

Memorandum¹

**Concerning the Implementation and State of General Measures in the Judgments of *Moldovan and Others v Romania* (No.1, friendly settlement), *Moldovan and Others v Romania* (No.2), *Kalanyos and Others v Romania* (friendly settlement), *Gergely v Romania* (friendly settlement)
(Application Nos. 41138/98, 64320/01, 57884/00, 57885/00)**

and

Requesting the “enhanced supervision” procedure

¹ Submitted under Rule 9§2 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of the friendly settlements.

Table of Contents

- I. Introduction
- II. Developments in the implementation of judgments in the *Moldovan* group since March 2009
 - II.1. The Committee of Ministers' supervision and recommendations
 - II.2. Other acknowledgements of the non-implementation of the judgments
 - II.3. Domestic proceedings underway for the non-implementation of Hădăreni Programme
- III. Critical assessment of the Action Plan/Action Report submitted by the Romanian Government on the 28 June 2011 to the Secretariat of the Committee of Ministers
- IV. Conclusions and request for examination under the enhanced supervision procedure

I. Introduction

The present memorandum is submitted to the Committee of Ministers by the European Roma Rights Centre ("ERRC"), an international non-governmental organisation which represented most of the applicants in the cases of *Moldovan and Others v Romania (No.1)*² ("*Moldovan 1*"), *Moldovan and Others v Romania (No.2)* ("*Moldovan 2*"), *Kalanyos and Others v Romania* and *Gergely v Romania* (all cases collectively, the "*Moldovan group*") in proceedings before the European Court of Human Rights ("the Court").

This memorandum will examine the developments regarding the implementation of the judgments of the *Moldovan group* since March 2009, when the ERRC last submitted to the Committee of Ministers a memorandum concerning implementation and the state of general measures.

The purpose of this memorandum is to critically assess the Action Plan/Action Report submitted by the Romanian Government to the Committee of Ministers in June 2011 ("the Action Plan") and to request the Committee of Ministers to award the status of "enhanced supervision" to the cases in the *Moldovan group*, according to the twin-track supervision system implemented under the Interlaken Action Plan. The ERRC considers that the general obligations undertaken by the Romanian Government in all the cases of the *Moldovan group* remain unimplemented to date; that the human rights violations resulting in the cases were of a serious nature requiring complex measures; that implementation of measures has been seriously delayed; and therefore, the respondent State needs closer monitoring and guidance from the Committee of Ministers in the implementation of these judgments.

II. Developments in the implementation of judgments in the *Moldovan group* since March 2009

II.1. The Committee of Ministers' supervision and recommendations

In March 2009, the ERRC submitted to the Committee of Ministers a Memorandum concerning the Implementation and State of General Measures in the Judgments of *Moldovan and Others v Romania (No.1, friendly settlement)*, *Moldovan and Others v Romania (No.2)*, *Kalanyos and Others v Romania (friendly settlement)* and *Gergely v Romania (friendly settlement)* (Application Nos. 41138/98, 64320/01, 57884/00, 57885/00). The ERRC Memorandum concluded that the Government had failed to carry out its obligations to implement the general measures, namely measures aimed at raising awareness and sensitising the local population in order to promote good inter-ethnic relations; measures for the stimulation of the participation of Roma in the local economic and social life and measures regarding the improvement of the infrastructure/rehabilitation of houses. In *Moldovan 1* and *Moldovan 2*, a comparative analysis of the general measures undertaken in the friendly settlement in *Moldovan 1* and those undertaken through the Hădăreni programme (see II.2 below), as well as an assessment of the implementation stage was submitted to the Committee of Ministers in June 2009 by a group of Romanian NGOs.³

During its 1059th meeting in June 2009, the Committee of Ministers examined the information presented in the memorandum submitted by the ERRC. The Committee invited the authorities to provide clarifications and further information, in particular concerning their assessment of the results achieved and, if necessary, further necessary measures.

A bilateral consultation regarding the implementation of the judgments took place between the Secretariat and the Romanian authorities in June 2009 in Bucharest. The Romanian

² *Moldovan and others v Romania (No.1)* was resolved under the friendly settlement procedure. For convenience, it is referred to below collectively amongst 'judgments'.

