



Crackdown on Romanian demonstrations in 1989: lack of effective investigation and use of secret surveillance

In today's Chamber judgment in the case of [Association "21 December 1989" and Others v. Romania](#) (applications nos 33810/07 and 18817/08), which is not final¹, the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 2 (right to life) of the European Convention on Human Rights on account of the lack of an effective investigation into the death of the son of applicants Elena and Nicolae Vlase; and

a violation of Article 8 (right to respect for private life and correspondence) on account of secret surveillance measures against the applicant Teodor Mărieș.

The case stemmed from the crackdown on anti-government demonstrations in Romania in December 1989. Two applicants, whose son lost his life in those circumstances, complained about the ineffectiveness of the investigation. Another applicant, president of an association for the defence of the interests of participants and victims of those events, argued among other things that he had been subjected to unlawful surveillance.

The Court noted that its finding of a violation of Article 2 on account of the lack of an effective investigation related to a wide-scale problem, given that many hundreds of people were involved as injured parties in the impugned criminal proceedings. In addition, more than a hundred applications similar to today's case were pending before the Court. It added that general measures at domestic level would unquestionably be necessary in the context of the execution of today's judgment.

Principal facts

The applicants are the "21 December 1989 Association", registered in Bucharest; its president, Teodor Mărieș, a Romanian national who was born in 1962 and lives in Bucharest; and Elena Vlase and her husband Nicolae Vlase, two Romanian nationals who live in Brașov (Romania). They were, or represent, participants, injured victims or relatives of those who died in the crackdown on anti-government demonstrations in December 1989, around the time when the then Head of State, Nicolae Ceaușescu, was overthrown. According to indications from the Romanian authorities in 2008, over 1,200 people died, over 5,000 were injured and several thousand were unlawfully deprived of their liberty and subjected to ill-treatment during those events.

In the 1990s various investigations into the events were opened by military prosecutors. The main one, under file no. 97/P/1990, began in July 1990. On 20 September 1995 the proceedings were discontinued, mainly on the ground that the criminal responsibility for

¹ Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution

the deaths and injuries caused in Bucharest, before 22 December 1989, by military personnel of the Defence Ministry, Interior Ministry and State Security Service (*Securitate*), lay exclusively with those who had ordered the use of firearms, namely the then Head of State and his defence and interior ministers, and the head of the *Securitate* – all of whom had already been convicted or had died. On 7 December 2004 the military prosecution division at the High Court of Cassation and Justice quashed that decision as unlawful and ill-founded. On the same day the military prosecution division ordered the indictment of 102 people, mainly officers of the army, the police and the *Securitate*, for murder, genocide, complicity in and instigation of and participation in those offences, between 21 and 30 December 1989. 16 civilians, including a former Romanian president and former head of the Romanian intelligence service, were also indicted. Subsequently, a number of other criminal investigations were joined under file no. 97/P/1990.

It can be seen from a letter sent in June 2008 by the military prosecutor's office to the applicant association that in the period 2005 to 2007, 6,370 people were interviewed in this case, and that 1,100 ballistic examinations, over 10,000 investigative acts and 1,000 on-site enquiries were conducted. The letter also mentioned delays in the investigation and referred to certain causes, including: the fact that the necessary investigative acts had not been carried out immediately after the homicides and ill-treatment in question, the repetitive steps to have the case transferred from one prosecutor to another, the lack of prompt communication to the injured parties of the discontinuance decisions, and the "lack of cooperation" on the part of the institutions involved in the December 1989 crackdown. The letter adds that delays were also caused by the Constitutional Court's decision of 16 July 2007 transferring from the military to public prosecutors the competence to continue the investigation in case no. 97/P/1990. On 15 January 2008 the case was thus transferred to the public prosecutor's office at the High Court of Cassation and Justice.

