CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

THIRD SECTION

CASE OF COBZARU v. ROMANIA

(Application no. 48254/99)

JUDGMENT

STRASBOURG

26 July 2007

FINAL

26/10/2007

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 Cobzaru v. Romania,

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

Mrs E. FURA-SANDSTRÖM, *President*,
Mr C. BÎRSAN,
Mrs A. GYULUMYAN,
Mr E. MYJER,
Mr DAVID THÓR BJÖRGVINSSON,
Mrs I. ZIEMELE,
Mrs I. BERRO-LEFÈVRE, *judges*,
and Mr S. QUESADA, *Section Registrar*,

Having deliberated in private on 5 July 2007,

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

PROCEDURE

1. The case originated in an application (no. 48254/99) against Romania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Romanian national, Mr Belmondo Cobzaru ("the applicant"), on 11 May 1999.

2. The applicant was represented successively by Ms M. Macovei, a lawyer practising in Bucharest, by the Romanian Helsinki Committee, an association based in Bucharest, and by the European Roma Rights Centre, an association based in Budapest (Hungary). The Romanian Government ("the Government") were represented successively by their Agent, Mrs B. Ramaşcanu, Director in the Ministry of Foreign Affairs and by their co-Agent, Ms R. Paşoi, also from the Ministry of Foreign Affairs.

3. The applicant alleged, in particular, that he was subjected to inhuman and degrading treatment while in police custody, in breach of Article 3 of the Convention; that the authorities failed to satisfy their obligation to carry out a prompt, impartial and effective investigation into the allegations of ill-treatment, also in breach of Article 3; and that he had no effective remedy under domestic law for his allegation of ill-treatment, in violation of Article 13 of the Convention. The applicant also complained of a violation of Articles 6 and 14 taken in conjunction with Articles 3 and 13 of the Convention.

4. On 22 May 2001 the Court decided to give notice of the application to the Government.

5. On 23 June 2005 the Court decided, in accordance with the provisions of Article 29 § 3 of the Convention, to examine the merits of the application at the same time as its admissibility.

6. The applicant and the Government each filed observations on the merits (Rule 59 §1). The parties replied in writing to each other's observations.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicant, Belmondo Cobzaru, is a Romanian national, born in 1973. He lives in the town of Mangalia (Constanţa).

1. Facts as submitted by the applicant

8. On 4 July 1997 at around 7.30 p.m. the applicant and his girlfriend Steluţa M. arrived at the flat which they were sharing and which belonged to Steluţa. The applicant then left the flat for about 20 minutes to get some money, as he and Steluţa were planning to go out that evening. However, when he came back, he found the door locked. He asked his neighbours whether they had seen Steluţa, but was told that nobody had seen her. Fearing that she might have attempted to take her life, as she had already done in the past, the applicant forced open the door of the flat in the presence of his neighbour, Rita G. He found nobody there, so decided to go to the police to enquire about her fate. As he was leaving the apartment block, he met Steluţa's brother-in-law, Crinel M., accompanied by three men armed with knives, who attempted to attack him, but from whom he managed to escape.

9. On 4 July 1997 at around 8 p.m. Crinel M. called the police and lodged a complaint against the applicant. According to the complainant, the applicant had tried to break into Steluţa's flat, but had run away when Crinel M. appeared. The complaint was certified by the police officer Dumitru CA.

10. Dumitru CA sent a police patrol to conduct an on-site investigation into the facts complained of by Crinel M. The report drafted by the police patrol concluded that there were no traces of rummaging or violence in the flat. Rita G., who was present during the investigation, stated that the applicant had broken into the flat in her presence, fearing that Steluţa might have committed suicide.

11. A short time after he escaped from Crinel M., that is, between 8 and 9 p.m., the applicant learned that the police were looking for him and went to the Mangalia City Police Department, accompanied by his cousin Venuşa L.

He reported to the police officer on duty, Dumitru CA., that some individuals had attempted to beat him up as he was leaving his flat, and that although he had managed to escape, he was still afraid that Crinel M. might beat him up. After he presented his identity card, he was told to wait. Other policemen were also present.

12. At around 10 p.m. police officers Gheorghe G., Curti D. and Ion M. came back from the on-site investigation they had carried out at Steluţa's flat. Gheorghe G. grabbed the applicant by his hair and pulled him upstairs to an office. Gheorghe G. and Curti D. punched him in the head until his nose started to bleed, and he was thrown to the ground and kicked. A newspaper was placed on the back of his neck and he was hit with a wooden stick. Four plainclothes officers observed the assault, but took no steps to prevent or halt it. The police told the applicant that the fact that his father was the local leader of a Roma association would not help him and forced him to sign a statement according to which he had been beaten up by Crinel M. and other individuals. Then he was told to leave and to come back the next day. The police kept his identity card.

13. The applicant left, but as he was feeling very weak, he stopped and sat in front of the police station. Gheorghe G. came out and told him to go home. Seeing that the applicant was in bad shape, Venuşa invited him back with her and offered him a coffee. The applicant showed her the bumps on his head and the other marks of the blows to his back.

14. Later that evening the applicant was admitted to the emergency ward of Mangalia Hospital with injuries diagnosed as craniocerebral trauma. He was transferred to Constanţa County Hospital where an X-ray was performed. He was informed that a further scan was necessary, but this was never performed.

15. On 7 July 1997 the applicant was discharged from hospital, allegedly at the request of someone whose name the hospital staff could not disclose.

16. On 8 July 1997 the applicant was examined by a forensic medical expert of the Forensic Institute of Constanţa, who noted in his report that the applicant had severe headaches and stomachaches, difficulty in walking, bruises around both eyes, on his fingers, on the back of his right hand, on his chest, on his right thigh and calf, and a haematoma on his head. The report concluded that the injuries had been caused by being hit “with painful and hard objects”. The doctor said that the applicant would need 14-15 days to recover.

17. On 8 July 1997 the applicant lodged a complaint with the head of the Mangalia Police Department against police officers Curti D. and Gheorghe G.. He alleged that after he had managed to escape from Crinel M. and his friends, he had gone home, but as he had found out that the police were looking for him, he had gone to the police station. There, Gheorghe G. and Curti D. had beaten him and made him sign a statement, after which they had told him to go home and come back the next day.

The complaint was registered on 9 July 1997 and forwarded to Major P.

18. On 10 or 11 July 1997 Major P. took written statements from the police officers involved in the applicant's questioning: Gheorghe G., Curti D. and Ion M. All police officers denied, in succinct terms, having beaten the applicant. None of them mentioned having seen any bruises on the applicant's face upon his arrival at the police station. The statements were dated 11 July, but Major P. certified them as having been made on 10 July.

