



**Memorandum on the implementation of the
Judgments in the cases of *Moldovan and Others v. Romania* (no.1 and no.2)
by
The European Roma Rights Centre¹ and Romani CRISS²**

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I. Introduction

1. This communication is submitted by the European Roma Rights Centre (ERRC) and Romani CRISS in accordance with Rule 9.2 of the Committee of Ministers for the supervision of the execution of judgments. It mainly addresses the *Revised Action Plan* submitted by the Romanian Government on 24 April 2015 regarding the implementation of the general measures in the cases of *Moldovan and Others v. Romania no.1 and 2*. The two organisations kindly ask the Committee of Ministers to take this communication into account when considering the Moldovan cases at its 1230th meeting which will take place between June 09 -11, 2015.

II. Background information on the implementation of the case

a. Review by the Committee of Ministers so far

2. The judgments in the cases of *Moldovan and Others v. Romania no.1 and 2* became final on 05 July 2005³ and 30 November 2005⁴ respectively and concerned 25 applicants, 18 of whom agreed to a friendly settlement of their case (*Moldovan and Others v. Romania* (No.1)).

¹ The European Roma Rights Centre (ERRC) is an international public interest law organisation working to combat anti-Romani racism and human rights abuse of Roma through strategic litigation, research and policy development, advocacy and human rights education. Since its establishment in 1996, the ERRC has endeavored to provide Roma with the tools necessary to combat discrimination and achieve equal access to justice, education, housing, health care and public services.

² Romani CRISS is a non-governmental organization established on April 4th, 1993, which defends and promotes the rights of Roma in Romania by providing legal assistance in cases of abuse and works to combat and prevent racial discrimination against Roma in all areas of public life, including the fields of education, employment, housing and health.

³ <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-69610>

⁴ <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-69670>

3. The cases concerned the aftermath of racially motivated violence against the Roma living in Hădăreni, Mures county, Romania, during a pogrom which took place in 1993. In 2005, the European Court of Human Rights (ECtHR) delivered a judgment in the case and found a violation of art. 3, art. 6, art. 8, art.13, and art. 14 read in conjunction with art. 6 and art. 8 of the European Convention on Human Rights. The ECtHR noted that police officers were involved in the organised action of burning the applicants' houses and driving them out of Hădăreni, forcing them to live in improper conditions. The Court also held that the applicants had been victims of the general discriminatory attitude of the authorities in the aftermath of the pogrom.
4. Besides complying with the individual measures ordered by the Court, the Romanian government committed to a series of general measures under the supervision of the Committee of Ministers. These include, inter alia, the elimination of various forms of discrimination and the prevention of possible similar conflicts, in particular by stimulating Roma participation in the economic, social, educational, cultural and political life of the local community, by promoting mutual assistance and community development projects, and by implementing programmes to rehabilitate housing and the environment in the communities affected.⁵
5. So far, the Committee of Ministers has reviewed the implementation of the general measures by the Romanian government, five times: in December 2009, September 2011, June 2012, March 2014 and December 2014. Following the *Memorandum*⁶ submitted by the ERRC to the Committee of Ministers on the implementation of the general and individual measures in the case of *Moldovan and Others v. Romania* for consideration at the September 2011 review, the Committee of Ministers decided to consider the implementation of the case under the *enhanced supervision* mode.
6. Throughout the years, the substantive issues identified during these reviews have remained largely the same: the poor quality of the housing rebuilt up to 2008, the authorities' failure to rebuild the remaining three houses, the construction of a clinic and of an industrial facility to provide employment opportunities. At the same time, the Committee has repeatedly criticised the deficiencies of the organisational and institutional framework put in place by the Romanian Government in order to deliver progress on the substantive issues.
7. In December 2009 the Committee required clarifications on the continuation and funding of the action plan for the Hădăreni and underlined the need for the authorities to evaluate the impact of measures already implemented and the necessity to adopt further measures⁷, in the light of the criticism expressed by the non-governmental organisations,⁸ including the ERRC and Romani Criss. The issues raised by the NGOs included the poor quality of the housing already rehabilitated and the failure to build a medical centre and an industrial facility.
8. In 2011 the Committee welcomed a new organisational framework that the Romanian authorities were promising would address these issues. In particular, the national working group for the implementation of the judgments had allegedly already designated the National Housing Agency as the authority responsible for the outstanding construction works; this authority was supposed to finalise the assessment of the technical documentation and the cost of the construction projects at the latest by 1 August 2011, a prior step to the adoption by the government of the decision on the budget allocated to the new Programme for Hădăreni.
9. In June 2012 the Committee noted that, notwithstanding the authorities' efforts, the new organisational and financial framework for the implementation of the remaining measures for the locality of Hădăreni had still not been adopted and urged the Romanian authorities to speed up the adoption of this framework and provide the Committee with a calendar for the implementation of the

