county court listed hearings for the examination of the defence witnesses and adjourned the case on five occasions before delivering its judgment.

11. On 22 November 1996 the applicant was found guilty of first-degree murder and sentenced to an eighteen-year prison sentence.

12. On 14 April 1997 the Timişoara Court of Appeal allowed appeals by both parties, quashed the first-instance judgment and remitted the case to the lower court for re-examination.

13. On 15 September 1997 the applicant was convicted again and given an eighteen-year prison sentence. His appeal was dismissed on 12 March 1998 by the Court of Appeal of Timişoara.

He lodged a further appeal, which was allowed by the High Court of Cassation and Justice ("ICCJ") on 28 October 1998. The case was thus sent back to the prosecution authorities on the ground that the criminal investigation had been incomplete.

14. On 8 July 1999 the Public Prosecutor's Office lodged an indictment with the Timiş County Court on charges of first-degree murder. The theft charges were dropped.

15. The county court summoned witnesses and, at the prosecution's request, ordered that a forensic medical report be submitted in the space of six months. The applicant's requests for a counter forensic medical report,

as well as for the removal of the panel of judges on allegations of partiality, were rejected.

16. On 5 May 2000 the applicant was convicted of first-degree murder and given a fifteen-year prison sentence. His appeal on points of law was allowed by the ICCJ on 9 November 2000, and the case was sent back to the prosecuting authorities for further investigation.

17. On 15 October 2001 a new bill of indictment was issued against the applicant on the same charges of first-degree murder. Shortly after the case was registered with the Timiş County Court, the applicant filed a request with the ICCJ for referral to a different court on allegations of lack of impartiality. Hearings were subsequently adjourned for failure to serve the bill of indictment on the applicant.

18. On 12 April 2002 the applicant's request for the case to be referred to another court was allowed by the ICCJ and the case was referred to the Dolj County Court.

19. The case remained with that court for more than a year. It was necessary to schedule several hearings on account of absences and improper summoning of witnesses, and pending the submission of a forensic report.

20. On 9 September 2003 the Dolj County Court convicted the applicant and sentenced him to a fifteen-year prison sentence. He filed a notice of appeal.

21. Of the hearings scheduled before the higher court, five were successively adjourned for failure to properly summon the applicant.

22. On 16 May 2005 the Court of Appeal of Craiova rejected the applicant's request for leave to appeal as time-barred.

23. The ICCJ allowed an appeal on points of law by the applicant, quashed the decision of the Court of Appeal and ordered a retrial on appeal.

24. On 2 November 2005 the Court of Appeal of Craiova dismissed the appeal.

25. On 6 April 2006 the ICCJ dismissed an appeal on points of law by the applicant and upheld the lower court's decision.

B. Application no. 41508/07, lodged by Mr Flaviu Plaţa

26. The applicant was born in 1969 and lives in Bucharest.

27. On 6 March 1997 the applicant was informed that a civil lawsuit had been filed against him with the Bucharest District Court no. 2. The legal dispute concerned the division of an estate co-inherited by the applicant and his aunt, who brought the claim to the court.

28. The trial at first instance involved several hearings to enable the plaintiffs to specify their claims and pay stamp duty.

29. In March 1998 the applicant lodged a request for the case to be referred to a different court. On 19 May 1998 the ICCJ allowed the request and sent the case to be heard before the Bucharest District Court no. 6.

30. Shortly after the case was registered with that court, several hearings were adjourned on account of the authorities' failure to submit documents requested by the court.

31. On 21 January 1999, owing to the repeated adjournments of the hearings on account of the relevant authorities' failure to submit court-ordered documents, the applicant lodged a request for the proceedings to be stayed. The court allowed this request by a ruling.

32. On 22 November 1999 the proceedings were resumed at the applicant's request. On the same date he asked the court to serve him the summons at an address in China, where he was studying. The district court considered his request to be abusive and continued to serve the summons at his former residence in Bucharest.

33. On 6 September 2001, however, the district court considered that the applicant had not misused his procedural rights by seeking to be given legal notice of the proceedings in China. It ruled that the applicant had been precluded from giving evidence and annulled as unlawful all procedural acts performed between 16 December 1999 and 22 February 2001. It ordered that they be carried out again in the applicant's presence.

34. On 13 December 2001, the district court allowed the action in part and ruled on the shares of property to be individually attributed to the parties.

35. The applicant filed a notice of appeal.

36. On appeal, the applicant submitted a request for the review of the constitutionality of Article 114^1 (4) of the Code of Civil Procedure, whereby a defendant living abroad has to set up residence in Romania to be given legal notice of process.

37. By an interlocutory judgment of 17 September 2002 the court stayed the proceedings and submitted the case to the Constitutional Court for review. On 11 February 2003 the Constitutional Court ruled that the above-mentioned provisions did not contravene the Constitution.

38. In March 2003 the trial was resumed. The ensuing hearings were adjourned several times prior to October 2003 owing to an expert witness's failure to submit a court-ordered report.

39. On 18 November 2003 the Bucharest County Court dismissed the appeal as unfounded. The applicant appealed on points of law.

40. On 27 January 2005 the Court of Appeal of Bucharest allowed the appeal on points of law, ruling that the expert report relied on by the court had been conducted in the applicant's absence, thus rendering the judgment void. The case was therefore sent back for retrial on appeal.

41. The case was registered before the Bucharest County Court and was adjourned on several occasions owing either to requests filed by the plaintiffs to have the panel of judges removed or pending the receipt of documents from other courts.

42. On 28 October 2005 the Bucharest County Court allowed the appeal, quashed the first-instance court's decision of 13 December 2001 for failure on the part of the lower court to examine a claim filed by the applicant, and sent the case back for a fresh examination on the merits.

43. On 21 June 2006 the Bucharest District Court no. 6 allowed the action in part, ruling on the individual shares of property to be allotted to the parties. The decision was upheld on appeal on 15 November 2006 and on appeal on points of law on 29 March 2007.

44. On an unspecified date, enforcement proceedings in respect of the judgment regarding the division of the property were initiated. On 7 September 2011 the bailiff declared that he was unable to enforce the judgment. A complaint concerning the execution of the judgment is currently pending at first instance before the Bucharest District Court no. 6.

C. Application no. 50806/07, lodged by Mrs Vasilica Bratu

45. The applicant was born in 1964 and lives in Bucharest.

46. On 4 May 1998 she was summoned to the police headquarters in Bucharest to be questioned on suspicion of misconduct in public office. She was brought to trial by a bill of indictment lodged with the Bucharest District Court no. 1 on 30 June 1998.

47. While examining the evidence, the district court decided to disregard the forensic accounting report submitted by the prosecution on the ground that not all the defendants had been present when the accounts had been examined.

48. On 26 May 1999 the district court commissioned a new forensic accounting report. The hearing was adjourned twice pending the submission of the report, which was eventually submitted in November 1999.

49. On 24 May 2000 the district court dismissed the State's civil claim as time-barred.

50. On 20 July 2000 the applicant was convicted of misconduct in public office and sentenced to a one-year prison sentence with a stay of execution.

51. A notice of appeal was filed with the Bucharest County Court with respect to both the criminal and the civil parts of the judgment.

52. On 29 June 2001 the county court upheld the first-instance court decision under its criminal head, and ordered the retrial of the case under the civil head.

53. On 13 December 2001 the Court of Appeal rejected the applicant's appeal on points of law in respect of the criminal conviction.

54. On 31 May 2002 Bucharest District Court no. 1. allowed the civil action in part.

55. Following the lodging of an appeal in June 2002, the Bucharest County Court scheduled twenty-two hearings pending the submission of

documents and information by the Ministry of Public Finance and the Public Prosecutor's Office.

56. On 8 November 2004 the Bucharest County Court allowed the appeal and altered the lower court's judgment by increasing the amounts of compensation awarded.

57. On 28 January 2005 the Court of Appeal of Bucharest allowed an appeal on points of law and set aside the decision on appeal of 29 June 2001 for insufficient evidence with respect to the amount of damages awarded. The case was referred for a new trial on appeal.

58. The hearings listed for the retrial were adjourned on seventeen occasions for improper service of process and pending the receipt of documents and information from the public authorities.

59. On 9 September 2005 the court imposed a fine on the chief prosecutor for failure to submit court-ordered documents. The latter were eventually submitted to the court nineteen months later.

