

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)¹**

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¹ Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements (*Adopted by the Committee of Ministers on 10 May 2006 at the 964th meeting of the Ministers’ Deputies*).

I. Introduction

1. The present memorandum is submitted to the Committee of Ministers by the European Roma Rights Centre (“ERRC”), an international non-governmental organization which represented most of the applicants in the cases of *Moldovan and Others v. Romania 1* (“Moldovan 1”)², *Moldovan and Others v. Romania 2* (“Moldovan 2”)³, *Kalanyos and Others v. Romania*⁴ and *Gergely v. Romania*⁵ in the proceedings before the European Court of Human Rights (“the Court”).
2. The purpose of the present memorandum is to critically assess the steps undertaken by the Government of Romania (“the Government”) towards implementation of the aforementioned judgments. The present submission will examine the level of compliance by the Government with the more specific commitments it undertook by virtue of the friendly settlement concluded in *Moldovan 1*, the unilateral statements which constituted the basis for striking out the applications in *Kalanyos* and *Gergely* cases, as well as with its general duty to implement the *Moldovan 2* judgment via the adoption of comprehensive general and individual measures.

² Applications nos. 41138/98 and 64320/01, friendly settlement, judgment of 5 July 2005.

³ Applications. nos. 41138/98 and 64320/01, judgment of 12 July 2005, rendered final on 30 November 2005.

⁴ Application no. 57884/00, final judgment of 26 July 2007.

⁵ Application no. 57885/00, final judgment of 26 July 2007.

II. Executive Summary

3. Although the Government consented to implementing a series of general measures only in relation to the cases of *Moldovan 1*, *Kalanyos and Others* and *Gergely*, the Committee noted and the Government agreed that given the affinity of the *Moldovan 1* and 2 cases, the general measures envisaged in the context of the former should be extended in order to encompass the applicants in the latter⁶ - indeed, the general measures are in favor of the respective Roma communities in total and not only to the benefit of the applicants exclusively. The measures put forwarded by the Government in all four cases are effectively the same (indeed, it would appear that the measures set out in *Moldovan 1* constituted the blueprint for the ones in *Kalanyos and Others* and *Gergely*)⁷ and can be broken into three main categories: firstly, measures aimed at raising awareness and sensitizing the local population in order to promote good inter-ethnic relations,⁸ secondly, measures for the stimulation of the participation of Roma in the local economic and social life and thirdly, measures regarding the improvement of the infrastructure / rehabilitation of houses.
4. As the present submission will demonstrate, the Government are unable to present even a modest level of success in the implementation of the abovementioned general measures. The program the Government adopted in order to implement these measures contained a number of omissions that severely undermined their professed aim, namely to fully redress the situation that arose following the pogroms of 1993. Turning to the program that was finally adopted, its implementation in practice was very deficient; with the qualified exception of certain seminars that took place in the end of 2006 and whose impact is impossible to assess, the only other component of the program that was executed related to infrastructure work. Yet even in this respect, the objectives established by the government were not met while the limited infrastructure work that was undertaken was of very low quality. As a result, in some cases the edifices in question (namely the local primary school and the cultural centre) effectively had to be rebuilt.
5. The Government's failure is most evident in the field of housing, a topic featuring heavily in all four judgments. Under the terms of the program, 20 houses were to be constructed/renovated. In the course of the program the number was increased to 36;⁹ yet by the end of the program in 2008 (three years after the Moldovan judgments), only six houses had been renovated.

⁶ See Conclusions of the 1043rd – 3.B meeting of the Committee of Ministers (DH) (2 December 2008). See also OSCE Human Dimension Implementation Meeting 2008, Working Session 6: Tolerance and non-discrimination I, HDIM.DEL/359/08 dated 7 October 2008, Statement by the delegation of Romania in the exercise of the Right to Reply, p. 2, attached as Annex 1 to the present submission.

⁷ See OSCE Human Dimension Implementation Meeting 2008, Working Session 6, op. cit., p.

⁸ The following important difference should be pointed out: in the general measures in the *Kalanyos and Others* and *Gergely* cases, the Government has also included the adoption of measures in order to “ensure the eradication of racial discrimination within the Romanian judicial system”.