19. In a statement certified by Major P. as having been made on 11 July 1997 Dumitru CA., a police officer on duty on 4 July 1997, explained that at 8.15 p.m. he had received a telephone call from Crinel M., who had told him that the applicant had forcibly entered Steluţa M.'s flat and had subsequently fled. The duty officer then sent to the flat a police patrol, composed of three police officers: Gheorghe G., Curti D. and Ion M. In the meantime the applicant arrived at the police station, accompanied by his cousin, Venuşa L. He told Dumitru CA. that he had forcibly entered the flat because he thought his girlfriend was inside. On his way out, on the staircase of the building, a number of individuals had approached him and tried to catch him, but he had run away and come to the police in order to avoid being beaten up by them. The police officer told the applicant and his cousin to wait in the waiting room. Police officer Gheorghe C. was there as well. At around 10 p.m. the police patrol returned from the flat and took the applicant to their office on the first floor for questioning. After approximately half an hour, the applicant was sent home and asked to come back the next morning. Dumitru CA. made no mention of the bruises which the applicant had allegedly had on his face upon arrival at the police station.

20. By a letter dated 10 July 1997 Major P. forwarded the preliminary investigation file to the Military Prosecutor's Office in Constanţa. The case file contained the following documents:

(i) an undated statement by the applicant according to which, after he had left Steluţa's flat in the evening of 4 July 1997, he had met her relatives, who had beaten him up;

(ii) the report dated 4 July 1997, 8.15 p.m. drawn up by police officer Dumitru CA. stating that Crinel M. had complained to the police that the applicant had broken into Steluţa's flat (see paragraph 9 above);

(iii) a statement dated 4 July 1997 by Crinel M. from which it appeared that he had threatened the applicant in the evening of 4 July 1997 and had even thrown a stone at him, which had missed its target, but that he had definitely not beaten him up;

(iv) the on-site investigation dated 4 July 1997;

(v) a statement dated 4 July 1997 by Rita G., confirming the applicant's allegation, namely that at around 6 p.m., he had broken into Steluţa's flat in her presence, out of concern that she might have committed suicide, and that

he had left when he had seen that Steluţa was not there; no mention was made of any physical assault against the applicant;

(vi) a police report dated 7 July 1997 issued by Gheorghe G., listing the clothes belonging to Steluţa allegedly torn up by the applicant on 28 June 1997;

(vii) a written notification issued on 7 July 1997 by the police requesting that the Forensic Institute examine Steluţa M., who "had been beaten up by Cobzaru Belmondo on 3 July 1997";

(viii) Steluţa's statement dated 9 July 1997 from which it appeared that on 3 July the applicant had beaten her up while she was at his flat, and that on 4 July he had taken her to her flat and told her not to leave; as soon as he had gone, Steluţa had gone onto the roof of the building where she had remained for about two hours; from there she had seen the applicant come back and break into the flat; as he had found nobody, he had gone away. Steluţa further stated that as the applicant was leaving the building, he had met Crinel M., who "had beaten him up, asking him why he had broken into the flat"; no details were given as to the alleged beating; at the end of her statement she mentioned again that the applicant had broken into her flat with a screwdriver he had borrowed from a neighbour, but that when he saw Crinel M., he had run away;

(ix) a statement dated 9 July 1997 by Elena, Steluţa's mother, according to which the relationship between the applicant and Steluţa had already deteriorated; on 28 June 1997 the applicant had torn up some clothes belonging to Steluţa and on 4 July 1997, while Steluţa was on the roof of the building, the applicant had broken into the flat but had not stolen anything;

(x) the statements dated 10 or 11 July 1997 made by police officers Gheorghe G., Ion M., Curti D. and Dumitru CA. (see paragraphs 18 and 19 above).

21. On 17 July 1997 the applicant and his father, president of the Association of Roma in Mangalia, lodged a complaint with the Department for National Minorities and requested an investigation in respect of the police officers who had beaten the applicant. They submitted a medical certificate issued on 8 July 1998, a copy of a newspaper article describing the applicant's allegations of ill-treatment and the statements of Venuşa, who had accompanied the applicant to the police station on 4 July 1997 and who had seen him coming out of the police station in excruciating pain. The complaint was forwarded to the Military Prosecutor's Office in Constanţa on 23 July 1997.

22. On 21 July 1997 the applicant's father lodged a complaint with the Constanţa Military Prosecutor's Office.

23. On 28 July 1997 the applicant lodged a separate criminal complaint with the Bucharest Military Prosecutor's Office. He also claimed pecuniary and non-pecuniary damages. The complaint was registered the same day

with the Prosecutor General's Office and forwarded on 14 August 1997 to the Constanţa Military Prosecutor's Office.

24. On 18 August 1997 the military prosecutor charged with the investigation interviewed the police officers and the applicant. Police officers Curti D. and Gheorghe G. maintained their statements made before the Mangalia police, and the applicant maintained his allegations of ill-treatment. He complained, moreover, that he had been forced to sign a statement according to which he had been hit by Crinel Marin and his girlfriend's other relatives.

25. On 18 September 1997 the military prosecutor took a statement from Venuşa L. She stated that on 4 July 1997 she and a friend, Valentina T., had accompanied the applicant to the police station and that about 30 minutes later the applicant had come out and complained to them that he had been beaten by the police with a wooden stick. He had also shown them the bruises on his hand, back and fingers.

26. On 29 September 1997 the General Prosecutor's Office in Bucharest urged the Constanţa military prosecutor in charge of the investigation to complete the investigation and render a final decision by 12 December 1997.

27. On 6 October 1997 the Constanţa military prosecutor went to the Mangalia City Police Department, where he took statements from the following witnesses:

(i) witnesses Amet F. and Nuri M. stated that they had heard that an altercation had taken place between Crinel M. and the applicant; Amet F. further stated that he had seen Crinel M. chasing the applicant with a stone in his hand;

(ii) police officer Dumitru CI., who gave a written statement according to which he was at the police station on 4 July 1997 when the applicant arrived there at around 9.30 p.m., and saw that the applicant had bruises on his face when he entered the police station; he had explained to the duty police officer, Dumitru CA., that he had been hit by someone when breaking into the flat;

(iii) Ion M. was interviewed again and stated this time that when the applicant had arrived at the police station, at around 9.30 p.m., he had bruises on his face and declared that he had been hit by someone when breaking into the flat;

(iv) police officer Marius I., who had also participated in the on-site investigation at Steluţa's flat on 4 July 1997, stated that the applicant had arrived at the police station after the team of policemen had come back from the on-site investigation and that he had noticed that the applicant had obvious bruises on his face, which had been caused a short time beforehand;

(v) Crinel M. confirmed that on 4 July 1997 he had seen the applicant breaking into Steluţa's flat and that after making an unsuccessful attempt to catch the applicant, he had only managed to throw some stones at him,

which had missed their target; he further confirmed that some neighbours had witnessed the incident, including Rita G.