60. On 23 March 2007 the Bucharest County Court dismissed the appeal as unfounded. It thus upheld the first-instance decision of 31 May 2002. An appeal on points of law was lodged against the decision in respect of both its criminal and civil aspects.

61. By a final decision of 11 May 2007 the Court of Appeal of Bucharest dismissed the appeal on points of law.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Relevant domestic law

1. The Constitution

62. The relevant provisions of the Constitution of 1991 read as follows:

Article 11 § 2

"Treaties ratified by Parliament, according to the law, are part of national law."

Article 20

"(1) Constitutional provisions concerning citizens' rights and liberties shall be interpreted and enforced in conformity with the Universal Declaration of Human Rights and with the covenants and other treaties Romania is party to.

(2) Where there are inconsistencies between the covenants and treaties on fundamental human rights Romania is a party to and its internal laws, the international regulations shall take precedence."

Article 21

"(1) Everyone is entitled to bring cases before the courts for the defence of his legitimate rights, liberties and interests.

(2) The exercise of this right may not be restricted by any law."

Article 133 § 2

"The Superior Council of the Magistracy shall perform the role of a disciplinary council for judges, in which case proceedings shall be presided over by the President of the Supreme Court of Justice."

63. The relevant provisions of the Constitution, as revised on 31 October 2003, read as follows:

Article 20 § 2

"Where there are inconsistencies between the covenants and treaties on fundamental human rights Romania is a party to and the national laws, the international regulations shall take precedence, unless the Constitution or national laws comprise more favourable provisions."

Article 21 § 3

"All parties shall be entitled to a fair trial and to have their cases decided on within a reasonable time."

Article 134

"(2) The Superior Council of Magistracy shall perform the role of a court of law, by means of its sections, as regards the disciplinary liability of judges and public prosecutors, based on the procedures set up by its organic law. (...)

(3) Decisions by the Superior Council of Magistracy as regards disciplinary actions may be contested before the High Court of Cassation and Justice."

2. The Civil Code in force until 1 October 2011

64. The relevant provisions on civil liability for tort read as follows:

Article 998

"Any act committed by a person that causes damage to another shall render the person through whose fault the damage was caused liable to make reparation for it."

Article 999

"Everyone shall be liable for damage he has caused not only through his own actions but also through his failure to act or his negligence."

3. The new Civil Code in force as from 1 October 2011

65. The principle of liability for tort established by the Civil Code in force until 1 October 2011 was maintained in Article 1349 of the new Civil Code:

Article 1349

"(1) Everyone shall respect the code of conduct which the law or local custom imposes and shall not breach, by action or inaction, the rights or legitimate interests of others.

(2) Anyone who knowingly breaches this duty shall be liable for all damage and shall make amends for it in full.

(3) In the cases provided for by the law, a person may also be liable for damage caused by the actions of another [...]"

4. Law no. 303 of 28 June 2004 on the statute of judges and prosecutors (in force as of 16 September 2005)

66. Section 97(1) of Law no. 303/2004 provides that every person can bring to the attention of the Superior Council of Magistracy cases concerning the improper conduct, wrongful behaviour, failure to meet professional duties or any other disciplinary misconduct on the part of judges and prosecutors. Section 99(e) of the law further provides that culpable and constant failure to comply with the "reasonable time" requirement when dealing with cases amounts to disciplinary misconduct. The penalties that can be imposed on a judge or prosecutor found guilty of misconduct are listed in section 100 as follows: reprimand, withholding of increment, discharge and transfer to a different court, and removal of the magistrate from office.

5. Law no. 304 of 28 June 2004 on the organisation of the judicial system (in force as of 24 September 2004)

67. Section 10 of Law no. 304/2004 provides that everyone is entitled to a fair trial and an examination of their case within a reasonable time, by an impartial and independent court, set up in accordance with the law.

6. Law no. 202 of 25 October 2010 for accelerating judicial proceedings

68. Law no. 202/2010 entered into force on 29 October 2010. It introduced provisions amending, *inter alia*, the 1993 Code of Civil Procedure and the 1997 Code of Criminal Procedure, pending the entry into force and implementation of the new codes of civil and criminal procedure (see paragraphs 73-75 below).

69. The main changes made to the civil procedure can be summarised as follows:

- the courts were obliged to schedule hearings close together; hearings could be scheduled further apart only if the court deemed it necessary;
- a limit was placed on the number of requests that could be lodged to transfer jurisdiction to a different court;
- new conditions and deadlines for raising an objection as to a court's competence to hear certain cases were introduced;
- the parties present at trial in person or through a representative could serve court documents and procedural deeds directly on each other;
- a party summoned to a hearing either personally or through their lawyer would be deemed to have been informed of all subsequent hearings;
- direct access to the databases of public institutions was to be granted to courts in order to obtain relevant information for the service of process;
- the courts could use alternative methods of service of process, such as telephone, telegraph, fax or email, to summon parties and send related documents to them;
- stricter requirements were applied to statements of claims and the procedure for friendly settlement;
- a request for the rescheduling of the date of a hearing ("*cerere de preschimbare a termenului*") in order to reduce the time between hearings was made possible;
- amendments were made to the procedure for appointing experts;
- limitations were placed on the number of jurisdictions competent to examine a case;
- the remittal of a case to a lower court for re-examination on the merits could now be ordered only once in the entire course of the proceedings.

70. The main changes to the criminal procedure can be summarised as follows:

- a procedure allowing for the civil action in the criminal trial to be resolved by way of a transaction between the parties was introduced;
- changes similar to those outlined above relating to civil cases (see paragraph 69) were made in respect of requests to reschedule hearings, the procedure for summoning the parties, the serving of court documents and procedural deeds, methods for the service of process and the courts' access to databases managed by public administrations;
- the designation of a common representative for multiple victims or civil parties who did not have diverging interests was made possible, with the effect that procedural deeds served on the representative would be deemed to have been served on all of the concerned parties;
- the amount of the judicial fine which could be imposed on parties, witnesses and lawyers for unjustified absence from court hearings was increased;

- plea bargaining before the first-instance court, allowing a defendant to admit to the charges brought against him and to request that the court examine the case exclusively on the basis of evidence gathered during the investigation phase, was made possible.

71. According to a paper submitted by the Government, which contains a study by national judges, the impact of Law no. 202/2010 on the workload and the length of the proceedings before the domestic courts had not been significant.

72. The Government also produced statistics compiled, *inter alia*, by the Superior Council of Magistracy and the European Commission for the Efficiency of Justice for the years 2010 and 2011, according to which there had been a drop in the total time needed to process a case, so that more than 80% of new cases were now being decided at first instance in less than six months. These statistics also showed that in 2011 there had been an increase in the number of both new cases and completed cases.

7. The new Code of Civil Procedure, in force as of 15 February 2013

73. According to Section 3 of Law no. 76/2012, the provisions of the new Code of Civil Procedure apply only to proceedings instituted after its entry into force on 15 February 2013.

74. Articles 522 to 526 of the new Code of Civil Procedure introduce a remedy aimed at expediting excessively lengthy proceedings, namely, a "complaint about the protraction of proceedings" (*contestaţie pentru tergiversarea procedurii*):

Article 522 – Parties and causes of action

"(1) Every party to a civil trial, as well as the public prosecutor taking part in the proceedings, is entitled to bring a complaint whereby they allege a violation of the right to a trial within a reasonable and foreseeable time and consequently request that adequate measures be taken to efficiently deal with the alleged violation.

(2) Such a complaint can only be filed in one of the following instances:

1. where a statutory deadline for the finalisation of a case, the delivery of a judgment or the drafting of a statement of reasons is reached without any of the requisite action having been taken;

2. where a party to the proceedings fails to comply with a court order urging it to carry out a specific procedural act by a deadline and the court does not take statutory measures against that party;

3. where an authority or other third party to the proceedings fails to observe a time-limit set by the court to submit to it a document, data or any other information deemed essential to the case, and the court does not take statutory measures against the defaulting authority or third party;

4. where the court defaults in its duty to dispose of the case within a reasonable and foreseeable time by not taking the required statutory measures or by not carrying out a procedural act, as imposed by law, even though it could have done so in the time that had lapsed from its last procedural act.