⁹ Throughout the duration of the program there was very little certainty as to the number of houses that would be rebuilt/constructed within the Program and as to the identity of the beneficiaries. When representatives of the ERRC visited Hadareni in June 2007, they were informed by local officials and members of the Roma community that 36 houses would in fact benefit from investment under the program.

6. The submission is structured as follows. Section III outlines the Government program launched to comply with the two Moldovan judgments (the “Program”), together with a chronicle of its evolution during the three years of implementation. Section IV outlines a number of issues that to this day have not been addressed either by the Program or other initiatives undertaken by the Government. Section V contains a critical assessment of the Program. In Section VI, the ERRC will attempt to tentatively assess the first stages of the equivalent program launched under the general measures envisaged in the *Kalanyos and Others v. Romania* and *Gergely v. Romania* cases. Finally, in Section VII, ERRC will provide some concluding remarks regarding the two programs.

III. The Hadareni Program

7. The Government sought to discharge the obligations it incurred as a result of the Moldovan judgments by devising a “Program for the Community Development of Hadareni 2006-2008” (the “Program”). Although the Program was modeled on the blueprint included in the Moldovan 1 friendly settlement, the Government extended it to cover Moldovan 2.¹⁰
8. The Program was adopted as an annex to Governmental Decision 523/19 April 2006, published in the Official Gazette no. 385/4 May 2006 nine months after the Moldovan judgments were delivered.
9. The program included a sum of activities grouped around five main directions:
 - partnership and community development;
 - public information, civic education, prevention and combating discrimination;
 - education, culture, inter-confessional dialogue;
 - economic development;
 - health and access to health services;
 - housing and infrastructure.

The Program was endowed with a total budget of 3,487,000 RON (approximately 982,000 Euros). The budget was broken down as follows: 2,098,235 RON (590,900 Euros) would be allocated for projects to be implemented in 2006, 958,748 RON (270,000 Euros) for 2007 and 430,016 RON (121,000 Euros) for 2008. According to the Decision 523, these amounts would be allocated from the Government’s General Secretariat to the National Roma Agency (NAR). The money for the activities planned for 2006 were allocated by the Government on the basis of Decision 523.

10. In terms of infrastructure work, the Program envisaged the rehabilitation of the community centre (Activity No. 6 in the Annex to GD 523/2006), the rehabilitation of the local school (Activity No. 21) and of the cultural centre (Activity No. 22), the resurfacing of local roads (Activity No. 33), the installation/overhauling of utilities networks (Activity No. 34) and finally the renovation of the exterior/construction of twenty houses (Activity No. 35). The latter was in fact the most costly undertaking, for which a budget of 200,000 Euros was allocated.

11. Decision 523 also set up the bureaucratic structure entrusted with the implementation of the Program. The primary responsibility was allocated to the NAR which was assigned with “coordinating, implementing, monitoring and evaluating” the Program.¹¹ Decision 523 also committed the NAR to adopt within 30 days a management methodology as well as procedures for implementation, monitoring and evaluation.

12. Despite that strict deadline, the methodology was only published on 3 August 2006, or more than four months after Decision 523 had been adopted and more than a year after the delivery by the Court of the two Moldovan judgments. The methodology identified the principles guiding the implementation of the Program, including

¹⁰ See Conclusions of the 1043rd – 3.B meeting of the Committee of Ministers (DH) (2 December 2008). See also OSCE Human Dimension Implementation Meeting 2008, Working Session 6: Tolerance and non-discrimination I, op. cit, p. 2.

¹¹ Decision 523/2006, Article 2 (1) and Annex 1, p. 9.

transparency in relation to spending, the principles of community participation and partnership, the principle of ensuring an optimal costs/efficiency ratio and the principle of an integrated approach to the beneficiaries' problems.

13. The methodology laid great emphasis on the issues of monitoring and accountability and reaffirmed the crucial role of the NAR. The latter would serve as a "clearing house", to which all program implementation reports (annual, quarterly, monthly with regard to both the narrative and financial aspects of the activities) would be transmitted in order to ensure the efficient and transparent management of the program.