³ Accept Association, Centre for Legal Resources, PRO EUROPE League and Romani CRISS, with the support of the independent expert Nicolae Gheorghe, "*Report concerning the implementation of Decision no. 1 from the 5th of July 2005 (amicable settlement) in the case Moldovan and others v Romania (applications no. 41.138/98 and 64.320/01)*", 4-13.

Government subsequently submitted further information to the Committee of Ministers in November 2009.

On 27 November 2009, the Department for the Execution of Judgments of the European Court of Human Rights presented a Memorandum concerning the examination of the state of execution of general measures, in light of the information provided by the Romanian authorities up to 2 October 2009 (hereinafter “the Memorandum of 27 November 2009”). This Memorandum assessed the implementing measures adopted and underway and made several recommendations to the Romanian Government for further implementation.

During its 1072nd meeting in December 2009, the Committee of Ministers noted that further information and clarification was necessary concerning the continuation and the financing of the action plan for the Hădăreni village and underlined the need for the authorities to evaluate the impact of measures already implemented and the necessity to adopt further measures for all the localities at issue, and to inform the Committee of their conclusions in this respect.

During the 1115th meeting in June 2011, the cases in the *Moldovan* group were assigned to the list of cases awaiting classification according to the twin-track supervision system implemented under the Interlaken Action Plan.

II.2. Other acknowledgements of the non-implementation of the judgments

UNDP Romania was tasked by the Government with implementing a Hădăreni community development programme from 2007 (“the Hădăreni programme”) as a way of fulfilling some of its obligations under the judgments. In their Report on Country Programme 2005-2009, UNDP acknowledges that the programme did not achieve its expected results,⁴ but became focused on compensating for the Government’s inability to execute construction projects. The UNDP report underlines concerns regarding qualitative and quantitative aspects of rebuilding the houses, as well as the failure to address the social tensions that persist within the community. The report also outlines the lack of expertise of UNDP to implement housing projects, as this is not consistent with UNDP’s mission and functions.

The shortcomings of the implementation were also noted in the Complementary Data Collection Contribution to the FRA Annual Report 2010 made by the Centre for Legal Resources, Romania.⁵ The report noted that the Hădăreni Programme cannot be considered to have been implemented, given that the programme has not been completed and the Government Decision on the programme had not been extended to cover 2009 and the following years.

II.3. Domestic proceedings underway for the non-implementation of the Hădăreni programme

Regarding the failure of the Government to implement the Hădăreni programme, the ERRC informs the Committee of Ministers that several applicants in *Moldovan 1* and *Moldovan 2*, as well as other members of the Romani community of Hădăreni, have initiated domestic legal proceedings against the Romanian Government, with the support of the ERRC and Romani CRISS.⁶

The proceedings are based on Law no. 554/2004 on administrative litigation. On 14 June 2011, the applicants lodged an administrative complaint with the Government, requesting proper

⁴ UNDP Romania, “*Outcome Statement. Socioeconomic Project Portfolio. Country Programme 2005-2009*” (18 December 2009), 17-18, available at:

<http://erc.undp.org/evaluationadmin/downloaddocument.html?docid=3591>

⁵ Centre for Legal Resources Romania, *Complementary Data Collection Contribution to the FRA Annual Report 2010 (2 October 2009)*, 12-13, available at:

<http://www.crj.ro/EN/Complementary-Data-Collection-Contribution-to-the-FRA-Annual-Report/>

⁶ <http://www.romanicriss.org/index.php>

justification for the failure to implement the general measures undertaken in *Moldovan 1* and *Moldovan 2*, in particular for the failure to implement the Government Decision no. 523/2006.⁷

The 30-day timeframe for the Government to provide a response elapsed on 13 July 2011. In the absence of an official response of the Government within this timeframe, the applicants will submit an administrative claim to the competent tribunal, requesting the domestic court to oblige the Government to resume the non-implemented measures and to award compensation.⁸

III. Critical assessment of the Action Plan/Action Report submitted by the Romanian Government on 28 June 2011 to the Secretariat of the Committee of Ministers

In the Memorandum of 27 November 2009, the Department for the Execution of the Judgments of the Court took note of the developments in the implementation process since 2009 in the communities of Hădăreni, Plăieșii de Sus and Cașinul Nou. It noted that the Romanian authorities expressed their intention to continue the Hădăreni programme in 2009 and 2010, but that no information has been submitted in regard to the implementation of concrete measures starting with 2009. The Memorandum outlined the need for the Government to provide further information in this respect.