Article 523 – Withdrawal of the complaint

The complaint may be withdrawn at any time up until a decision has been rendered. Once withdrawn, the complaint cannot be repeated.

Article 524 – Formal requirements. Examination and determination of the complaint

(1) The complaint shall be filed in writing with the court dealing with the case in respect of which allegations of undue delays have been raised. The complaint can also be made orally, at a hearing, in which case note has to be taken of it, together with its legal grounds, in the interlocutory judgment.

(2) The filing of such a complaint shall not halt the course of the legal process.

(3) The complaint shall be examined without delay, and at the latest within five days from its submission, by the panel of judges sitting in the main proceedings. No party shall be summoned.

(4) Should the panel determine that the complaint is well-founded, it shall deliver an interlocutory judgment ordering adequate measures to remove the situation that had led to the protraction of the proceedings to be taken forthwith. The interlocutory judgment shall not be subject to appeal. The concerned party shall be immediately notified.

(5) Should the panel find that the complaint is unfounded, it shall reject it by an interlocutory judgment. Such judgment may be appealed against by the interested party, within three days from the date on which service of process has been effected. The appeal (*plîngere*) shall be filed through the court that rejected the complaint, which shall submit it immediately to the higher court together with a certified copy of the case file. If the case is being heard before the High Court of Cassation and Justice, the appeal shall be examined by a different panel within the same court. The filing of the appeal shall not halt the legal process.

(6) The statement of reasons for the interlocutory judgments mentioned in the two previous subparagraphs shall be prepared within five days from the date on which the judgment is rendered.

Article 525 – Examination and determination of an appeal

(1) An appeal against the decision to reject a complaint shall be examined and determined within ten days from the receipt of the case file by a panel composed of three judges. No party shall be summoned. The decision, the statement of reasons for which is to be prepared within five days from its delivery, shall be final.

(2) If the court allows the appeal, it shall order the court dealing with the case to take the procedural step or ... measure in question, clearly indicating [what action is to be taken] and, if need be, setting a deadline to that effect.

(3) Irrespective of its decision, the court examining the appeal cannot, by its own ruling, give guidance or express its opinion on the facts or points of law that may anticipate the judgment on the merits or otherwise infringe upon the freedom of the judge to decide, according to the law, on the ruling to be adopted.

Article 526 – Sanction for a complaint filed in bad faith

(1) The filing of a complaint or an appeal in bad faith shall be sanctioned by a fine of between ROL 500 and 2,000. An additional payment of compensation for damages caused by the abusive filing of a complaint or appeal may also be ordered at the request of the interested party.

(2) Bad faith shall be discerned from the manifestly ill-founded nature of the complaint or appeal, as well as from any other circumstances that make it reasonable to assume that the right was exercised abusively or served a different purpose than that allowed for by the law."

8. The new Code of Criminal Procedure

75. Law no. 255/2013 on the implementation of Law no. 135/2010 introducing the new Code of Criminal Procedure sets the date of the entry into force of the new Code of Criminal Procedure as 1 February 2014.

The new Code of Criminal Procedure does not contain any provision similar to the complaint about the protraction of the proceedings provided for by Articles 522 to 526 of the new Code of Civil Procedure.

The Government claimed, however, referring to the opinions submitted by the Ministry of Justice and by domestic courts in that respect, that Articles 522 to 526 of the new Code of Civil Procedure also applied to criminal proceedings. In particular, they pointed out that Article 2 § 2 of the Code stipulates that its provisions represent common law for civil matters and for "other matters", provided that they do not contravene the laws governing such matters.

In support of their allegations, the Government relied on three court decisions, two delivered in 2003 and one in 2012, from which it appears that courts had applied civil procedural provisions to proceedings before criminal courts (the possibility to reduce the lawyer's fee and the imposition of a fine on a party which had exercised its rights abusively, respectively).

B. Relevant domestic case-law and administrative practice

76. The Government submitted that in general, upon registration of a claim with a court, the first hearing is scheduled at random using special computer software. However, the domestic courts allow requests to have the

hearings rescheduled in cases where the computer-generated dates create excessive and unjustified delays in the proceedings. In doing so, the courts take into account the nature of the litigation and the age and the state of health of the applicant. The delays may thus be shortened by anything from one week to five months.

77. The Government submitted examples of case-law in an attempt to show that at present the system of legal remedies in Romania in length of proceedings cases, comprising the direct applicability of the Convention and the liability for tort under former Articles 998 and 999 of the Civil Code, makes it possible not only to expedite proceedings but also to make good any damage suffered.

78. In a judgment of 12 October 2010 concerning civil matters the County Court of Bacău quashed for the third time the first-instance court's decision. Having regard to the delays already accrued in the proceedings, and to the requirements of Article 6 of the Convention, it decided not to remit the case to the lower court again, and therefore held the case for re-examination on the merits.

79. In another case concerning enforcement proceedings the County Court of Bacău quashed the lower court's decision and, having regard to the fact that the proceedings had lasted almost two years already, held the case for re-examination on the merits (judgment of 11 July 2011).

80. In a final decision of 16 November 2007 the Court of Appeal of Jassy (Iaşi) ruled on an appeal on points of law that a criminal investigation which had lasted four years had been opened against the wrong individual due to mistaken identity, and that the procedure had thus breached the "reasonable time" requirement laid down in the Convention. The court found that the delays which had occurred prior to the administration's acknowledgment of its error represented a "wrongful act" within the meaning of former Articles 998 and 999 of the Civil Code as a result of which non-pecuniary damage had been caused.

81. In three judgments delivered between March 2008 and May 2010, various courts in Bucharest examined, under Article 13 of the Convention, complaints of unjustified delays in criminal investigations and dismissed them as ill-founded.

82. In a final decision of 20 January 2010 the Bucharest County Court granted a claim lodged in 1998 and awarded the claimant 50,000 Romanian lei (RON) (around EUR 11,000) in compensation for non-pecuniary damage suffered due to the length of ongoing criminal investigations commenced in 1990 into the death of his son. The court found that the criminal investigations had been excessively long and noted that they had not been concluded by the investigating authorities. Such a situation had been due to "negligence" on the part of the investigating authorities within the meaning of former Articles 998 and 999 of the Civil Code, triggering the State's liability.

83. In a final decision of 6 February 2009 the County Court of Jassy (Iaşi) allowed an action in tort filed against the State by an individual seeking compensation for pecuniary and non-pecuniary damage incurred due to the total lack of action by the police in a criminal investigation. The court established that the lack of action on the part of the police officers represented a "wrongful act" within the meaning of former Articles 998 and 999 of the Civil Code, triggering the State's liability. It therefore awarded the claimant EUR 1,500 in compensation for non-pecuniary damage.

84. In a final decision of 28 October 2009 the Court of Appeal of Oradea, ruling on an appeal on points of law, awarded RON 1,000 (approximately EUR 220) in compensation for non-pecuniary damage to individuals who had lodged a claim for tort against a registered expert and the Ministry of Justice. The individuals complained that civil proceedings they had initiated against third parties in 2006 were still pending before the competent court because the registered expert who had been commissioned to submit a report had done so with an excessive delay.

The Court of Appeal found that the expert's dilatory conduct had resulted in twenty-three postponements of the proceedings to which the claimants were parties. It further stated that although the State was not as such liable for the delays in the proceedings, it was liable for tort under former Articles 998 and 999 of the Civil Code, since it had not discharged its statutory obligations to organise the judicial system in such a way as to ensure a its proper functioning. In particular, it had not taken any initiative with a view to increasing the number of registered experts, for example, through opening up access to that profession.

85. In a final decision of 25 March 2010 the Court of Appeal of Constanţa, ruling on an appeal on points of law, allowed a claim in tort filed in 2006 against the State by an individual in respect of delays in criminal proceedings which had lasted some ten years, and which had ended with his acquittal due to the fact that the acts committed did not represent an offence under the law. The Court of Appeal found that the length of the proceedings was due in part to procedural errors and mistakes committed by the lower courts. Relying on Articles 6 and 13 of the Convention, and on the notion of the State's responsibility as a public authority to ensure the proper organisation of the judicial system, it awarded the claimant EUR 5,000 in compensation for non-pecuniary damage and EUR 1,500 for pecuniary damage.