The prosecutor did not put any questions to the police officers who had submitted written statements.

28. On 12 November 1997 the military prosecutor of Constanţa refused to open a criminal investigation in respect of the applicant's complaints against police officers Gheorghe G. and Curti D., on the ground that the facts had not been established. The prosecutor noted that both the applicant and his father were known as "antisocial elements prone to violence and theft", in constant conflict with "fellow members of their ethnic group" and that it was in this context that in the evening of 4 July 1997 the applicant had broken into his girlfriend's flat and had destroyed many of her clothes. It further found that, according to various testimonies, including those of the police officers from the Mangalia Police Department, the applicant's girlfriend, her mother and Nuri M., the applicant had been hit by Crinel M. for breaking into Steluţa's flat. The prosecutor found that it was for "obvious reasons" that Crinel M., a "gypsy as well", had denied having beaten the applicant. The prosecutor considered that the statement given by Venuşa L., from which it appeared that the applicant had come out of the police station with bruises on various parts of his body, could not be taken into consideration since she was also a gypsy – and, moreover, the applicant's cousin – and therefore her testimony was insincere and subjective.

29. By separate decisions of 26 February and 27 July 1998 the public prosecutor of the Mangalia County Court discontinued the proceedings instituted against the applicant by his girlfriend and her brother-in-law for physical assault and material damage.

30. On 4 March 1998 the applicant lodged an appeal against the decision of 12 November 1997 refusing to open a criminal investigation. The appeal was registered on 11 March 1998 by the military section of the Prosecutor General's Office. They sent it to the military prosecutor of the Bucharest Court of Appeal, who, in turn, sent it back to the Constanţa Chief Military Prosecutor.

31. On 4 May 1998 the Constanţa Chief Military Prosecutor dismissed the applicant's appeal on the ground that no evidence had been adduced that the police officers had beaten the applicant, "a 25-year-old gypsy" "well known for causing scandals and always getting into fights". He found that, on the contrary, the applicant's injuries "might have been caused during the altercation which he had had with fellow members of his ethnic group. As a matter of fact, there were indications that the young man's father, who had been very insistent under the hypothetical title of a leader of an ethnic local association, had tried to use the complaint against the policemen to extinguish the other conflict".

32. On 23 September 1998 the applicant lodged an appeal with the military section of the Prosecutor General's Office.

33. On 18 November 1998 the Chief Prosecutor of the military section of the Prosecutor General's Office informed him that his appeal had been dismissed and that the decision was final.

2. Facts as submitted by the Government

34. The Government submitted that the applicant had been beaten up by Crinel M. and that these facts had been confirmed by some of the witnesses heard during the investigation, in particular by the applicant's girlfriend, who had seen the applicant being beaten up by Crinel M. from the roof of the building, and by three police officers, who had noted very recent marks of violence on the applicant's face when he arrived at the police station. The Government pointed out in this connection that the applicant's allegation that he had bruises on his face had been contradicted by the medical forensic examination, which did not reveal any such marks.

35. The Government also denied that Major P. had pre-dated the statements given to him on 10 July by the police officers questioned, and contended that the date of 11 July 1997 which the police officers wrote in their statements was obviously a mistake.

II. RELEVANT DOMESTIC LAW AND PRACTICE AND INTERNATIONAL SOURCES

1. Relevant domestic law and practice

36. The relevant provisions of the Code of Criminal Procedure in force at the time when the facts occurred read as follows:

Article 10

"Criminal proceedings cannot be instituted and, if instituted, cannot be continued if

(a) the act was not committed at all;

(...)

(c) the act was not committed by the defendant;

..."

Article 14

"The aim of the civil action is to establish the civil liability of the accused and the liability for damages of any other person who can be held legally responsible.

The civil action can be brought together with the criminal action in a criminal trial, by way of joining the proceedings."

Article 15

"The person who has suffered civil damage can join the criminal proceedings...

He or she can do so either during the criminal investigation... or before the court..."

Article 22

"The findings contained in a final judgment of the criminal court concerning the issue whether the act in question was committed and the identification of the perpetrator and establishment of his guilt are binding on the civil court when it examines the civil consequences of the criminal act."

Article 19

"(1) The victim who has not joined the criminal proceedings instituted before the court can lodge an action with a civil court ...

"(2) The civil proceedings will be suspended until the criminal case is decided.

..."

Article 278

"Complaints about decisions and acts of the prosecutor ... shall be examined by the chief prosecutor at the Prosecutor's Office. If it is the chief prosecutor who took the decision ... the complaint shall be examined by the higher Prosecutor's Office..."

Article 343 § 3

"In case of a conviction or an acquittal, or the termination of the criminal trial, the court shall deliver a judgment in which it also decides on the civil action.

Civil damages cannot be awarded if the accused is acquitted on the ground that the impugned act did not occur or was not committed by the accused."

37. In its decision no. 486 of 2 December 1997, the Constitutional Court ruled that Article 278 of the Code of Criminal Procedure was constitutional only in so far as it did not deny anyone who was dissatisfied with a decision of the Prosecutor's Office direct access to a court in accordance with Article 21 of the Constitution.

38. Law no. 281 of 24 June 2003 amended the Code of Criminal Procedure. It introduced, *inter alia*, Article 278(1) regulating appeals to the courts against the prosecutor's decision. It prescribes the time-limit for lodging an appeal, the competent court and the procedure to be followed.

39. The relevant provisions of the Civil Code are worded as follows:

Article 998

"Any act committed by a person who 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 act but also through his failure to act or his negligence."

40. The Government submitted a number of cases in which the domestic courts had decided that the prosecutor's decision, based on Article 10 (b) of the Code of Criminal Procedure, not to open a criminal investigation on account of the absence of intention – as an element of the offence – did not prevent the civil courts from examining a civil claim arising out of the commission of the act by the person in question.

41. The Government submitted a single case, dating back to 1972, in which the Supreme Court had decided that the prosecutor's decision, based this time on Article 10 (a) and (c) of the Code of Criminal Procedure, not to open a criminal investigation having regard to the fact that the acts were not committed at all or were not committed by the defendant, should not prevent civil courts from examining a civil claim arising out of the commission of the same act by the person in question. However, the Supreme Court's decision dealt solely with the competence issue and did not specify whether there was a legal provision offering a chance of success for such an action.