In assessing the information submitted on the implementation of national programmes adopted for the *Moldovan* group cases, as well as in referring to the future work on the implementation, the Memorandum highlighted some important aspects to be considered by the Romanian Government when envisaging further implementation measures.

The Romanian Government submitted to the Committee of Ministers on 28 June 2011 an Action Plan/Action Report concerning the *Moldovan* group of cases, with the intention of providing feedback to the findings of the Memorandum of 27 November 2009.

The ERRC's position regarding the general implementation measures up to 2009 was presented in the Memorandum submitted in March 2009 to the Committee of Ministers, after which no progress whatsoever has been made. The present submission aims to evaluate the further measures envisaged by the Romanian Government in this Action Plan and the assessment regarding the stage of the implementation that this Action Plan provides.

Concerning the implementation of the general measures in relation to the Hădăreni community, the Action Plan focused on two aspects: first, the measures taken in order to eliminate the different forms of discrimination of the Romani community and to encourage their integration in the local community; second, the reconstruction of houses and infrastructure in the locality.

On the first point, the Government considers that the inter-ethnic tensions in the community have disappeared and no future measures in this direction are envisaged in the Action Plan. This is in contradiction not only with the ERRC's evaluation of the situation and with the findings in the Report submitted by the Romanian NGOs, but also with a mention in the Action Plan itself about a local action plan for 2009 aiming to increase the ethnic cohesion in the community (page 6). Additionally, one of the conclusions of the UNDP Country Report cited above on the implementation of the Hădăreni programme was that the Romanian Government had not solved social problems in the Hădăreni community⁹.

Concerning the housing and infrastructure aspect of the Action Plan, the ERRC recalls that this was a crucial component both of the Court's judgment and of the Hădăreni programme.

This is the only direction in which the Action Plan provides any sort of calendar, although it does not contain clear timelines for the actual implementation of concrete measures. It is limited to evaluating the legal situation of the houses to be rebuilt and the costs for the construction

⁷Government Decision no. 523/2006 for the approval of the community development programme in Hadareni, Mures County, for the period 2006-2008, published in the Official Gazette no. 385 of 4 May 2006.

⁸ Annex 1 to the present Memorandum.

⁹ UNDP Romania, "Outcome Statement", 18.

projects. There are no further details or clarifications as to what these evaluations comprise, why they are necessary at this stage or what will follow after they have been undertaken.

The only conclusion to be drawn from this very vague framework is that the authorities still do not have an accurate picture of who is entitled to housing rehabilitation or reconstruction and what exactly has been done until now. As pointed out in the ERRC's previous memorandum¹⁰, the names of the beneficiaries of the renovation work of houses have not been published and do not appear in the reports on the stage of implementation of the reconstruction works under the Hădăreni programme. Moreover, the Government still does not seem to consider the reconstruction of the houses of the victims of the 1993 events to be a priority, as there is no such mention in the Action Plan.

Another important issue in this matter is the situation of the Romani victims of the pogrom who left the village after the events and did not return to the community, living scattered throughout Romania and other parts of Europe. This was an omission of the Hădăreni programme signalled in ERRC's previous memorandum.¹¹ The Government still fails to address the situation of these persons and to conceive adequate reparation, as restoring their houses would not constitute a remedy at this point.

As to the other construction projects, they consist of building a medical unit and an industrial centre, finishing works at the cultural centre, school and kindergarten and purchase of equipment for the income generating activities. The Action Plan briefly mentions professional training sessions, although there is no mention of a local business plan aimed at facilitating the insertion of Romani trainees into local economic life. There is no mention in the Action Plan of measures envisaged in order to enable them to use the acquired skills to find employment and to secure a decent living for their families, although stimulating Roma participation in the economic, social, educational, cultural and political life of the local community in Mureş County, by promoting mutual assistance and community development projects was one of the general measures undertaken in the friendly settlement in *Moldovan 1* and extended to the applicants in *Moldovan 2*.

Regarding the possibility of making use of the available unspent financial resources consisting of VAT recovered from the expenses that UNDP made in 2007 and 2008 under the Hădăreni programme, the Action Plan mentions that the Government's Secretariat General requested a point of view from the Ministry of Public Finances. It seems this is an important element in the decision-making process, which will determine all the decisions regarding the further use of the funds. However, no indication of a timeline is given for this matter.