14. In the course of August and September 2006, the head of the NAR issued a number of other orders implementing further details of the methodology, concerned in particular with setting in place the administrative apparatus entrusted with the implementation of the program.

15. The only official document reporting on the activities undertaken during 2006 is a four-page document issued by the NAR titled "The stage of implementation of the Hadareni program in December 2006."¹² According to the document, the effective implementation of the program started in September 2006 and consisted of activities classified in two broad categories.

16. The first category of activities was carried out by three non-governmental organizations and were aimed at

- strengthening the capacity of the members of the Hadareni community to actively participate in the development of the community;
- diminishing the stereotypes, prejudices and practices which encourage discrimination in Hadareni, as well as in public administration;
- providing information and civic education to the Hadareni community, as well as preventing and combating discrimination in local mass-media and public administration.

A total of 228,538 RON was spent for these activities. Apart from mere references to these programs however,¹³ the Government does not furnish any evidence whether a qualitative assessment was carried out on their effectiveness.

17. The document also listed three activities for which expenditure was contracted out by the end of 2006: education, economic development and housing and infrastructure (specifically including the resurfacing of the roads and the restoration of public utilities networks), for a total value of 157,922 RON. The document referred to an annex concerning supplementary details which however was not made public.

18. The rectified budget for the Program published in 2007 (see below) clarified that the program's implementation fell far short of its intended objectives, being characterized by massive under spending. Out of 2,098,235 RON (590,900 Euros) budgeted for 2006, actual expenditure (both for work completed and contracted out) amounted to only

¹² The report is available at NAR's website, at http://www.anr.gov.ro/docs/programe/hadareni/Stadiul_implementari_Programului_Hadareni.pdf. It is also reproduced as Annex 2 to the present submission.

¹³ See e.g. OSCE Human Dimension Implementation Meeting 2008, Working Session 6, op. cit., page 4.

367,895 RON.¹⁴ The only section of the Program where spending was in line with the plan was that concerning the section on public information, civic education, preventing and combating discrimination. In the field of housing, although the initial budget provided for the expenditure of 532,638 RON (150,000 Euros) in 2006 towards rebuilding/renovating 20 houses, no such expenditure took place and consequently no such work was actually undertaken.¹⁵ There were also discrepancies between the revised budget published in 2007 and the document issued by the NAR in December 2006, the latter being larger by 19,000 RON.¹⁶

19. The Program was suspended for most of 2007, during which time none of the activities planned took place, giving the impression that the program had effectively stopped.¹⁷ This was due, according to statements made by NAR representatives, to the fact that the NAR “lacked the capacity to implement the Program.”¹⁸ The difficulties experienced by the NAR led the Government to undertake a drastic alteration of the program. By means of Governmental Decision 734/11 July 2007¹⁹ and following an agreement signed between the NAR and the United Nations Development Programme (UNDP) Bucharest office,²⁰ the Program was modified in that most of the responsibilities formerly entrusted to the NAR were transferred to the UNDP. Under the terms of the agreement, the NAR would transfer to UNDP the relevant funds and would retain its monitoring and evaluation role.²¹ At the same time, UNDP would contribute 10% towards the total cost of the program for the years 2007 – 2008.

20. The budget of the Program was reshuffled to take into account the developments to date. Whereas the total budget of the Program for the period 2006 to 2008 remained the same, the budget for 2006 suffered a severe correction to reflect the actual level of expenditures, the budget for 2007 remained practically the same (958,748 RON, 270,000 Euros), probably in recognition of the fact that not much time remained until the end of the year, and the budget for 2008 increased exponentially, to take into account the amounts which remained unspent in 2006. Thus whereas according to the original budget, only 430,016 RON (121,000 Euros) were allocated for 2008, the new budget allocated 2,160,357 RON (608,550 Euros) for 2008. Under the provisions of the decree, the funds allocated would be available until 15 December 2008; following that date, any funds that remained unspent would be returned to NAR which would then transfer it to the state budget.²²

¹⁴ The revised budget of the program is available as an annex to GD 743/2007, Official Journal no. 474/16 July 2007.