42. The common view of the criminal-procedure specialists is that a civil court cannot examine a civil action filed against a person against whom the prosecutor has refused to open a criminal investigation on the grounds provided for in Article 10 (a) and (c) of the Code of Criminal Procedure that the acts were not committed at all or were not committed by the defendant (see *Criminal Procedural Law – General Part*, Gheorghe Nistoreanu and Others, p. 72, Bucharest 1994, and *A Treaty on Criminal Procedural Law – General Part*, Nicolae Volonciu, pp. 238-39, Bucharest 1996).

43. The common view of the civil-procedure specialists and of some criminal-procedure specialists is that the prosecutor's decision refusing to open a criminal investigation on the grounds mentioned in the previous paragraph, does not prevent a civil court from examining a civil action brought against the defendant and from making its own assessment on the facts which were committed and by whom. However, the view is that when making this assessment, civil courts have to rely on the findings of the prosecutor set out in the decision refusing to open a criminal investigation (see *The Civil Action and the Criminal Trial*, Anastasiu Crişu, RRD no. 4/1997, and *Criminal Procedural Law*, Ion Neagu, p. 209, Bucharest 1988).

2. International documents on the situation of the Roma community in Romania

44. In its Resolution No. 1123/1997 on the honouring of obligations and commitments by Romania, the Parliamentary Assembly of the Council of Europe urged the Romanian Government "to promote a campaign against racism, xenophobia and intolerance and take all appropriate measures for the social integration of the Roma population".

45. The European Union's Commission noted in the 1998 Regular Report on Romania's progress towards Accession, that "discrimination against the large Roma minority in Romania remains widespread" and that in "general terms, the protection of minorities in Romania remains satisfactory, with the major exception of Roma".

46. In its Regular Report on Romania's progress towards Accession of 8 November 2000, the European Commission stated, *inter alia*, that

> "Roma remain subject to widespread discrimination througout Romanian society. However, the Government's commitment to addressing this situation remains low and there has been little substantial progress in this area since the last regular report".

47. In its publication "Roma - Justice Delayed, Justice Denied", issued in 1998, Amnesty International reported cases of killings, beatings and other forms of ill-treatment of Roma and criticised the failure of law enforcement officers to protect Roma from racist violence in Romania.

48. US Department Yearly Reports on Romania from 2000 until 2006 reported routine police brutality - including beatings - and racial harassment of the Roma population, and noted that investigations of police abuses generally were lengthy, inconclusive and rarely resulted in prosecution or punishment.

49. In its second report on Romania adopted on 22 June 2001, the European Commission against Racism and Intolerance (ECRI) found that:

> "Grave problems ... persist throughout the country as regards police attitudes and behaviour towards members of the Roma/Gypsy community. ECRI deplores in particular that cases of police violence against members of the Roma/Gypsy community, including the use of firearms, continue to occur, and have led to serious and sometimes lethal injuries...
>
> Such abuses, although well-documented and reported to the authorities by the non-governmental organisations and individuals, do not appear to be thoroughly investigated or sanctioned: cases which are investigated are usually dismissed..."

50. On 24 June 2005 ECRI adopted a third report on Romania, in which it stated the following on the progress made by the Romanian authorities in improving the situation of Roma:

> "...As regards the existence of a body responsible for looking into complaints made against police officers or law enforcement officials, the Romanian authorities have told ECRI that a procedure has been set in motion for that purpose within the Ministry of the Interior itself. [...] However, although the Romanian authorities have

acknowledged that large numbers of police officers have been arrested for wrongful behaviour, they have provided no information on the victims. Furthermore, ECRI notes with concern that despite the existence of these procedures, the Romanian authorities have stated that no complaints have been recorded against police officers or law enforcement officials for discriminatory acts. It therefore wonders whether this does not reflect a lack of confidence among the general public in the authorities' capacity to punish the perpetrators of such acts."

51. In a report on his first visit to Romania between 5 to 9 October 2002, the Council of Europe's Commissionner for Human Rights stated, *inter alia*, with regard to the Roma community in Romania:

"47. The Roma/Gypsy community suffers greatly from poverty, unemployment, lack of schooling, lack of access to health care and justice and discrimination in all its forms. Likewise, according to Roma/Gypsy organisations, one of this community's growing concerns is the "anti-Roma/Gypsy phenomenon", which is gaining ground both in Romania and in Europe."

52. In his follow-up report on Romania for the period 2002-2005, the Commissioner described as follows the general situation of the Roma community:

"54. According to the 2002 census, 535,250 persons were registered as Roma, representing 2.5% of the Romanian population. Nonetheless, the UNHCR estimated in 2004 that the Roma population actually numbered between 1.8 and 2.5 million persons.

[...]

56. From a general point of view, the Roma situation continues to be a cause for concern. The NGOs and the representatives of the Roma community continue to report violence on the part of the police and discrimination and state that a negative image of the Roma is spread by the media and a part of the political class.

[...]".

THE LAW

I. ADMISSIBILITY

53. The Government raised an objection of non-compliance with the six-month rule. While conceding that Article 278 of the Criminal Procedure Code provided that a complaint could be lodged against the decision of a prosecutor with the superior prosecutor and thereafter with the Prosecutor General, they submitted that the applicant's complaint lodged with the Prosecutor General's Office on 23 September 1998 was not an effective remedy. As a consequence, the six-month time-limit laid down by Article 35 of the Convention had started to run on 4 May 1998, when the Constanţa Chief Military Prosecutor confirmed the decision not to press charges, and not, as suggested by the applicant, on 18 November 1998, when the military section of the Prosecutor General's Office informed him that they had dismissed his appeal.

They further asked the Court to dismiss the application for failure to comply with the requirement of exhaustion of domestic remedies under Article 35 § 1 of the Convention and argued that, in accordance with the Constitutional Court's decision no. 486 of 2 December 1997, the applicant could have brought an action before a court challenging the military prosecutors' decision not to press charges.

54. The applicant claimed that he had simply followed the internal law, which allowed him to appeal up to the Prosecutor General's Office.

In reply to the alleged possibility of challenging before a court a decision not to press charges, he stressed that in a number of decisions adopted by the Supreme Court subsequent to the Constitutional Court's decision of 4 May 1998, it had been held that complaints before a court against a prosecutor's decision not to press charges were inadmissible.