⁵<https://wcd.coe.int/ViewDoc.jsp?id=1451197&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383>

⁶<https://wcd.coe.int/com.intranet.InstraServlet?command=com.intranet.CmdBlobGet&IntranetImage=1903717&SecMode=1&DocId=1769566&Usage=2>

⁷[https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/Dec\(2009\)1072&Language=lanEnglish&Ver=immediat&Site=DG4&BackColorInternet=B9BDEE&BackColorIntranet=FFCD4F&BackColorLogged=FFC679](https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/Dec(2009)1072&Language=lanEnglish&Ver=immediat&Site=DG4&BackColorInternet=B9BDEE&BackColorIntranet=FFCD4F&BackColorLogged=FFC679)

⁸ CM/Inf/DH(2009)31 rev § 50 and §§ 42-47 for a summary of the issues raised by the NGOs, available at [https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Inf/DH\(2009\)31&Language=lanEnglish&Ver=rev#P182_18385](https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Inf/DH(2009)31&Language=lanEnglish&Ver=rev#P182_18385)

remaining measures, as well as a detailed assessment of the impact of the measures taken so far at the level of this locality.

10. In March 2014 the Committee expressed their deep concern that more than one year after their previous call, the authorities had still not succeeded in putting in place the organisational and budgetary framework for the general measures which remained to be adopted for the implementation of the judgments *Moldovan and others* (Nos. 1 and 2) and exhorted the Romanian authorities to adopt this framework urgently and to implement without further delay the remaining general measures.
11. Before its December 2014 meeting the Committee received information on the creation of a new working group in charge of the implementation of the judgments, coordinated this time by the Ministry of Foreign Affairs. More worryingly, the Committee was also informed that tensions around the shooting of a young Roma man in June 2014 had allegedly prevented the authorities from carrying out an assessment visit in Hădăreni.

b. Decision of the Committee of Ministers at the last review

12. At the last review by the Committee of Ministers, on December 4, 2014 at the 1214th meeting, the Committee of Ministers “*deplored the significant and persistent delay in the adoption and the implementation by the Romanian authorities of the general measures which remain to be taken for the execution of the judgments Moldovan and Others (Nos. 1 and 2)*”. It also indicated that it expected “**concrete substantial progress**” before its next examination of the case in June 2015.

III. Domestic litigation

13. The Romanian authorities’ commitments before the ECtHR and the Committee of Ministers are reflected in various decisions and administrative acts at the national level. The community believe that though legally binding, these acts have not been complied with over the years. The ERRC and Romani CRISS have supported the community in proceedings at the national level to secure their implementation. After damages for the community were awarded in the first instance in the summer of 2014, the High Court of Cassation and Justice dismissed the complaint on 29 April 2015. The reasoning of the judgment is not yet available.