¹⁵ Ibid, budget line 11.

¹⁶ No explanation is put forward for this discrepancy which appears to be due to some projects included in one document but not in the other. Thus, whereas according to the NAR 2006 document 10,567 RON (approximately 2,976 Euros) had been contracted towards the development of an educational resource center in the local school, no expenditure had taken place under this activity according to the revised budget.

¹⁷ Both members of the local Roma community as well as the Mayor of officials stated to an ERRC delegation that visited Hadareni in August 2007 that they were not informed of the reasons for the lack of activities and expressed their frustration and consternation in this regard.

¹⁸ According to official NAR statements cited in the article “*Hadareni, Fiasco de 1000000 dolari*” published in Romanian daily *Romania libera*, issue of 27 January 2009, reproduced in Annex 7.

¹⁹ Published on the Official Journal no. 474/16 July 2007.

²⁰ Ibid. Although the ERRC twice requested NAR to provide it with a copy of the agreement by phone and email and was assured that it would be provided with a copy, this has not happened as of the date of writing.

²¹ Ibid, Article 5.1.c.

²² Article 2¹(3) GD 523/2006, as added by means of GD 743/2007.

21. The activities undertaken by the UNDP until the end of the year are detailed in a brief three-page document, undated and not including any information about the authority issuing it, which was handed out to ERRC representatives during their visit to the NAR office in September 2008.²³ The document is divided into two sections – ‘narrative report’ and ‘financial report’. According to this document, the UNDP received the Program files from the NAR in September 2007. During the same month the NAR wired the first installment of the 2007 budget to the UNDP. Reportedly, by the end of that year, the local school in Hadareni had been renovated, equipped with educational material and with a heating system, the interior of six houses belonging to Roma were refurbished, the cultural centre was renovated and seven kilometers of roads were paved, with the total expenditure reaching 100% of the allocated sum for that year. No assessment was made as to the extent to which these activities complied with the objectives set out in the plan of activities for 2007, and no reasons were provided for the fact that many of the activities planned had not actually been carried out.

22. No further work was undertaken in Hadareni for most of 2008 which prompted strong reactions of protest from the Hadareni community as well as civil society organizations. In July 2008 Istvan Haller, a prominent human rights activist, currently employed with the Romanian Equality Authority, who documented the original incidents in Hadareni and represented the local community in their relation with authorities throughout the years, addressed a letter to the NAR inquiring about the reasons for the suspension of the Program. In its reply the NAR noted that the Program’s implementation was suspended as the Government had failed to transfer the allocated funds for 2008.²⁴

23. On 27 August 2008 the Government issued Governmental Decision No. 980 whereby it formally transferred to the NAR the funds necessary for the completion of the Program that in fact were those funds allocated for the whole of 2008, namely 2,160,357 RON.²⁵ As a result, on 10 September 2008 the UNDP and the NAR formally resumed the Program,²⁶ under considerable time pressure, considering the short time remaining until the end of 2008, after which unspent funds were supposed to be returned to the Government. According to the 2007 revised budget, 2008 was the year with the biggest budget allocated (including the unspent funds from 2006). Indicative of this problem was the very short deadline for the tenders put forward by UNDP on 17 September 2008 – five days until 22 September - with work by the successful bidders set to start on 25 October 2008.²⁷ Similarly, the new phase of the program included the construction of three new houses, a village medical/health unit and industrial building.²⁸ It is difficult to see how these edifices would be built by 15 December 2008, and indeed, they were not.

²³ See Annex 3 to the present submission. The same document had been forwarded to the ERRC by UNDP in February 2008, in both Romanian and English.

²⁴ See Annex 4, NAR letter to Mr. Haller, undated but circa August 2008.

²⁵ Published on the Official Journal no. 628/29 August 2008.

²⁶ See UNDP press release dated 10 September 2008, “UNDP and NAR to Start Community Development Works in Hadareni”, available at http://www.undp.ro/news/?item_id=2868

²⁷ The following five posts were advertised on 17 September 2008: Lawyer (Hadareni Project), Technical Site Supervisor, Short Term-Expert: Related to the Training for Post Conflict Area, Short Term-Expert: Economist related to the Income Generator Activities and Local Coordinator for Hadareni Project.