Investigation into the death of Nicușor Vlase, the son of applicants Elena and Nicolae Vlase

The investigation into Nicușor's death was first conducted by the military prosecutor's office of Brașov. After being given the opportunity to see their son's body, on which they noticed signs of violence, with the gunshot wound still bleeding, Elena and Nicolae Vlase immediately expressed their doubts about the version that their son had been killed in Brașov on 23 December 1989. In their view he must have died later. Between 1991 and 2008 they sent numerous submissions and complaints to the prosecutor's office and other authorities, requesting that those who had killed their son be identified and punished. In a decision of 28 December 1994, which was not notified to Elena and Nicolae Vlase, the military prosecutor's office of Brașov discontinued the proceedings. It was not until 9 July 1999 that the military prosecutor informed the applicants that the investigation concerning the death of their son "during the events of December 1989" had been discontinued on account of an "error of fact, which ruled out any criminal responsibility". On an appeal by Elena Vlase that decision was set aside in August 1999. The applicants reiterated their complaints on numerous occasions. In January 2006 the investigation was joined to case no. 97/P/1990. In letters of October 2008 and January 2009 in response to a complaint from Elena Vlase about the length of the investigation, the National Legal Service Council indicated its finding that from 1994 to 2001 and 2002 to 2005, no investigative act had been taken to identify those responsible for the death of her son, but that the prosecutors were not subject to disciplinary measures on account of delays. The Council added, however, that the investigation had been resumed after December 2004. The applicants sought compensation from the institutions they held responsible for the death of their son and for impeding the corresponding investigation.

The case of Teodor Mărieș and the association of which he is president

Mr Mărieş played an active role in the demonstrations from 21 December 1989 onwards. He was part of the crowd that was rammed by the armoured vehicles and came under fire from the security forces. On 22 and 23 December 1989 he was one of the demonstrators who managed to enter the headquarters of the Communist Party's Central Committee and the premises of the national TV station. He took part in demonstrations until 1990, requesting that responsibilities for the killings in December 1989 be established. Mr Mărieş subsequently refused to obtain a "revolutionary's certificate", but the authorities clearly confirmed that he had taken part in the events leading to the fall of the totalitarian regime.

Teodor Mărieş has alleged that, as President of the applicant association, he has been subjected to secret measures of surveillance, in particular phone tapping. Mr Mărieş submitted two intelligence notes of June and December 1990 concerning him, and one report from the Romanian Intelligence Service (SRI) of November 1990. He obtained copies of those documents in 2006. They provide numerous details, in particular about Mr Mărieş' private life. From 1998 onwards the applicant association requested the SRI to inform it of the warrants on the basis of which the alleged illegal phone tapping had been carried out. The SRI replied that it could not grant that request, as that was prohibited by legislation on national security and on its activity. In the course of 2009 three other organisations with jurisdiction in matters of national security informed Mr Mărieş that he had not been under their surveillance or that they had no information on the matter.

Applicants' access to investigation files

In October 2009 copies of all the investigation documents, together with audio and video recordings in file no. 97/P/1990, except for those that were confidential, were given to the applicant association. By a decision of the Government in February and March 2010, certain information relating to official secrets held by the Ministry of Defence was declassified and other documents were thus made available to the applicants. In their submission they now have access to almost all the documents from the file except for the decisions of the Council of Ministers.

Draft law on an amnesty for acts committed by servicemen

In 2008 a draft law on an amnesty for acts committed by military personnel in December 1989 was transmitted to military prosecutors for their opinion.

Complaints, procedure and composition of the Court

Relying on Article 2 (right to life), Mr and Mrs Vlase complained of the lack of an effective investigation into their son's death. Relying on Article 3 (prohibition of inhuman or degrading treatment), Mr Mărieş complained of the lack of an effective investigation into the ill-treatment which he said had been inflicted on him during the demonstrations of December 1989. Relying on Articles 8 (right to respect for private life and correspondence), he further complained, in his own name and on behalf of the applicant association, that he had been subjected to secret surveillance measures as a form of pressure by the authorities in connection with his activities as president of an association campaigning for an effective investigation into the events of December 1989. The applicants further relied on one or more of the following Articles in their complaints concerning the lack of an investigation: Article 6 (right to a fair hearing within a reasonable time), Article 13 (right to an effective remedy), Article 14 (prohibition of discrimination) and Article 34 (right of individual application).