IV. The Romanian Government’s revised action plan and implementation of the measures

14. In April 2015 the Romanian government submitted a *Revised Action Plan* to be considered at the upcoming Committee of Ministers’ 1230th meeting, which will take place on 9-11 June 2015. The comments below address the latest steps envisaged by the authorities in order to deliver the general measures to which they have committed in *Moldovan and Others* (1 and 2) cases and attempt to assess any relevant progress.

a. The Medical Centre and the Industrial Facility

15. In the Revised Action Plan, the Romanian government firstly mentions the construction of a medical centre and an industrial site. The failure to build these facilities was noted by the Committee as far back as 2009.
16. The ERRC and Romani CRISS welcome the adoption of Government Emergency Ordinance no. 93/2014 according to which the Government will fund the construction in the village of Hădăreni of a local medical centre and an industrial site. However, construction has not started on either the medical centre or the industrial facility. Any progress made in this respect is difficult to assess as the

Government Emergency Ordinance and the Revised Action Plan contain different intermediary targets.

17. For instance, the emergency ordinance specifies that the Municipality must secure plots of land with clear ownership title for the facilities, yet the *Revised Action Plan* does not mention whether this target has been met. The community have been told of the intended location of the medical centre and industrial facility. It is however still unclear whether the Chetani municipality has solved any outstanding issues with the property titles for the plots destined for the two facilities.
18. Furthermore, while stating that the municipality of Chetani sent the necessary documentation for obtaining the approvals (needed for starting construction) on 20 March 2015, the Revised Action Plan is unclear to the nature of this documentation. We recall that according to the information note submitted by the Government in June 2014, the Local Council of Chetani had already approved two decisions concerning the feasibility study and the infrastructure works for the medical centre and the industrial site. The relationship between the 2014 and the 2015 documentation is unclear.
19. According to information obtained during an ERRC fact-finding visit in May 2015, the community have been told by the Municipality that the technical documentation needs to be amended and updated. There also appears to be some discussion about changing the purpose of the industrial facility from a brick-factory to a slaughterhouse. It is unclear if the Municipality intends to amend the March 2015 documentation or has simply failed to keep the community updated of whatever progress they have made.
20. The Government should provide clear details on existing documents and those still outstanding, with a firm timetable for drawing them up.

b. Rehabilitation of Housing Destroyed in the Pogrom

21. An essential part of the general measures undertaken was the reconstruction of the houses destroyed in the 1993 pogrom. The status of the housing rehabilitation component has already been described in great detail by the ERRC and Romani CRISS in our previous submissions from 2009, 2011 and 2014. In essence, the authorities still need to build three houses and repair those that were poorly built between 2006 and 2008.
22. The Government claim that the houses were rebuilt, but these houses have degraded with the time and a new needs-assessment must be carried out.
23. The ERRC visited Hădăreni and spoke to the victims on 22 May 2015. During the discussions the community reiterated that the materials used to build the houses were of very low quality and some construction works (such as some windows, insulation) were not completed before the handover. The applicants had to invest their own money to complete and remedy the construction of their houses. Thus current degradation is not attributable merely to the passage of time, as the Government seem to imply, but to specific decisions (about construction materials, handover date etc.) made at the time the houses were rebuilt, decisions for which the Government are responsible.
24. According to the 2015 *Revised Action Plan* the authorities deem it necessary to undertake an evaluation of current housing conditions and needs in Hădăreni, following which, the inter-institutional working group will decide on the possible measures to be taken in this respect. This assessment will apparently be carried out by the Chetani Municipality.
25. As indicated in our previous communication to the Committee of Ministers, an evaluation has already been carried out in 2013 by the National Council for Combating Discrimination, while another had been carried out in 2012 for the National Roma Agency.
26. The poor quality of the rebuilt houses was brought to the Government's attention long ago and has already been noted by the Committee of Ministers. Planning to carry out a future evaluation of a recognised problem does not constitute either concrete or substantial progress.