²⁸ On 15 September 2008, UNDP issued a Request for Quotation (RFQ) for “Design Services regarding 3 family houses, 1 medical/health village unit and one industrial building.”

24. The Program ran into further difficulties when, at the beginning of October 2008, the Government had still not effectively transferred the money to the NAR in line with the undertakings included in Decision 980. This prompted Mr. Haller to launch a hunger strike on 2 October 2008. In a letter explaining the reasons for his action, he *inter alia* called upon the Government to authorize the continuation of the Hadareni Program into 2009 and make the necessary funds available while he also called for the immediate launching of the programs in Plăieșii de Sus and Casinul Nou (see below, paragraph 45 *et seq.*).²⁹

25. On the following day, NAR issued a press release in which it referred to the progress in the Program to date, namely the infrastructure work completed by UNDP in 2007. Noting that the remaining funds were now available and that on 10 September 2008 the Program had been re-launched, the letter then briefly set out the objectives to be attained by 15 December 2008: the construction of three new houses would begin on 10 November 2008 and be concluded by 15 December 2008. At the same time, medical and industrial facilities would be built in the village. For the first time however it was mentioned that 10 houses,³⁰ the local school and the cultural centre would be rehabilitated, something that as will be seen below casts in doubt the quality of the construction previously undertaken. The letter concluded with the expression of the NAR President's conviction that the above task would be completed in time; he also noted however that if, "due to exceptional reasons", this was not possible, then the NAR would take all the necessary measures to extend the program's duration in the next year.³¹ This rather unfounded optimistic assessment was shared by the Government in a statement delivered during an OSCE/HDIM meeting a few days later, on 7 October 2007.³² That this optimism was rather misplaced was subsequently confirmed by UNDP. According to Mircea Mocanu, Head of the UNDP Socio-Economic Section, given that the funds were made available in October, it was impossible for the work to be completed by December.³³

26. The Program formally ended on 31 December 2008. Although the UNDP suggested that the program be extended for another year, the Government have yet to officially take a stance on this issue.

²⁹ See press release issued by Mr. Haller, dated 2 October 2008, attached as Annex 5.

³⁰ The document makes no reference whether this concerns houses already renovated or others.

³¹ NAR Press Release dated 3 October 2008, attached as Annex 6.

³² Annex 1, *op. cit.* page 5.

³³ See Annex 8, Divers Press Bulletin no 105 (392), dated 12 March 2009

IV. Omissions of the Hadareni Program and Related Governmental Measures in Relation to Moldovan 1 and 2

27. Although it purported to achieve a comprehensive implementation of the Moldovan judgments, the Program has several outstanding lacunae.

28. As noted by the Court in the Moldovan judgments,³⁴ many of the Romani victims of the 1993 pogrom have been displaced by the conflict and continue to this day to live in precarious conditions dispersed throughout Europe. Arguably the most important part of the judgment and the Government Program is related to restoring the housing that was damaged or destroyed. However, for those displaced, restoring the housing in Hadareni does not provide an adequate remedy, and the Government should be obliged to provide an alternative remedy to these people, such as additional monetary compensation.

29. Moreover, as Romania became a Party to the European Convention only in 1994, the Court's judgments cannot be seen to operate to resolve claims of rights violations under domestic law that arose before 1994 and relate to alleged violations of Articles 2 (in relation to the non-effective investigation into the deaths of the applicants' relatives), 3 (in relation to the destruction of the applicants' homes and belongings in 1993 and the lack of an effective investigation) 8 and Article 1, Protocol 1 (in relation to the destruction of their homes). These allegations were declared inadmissible *rationae temporis* by the Court on 13 March 2001 and hence were never examined by the Court.³⁵ The Government, however, want to interpret the Court's subsequent judgments as absolving it of any additional responsibility for the harm caused by the 1993 pogrom. As a result, the Government have failed to settle the claims of the Romani victims of the pogrom (including the applicants in the Moldovan judgments) in a full and transparent manner, over and beyond formal payment of the just satisfaction ordered by the Court. This caused wide discontent among the Romani community in Hadareni and resulted in further domestic litigation and applications filed with the Court, recently communicated to the Government.³⁶