Furthermore, the ERRC notes with concern that the Action Plan provides only general and vague planning for allocating financial resources for construction projects in the second half of 2011. This is reminiscent of the planning which caused unpardonable delays in implementing the Hădăreni Programme in 2006-2008, made the actual construction work impossible during winter and raised repeated and strong criticism from NGOs and from the Committee of Ministers. This will mean that the works will only resume by earliest in 2012, five years after the judgments and over 20 years after the violence that destroyed the victims' homes.

Another serious concern is the failure of the Romanian Government to identify and contract a partner for the implementation of the concrete measures to be adopted. The Action Plan mentions the possibility to continue the collaboration with the UNDP, but does not set any timeline in this matter. It seems that there is no consensus between UNDP and the Government on the role of UNDP in the process. This is evident from the UNDP Country Report on Romania cited above, as well as from the Note of the Government's Secretariat General meeting of 25 May 2011 submitted by the Romanian Government in the Annex to the Action Plan. The Action Plan mentions other possible partners, but it is very clear from the documents submitted by the Government that no significant progress has been made until now and there is no evidence that

¹⁰ ERRC, "Memorandum Concerning the Implementation and State of General Measures in the Judgments of *Moldovan and Others v Romania* (No.1, friendly settlement), *Moldovan and Others v Romania* (No.2), *Kalanyos and Others v Romania* (friendly settlement), *Gergely v Romania* (friendly settlement) (Application Nos. 41138/98, 64320/01, 57884/00, 57885/00)", paragraph 37.

¹¹ *Ibid.*, paragraph 28.

this will be resolved in the near future. No timeline is provided for this important stage of implementation.

The Memorandum of 27 November 2009 requested the Government to provide clarifications on the intention to partially change the composition of the team monitoring the implementation of the Hădăreni programme, in order to include individuals from non-governmental organisations. The Action Plan mentions that “a group of experts” has been constituted. The Government did not provide any formal decision on the constitution of this group nor on its functions. The only reference submitted is the proposal contained in the Note of the Government’s Secretariat General meeting of 25 May 2011.

Nor did the Government indicate if it would include individuals from NGOs, or the reasons why the group of experts does not presently include a non-governmental representative. Giving the strong involvement of several NGOs in monitoring the implementation of the judgments and assessing the needs of the affected communities, their participation would bring a valuable contribution in the process.

In order to argue compliance with the general obligations undertaken according to the Court’s judgments in *Moldovan 1* and *Moldovan 2*, the Government refers to the findings of the European Court of Human Rights in the Decision of 15 February 2011 in the case of *Costică Moldovan and others v Romania*. In this case, the Court declared inadmissible the applications of 86 family members and relatives of the initial applicants in *Moldovan 1* and *Moldovan 2*. However, this decision did not conclude that the Government had fulfilled all its obligations under the *Moldovan* group of cases.

For example, as regard to the measures taken by the Romanian Government to address complaints under Articles 3 and 8, the Court’s reasoning was that the examination of their alleged ineffectiveness does not fall within the scope of supervision exercised by the Court, but is under the supervision of the Committee of Ministers.¹² This means that the Court does not consider itself to be competent to examine these complaints; but that does not mean that they are ill-founded.

Moreover, the ERRC respectfully requests the Committee to note that a final judgment of domestic courts ordering payment of monetary compensation for the violations of the applicants’ rights remains unenforced to date.¹³

As to the stage of implementation of the programme in relation to Plăieșii de Sus and Cașinul Nou communities (*Kalanyos and Others v Romania* and *Gergely v Romania*) in a Report submitted to the Department for the Execution of Judgments of the European Court of Human Rights on 16 June 2009¹⁴, the National Council for Combating Discrimination (NCCD) highlighted the future work that needs to be undertaken in order to improve the infrastructure, the rehabilitation of the school and kindergarten, the access to health services, the access to public utilities, the housing situation of the Romani inhabitants in relation to the non-Roma villagers and the access of Romani inhabitants to the labour market, as part of the general measures that the Government undertook in the unilateral declarations that it submitted to the Court in both cases.