c. Community relations

27. The Government mentions that some training and activities were organised, targeting the school and the local police, aimed at preventing conflict and increasing tolerance. It is unclear when these activities took place and whether the authorities had in fact any contribution to them. Nor were any indicators provided measuring the impact of such activities.
28. Moreover, the Government explain that on 26 November 2014 various relevant representatives of the Government visited the local authorities of Mures county and Chetani (Hădăreni village). According with the action plan, no Roma were interviewed for the purposes of understanding the current situation in Hădăreni. The community have confirmed that they were not aware of the November visit.
29. However, one conclusion that emerged from the Government visit was that there are no problems in relation to combating discrimination and prevention of conflict. In its view *“At present, the relation between local authorities and Roma is based on good communication and comprehension of community needs. Roma citizens turn with reliance to local institutions (commune hall, police). This is due to the constructive dialogue of the mayor and local police with Roma representatives to discuss and solve the existing problems of the community. There is also good cooperation with local mediators (school and health)”*.
30. The European Roma Rights Centre and Romani CRISS consider it extremely problematic that no consultation with the Romani community in Hădăreni was carried out and that the Government based its conclusions exclusively on the viewpoint of the local authorities.
31. Romani CRISS, which has a long track-record of working with the Hădăreni community, was invited by the Government to participate in the June 2014 visit. After that visit was cancelled, Romani CRISS received no further invitation from the Government. It is also unclear from the revised action plan which NGOs the Government has consulted or intends to consult. In any case, the community were not aware of or involved in any such consultations.
32. With reference to the new joint working group of Mures County, in charge of the implementation of the National Roma Inclusion Strategy, the two respective organisations would like to make the following observations:
 - a. Currently there is no publicly accessible information on this newly established joint working group including its remit, the participants (civil society, strictly government officials or both), the frequency of their meetings, their proposals and recommendations or minutes from their meetings. From what the ERRC’s monitor was able to gather there has been no consultation with the Roma of Hădăreni to date since this joint working group has been in operation.
 - b. The Government Strategy for the Inclusion of Romanian Citizens of Roma minority was initially adopted at the end of 2011. Unfortunately, the implementation of the Strategy encountered significant obstacles during 2012 and 2013 due to lack of budget allocations, lack of indicators, and lack of a clear framework for implementation. The Strategy attracted significant criticism from both Roma activists and professionals working on Roma issues, ultimately being replaced by a new strategy (2015-2020). No specific results can be discerned from the government’s *Revised Action Plan* in relation to the activity of this joint working group.
 - c. Secondly, the Government need to clarify whether this joint working group is taking into account the previous tension and conflict between communities in Hădăreni in its proposals and recommendations.
 - d. From the ERRC’s information, the community is not aware of the existence of this joint working group, nor of the information centre mentioned by the Government. Therefore, the Government

should clarify what measures have been taken to inform the Roma of Hădăreni, about the two county level bodies and their attributions.

33. The Government's assertion of good relations between the Roma community and the authorities is called into question on two fronts, at local and national levels.
34. At the local level, we recall the shooting in June 2014 of a young Roma man by the police, allegedly without warning. According to information submitted by the Government this incident led to tensions which resulted in the authorities cancelling their planned assessment visit to Hădăreni.
35. At a national level, deeply entrenched anti-Roma attitudes can be vividly seen in the annual surveys carried out by the National Council for Combating Discrimination (NCCD): in 2005⁹ 61% of respondents thought that Roma were a source of shame for Romania, while 52% of respondents went further to say that Roma should not be allowed to travel outside the country. These attitudes have not improved much: in 2013¹⁰ 48% of respondents said that they did not want a Roma work colleague, 41% would not want a Roma neighbour, and 38% would not want any Roma in their municipality.
36. In recent years international monitoring bodies have expressed particular concern about the rise in anti-Roma rhetoric and racism in Romania. For instance, the European Commission against Racism and Intolerance (ECRI) noted in its 2014 report¹¹ that “[s]tigmatising statements against Roma are common in the political discourse, encounter little criticism and are echoed by the press, the audiovisual media and on the Internet. No effective mechanism is in place to sanction politicians and political parties which promote racism and discrimination.” Similarly, the UN Committee on the Elimination of Racial Discrimination (“CERD”) stated in its 2010 Concluding Observations on Romania that it was “concerned at reports of the spread of racial stereotyping and hate speech aimed at persons belonging to minorities, particularly Roma, by certain publications, media outlets, political parties and certain politicians”.¹²
37. Unfortunately, the Hădăreni case remains in the collective memory of many Romanians as a successful example of getting unwanted Roma to flee the locality. For example, during the conflicts between Roma and non-Roma people from 2009, in Sancaieni and Sanmartin localities (Harghita county), the angry mob mentioned Hădăreni as “good practice” and as an example to follow, while gathering to go to Roma houses. According to people whom Romani CRISS has interviewed back in 2009, the mob changed: “We will set you on fire, as in Hădăreni”. Consequently, it is all the more important to achieve demonstrable improvement in community relations in Hădăreni and replicate it elsewhere.
38. We recommend that the Romanian authorities develop a mix of quantitative and qualitative indicators to measure the objective of preventing conflict and increasing tolerance and follow-up on all such types of activities that have been undertaken in Hădăreni. Also, whichever body assesses progress on those indicators, the crucial point is that this assessment needs to be evidence-based and credibly take into consideration the community's views.