55. The Court observes that Article 278 of the Code of Criminal Procedure provides that the prosecutor's decisions can be challenged before the superior prosecutor, which is precisely what the applicant did. It further recalls that it has previously dismissed an analogous objection by the Government of non-exhaustion of domestic remedies in a similar case (see *Notar v. Romania* (dec.), no. 42860/98, 13 November 2003). The Court finds no reason to reach a different conclusion in the instant case. It therefore dismisses the Government's objections.

56. The Court notes that the application 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.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

57. The applicant complained that he had been subjected to ill-treatment while in police custody, in violation of Article 3 of the Convention, which reads as follows:

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

58. The Government contested the applicant's allegations. They submitted that the applicant was not formally arrested, but came of his own volition to the police station, where he stayed no more than two hours. The police had no obligation whatsoever to subject the applicant to a medical examination in order to establish his state of health at the time of his arrival at the police station. They further stated that the medical forensic certificate submitted by the applicant referred only to lesions on those parts of the body normally covered by clothing. It did not refer to bruises on the applicant's face. This certificate was consonant with Venuşa L.'s statement, according to which upon his arrival at the police station, the applicant had no traces of violence on the uncovered parts of the body. On the other hand, according to the Government, distinct pieces of evidence, such as the statements made by Steluţa M and by police officer Dumitru CI., indicated that the applicant had been in a fight with Crinel M. prior to his arrival at the police station. The Government concluded that there was not enough evidence to indicate that the applicant was in good health when he arrived at the police station.

59. The applicant contended that he had been in police custody at least for the purpose of Article 3, since he could not have left the building without the permission of the police officers questioning him and they had kept his identity card. Therefore, the authorities had to give an alternative explanation for the injuries on his body. Many of the injuries were on his head and fingers, and therefore visible. The applicant stressed that the Government's allegations that the injuries had been caused by Crinel M. were full of inconsistencies. First of all, Crinel M. had himself denied having hit the applicant, while admitting that the applicant "would have deserved it". Moreover, no investigations were ever initiated against Crinel M. for physically assaulting the applicant, although the military prosecutor made this finding with respect to the injuries on the applicant's body. The applicant argued that it was only in October 1997, more than four months after the events, that some police officers stated that they had seen bruises on his body upon his arrival at the police station. Such statements could therefore be seen as attempts to protect their colleagues.

60. The Court reiterates that Article 3 enshrines one of the fundamental values of democratic society. Even in the most difficult of circumstances, such as the fight against terrorism or crime, the Convention prohibits in absolute terms torture or inhuman or degrading treatment or punishment.

Unlike most of the substantive clauses of the Convention and of Protocols Nos. 1 and 4, Article 3 makes no provision for exceptions and no derogation from it is permissible under Article 15 of the Convention even in the event of a public emergency threatening the life of the nation (see *Assenov and Others v. Bulgaria*, judgment of 28 October 1998, *Reports of Judgments and Decisions* 1998-VIII, p. 3288, § 93).

61. Ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum depends on all the circumstances of the case, such as the duration of the treatment, its physical or mental effects and, in some cases, the sex, age and state of health of the victim (see *Ireland v. the United Kingdom*, judgment of 18 January 1978, Series A no. 25, p. 65, § 162; *Kudła v. Poland* [GC], no. 30210/96, § 91, ECHR 2000-XI; and *Peers v. Greece*, no. 28524/95, § 67, ECHR 2001-III). The Court has considered treatment to be "inhuman" because, *inter alia*, it was premeditated, was applied for hours at a stretch and caused either actual bodily injury or intense physical and mental suffering. It has deemed treatment to be "degrading" because it was such as to arouse in the victims feelings of fear, anguish and inferiority capable of humiliating and debasing them (see *Kudła*, cited above, § 92).

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

63. The Court considers that the degree of bruising found by the doctors who examined Mr Cobzaru (see paragraphs 14 and 16 above) indicates that the latter's injuries, whether caused by the police or by someone else, were sufficiently serious to amount to ill-treatment within the scope of Article 3 (see, for example, *A. v. the United Kingdom*, judgment of 23 September 1998, *Reports* 1998-VI, p. 2699, § 21, and *Ribitsch v. Austria*, judgment of 4 December 1995, Series A no. 336, pp. 9 and 26, §§ 13 and 39). The Government did not dispute that the applicant's injuries, assuming that it were proved that they had been deliberately inflicted on him while under police control, reached a level of severity sufficient to bring them within the scope of Article 3.

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

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

65. The Court is sensitive to the subsidiary nature of its role and recognises that it must be cautious in taking on the role of a first-instance tribunal of fact, where this is not rendered unavoidable by the circumstances of a particular case (see, for example, *McKerr v. the United Kingdom* (dec.), no. 28883/95, 4 April 2000). Nonetheless, where allegations are made under Article 3 of the Convention the Court must apply a particularly thorough scrutiny (see, *mutatis mutandis*, *Ribitsch v. Austria*, cited above, Series A no. 336, § 32, and *Avşar*, cited above, § 283) even if certain domestic proceedings and investigations have already taken place.

66. The Court observes that shortly after he left the police station in the evening of 4 July, the applicant was admitted to Mangalia Hospital with injuries diagnosed as craniocerebral trauma. On 7 July 1997 he was discharged from the hospital. On 8 July 1997 a forensic doctor examined him and found bruises around his eyes, on the fingers of his right hand, on his chest, on his right thigh and calf, and a haematoma on his head. The applicant alleged that all these injuries had been caused by the policemen during the time he spent in the police station, whereas the Government alleged that it was Crinel M. who had hit the applicant shortly before the latter arrived at the police station.

67. It is not disputed that the applicant was the victim of violence on 4 July 1997 either shortly prior to his arrival at the police station or during his stay at the police station. Having regard to the seriousness of the injuries sustained by the applicant, the Court finds it inconceivable that, had the applicant arrived at the police station with bruises on his body, the policemen would not have noticed them. Moreover, had the police noticed any bruises, they would normally have questioned him as to their origin and either taken him to the hospital or called a doctor.

68. The Court observes that, despite the Government's allegation, there is no evidence of anyone hitting the applicant before he entered the police station. In particular, no evidence gathered by the police immediately after the incident, that is, in July 1997, suggests that the applicant had been hit by Crinel M., save for the applicant's statement of 4 July 1997, which he withdrew on 8 July, alleging that it had been made under pressure from the police.

It was not until 6 October 1997 that three policemen presented a new version of the events, stating that the applicant arrived at the police station after the policemen had come back from the on-site investigation of 4 July 1997, and that he had bruises on his body upon arrival. None of the eyewitnesses to the altercation between the applicant and Crinel M.

confirmed the new version presented by the police, namely, that Crinel M. had beaten the applicant up. As to Crinel M., he consistently denied having beaten the applicant up.