The applications were lodged with the European Court of Human Rights on 13 July 2007 and 9 April 2008 respectively.

Judgment was given by a Chamber of seven, composed as follows:

Josep **Casadevall** (Andorra), *President*,
Alvina **Gyulumyan** (Armenia),
Egbert **Myjer** (the Netherlands),
Ineta **Ziemele** (Latvia),
Luis **López Guerra** (Spain),
Mihai **Poalelungi** (Moldova), *judges*,
Florin **Streteanu** (Romania), *ad hoc Judge*,

and also Santiago **Quesada**, *Section Registrar*.

Decision of the Court

The Court found that only the complaints under Articles 2 and 8 were admissible (Article 35, [admissibility conditions](#)). In addition, its findings with regard to those Articles – or on the inadmissibility of the other complaints – made it pointless to examine the complaints under Articles 6, 13, 14 and 34. It further observed that the association had not maintained its initial complaint as regards the alleged use of secret surveillance (Article 37).

The Court thus had to examine on the merits only those questions concerning the effectiveness of the investigation into the death of M and Mrs Vlase's son (Article 2) and concerning the alleged secret surveillance of Mr Mărieș (Article 8).

Article 2 (investigation into death of Mr and Mrs Vlase's son)

Article 2 required that an effective investigation be conducted when individuals had been killed by the use of force, especially by agents of the State. The circumstances of the killings had to be examined promptly, comprehensively and impartially, in order to identify and punish those responsible.

As regards the death of Mr and Mrs Vlase's son, the Court noted that an investigation procedure had been pending for over 20 years. As the European Convention on Human Rights had not entered into force in respect of Romania until 20 June 1994 the Court could examine that investigation only in relation to the period subsequent to that date.

The Court observed that in 1994 the case was pending before the military prosecutors of Braşov. Those prosecutors were, on the same basis as the majority of the defendants, who included high-ranking army officers still in office, military personnel bound by the principle of subordination to hierarchy. It further observed that, as the National Legal Service Council had confirmed by two letters of October 2008 and January 2009, between 1994 and 2001, then between 2002 and 2005 (for ten years in total), no investigative act concerning the death of the applicants' son had been performed, apparently without justification. Similarly, in a letter of 2008 the military prosecution division at the High Court of Cassation and Justice had pointed to delays and had drawn up a list of causes, which included a lack of prompt notification to the injured parties of the discontinuance decisions, or a "lack of cooperation" on the part of the institutions involved in the December 1989 crackdown. In that connection, the Court observed that the deliberate withholding of evidence cast doubt on the actual capacity of the investigations to establish the facts. Similarly, the "secret" or "absolute secret" classification of essential information from the investigation was not justified.

The Court further pointed to the obligation to associate the victim's relatives with the proceedings. It noted that no justification had been given for the total failure to give Mr and Mrs Vlase any information about the investigation until July 1999, despite their numerous requests. More specifically, neither the discontinuance decision of 28 December 1994 nor its grounds had been notified to them. Even after that date, the

notification given to them was confined to summary information in December 2003 and repetitive answers from the National Legal Service Council in October 2008 and January 2009. It was only in February-March 2010 that essential information from the investigation, previously covered by a "secret" or "absolute secret" classification, had been made available to the applicants or any other injured party.

The Court did not underestimate the undeniable complexity of the case, which, since the proceedings had been joined under file no. 97/P/1990 in January 2006, also involved the establishment of those responsible for the general armed repression that took place in the last days of 1989 in various Romanian towns and cities. It took the view, however, that the political and social issues referred to by the Romanian authorities in their arguments could not in themselves justify either the length of the investigation or the manner in which it had been conducted over a significant period of time, without those concerned or the public being informed of its progress. On the contrary, its importance for Romanian society should have encouraged the authorities to deal with the case promptly and without needless delays, in order to avoid any appearance of impunity for certain acts.