V. Conclusion and Recommendations

39. In summary, the Romanian Government have failed to implement numerous aspects of the *Moldovan and Others v. Romania* (no.1 and no. 2) judgments in line with the parameters set out by the Committee of Ministers in its last review. “Concrete and substantial” progress has not been achieved ten years on regarding the construction of the medical centre, the industrial facility, the

⁹ The 2005 survey is available at <http://www.cncd.org.ro/Files/?FileID=106>; see page 37.

¹⁰ The 2013 survey is available at <http://www.cncd.org.ro/files/file/Sondaj%20de%20opinie%20CNCD%202013.pdf>; see page 33.

¹¹ The report is available at <http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Romania/ROM-CbC-IV-2014-019-ENG.pdf>, page 10

¹² The observations are available at:

<http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsk9HknmUTbUvDqDjwUSqemoc4TdqltS%2bjZT%2bLyf twg2oSEAKCwygl6Na1poCrRvPdMhWKEsUW1FhH%2fikjAtFFFaGQKSA1kptztlWIMN0OkY4aQyMf%2bkGBSDw3rbbBk%2bUg%3d%3d>, page 4, para. 16

remaining unbuilt houses and the refurbishment of poorly constructed houses. Nor has there been a credible evidence-based assessment of the quality of the relations between the Roma, the authorities and the wider community in Hădăreni.

40. While organisational steps appear to have been taken in respect of the medical centre or the industrial facility, no substantial progress has been achieved on the ground. Given that the construction of these facilities is not a goal in itself, but aims to foster inclusion, it is essential that the Government provide avenues for the input of the Romani community in Hădăreni into the plans for these facilities. The community need to be updated on progress, as well as any obstacles or setbacks, towards these ends.
41. With regard to the housing issues, already amply documented by various authorities, the Government must address the construction of the remaining houses and refurbish the poorly built houses for the affected Roma community based on genuine and participative consultations.
42. In order to achieve sustainable improvements in the relations between the authorities and wider Romanian society with the affected community the Government must address the lingering institutional racism that currently exists. The authorities need to involve the community in a credible way in the assessment of the current situation and the design of any further measures which may be necessary. In choosing not to engage the Roma community in Hădăreni the Government are actively neglecting their participation at every level of this process in particular as set out above with regard to the joint working group. The Government need to improve their level of communication with the Roma community for progress to be effectively realised. The Government must ensure access to effective complaints mechanisms for the affected community to reinforce confidence in public authorities.
43. When considering the current status of implementation of the Moldovan judgments, the ERRC and Romani CRISS kindly ask the Committee of Ministers to:
 - Take note of the adoption of the emergency ordinance and strongly encourage the authorities to abide by the timetable to build and open the medical centre and the industrial facility,
 - Urge the Romanian authorities to conduct consultations with the community on assessing the current status of implementation and identifying further necessary measures,
 - Deplore the continued lack of progress in building the remaining houses and refurbishing those that have been poorly rebuilt,
 - Call on the authorities to carry out an evidenced-based assessment of the impact and sustainability of the anti-discrimination and conflict prevention measures and mechanisms.