69. Turning to the findings of fact made by the prosecutors, the Court finds that they were entirely based on the accounts of October 1997 given by the police officers accused of ill-treatment or their colleagues. Not only did the prosecutors accept without reserve the submissions of these police officers, they also appear to have disregarded crucial statements, such as those of Rita G., eyewitness to the altercation between the applicant and Crinel M., and of Venuşa L., who had accompanied the applicant to the police station. The latter stated in July and September 1997 that the applicant had had no bruises before going to the police, but had presented marks of violence when he left the police station.

70. The investigation carried out by the domestic authorities appears to have had other shortcomings. In particular, except for Rita G., none of the other neighbours who had witnessed the incident between the applicant and Crinel M. was questioned. Nor was the police officers Gheorghe C. mentioned in Dumitru CA.'s statement of 11 July 1997 (paragraph 19).

71. It is also noteworthy that the applicant himself was never questioned about the origin of his bruises, either when allegations were made that it was Crinel M. who had beaten him up, or after he had complained to the prosecutor that it was the police who had beaten him up. Similarly, none of the police officers who had declared that the applicant had bruises upon his arrival at the police station was asked to explain why he had not been questioned about the origin of his bruises either on his arrival at the police station on 4 July 1997 or later, when they learned that he had been admitted to hospital. No explanation was provided by the authorities as to why no steps had been taken to investigate his alleged beating by Crinel M.

72. The Court also notes that the decision of 4 May 1998 of the Constanţa Chief Military Prosecutor not only failed to clarify the issue of who was responsible for the applicant's injuries, but in addition formulated certain accusations against various individuals without adducing any evidence in support of those accusations.

73. Finally, the Court notes a number of contradictions in the investigation file: whereas Dumitru CA. declared on 11 July 1997 that the applicant arrived at the police station before the police patrol had come back, police officer Marius I. stated on 6 October 1997 that the applicant had arrived after the team of policemen had come back from the investigation (see paragraphs 20 and 27). Moreover, the prosecutor's decision of 12 November 1997 refusing to open a criminal investigation in respect of the police officers mentioned that it was on 4 July 1997 that the applicant had destroyed some of his girlfriend's clothes, whereas Steluţa's mother stated on 9 July 1997 that this had happened on 28 June (see paragraphs 20 and 28).

74. In the light of the above and on the basis of all the material placed before it, the Court considers that the Government have not satisfactorily established that the applicant's injuries were caused otherwise than by the treatment inflicted on him while he was under police control at the police station on the evening of 4 July 1997, and concludes that these injuries were the result of inhuman and degrading treatment. Accordingly, there has been a violation of Article 3 of the Convention.

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

III. ALLEGED VIOLATION OF ARTICLES 6 § 1 AND 13 OF THE CONVENTION

76. The applicant maintained that the investigation conducted by the authorities was insufficient to meet the Convention standards. In this respect, he invoked Article 6 § 1 of the Convention, which provides, in so far as relevant:

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

and Article 13 of the Convention, which 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."

77. The Government contended that the alleged assault on the applicant on 4 July 1997 had been adequately investigated and that therefore the Romanian legal system had not failed to afford the applicant an effective remedy.

A. Article 6 § 1 of the Convention

78. The Court observes that the applicant's grievance under Article 6 § 1 of the Convention is inextricably bound up with his more general complaint concerning the manner in which the investigating authorities treated his complaint that he had been beaten up by the police on 4 July 1997 and the repercussions which this had on his access to effective remedies. It accordingly finds it appropriate to examine this complaint in relation to the more general obligation on States under Article 13 to provide an effective remedy in respect of violations of the Convention (see, among other authorities, *Kaya v. Turkey*, judgment of 19 February 1998, *Reports* 1998-I, p. 329, § 105).

79. The Court therefore finds it unnecessary to determine whether there has been a violation of Article 6 § 1.

B. Article 13 of the Convention

80. The Court reiterates that Article 13 of the Convention guarantees the availability, at the national level, of a remedy to enforce the substance of Convention rights and freedoms in whatever form they might happen to be secured in the domestic legal order. The effect of Article 13 is thus to require the provision of a domestic remedy to deal with the substance of an "arguable complaint" under the Convention and to grant appropriate relief, although Contracting States are afforded some discretion as to the manner in which they conform to their Convention obligations under this provision. The scope of the obligation under Article 13 varies depending on the nature of the applicant's complaint under the Convention. Nevertheless, the remedy required by Article 13 must be "effective" in practice as well as in law; in particular, its exercise must not be unjustifiably hindered by the acts or omissions of the authorities of the respondent State (see *Tekdağ v. Turkey*, no. 27699/95, §95, 15 January 2004).

81. The Court reiterates that Article 13 of the Convention requires that where an arguable breach of one or more of the rights under the Convention is in issue, there should be available to the victim a mechanism for establishing any liability of State officials or bodies for that breach. The Contracting States are afforded some discretion as to the manner in which they comply with their Convention obligations under this provision. As a general rule, if a single remedy does not by itself entirely satisfy the requirements of Article 13, the aggregate of remedies provided for under domestic law may do so (see, among many other authorities, *Kudła v. Poland* [GC], no. 30210/96, § 157, ECHR 2000-XI; see also *Čonka v. Belgium*, no. 51564/99, § 75, ECHR 2002-I).

82. However, the scope of the State's obligation under Article 13 varies depending on the nature of the applicant's complaint, and in certain situations the Convention requires a particular remedy to be provided. Thus, in cases of suspicious death or ill-treatment, given the fundamental importance of the rights protected by Articles 2 and 3, Article 13 requires, in addition to the payment of compensation where appropriate, a thorough and effective investigation capable of leading to the identification and punishment of those responsible for the acts of ill-treatment (see *Anguelova v. Bulgaria*, no. 38361/97, §§ 161-162, ECHR 2002-IV; *Assenov and Others v. Bulgaria*, cited above, § 114 et seq.; and *Süheyla Aydın v. Turkey*, no. 25660/94, § 208, 24 May 2005).