The Memorandum of 27 November 2009¹⁵ mentioned the need for the Government to submit further information and details about the necessity to extend the programme, about the measures envisaged, the objectives pursued and their financing, as well as a provisional calendar for their adoption and implementation.

The Action Plan mentions that the local authorities have developed programmes for the improvement of the situation of the Romani community and that there are ongoing initiatives

¹² European Court of Human Rights, *Costică Moldovan and others v Romania*, Application no. 8229/04 and other applications, Decision of 15 February 2011, paragraphs 123-128.

¹³ This was acknowledged by the Court, *ibid.*, paragraph 95.

¹⁴ National Council for Combating Discrimination, “*The educational programme for preventing and combating Roma discrimination in Plăieșii de Sus, and Cașinu Nou, Plăiesii de Jos village, Harghita County, programme developed between 2008-2009*”, 16 June 2009, available at: www.cncd.org.ro

¹⁵ Paragraphs 31-39; 55-58.

concerning the infrastructure for the school and for the Romani community. No documents have been produced to support these claims. There are no further details about the stage of the implementation of these local initiatives, about the responsible bodies for implementation, about the sources and amounts of funds available or about a provisional timetable. The Action Plan does not provide a calendar for the adoption and implementation of these measures. Moreover, there is no evidence in the Action Plan that the Romanian authorities have assessed the impact of the measures adopted, as requested by the Memorandum of 27 November 2009. This leads to the conclusion that the Government does not have a clear and precise strategy to address the needs of the community concerned, as required by the Committee of Ministers.

IV. Conclusions and request for examination under the enhanced supervision procedure

Expeditious and full execution of judgments of the European Court of Human Rights is an obligation for all State Parties to the European Convention on Human Rights. This undertaking, to abide by the final judgment of the Court, is an indispensable element for the effective functioning of the unique Convention system. The failure of national authorities to implement fully and timely judgments of the Court and the terms of friendly settlements undermines the system of human rights protection in Europe and simultaneously erodes the credibility of the Court.¹⁶

The ERRC considers that the implementation of judgments in the cases of *Moldovan and Others v Romania (No.1)*, *Moldovan and Others v Romania (No.2)*, *Kalanyos and Others v Romania* and *Gergely v Romania* should be examined under the “**enhanced supervision**” procedure, for several reasons detailed below.

The *Moldovan* group are judgments that raise major structural and complex problems¹⁷

Roma are recognised throughout Europe as its most vulnerable and marginalised minority. The improvement of their situation in Europe is an undertaking of national governments and international bodies. Implementation of the Court’s judgments aimed to improve the situation of Roma and to mitigate the consequences of inter-ethnic conflicts would benefit from closer supervision by the Committee of Ministers.

The Court found in numerous cases the Romanian authorities to be in violation of the principle of non-discrimination in relation to minority rights and to racially-motivated incidents. The pogrom in Hădăreni and the following events did not constitute a singular case. After the two judgments of the Court in 2005 related to the Hădăreni events, three more similar cases were decided by the Court in the following years (*Gergely v Romania*, *Kalanyos v Romania* and *Tanase v Romania*).

In all these cases, there were similar violations of a particularly grave nature of important rights protected by the Convention. Moreover, forced evictions of Roma from their homes, with the active complicity of local authorities, continues. The most recent case concerns 270 people evicted in December 2011 from Cluj-Napoca¹⁸.

The Parliamentary Assembly, in the Addendum to the Progress Report of 31 August 2009 on the Implementation of Judgments of the European Court of Human Rights, listed the *Moldovan* group on the list of Court judgments not fully implemented more than five years after final delivery, or otherwise raising important implementation issues. Given the fact that at the time the Report was drafted, the five-year period had not yet elapsed for any of the judgments in the group, it may be inferred that they were listed in this Addendum under the second criterion, namely judgments raising important implementation issues, whether individual or general. Such

¹⁶ Parliamentary Assembly, “*Implementation of judgments of the European Court of Human Rights. Progress Report*”, 31 August 2009, 2, available at: http://assembly.coe.int/CommitteeDocs/2009/ejdoc36_2009.pdf

¹⁷ This is one of the indicators for cases to be examined under the enhanced supervision procedure, as established at the 1100th Meeting (December 2010) (DH) of the Committee of Ministers, document no. CM/Inf/DH (2010) 45 final 7 December 2010, paragraph 10.