86. In a decision of 19 March 2010 the Bucharest District Court no. 4 ruled that, although it was entitled to apply Article 6 of the Convention and examine whether the length of proceedings was reasonable, the only legal ground for granting damages in case of a breach of the right guaranteed by that Article were, in the absence of a specific domestic remedy, the relevant articles of the Civil Code on the liability for tort.

87. The Government submitted further decisions delivered between November 2008 and June 2013, in which various courts in had allowed claims in tort against the State and awarded compensation for non-pecuniary damage ensuing from violations of the "reasonable time" requirement laid down in Article 6 of the Convention. In each case the courts had examined and ascertained whether the elements of tort stipulated in former Articles 998 and 999 of the Civil Code were present in order to engage the liability of the State.

C. Council of Europe (and other relevant) materials

1. *Committee of Ministers*

88. On 24 February 2010, during the 1077th meeting of the Ministers' Deputies, the Committee of Ministers adopted a Recommendation to member states on effective remedies for excessive length of proceedings (CM/Rec(2010)3), which reads as follows:

> "The Committee of Ministers, under the terms of Article 15.*b* of the Statute of the Council of Europe,
>
> Recalling that the Heads of State and Government of the Council of Europe member states, meeting at the Third Summit in Warsaw on 16 and 17 May 2005, expressed their determination to ensure that effective domestic remedies exist for anyone with an arguable complaint of a violation of the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5 – hereafter referred to as "the Convention");
>
> Recalling Recommendation Rec(2004)6 of the Committee of Ministers to member states on the improvement of domestic remedies and intending to build upon this by giving practical guidance to member states in the specific context of excessive length of proceedings;
>
> Recalling also the Declaration of the Committee of Ministers on sustained action to ensure the effectiveness of the implementation of the European Convention on Human Rights at national and European levels (adopted on 19 May 2006 at its 116th Session);
>
> Welcoming the work of other Council of Europe bodies, notably the European Commission for Democracy through Law (Venice Commission) and the European Commission for the Efficiency of Justice;
>
> Emphasising the High Contracting Parties' obligations under the Convention to secure to everyone within their jurisdiction the rights and freedoms protected thereby, including the right to trial within a reasonable time contained in Article 6.1 and that to an effective remedy contained in Article 13;
>
> Recalling that the case law of the European Court of Human Rights (hereinafter "the Court"), notably its pilot judgments, provides important guidance and instruction to member states in this respect;

Reiterating that excessive delays in the administration of justice constitute a grave danger, in particular for respect for the rule of law and access to justice;

Concerned that excessive length of proceedings, often caused by systemic problems, is by far the most common issue raised in applications to the Court and that it thereby represents an immediate threat to the effectiveness of the Court and hence the human rights protection system based upon the Convention;

Convinced that the introduction of measures to address the excessive length of proceedings will contribute, in accordance with the principle of subsidiarity, to enhancing the protection of human rights in member states and to preserving the effectiveness of the Convention system, including by helping to reduce the number of applications to the Court,

Recommends that the governments of the member states:

1. take all necessary steps to ensure that all stages of domestic proceedings, irrespective of their domestic characterisation, in which there may be determination of civil rights and obligations or of any criminal charge, are determined within a reasonable time;

2. to this end, ensure that mechanisms exist to identify proceedings that risk becoming excessively lengthy as well as the underlying causes, with a view also to preventing future violations of Article 6;

3. recognise that when an underlying systemic problem is causing excessive length of proceedings, measures are required to address this problem, as well as its effects in individual cases;

4. ensure that there are means to expedite proceedings that risk becoming excessively lengthy in order to prevent them from becoming so;

5. take all necessary steps to ensure that effective remedies before national authorities exist for all arguable claims of violation of the right to trial within a reasonable time;

6. ascertain that such remedies exist in respect of all stages of proceedings in which there may be determination of civil rights and obligations or of any criminal charge;

7. to this end, where proceedings have become excessively lengthy, ensure that the violation is acknowledged either expressly or in substance and that:

a. the proceedings are expedited, where possible; or *b.* redress is afforded to the victims for any disadvantage they have suffered; or, preferably, *c.* allowance is made for a combination of the two measures;

8. ensure that requests for expediting proceedings or affording redress will be dealt with rapidly by the competent authority and that they represent an effective, adequate and accessible remedy;

9. ensure that amounts of compensation that may be awarded are reasonable and compatible with the case law of the Court and recognise, in this context, a strong but

rebuttable presumption that excessively long proceedings will occasion non-pecuniary damage;

10. consider providing for specific forms of non-monetary redress, such as reduction of sanctions or discontinuance of proceedings, as appropriate, in criminal or administrative proceedings that have been excessively lengthy;

11. where appropriate, provide for the retroactivity of new measures taken to address the problem of excessive length of proceedings, so that applications pending before the Court may be resolved at national level;

12. take inspiration and guidance from the Guide to Good Practice accompanying this recommendation when implementing its provisions and, to this end, ensure that the text of this recommendation and of the Guide to Good Practice, where necessary in the language(s) of the country, is published and disseminated in such a manner that it can be effectively known and that the national authorities can take account of it."

89. On 6 December 2011, at the conclusion of the 1128th meeting of the Ministers' Deputies, the Committee of Ministers adopted a decision concerning the excessive length of proceedings and the lack of an effective remedy in forty-three cases against Romania (CM/Del/Dec(2011)1128/17). The decision reads:

"The Deputies,

1. noted that the numerous violations found by the Court due to excessive length of civil and criminal proceedings in Romania reveal structural problems in the administration of justice at the time of the relevant facts;

As regards the excessive length of proceedings

2. noted with satisfaction the action plan for the execution of these judgments, provided on 10 October 2011 and the large-scale legislative measures taken by the Romanian authorities with a view to remedying the problems at the origin of these cases, in particular the adoption of the new Codes of Civil and Criminal Procedure;

3. considered that a certain period of time is necessary for the effectiveness of the reforms to be assessed; called on the authorities to monitor the effects of these reforms as they proceed and to present to the Committee, as soon as possible, their assessment of the achieved results;

4. invited the authorities to keep the Committee informed on the entry into force of the new Codes of Civil and Criminal Procedure, as well as on the consequences of the concrete measures proposed by the Superior Council of Magistracy;

As regards the effective remedies required in this field

5. recalled Committee of Ministers' Recommendation Rec(2010)3 encouraging states to introduce remedies making it possible both to expedite proceedings and to award compensation to interested parties for damage suffered and emphasising the importance of this question where judgments reveal structural problems likely to give rise to a large number of further similar violations;

6. noted with interest, in this respect, the developments of the case-law of the domestic courts which have begun to decide, on the basis of the direct application of the Convention, on claims for compensation for damages caused by the excessive length of proceedings as well as on complaints aimed at accelerating proceedings;

7. invited the authorities to provide clarification on this case-law, in particular on the procedural rules followed (especially the number of degrees), on the concrete results achieved following the proceedings concerning the acceleration of proceedings and on whether the decisions submitted became final;

8. noted with interest that the new Code of Civil Procedure provides the introduction of a remedy aimed at accelerating civil proceedings; invited the authorities to submit a summary of the relevant provisions and to indicate if they also intend to introduce a remedy aimed at accelerating criminal proceedings and a compensatory remedy;

9. regarding individual measures, called on the authorities to expedite as much as possible the pending proceedings in four cases and to keep the Committee informed of their progress."

90. The same conclusions were included in the Annual Report 2011 on the supervision of the execution of judgments and decisions of the European Court of Human Rights, issued in April 2012 by the Committee of Ministers.

2. The European Commission for Efficiency of Justice (CEPEJ)

91. The European Commission for the Efficiency of Justice was set up at the Council of Europe by Resolution Res(2002)12 with the aim of (a) improving the efficiency and the functioning of the justice systems of Member States with a view to ensuring that everyone within their jurisdiction can enforce their legal rights effectively, thereby generating increased confidence of the citizens in the justice system, and (b) enabling a better implementation of the international legal instruments of the Council of Europe concerning efficiency and fairness of justice.

92. In its framework programme (CEPEJ (2004) 19 Rev 2 § 6), the CEPEJ observed that mechanisms which are limited to compensation are too weak and do not adequately incite the States to modify their operational procedures, and provide compensation only *a posteriori* in the event of a proven violation instead of trying to find a solution to the problem of delays.