The Court emphasised the importance of the right of the victims and of their families and dependants to ascertain the truth about the circumstances of events involving a large-scale violation of rights as fundamental as the right to life, entailing the right to an effective judicial investigation and possibly the right to compensation. For that reason, in the case of a widespread use of lethal force against the civilian population during the anti-government demonstrations that preceded the transition from a totalitarian to a more democratic regime, the Court could not regard an investigation as effective when it was concluded by the effect of a time-bar on criminal responsibility, in a situation where it was the authorities themselves that had remained inactive. Moreover, as the Court had already indicated, an amnesty was generally incompatible with the States' duty to investigate acts of torture and to combat impunity for international crimes. The same could be said for pardons.

In those circumstances there had been a violation of Article 2 in respect of Mr and Mrs Vlase.

Article 8 (alleged secret surveillance of Mr Mărieş)

M. Mărieş produced two intelligence notes and a summary report concerning him that had been drawn up in 1990. This confirmed that he had indeed been subject to surveillance measures in 1990. Those documents had been kept by the Romanian intelligence services at least until 2006, when he had obtained copies. The Court observed that it had examined Romanian legislation concerning secret surveillance measures related to national security for the first time in 2000². It had then concluded that the Romanian system for gathering and archiving information did not provide the safeguards necessary for the protection of individuals' private lives. The domestic law did not indicate with reasonable clarity the scope and manner of exercise of the relevant discretion conferred on the public authorities. The Committee of Ministers of the Council of Europe³ had issued an Interim Resolution⁴ calling for those shortcomings to be remedied rapidly and fully, but despite that measure, among others, the execution of the Court's judgment was still pending to date. In addition, as the Court had also found in 2007⁵, despite amendments in 2003 and 2006 to the Code of Criminal Procedure, it still appeared possible for surveillance measures to be ordered in cases of presumed

² [Rotaru v. Romania](#), Grand Chamber, 04.05.2000

³ Under Article 46 of the Convention, the Committee of Ministers is responsible for monitoring the execution of the Court's judgments.

⁴ Document [ResDH\(2005\)57](#)

⁵ [Dumitru Popescu v. Romania \(no. 2\)](#), 26.04.2007

breaches of national security according to the procedure provided for under law no. 51/1991, which had not been repealed.

The absence of sufficient guarantees in domestic law had thus had the result that the information gathered in 1990 by the intelligence services on Mr Mărieș was still kept by them 16 years later, in 2006. Moreover, with the lack of safeguards in the relevant domestic law, Mr Mărieș ran a serious risk of having his telephone calls intercepted.

There had therefore been a violation of Article 8 in respect of Mr Mărieș.

Article 46 (binding force and execution of judgments)

The Court noted that its finding of a violation of Article 2 on account of the lack of an effective investigation related to a wide-scale problem, given that many hundreds of people were involved as injured parties in the impugned criminal proceedings. In addition, more than a hundred applications similar to today's case were pending before the Court. They could give rise in the future to new judgments finding a violation of the Convention.

The Court pointed out, among other things, that in principle Romania remained free, subject to monitoring by the Committee of Ministers of the Council of Europe, to choose the means by which it would discharge its legal obligation under Article 46. It found, however, that general measures at domestic level would unquestionably be necessary in the context of the execution of the present judgment. It found that Romania would have to put an end to the situation that had led to the finding of a violation of Article 2 in respect of Mr and Mrs Vlase, on account of the right of the numerous persons affected to have an effective investigation – a right that was not extinguished by the time-bar on criminal responsibility – and also having regard to the importance for Romanian society to know the truth about the events of December 1989. Romania thus had to provide appropriate redress in order to fulfil the requirements of Article 46, taking into account the principles of the Court's case-law in such matters.

In those circumstances, the Court did not find it necessary to adjourn the examination of similar cases pending before it while waiting for Romania to take the necessary measures. The fact of continuing to examine similar cases would regularly remind Romania of its obligation arising from the present judgment.

Article 41 (just satisfaction)

By way of just satisfaction, the Court awarded Mr and Mrs Vlase 15,000 euros (EUR) each and M. Mărieș EUR 6,000, in respect of non-pecuniary damage. Romania also had to pay a total of EUR 20,000 for costs and expenses.

The judgment is available only in French.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.