83. On the basis of the evidence adduced in the present case, the Court has found that the State authorities were responsible for the injuries sustained by the applicant on 4 July 1997. The applicant's complaints to the

domestic authorities in this regard were based on the same evidence and were therefore "arguable" for the purposes of Article 13 (see *Boyle and Rice v. the United Kingdom*, judgment of 27 April 1988, Series A no. 131, p. 23, § 52). The authorities thus had an obligation to carry out an effective investigation into his allegations against the police officers. For the reasons set out above no effective criminal investigation can be considered to have been carried out in accordance with Article 13, the requirements of which are broader than the obligation to investigate imposed by Article 3 (see *mutatis mutandis, Buldan v. Turkey,* no. 28298/95, § 105, 20 April 2004; *Tanrıkulu v. Turkey*, no. 23763/94, § 119, ECHR 1999-IV; and *Tekdağ*, cited above, § 98). Consequently, any other remedy available to the applicant, including a claim for damages, had limited chances of success and could be considered as theoretical and illusory, and not capable of affording redress to the applicant. While the civil courts have the capacity to make an independent assessment of fact, in practice the weight attached to a preceding criminal inquiry is so important that even the most convincing evidence to the contrary furnished by a plaintiff would often be discarded and such a remedy would prove to be only theoretical and illusory (see *Menesheva v. Russia*, no. 59261/00, § 77, 9 March 2006, and *Corsacov v. Moldova*, no. 18944/02, § 82, 4 April 2006). This is illustrated by the fact that among the numerous examples of domestic case-law submitted by the Government, some dating back to the 1970s, there has not even been one case showing that a civil court would not consider itself bound by a decision of the prosecuting authorities finding that the State agents had not committed ill-treatment.

The Court can therefore conclude that, in the particular circumstances of the case, the possibility of suing the police for damages is merely theoretical.

84. The Court therefore finds that the applicant has been denied an effective remedy in respect of his alleged ill-treatment by the police. Consequently, there has been a violation of Article 13 of the Convention.

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

85. The applicant complained that the ill-treatment he suffered and the refusal of the military prosecutor to indict the police officers responsible for the ill-treatment was in substantial part due to his Roma ethnicity, and therefore inconsistent with the requirement of non-discrimination laid down by Article 14 taken together with Articles 3 and 13. Article 14 of the Convention provides:

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language,

religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

86. The applicant maintained that the ill-treatment he was subjected to by the police while he was inside the Mangalia police station and the passive conduct of the authorities resulted mainly from the fact that he was of Roma origin. He contended that his ethnic origin was known to the police officers. He also alleged that his ethnic origin was openly and repeatedly referred to by the investigating authorities as a factor militating against his complaint of police abuse. The applicant stressed that his allegation should be evaluated within the context of the well-documented and repeated failure of the Romanian authorities to remedy instances of anti-Roma violence and to provide redress for discrimination.

87. The Government considered the applicant's complaint to be unsubstantiated.

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

89. The Court further recalls that when investigating violent incidents, State authorities have the additional duty to take all reasonable steps to unmask any racist motive and to establish whether or not ethnic hatred or prejudice may have played a role in the events (see, *Nachova and others v. Bulgaria*, cited above, § 160).

90. Treating racially induced violence and brutality on an equal footing with cases that have no racist overtones would be turning a blind eye to the specific nature of acts that are particularly destructive of fundamental rights. A failure to make a distinction in the way in which situations that are essentially different are handled may constitute unjustified treatment irreconcilable with Article 14 of the Convention (see, *Nachova and others v. Bulgaria*, cited above, with further references).

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

92. Faced with the applicant's complaint under Article 14, the Court's task is to establish first of all whether or not racism was a causal factor in the applicant's ill-treatment by the police and in relation to this, whether or not the respondent State complied with its obligation to investigate possible racist motives. Moreover, the Court should also examine whether in carrying out the investigation into the applicants' allegation of ill-treatment by the police, the domestic authorities discriminated against the applicant and if so, whether the discrimination was based on his ethnic origin.

93. As to the first limb of the complaint, in particular the allegation that the ill-treatment was based on racial prejudice, the Court recalls that in assessing evidence in this connection, it has adopted the standard of proof "beyond reasonable doubt". However, it has never been its purpose to borrow the approach of the national legal systems that use that standard. Its role is not to rule on criminal guilt or civil liability but on Contracting States' responsibility under the Convention. In the proceedings before it, the Court puts no procedural barriers on the admissibility of evidence or pre-determined formulae for its assessment. It adopts the conclusions that are, in its view, supported by the free evaluation of all evidence, including such inferences as may flow from the facts and the parties' submissions. According to its established case-law, proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. Moreover, the level of persuasion necessary for reaching a particular conclusion and, in this connection, the distribution of the burden of proof are intrinsically linked to the specificity of the facts, the nature of the allegation made and the Convention right at stake. The Court is also attentive to the seriousness that attaches to a ruling that a Contracting State has violated fundamental rights (see, *Nachova and others v. Bulgaria*, cited above, § 147 and further references).

94. The Court notes that the applicant did not refer to any specific facts in order to substantiate his claim that the violence he sustained was racially motivated. Instead, he claimed that his allegation should be evaluated within the context of documented and repeated failure by the Romanian authorities to remedy instances of anti-Roma violence and to provide redress for discrimination.

95. However, the expression of concern by various organisations about the numerous allegations of violence against Roma by Romanian law enforcement officers and the repeated failure of the Romanian authorities to remedy the situation and provide redress for discrimination does not suffice to consider that it has been established that racist attitudes played a role in the applicant's ill-treatment.

96. Turning to the other aspect of the applicant's allegation, namely the State's obligation to investigate possible racist motives, the Court notes that it has already found that the Romanian authorities violated Article 3 of the

Convention in that they failed to conduct a meaningful investigation into the applicant's ill-treatment (see paragraphs 69 to 75 above).

It also notes that there was no allegation of any racist verbal abuse having been uttered by the police during the incident involving the use of force against the applicant. Therefore, contrary to the situation in the case of *Nachova and others* (judgment cited above, § 166), the prosecutors in the present case did not have before them *prima facie* plausible information of hatred-induced violence requiring investigation into possible racist motives in the events.

97. However, the Court observes that the numerous anti-Roma incidents which often involved State agents following the fall of the communist regime in 1990, and other documented evidence of repeated failure by the authorities to remedy instances of such violence were known to the public at large, as they were regularly covered by the media. It appears from the evidence submitted by the applicant that all these incidents had been officially brought to the attention of the authorities and that as a result, the latter had set up various programmes designed to eradicate such type of discrimination. Undoubtedly, such incidents, as well as the policies adopted by the highest Romanian authorities in order to fight discrimination against Roma were known to the investigating authorities in the present case, or should have been known, and therefore special care should have been taken in investigating possible racist motives behind the violence.

98. Not only was there no attempt on the part of the prosecutors to verify the behaviour of the policemen involved in the violence, ascertaining, for instance, whether they had been involved in the past in similar incidents or whether they had been accused of displaying anti-Roma sentiment, but the prosecutors made tendentious remarks in relation to the applicant's Roma origin throughout the investigation (see paragraphs 28 and 31 above). No justification was advanced by the Government with regard to these remarks.