3. Parliamentary Assembly

93. In its Resolution 1787 (2011) on the implementation of the Court's judgments, adopted on 26 January 2011, the Parliamentary Assembly of the Council of Europe noted "with grave concern" the continuing existence of "major systemic deficiencies which cause large numbers of repetitive findings of violations of the Convention and which seriously undermine the

rule of law" in some Member States of the Council of Europe with cases "in which extremely worrying delays in implementation have arisen". One of those problems was related to "the excessive length of ... proceedings" (paragraph 5.1). In this respect, the Assembly urged Romania to "give priority to and tackle the problem of [the] excessive length of judicial proceedings" (paragraph 7.6).

THE LAW

I. ADMISSIBILITY

94. The applicants complained that the length of the proceedings which concerned each of them had been incompatible with the "reasonable time" requirement laid down in Article 6 § 1 of the Convention. The second and the third applicants further complained, relying on Article 13 of the Convention, that they had not had effective remedies in respect of the excessive length of the proceedings.

Article 6 § 1 of the Convention provides:

> "In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by a ... tribunal ..."

Article 13 provides:

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

95. The Government disagreed and invited the Court to find the applications inadmissible or, in the alternative, to find that there had been no violation of the above Articles.

96. In particular, they submitted that the second applicant could not claim to have suffered a "significant disadvantage" within the meaning of the new subparagraph (b) of Article 35 § 3 of the Convention. In their view, the allegedly long delay within which the courts decided the civil case did not affect the applicant's financial or legal interests to a sufficient degree. Moreover, the applicant did not claim that the length of the civil lawsuit had caused him any material damage. Furthermore, the litigation concerned the division of property, thus the stakes were not particularly high for the applicant.

97. The Government additionally contended that the second applicant had also failed to exhaust domestic remedies, as he had not availed himself of the avenues of redress at his disposal for the purpose of expediting the

judicial proceedings and/or claiming compensation. They argued that the Romanian legal system provided adequate and effective preventive remedies which could be used while the proceedings were still pending, such as a complaint based on the direct applicability of the Convention in the Romanian law, a request to reschedule a hearing, a civil action for compensation after the proceedings had terminated, and disciplinary action against the dilatory authority, be it a judge or a prosecutor, for failure to comply with the obligation to perform an act or to take a procedural step and thus causing undue delays in the proceedings.

They asserted that those remedies were available both in theory and in practice, and were accessible to the applicant. They relied on the new domestic provisions which introduced an acceleratory remedy (see paragraph 68 above) and submitted examples of case-law from the domestic courts in cases of tort claims (see paragraphs 77-87 above).

Finally, the Government contended that the third applicant had failed to comply with the six-month time-limit fixed by Article 35 § 1 of the Convention in respect of the criminal proceedings. They pointed out that the applicant had been convicted on 20 July 2000 at first instance, in a decision which was upheld on appeal on 29 June 2001 before the Bucharest County Court. They alleged that the applicant had failed to lodge an appeal on points of law against the decision of 29 June 2001, which therefore became final on 10 July 2001, the last day of the statutory time-limit to file such an appeal. Thus, they claimed that the application submitted to the Court on 9 November 2007 had been lodged out of time in respect of the criminal conviction.

98. The second applicant argued that the new remedies referred to by the Government were aimed at preventing delays in future proceedings, whereas the litigation in issue, which involved serious stakes for him, had been decided in 2007. Thus, none of the remedies were relevant in his case. Furthermore, there was no convincing argument that there was any judicial remedy open to him to effectively seek relief for the unduly lengthy proceedings.

The third applicant stressed that the final decision of 11 May 2007 had been delivered as a result of an appeal on points of law lodged against the judgment of 29 June 2001with respect to both the criminal and civil aspects of the case.

99. The Court has stated that an application raising the issue of a potential systemic problem of unreasonable length of civil proceedings and an alleged lack of effective remedies in that regard should not be rejected under the new admissibility requirement set out by Article 35 § 3 (b) of the Convention (see, among others, *Finger v. Bulgaria*, no. 37346/05, §§ 75-77, 10 May 2011).

100. In the instant case, it observes that, being invited to comment on the potential applicability of Article 46 of the Convention to the problem of

the unreasonable length of proceedings in Romania in conjunction with the alleged lack of effective remedies in that regard, the Government submitted that a number of measures were being taken by the Romanian authorities in order to prevent repetitive breaches of the right to a hearing within a reasonable time (see paragraphs 149-152 below).

The Court therefore considers – without prejudice to its ruling on the question of whether the present case reveals a systemic problem of unreasonable length of proceedings or not – that respect for human rights, as defined in the Convention and the Protocol thereto, requires an examination of the application on the merits (see, *mutatis mutandis*, *Karner v. Austria*, no. 40016/98, §§ 25-28, ECHR 2003-IX, and *Finger*, cited above).

101. The Court also observes that one of the complaints raised by the present case is precisely whether the alleged unreasonable length of the proceedings could be duly considered at domestic level, as required by the principle of subsidiarity (see *Finger*, cited above, § 76). The case cannot therefore be considered to comply with the third element of the new admissibility criteria.

102. It follows that the Government's objection must be rejected.

103. The Court further considers that the question of exhaustion of domestic remedies is closely linked with the substance of the complaint under Article 13 of the Convention (see paragraph 106 below). It should therefore be joined to the merits (see *Sürmeli v. Germany* (dec.), no. 75529/01, 29 April 2004, and *McFarlane v. Ireland* [GC], no. 31333/06, § 75, 10 September 2010).

104. It further notes that the final decision of 11 May 2007 was delivered following the rejection on the merits of an appeal on points of law lodged in respect of both the civil and criminal aspects of the case (see paragraph 60 above). It follows that the third applicant cannot be considered to have failed to observe the six-month time-limit. The Government's preliminary objection must accordingly be dismissed.

105. The Court finds that the applications are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. They must therefore be declared admissible.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

106. The second and the third applicant complained that they had not had effective remedies in respect of the excessive length of the proceedings. They relied on Article 13 of the Convention, which provides as follows:

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

A. The parties' submissions

107. The Government reiterated in the first place some of the arguments put forward and a remedy referred to in the case of *Abramiuc v. Romania* (no. 37411/02, §§ 118 to 133, 24 February 2009), namely, a complaint based on the direct applicability of the Convention in the domestic law.

In addition, they submitted that since the *Abramiuc* case the Romanian authorities had put in place a system of legal remedies in length of proceedings cases which would not only make it possible to expedite the proceedings, but also to make good any damage suffered. Thus, it was now open to the parties to request a new hearing to be scheduled, to file a civil action for compensation based on the law on torts, a disciplinary action against the dilatory authority, or a request to impose a fine on the party who failed to comply with the obligation to perform an act or to take a procedural step (see paragraphs 63-73 above). In support of their allegations, the Government submitted a number of court decisions (see paragraphs 77-87 above).

108. The applicants alleged that they had not had effective remedies in respect of their complaint about the excessive length of the proceedings.

B. The Court's assessment

1. General principles

109. The Court reiterates, firstly, that by virtue of Article 1, which provides that "The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of [the] Convention", the primary responsibility for implementing and enforcing those guaranteed rights and freedoms rests with the national authorities. The machinery of complaint to the Court is thus subsidiary to national systems safeguarding human rights. This subsidiary character is reflected in Articles 13 and 35 § 1 of the Convention.

110. The purpose of Article 35 § 1, which sets out the rule on exhaustion of domestic remedies, is to afford the Contracting States the opportunity of preventing or putting right the violations alleged against them before those allegations are submitted to the Court. The rule in Article 35 § 1 is based on the assumption, reflected in Article 13 (with which it has a close affinity), that there is an effective domestic remedy available in respect of the alleged breach of an individual's Convention rights (see *Selmouni v. France* [GC], no. 25803/94, § 74, ECHR 1999-V, and *Kudła v. Poland* [GC], no. 30210/96, § 152, ECHR 2000-XI).

111. The Court also points out that Article 13 of the Convention "guarantees an effective remedy before a national authority for an alleged

breach of the requirement under Article 6 § 1 to hear a case within a reasonable time" (see *Kudła*, cited above, § 156).