¹⁸ <http://errc.org/cikk.php?cikk=3804>

judgments “include those which raise concerns regarding systemic human rights violations and/or violations of a particularly grave nature.”¹⁹

The *Moldovan* group of cases concern violations which involve the complicity of state and non-state actors, and affected entire communities. Their implementation raises structural and complex problems related to the integration of Roma in the communities where they live and to the Government’s ability to provide appropriate reparation for the victims of the events that originated these applications before the Court. The general measures to be implemented are of a complex nature. They require joint efforts and a thorough expertise in designing and implementing programmes for combating discrimination and social marginalisation, stimulating economic growth and employment in the affected communities, intervening in health and education policies, as well as a technical expertise in the reconstruction of property and infrastructure development.

There have been repeated and serious delays in the implementation of the measures announced

Several years after the delivery of the Court judgments in the *Moldovan* group, the Romanian Government still fails to address the specific needs of the affected communities.

The ERRC Memorandum submitted to the Committee of Ministers in March 2009 outlined the fact that the Government was unable to present even a modest level of success in the implementation of the general measures undertaken in the context of the friendly settlement in *Moldovan 1* and extended in order to encompass the applicants in *Moldovan 2*, as well as the general measures undertaken by unilateral declarations in the *Gergely* and *Kalanyos* cases.

There followed a period of over two years of absolute inactivity on the ground, which continues to date. Analysis of the Action Plan submitted by the Romanian Government in June 2011 shows the incapacity of the Romanian authorities to take concrete steps under a set timeline in order to comply with very precise obligations regarding the implementation of the Court’s judgments. The provisional timetable submitted does not provide for a date, even approximate, for the finalising of the implementation of the general measures. In fact, no provisions on the implementation are given; there is only a calendar for evaluation activities and adoption of a normative document for allocation of funds. Almost 20 years after the events, the respondent Government is still in the phase of drawing up a plan. The Action Plan is disturbing evidence of continued bureaucratic inertia and systemic malfunctioning of the entire administrative system involved in the process. The flouting of Romania’s obligations to the Court suggests to municipal authorities in Cluj-Napoca and elsewhere that the rights of Roma can be violated with impunity. For these reasons, the ERRC and Romani CRISS have initiated new domestic proceedings against the Government in the Hădăreni case; domestic proceedings against the eviction of Cluj-Napoca are also about to be initiated with the support of ERRC.

Serious delay in the implementation of the measures announced in the Action Plan is a ground for transferring the case from the standard supervision to the enhanced supervision. Although this is not a situation of delay in implementation of the Action Plan, as it was submitted in June 2011, it is clearly a situation of serious delay in implementing the general measures undertaken in all the cases in the *Moldovan* group before the Court and reinforced by the adoption of programmes for the Hădăreni, Plăieșii de Sus and Cașinul Nou communities. Furthermore, there are serious concerns, as set out above, that this current Action Plan, as conceived cannot be timely and effective and is likely to suffer from similar delays and shortcomings to the previous failed action plan. For the purpose of assessing delay, the Government should not be allowed to restart the clock by submitting an Action Plan with no concrete timeline, activities or funding.

The Committee of Ministers may decide to examine any case under the enhanced supervision following an initiative of the Secretariat. The request may be made at any stage of the supervision procedure²⁰.

¹⁹ Parliamentary Assembly, AS/Jur (2009) 36 Addendum, paragraph 2.

²⁰ Committee of Ministers, CM/Inf/DH (2010) 45 final 7 December 2010, paragraph 10.

ERRC calls upon the Committee of Ministers to take all the necessary measures to ensure that the Government comply with the obligations they willingly took upon themselves in the context of the *Moldovan* group. The failure to do so up to now should be attributed to the systemic malfunctioning of the whole bureaucratic apparatus involved in the Hădăreni programme, and clearly points to the need for far-reaching measures in order to ensure that any new initiatives will not suffer the fate of the previous ones.

The ERRC further requests the Secretariat to require that *Moldovan* group be classified under the enhanced supervision procedure and to the Committee of Ministers to examine these cases in detail at the next Human Rights meeting in September 2011.

Budapest, 19 July 2011

Robert Kushen
Executive Director
European Roma Rights Centre