99. The Court has already found that similar remarks made by the Romanian judicial authorities regarding an applicant's Roma origin were purely discriminatory and took them into account as an aggravating factor in the examination of the applicants' complaint under Article 3 of the Convention in the case of *Moldovan and Others v. Romania* (no. 2) (nos. 41138/98 and 64320/00, judgment of 12 July 2005, §§ 108 to 114 and 120 and 121).

100. In the present case, the Court finds that the tendentious remarks made by the prosecutors in relation to the applicant's Roma origin disclose a general discriminatory attitude of the authorities, which reinforced the applicant's belief that any remedy in his case was purely illusory.

101. Having regard to all the elements above, the Court finds that the failure of the law enforcement agents to investigate possible racial motives in the applicant's ill-treatment combined with their attitude during the investigation constitutes a discrimination with regard to the applicant's

rights contrary to Article 14 taken in conjunction with Articles 3 in its procedural limb and 13 of the Convention.

It follows that there has been a violation of Article 14 of the Convention taken together with Articles 3 under its procedural head and 13.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

102. 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

103. The applicant claimed 60,000 euros (EUR) in respect of non-pecuniary damage.

104. The Government requested the Court to dismiss the applicant's claims since they were exaggerated and unsubstantiated.

105. The Court notes that the applicant suffered numerous injuries at the hands of State agents, such as cranial trauma and bruises around his eyes, on the fingers of his right hand, on his chest, and on his right thigh and calf. The Court has found the authorities of the respondent State to be in breach of Article 3 on account of the ill-treatment inflicted on the applicant by State agents and on account of the authorities' failure to investigate the applicant's allegations. It has further found that the applicant was denied an effective remedy in respect of his alleged ill-treatment by the police in breach of Article 13 and that the applicant was discriminated against based on his ethnic origin in the enjoyment of his rights under Article 3 and 13. In these circumstances, it considers that the applicant's suffering and frustration cannot be compensated for by a mere finding of a violation. Having regard to its previous case-law in respect of Article 3 (see in particular, *Khudoyorov v. Russia*, no. 6847/02, ECHR 2005-X (extracts); *Matko v. Slovenia,* no**.** 43393/98, judgment of 2 November 2006; and *Dilek Yilmaz v. Turkey*, no**.** 58030/00, judgment of 31 October 2006) and making its assessment on an equitable basis, the Court awards him EUR 8,000.

B. Costs and expenses

106. The applicant claimed a further EUR 14,271 for legal costs and expenses incurred both at the domestic level and during the proceedings before the Court by his representatives, to be paid directly to them as follows:

(i) the European Roma Rights Centre requested EUR 605 for 15 hours' legal work spent reviewing the evidence and pleadings, advising on strategy, and drafting the submissions to the Court;

(ii) the applicant also submitted a contract of legal assistance concluded with his lawyer, Ms Macovei, according to which the latter would be paid according to certain fees per hour, based on a schedule of hours actually worked. A detailed document was submitted indicating the precise dates and the number of hours worked in preparing the case, which amounted to 116 hours in all, and the hourly fee for each type of activity: EUR 5 per hour for simple letters and other secretarial activities, EUR 20 per hour for travel expenses necessarily incurred, EUR 45 per hour for meetings, interviews and written statements and EUR 120 per hour for research on case-law and legislation, studying the case-file's documents, drafting the observations on the admissibility and merits and just satisfaction. Detailed time-sheets of the hours actually worked were also submitted, including time-sheets and costs of travelling between Bucharest and Mangalia and for the meetings between the lawyer and the applicant and his father. The total fees requested by the lawyer amounted to EUR 13,366;

(iii) finally, the Romanian Helsinki Committee requested EUR 300 for technical support and various correspondence.

107. The applicant's representatives argued that the number of hours spent by them on the case was not excessive and was justified by its complexity and abundance of detail. The time was also justified by the repeated attempts to obtain access to the medical file and by the fact that all the correspondence with the Court was conducted in a foreign language.

108. As to the hourly fees, the representatives argued that it was within the average of the fees which are normally charged by law firms in Bucharest, that is, EUR 200 per hour. In addition, an hourly fee of EUR 120 was reasonable, having regard to the lawyer's reputation as an expert in the field of human rights.

109. The Government did not dispute the number of hours spent by the applicant's representatives, given the complexity of the case. However, they considered that the lawyer's hourly rate of EUR 120 was excessive, and referred in this respect to a number of Bulgarian cases where the Court had granted fees amounting to hourly rates of EUR 40-50. They further submitted that the applicant had not submitted any contract with the European Roma Rights Centre as an objective basis for calculating its fees. Finally, they submitted that the amount of EUR 300 requested by the Helsinki Committee was not supported by any proof.

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

itemised particulars of all claims must be submitted, failing which the Chamber may reject the claim in whole or in part.

111. In the present case, having regard to the above criteria, to the itemised list submitted by the applicant and to the number and complexity of issues dealt with and the substantial input of the lawyers from 1999 until today, the Court awards the applicant the requested amount, as follows: EUR 605 to the European Roma Rights Centre, EUR 13,366 to Ms Monica Macovei and EUR 300 to the Romanian Helsinki Committee, to be paid separately to a bank account indicated by each of the applicant's representatives.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;

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

3. *Holds* that there has been a violation of Article 13 of the Convention on account of the lack of effective remedies in respect of the ill-treatment complained of;

4. *Holds* that there has been a violation of Article 14 taken together with Articles 3 under its procedural limb and 13 of the Convention;

5. *Holds*

(a) that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:

(i) EUR 8,000 (eight thousand euros) to the applicant in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount, to be converted into Romanian lei (RON) at the rate applicable at the date of settlement;

(ii) EUR 14,271 (fourteen thousand two hundred and seventy one euros) in respect of costs and expenses, plus any tax that may be

chargeable on that amount, to be paid into a bank account indicated by each representative as follows:

(α) EUR 605 (six hundred and five euros) to the European Roma Rights Centre;

(β) EUR 13,366 (thirteen thousand three hundred and sixty-six euros) to Ms Monica Macovei, to be converted into Romanian lei (RON) at the rate applicable at the date of settlement; and

(γ) EUR 300 (three hundred) to the Romanian Helsinki Committee, to be converted into Romanian lei (RON) at the rate applicable at the date of settlement;

(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;

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

Done in English, and notified in writing on 26 July 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago QUESADA
Registrar

Elisabet FURA-SANDSTRÖM
President