The scope of the Contracting States' obligations under Article 13 varies depending on the nature of the applicant's complaint; the "effectiveness" of a "remedy" within the meaning of Article 13 does not depend on the certainty of a favourable outcome for the applicant. At the same time, the remedy required by Article 13 must be "effective" in practice as well as in law, in the sense either of preventing the alleged violation or its continuation, or of providing adequate redress for any violation that has already occurred, and must offer reasonable prospects of success (see *Kudła*, cited above, §§ 157-158; *Sejdovic v. Italy* [GC], no. 56581/00, § 46, ECHR 2006-II; and *Wasserman v. Russia* (no. 2), no. 21071/05, § 45, 10 April 2008).

Moreover, the effectiveness of a particular remedy is normally assessed with reference to the date on which the application was lodged (see, for example, *Baumann v. France*, no. 33592/96, § 47, ECHR 2001-V (extracts)), this rule, however, being subject to exceptions which may be justified by the specific circumstances of each case (see *Nogolica v. Croatia* (dec.), no. 77784/01, ECHR 2002-VIII).

112. The Court has established other principles on the occasion of examination of the effectiveness, within the meaning of Article 13 of the Convention, of remedies in a number of Contracting States in respect of the length of proceedings (see, among other authorities, *Belinger v. Slovenia* (dec.), no. 42320/98, 2 October 2001; *Andrášik and Others v. Slovakia* (dec.), nos. 57984/00, 60237/00, 60242/00, 60679/00, 60680/00, 68563/01 and 60226/00, ECHR 2002-IX; *Slaviček v. Croatia* (dec.), no. 20862/02, ECHR 2002-VII; *Fernández-Molina González and Others v. Spain* (dec.), nos. 64359/01 and others, ECHR 2002-IX; *Doran v. Ireland*, no. 50389/99, ECHR 2003-X (extracts); *Hartman v. the Czech Republic*, no. 53341/99, ECHR 2003-VIII; *Paulino Tomas v. Portugal* (dec.), no. 58698/00, ECHR 2003-VIII; *Kormacheva v. Russia*, no. 53084/99, 29 January 2004; *Bako v. Slovakia* (dec.), no. 60227/00, 15 March 2005; *Charzyński v. Poland* (dec.), no. 15212/03, ECHR 2005-V; *Lukenda v. Slovenia*, no. 23032/02, ECHR 2005-X; *Sürmeli v. Germany* [GC], no. 75529/01, ECHR 2006-VII; *Finger*, cited above; and *Milić v. Montenegro and Serbia*, no. 28359/05, 11 December 2012).

Thus, in the absence of a specifically introduced remedy for delay, the development and availability of a remedy said to exist, including its scope and application, must be clearly set out and confirmed or complemented by practice or case-law (see *McFarlane*, cited above, § 120).

A remedy awarding compensation should itself comply with the "reasonable time" requirement, in that the procedural rules applied to it should not be exactly the same as those applied to ordinary applications for damages.

While it is for each State to determine, on the basis of the rules applicable in its judicial system, which procedure shall best meet the requirement of "effectiveness", such a procedure should also conform to the principle of fairness guaranteed by Article 6 of the Convention. In addition, special rules concerning legal costs (in particular registration fees) may be appropriate to avoid excessive costs constituting an unreasonable restriction on the right to file such claims (see *Scordino v. Italy (no. 1)* [GC], no. 36813/97, §§ 200-201, ECHR 2006-V).

2. Application of these principles in the instant case

113. The Court considers, without anticipating the examination of whether the "reasonable time" requirement in Article 6 § 1 of the Convention was complied with, that the second and the third applicants' complaints concerning the length of the proceedings is prima facie "arguable". They were therefore entitled to an effective remedy in that regard.

a) As regards the claim for compensation based on the direct applicability of the Convention taken alone or combined with the provisions of the Civil Code on the liability for tort

114. The Court recalls in the first place that in earlier cases it has rejected, for lack of persuasive examples, the arguments put forward by the Government with regard to claims for compensation based on the direct applicability of the Convention in the domestic law (see, for instance, *Abramiuc*, cited above, §§ 123-24, and *Csiki v. Romania*, no. 11273/05, §§ 98-99, 5 July 2011).

115. In the present case, the Government have submitted examples of recent case-law aimed at demonstrating the effectiveness of a claim for compensation based on the direct applicability of the Convention and on former Articles 998 and 999 of the Civil Code.

The Court welcomes the domestic courts' more frequent reliance on the Convention but points to the following aspects casting some doubt on the "effectiveness", within the meaning of Article 13 of the Convention, of the remedy in question.

116. First of all, the Court notes that although the remedy has been available for almost twenty years, that is, since the ratification of the Convention by Romania in June 1994, none of the decisions submitted by the respondent Government showed that a litigant had successfully relied on the relevant provisions of the Convention in order to obtain the acceleration of his or her court action.

117. Secondly, in most cases submitted by the Government, the decisive factor on which the domestic courts relied in order to award compensation was the finding either of a judicial error committed by State authorities or of

a wrongful act or omission for which the State was found to be liable within the meaning of former Articles 998 and 999 of the Civil Code.

118. Furthermore, it appears that the proposed remedy follows the ordinary civil procedure for claiming damages, which could thus last several years through three jurisdictions (see paragraphs 78-79, 82 and 85 above). Such a lapse of time would not be reconcilable with the requirement that the remedy for delay be sufficiently swift (see, for instance, *Vidas v. Croatia*, no. 40383/04, § 37, 3 July 2008).

The Court observes that the remedial action indicated by the Government would be also subject to the normal rules of litigation concerning legal representation, court fees and legal costs. This means that it imposes on the litigants a burden in terms of expenses, court fees such as stamp duty, which is, in such cases, proportionate to the value of the financial claim, and legal costs. Moreover, a claimant be unsuccessful, a costs order would ordinarily be made against him.

119. Having regard to the above, the Court considers that it cannot be established from the examples submitted by the Government that a claim based on the direct applicability of the Convention, taken alone or combined with a liability for tort claim brought pursuant to the relevant Articles of the Civil Code, represents an effective remedy for the excessive length of proceedings.

b) As regards Law no. 202/2010

120. The Court notes that this law was enacted several years after the proceedings on the merits concerning the applicants in the present case came to an end in May 2007 (see paragraph 43 above).

Only the proceedings in the application no. 41508/07 continued after that date, for the purpose of enforcing the judgment on the merits. These proceedings had now been pending before the domestic authorities for five years since the delivery of the final judgment, of which three years have elapsed since the adoption of that law. The Court notes in this respect that no conclusion can be drawn from the Government's submissions as to the effectiveness of the measures provided for by Law no. 202/2010 in the applicant's case (see, mutatis mutandis, *Milić*, cited above, § 53).

121. In any event, the Government have not provided a single example of domestic case-law demonstrating that this transitional law, which was in force for almost three years, offered individuals an effective remedy for significantly expediting the proceedings or awarding appropriate redress (see, *a contrario*, for absence of practice in the first several months since the entry into force of a new remedy, *Nogolica*, cited above).

c) As regards the new Code of Civil Procedure

122. With regard to complaints about the protraction of proceedings provided for by Articles 522 to 529 of the new Code of Civil Procedure in

force as of 15 February 2013 (paragraph 73 above), the Court reiterates that an effective remedy must be available both for proceedings that have already ended and for those still pending (*Šoć v. Croatia*, no. 47863/99, § 94, 9 May 2003; *Paulino Tomás*, cited above; and *Mifsud v. France* (dec.) [GC], no. 57220/00, § 17, ECHR 2002-VIII). It notes that such a complaint was not and is not available to the applicants, since the new procedures are applicable only to proceedings opened after the entry into force of the new Code (see paragraph 73 above).

The same holds true for the criminal proceedings, assuming that such a complaint would be available under the new Code of Criminal Procedure, as contended by the Government (see paragraph 75 above).

3. Conclusion

123. In the light of all the foregoing considerations, the Court is not satisfied that the aforementioned legal remedies or their aggregate can be considered an effective legal remedy in the circumstances of the instant case.

124. Therefore, the Court finds that the second and the third applicants did not have access to effective remedies in respect of their complaint under Article 6 § 1 of the Convention.

125. The Court accordingly dismisses the Government's preliminary objection of non-exhaustion of domestic remedies, and holds that there has been a violation of Article 13 in conjunction with Article 6 § 1 of the Convention.

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

126. The applicants complained that the proceedings had been unreasonably long and invoke Article 6 § 1 of the Convention, which provides, in so far as relevant:

> "1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] tribunal ..."

A. The parties' arguments

1. The Government

127. The Government agreed that the length of the criminal proceedings in respect of the first applicant had been "considerable", but pointed out that the authorities had showed due diligence in handling the case by listing hearings within short periods of generally one month. They argued that it

had been the first applicant who had contributed to delays in the proceedings, particularly by filing unsuccessful requests for the removal of judges examining the case on allegations of partiality.

128. They further suggested that the second applicant had been responsible for several periods of inactivity before the courts, as follows: one year due to a request to stay the proceedings because of a separate criminal complaint which was eventually rejected; nine months as he had unsuccessfully lodged a complaint of unconstitutionality; and nearly two years for an abusive request made in respect of the right to be summoned before a court. The Government attributed further delays to the parties' requests for defence purposes.

129. The Government alleged that, in so far as the civil aspect of the case was concerned, the length of the criminal proceedings concerning the third applicant amounted to five years, ten months and twelve days, which could not be deemed excessive within the meaning of the Convention. They further submitted that in any event, the case had been of particular complexity, as it had involved four co-defendants and a forensic accounting analysis and alleged that applicant had contributed to the delays in the proceedings by not objecting to the repeated adjournments of the case.

2. The applicants

130. The applicants objected to the Government's arguments, maintaining that the length of the proceedings had been excessive and had been a result of the authorities' conduct.

B. The Court's assessment

131. The reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities and what was at stake for the applicant in the dispute (see, among many other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II, and *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

132. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case (see *Pélissier and Sassi* and *Frydlender*, cited above, and *Abramiuc v. Romania*, cited above, §§ 103-109).

133. It has also already found that, although it is not in a position to analyse the juridical quality of the case-law of the domestic courts, since the remittal of cases for re-examination is usually ordered as a result of errors committed by lower courts, the repetition of such orders within one set of proceedings discloses a serious deficiency in the judicial system. Moreover, this deficiency is imputable to the authorities and not the applicants (see,

among many others, *Wierciszewska v. Poland*, no. 41431/98, § 46, 25 November 2003, and *Matica v. Romania*, no. 19567/02, § 24, 2 November 2006).

1. Mr Vlad

134. The proceedings began on 30 January 1994, when the applicant was taken into police custody and ended on 6 April 2006, when the ICCJ delivered its final decision. The total duration of the proceedings was thus twelve years, two months and six days at three levels of jurisdiction.

135. The Court considers that the trial concerning the criminal charges against the applicant did not raise particularly complex issues. It notes that the case was referred to the prosecution authorities for further investigation three times, a fact which led to three bills of indictment being issued against the applicant. Further considerable delays were caused by the defective service of process in respect of the applicant and the witnesses heard in the case, as well as by the repeated adjournment of hearings for a forensic medical report to be drawn up or for court judgments to be delivered. While it is true that the applicant filed several motions to have the judges removed on allegations of partiality, the Court observes that they were not unfounded, as the case was eventually referred to a different court for examination on the merits (see paragraph 18 above). Moreover, his requests overlapped with requests in evidence submitted by the prosecution authorities.

136. Having examined all the material submitted to it, and having regard to its case-law on the subject (see, for instance, *Stoianova and Nedelcu v. Romania*, nos. 77517/01 and 77722/01, § 26, ECHR 2005-VIII; *Georgescu v. Romania*, no. 25230/03, §§ 93- 96, 13 May 2008; and *Soare v. Romania*, no. 72439/01, § 29, 16 June 2009) the Court considers that the length of the proceedings was excessive and failed to meet the "reasonable time" requirement.

137. There has accordingly been a breach of Article 6 § 1 of the Convention.

2. Mr Plaţa

138. The proceedings started on 6 March 1997, when the applicant was given notice of the lawsuit, and are still pending, since the judgment on the merits of 29 March 2007 has still not been enforced. The proceedings have so far lasted approximately sixteen years at three levels of jurisdiction.

139. The Court acknowledges that division-of-property proceedings concerning inherited estates are likely to be time-consuming, as they generally involve disputes over kinship, unjust enrichment or invalidation of will clauses.

The present case, however, did not involve disputes over any of the above-mentioned points and could not be regarded as particularly complex, either from a procedural or factual angle.

140. The Court further notes that the bulk of the delay occurred as a result of the manner in which the domestic courts handled the proceedings. Thus, the proceedings at first instance lasted four years and nine months, with the case being referred to a different court on allegations of partiality.

Further delays occurred as a result of procedural errors (see paragraphs 33, 40 and 42 above), for which responsibility lies with the authorities.

Moreover, the proceedings concerning the enforcement of the final judgment are still pending, the bailiff having declared that he was unable to enforce the judgment (see paragraph 44 above).

141. Having regard to the above, the Court considers that the overall length of the proceedings concerning the second applicant was excessive and failed to meet the "reasonable time" requirement.

142. There has accordingly been a breach of Article 6 § 1 of the Convention.

3. Mrs Bratu

143. The Court considers that the proceedings began on 4 May 1998, when the third applicant gave a first statement as a suspect of misconduct in public office, and ended on 11 May 2007. The total length of the proceedings was thus nine years at three levels of jurisdiction.

144. The Court observes that the proceedings were not particularly complex. Furthermore, it notes that almost forty hearings were postponed while waiting for documents and information to be submitted by public authorities and because the parties had not been summoned properly (see paragraphs 55-59 above). In addition, the domestic courts chose not to separate the civil and criminal proceedings, which led to a significant increase in the overall length of the proceedings.

145. The Court observes that the Government did not submit any justification for such long delays, the responsibility for which lies entirely with the authorities.

146. In conclusion, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the "reasonable time" requirement.

147. There has accordingly been a breach of Article 6 § 1.

III. APPLICATION OF ARTICLE 46 OF THE CONVENTION

148. The Court finds it appropriate to consider this case under Article 46 of the Convention, which provides as follows:

"1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.

2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution."

A. The parties' submissions

1. The Government

149. The Government submitted that most of the breaches found by the Court were generated by several legal, organisational and logistic problems which had been addressed by the recent reforms (see paragraphs 73-75 above), coupled with improvements in the functioning of the judicial system.

They submitted a detailed description of the manner in which the new domestic remedies operated, in particular the request to reschedule a hearing, the acceleratory remedy introduced by the new Code of Civil Procedure and the claim for damages. In their view, the aggregate of these remedies, available both in theory and in practice, fully complied with the Convention requirements, providing adequate and effective relief while proceedings were still pending, as well as after their conclusion.

150. In support of their averments, the Government produced statistics compiled, *inter alia*, by the Superior Council of Magistracy and the CEPEJ for the years 2010 and 2011, according to which there had been a drop in the total time needed to process a case, so that more than 80% of new cases are now being decided at the first instance in less than six months. Statistics showed that in 2011 there had been an increase in the number of both new cases and completed cases.

151. They further added that an action plan had been put in place in order to prepare the judicial system for the entry into force of the new codes and for their implementation. They also emphasised the Committee of Ministers' decision of 2011, which noted with interest the provisions of the new codes and welcomed the measures proposed for setting them up and implementing them.

152. In the Government's view, all of the above showed that the Romanian authorities were taking effective measures to prevent repetitive breaches of the right to a trial within a reasonable time, as well as to accelerate pending cases.

2. The applicants

153. The applicants submitted that the excessive length of proceedings in Romania was a problem of a systemic nature which required an appropriate response from the Court. They pointed out that at present there

was no effective remedy allowing them to seek relief for the infringements of their right to a trial within a reasonable time.

B. The Court's assessment

154. The Court observes that since its first judgment concerning the length of civil proceedings in Romania (*Pantea v. Romania*, no. 33343/96, §§ 272-283, ECHR 2003-VI (extracts)), it has adopted decisions and judgments in some 200 cases dealing with allegations of breaches of the "reasonable time" requirement laid down in Article 6 § 1 in relation to civil and criminal proceedings.

Almost 500 length of proceedings cases against Romania are currently pending before the Court.

155. The Court cannot ignore the above figures, which indicate the existence of a systemic problem (see, among other authorities, *Vassilios Athanasiou and Others v. Greece*, no. 50973/08, 21 December 2010; *Rumpf v. Germany*, no. 46344/06, §§ 64-70, 2 September 2010; *Lukenda*, cited above, §§ 90-93, ECHR 2005-X; and *Finger*, cited above, § 115).

156. While welcoming the new measures adopted with a view to preventing further delays in the proceedings, the Court notes that in its resolution of 26 January 2011, the Parliamentary Assembly of the Council of Europe took note "with grave concern" of the problem of the excessive length of proceedings in Romania and urged the authorities to tackle it with priority (see paragraph 93 above).

The Court also takes note of the issues raised with regard to the new legislation by the Committee of Ministers in its decision of 6 December 2011, in particular to the procedural rules applicable to the complaint about the length of proceedings provided for in the new Code of Civil Procedure and to the effective remedies available in criminal proceedings for the same purpose. A question was also raised as to the possibility of introducing a specific compensatory remedy (see paragraph 89 above).

157. The Court notes that the Government have not submitted any information in reply to those queries.

158. Furthermore, it observes that, in any event, the introduction of measures aimed at ensuring a speedy examination of civil cases applies only to new proceedings, that is, those instituted after 15 February 2013. It cannot remedy the problem of delays accrued before the introduction of those measures, that is, in proceedings which occurred under the previous Code of Civil Procedure.

159. By becoming a High Contracting Party to the European Convention on Human Rights, the respondent State assumed the obligation to secure to everyone within its jurisdiction the rights and freedoms defined in Section 1 of the Convention. In fact, the States have a general obligation resolve the

problems that have led to the Court finding a violation of the Convention. This should therefore be the primary goal of the respondent State.

160. Should violations of Convention rights still occur, the respondent States must set up mechanisms within their respective legal systems for the effective redress of violations of those rights (see paragraphs 109-110 above).

161. The Court has determined in the instant case that the respondent State failed to comply with its Convention obligations to ensure the applicants had a trial within a reasonable time and to provide them with an effective legal remedy for that violation.

162. The Court reiterates that by virtue of Article 46 the High Contracting Parties have undertaken to abide by the final judgments of the Court in any case to which they are parties, with execution being supervised by the Committee of Ministers of the Council of Europe. It follows that a judgment in which the Court finds a breach imposes on the respondent State a legal obligation not just to pay those concerned the sums awarded by way of just satisfaction under Article 41, but also to select, subject to supervision by the Committee of Ministers, the general and/or, if appropriate, individual measures to be adopted in its domestic legal order to put an end to the violation found by the Court and to redress, in so far as possible, its effects. Subject to monitoring by the Committee of Ministers, the respondent State remains free to choose the means by which it will discharge its legal obligation under Article 46 of the Convention, provided that such means are compatible with the conclusions set out in the Court's judgment (see *Scozzari and Giunta v. Italy* [GC], nos. 39221/98 and 41963/98, § 249, ECHR 2000-VIII, and *Broniowski v. Poland* [GC], no. 31443/96, § 192, ECHR 2004-V).

163. The Court takes note of the fact that the respondent State has taken certain general steps, including legislative amendments, to remedy the structural problems related to the excessive length of civil and criminal proceedings (see paragraphs 73-75 and 76-87 above). By virtue of Article 46 of the Convention, it will be for the Committee of Ministers to evaluate the general measures adopted by Romania and their implementation as far as the supervision of the Court's judgment is concerned.

The Court cannot but welcome these developments. However, in view of the extent of the recurrent problem at issue, and in the light of the identified weaknesses and shortcomings of the legal remedies indicated by the respondent State (see paragraphs 88-93 above), consistent and long-term efforts, such as the adoption of further measures, must continue in order to achieve complete compliance with Articles 6, 13 and 46 of the Convention.

164. To prevent future findings of infringement of the right to a trial within a reasonable time, the Court encourages the State to either amend the existing range of legal remedies or to add new remedies, such as a specific

and clearly regulated compensatory remedy, in order to provide genuine effective relief for violations of these rights.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

165. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

166. The first applicant, Mr Mihai Vlad, claimed 8 million euros (EUR) in respect of non-pecuniary damage.

167. The second applicant, Mr Flaviu Plaţa, claimed EUR 1,100 in respect of pecuniary damage, equivalent to loss of earnings occasioned by his presence at court hearings and thereby absence from work. This represented EUR 22 per hearing for the approximately fifty public hearings he estimated to have attended. As for non-pecuniary damage, he considered that fifteen years of uncertainty as to the outcome of the proceedings had kept him in a state of constant stress, for which he considered EUR 5 per day, starting from the beginning of the proceedings and ending with enforcement of the final decision, to be adequate compensation

168. The third applicant, Mrs Vasilica Bratu, claimed EUR 60,000 in respect of pecuniary damage, the estimated value of her apartment, on which the domestic courts had allegedly levied distraint. She also claimed EUR 20,000 in respect of non-pecuniary damage resulting from the constant adjournments of hearings, the impossibility to advance her career and the public disdain she was subject to as a result of the alleged unjust sentencing.

169. The Government contested these claims.

170. As to the claims submitted by Mr Plaţa and Mrs Bratu, the Government pointed to the lack of any causal link between the violation found and the pecuniary damage alleged. They also stressed that none of the claims were supported by any documentary evidence.

171. As to the non-pecuniary damage claimed by the applicants, the Government submitted that the claims were excessive in comparison with the Court's awards in similar cases. They further claimed that the finding of a violation would constitute sufficient just satisfaction.

172. The Court does not discern any causal link between the violations found in respect of the length of civil and criminal proceedings and the pecuniary damage alleged; it therefore rejects this claim in respect of all the applicants.

173. The Court considers that the applicants must have certainly sustained non-pecuniary damage – such as distress and frustration resulting from the protracted length of the proceedings before the domestic courts – which is not sufficiently compensated for by the finding of a violation of the Convention. As far as Mr Plaţa and Mrs Bratu are concerned, the Court notes that the violation of Article 13 of the Convention in respect of the unduly long proceedings in their cases further compounds the non-pecuniary damage sustained.

Ruling on an equitable basis, the Court awards, under this head, EUR 3,600 to Mr Vlad, EUR 7,800 to Mr Plaţa, and EUR 2,340 to Mrs Bratu.

B. Costs and expenses

174. Mr Vlad and Mr Plaţa did not claim any sum under this head.

175. Mrs Bratu sought reimbursement of EUR 10,000, which she had incurred in lawyer's fees. She stated she was unable to provide supporting documents for these fees, thus leaving the matter to the Court's discretion.

176. The Government contested the claim. They submitted that the amount was excessive and, in any case, not supported by any documentary evidence.

177. According to the Court's established case-law, costs and expenses will not be awarded under Article 41 unless it is established that they were actually and necessarily incurred and are reasonable as to quantum (see *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 54, ECHR 2000-XI).

178. Concerning the lawyer's fees claimed by Mrs Bratu, the Court notes that the applicant did not provide any supporting documents. Therefore, it shall not make any award under this head.

C. Default interest

179. 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 UNANIMOUSLY

1. *Joins to the merits* the Government's preliminary objection concerning the complaint under Article 13 of the Convention read together with Article 6 § 1 and *dismisses* it;

2. *Declares* the applications admissible;

3. *Holds* that there has been a violation of Article 13 in conjunction with Article 6 § 1 of the Convention in respect of the second and the third applicants;

4. *Holds* that there has been a violation of Article 6 § 1 of the Convention in respect of all the applicants;

5. *Holds* that the above violations have originated in the malfunctioning of the relevant domestic legislation and practice;

6. *Holds* that the respondent State must, through appropriate legal measures and administrative practices regarding, in particular, the compensatory remedy, secure the right to a trial within a reasonable time;

7. *Holds*
(a) that the respondent State is to pay the applicant Mihai Vlad, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 3,600 (three thousand six hundred euros) in respect of non-pecuniary damage, plus any tax that may be chargeable, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
(b) that the respondent State is to pay the applicant Flaviu Plaţa, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 7,800 (seven thousand eight hundred euros) in respect of non-pecuniary damage, plus any tax that may be chargeable, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
(c) that the respondent State is to pay the applicant Vasilica Bratu, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 2,340 (two thousand three hundred and forty euros) in respect of non-pecuniary damage, plus any tax that may be chargeable, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
(d) 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* unanimously the remainder of the applicants' claims for just satisfaction.

Done in English, and notified in writing on 26 November 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President