30. After the Moldovan judgments were delivered in 2005, the Romani victims of the 1993 pogrom (including, but not restricted to the applicants in the two Moldovan cases) initiated proceedings seeking effective implementation of the judgment of 24 February 2004 of the Targu Mures Court of Appeal awarding them limited monetary compensation.³⁷ However, the domestic courts rejected their claims, stating that the awards of just satisfaction provided by the Court in the Moldovan judgments included the damages awarded domestically. The ERRC would like to refer again to the arguments included in an earlier submission to the Committee of Ministers,³⁸ that this interpretation of the Moldovan judgments represents a further breach of the right of the victims for full

³⁴ See Moldovan 2, § 107 (h): "(h) 'most of the applicants have not to date returned to their village, and live scattered throughout Romania and Europe.'"

³⁵ See Applications nos. 41138/98 by Iulius Moldovan and others and 64320/01 by Octavian Rostas and others against Romania, partice admissibility decision of 13 March 2001.

³⁶ See Applications. nos. 12694/04, 8278/04 and 8229/04, to which another twenty nine applications have been joined. All thirty two applications were communicated to the Government on 15 January 2009.

³⁷ See §77 of Moldovan 2.

³⁸ See *Written Comments on the European Roma Rights Centre in Relation to the Interpretation of the Terms of the Friendly Settlement in the case Moldovan and Others v. Romania*, dated 16 September 2005 and addressed to the Department for the Execution of Judgments of the European Court of Human Rights attached as Annex 9.

redress for the breaches of their rights resulting from the 1993 pogrom. This in fact is the subject of yet another application reportedly pending before the Court filed by the Romanian NGO Romani Criss.

31. Given the pending litigation on multiple fronts, we respectfully request that the Committee make a clear statement as to the effect of its judgments. As we wrote in an earlier submission, we believe the Committee should not regard the judgment and friendly settlement as extinguishing claims relating to damage to persons or property that occurred before Romania became a Party to the Convention in 1994. Alternatively, the Committee could interpret full settlement of all claims arising out of the 1993 events, including those arising out of damage to persons and property, to be a general measure implicit in a *bona fide* implementation by the Government of the Moldovan judgments. In this case, the Committee should be seized of the entire matter, including an obligation on the part of the Government to make effective restitution to all victims.

V. Critical Assessment of the Hadareni Program

32. While the Hadareni Program failed entirely to address certain critical aspects of the Moldovan judgments, it also failed to meet even its own most basic defined objectives.

33. A crucial component of the Program was that of infrastructure development. At least 20 dwellings³⁹ were to be repaired/constructed while the local school and the local cultural centre would be rehabilitated. In addition, an industrial centre was to be constructed and equipped to facilitate local entrepreneurial activity. The only development in this respect is to be found in UNDP's report for 2007, where it is mentioned that the interior of six houses had been renovated, together with the school and the cultural centre. According to a list of UNDP-administered contracts signed for various projects in Hadareni, on 9 and 23 October 2007, two contracts had been signed for the rehabilitation of the school and the cultural centre.⁴⁰ Yet according to the October 2008 letter by NAR, the school and the cultural centre were to be rehabilitated *again*; according to a list of contracts regarding Hadareni prepared by the UNDP, on 9 and 10 December 2008, two new contracts had been signed for the rehabilitation of the school and the cultural centre, at roughly the same cost of the original renovation. It would appear that the quality of the original work was so low that they effectively have to be rebuilt. An assessment report on the school dated 28 May 2008 identified numerous deficiencies in the workmanship and extensive repairs were required in order to remedy them.⁴¹ Furthermore, according to reports published by national newspapers in January 2009, the work carried out on the houses and the school was of very poor quality. In particular at the local school, the new toilets were unusable, and therefore the children continued to use the ancient outhouses and the wooden flooring installed in the school was already damaged.

34. Another important failure of the Program has been the non-completion of the industrial building that would enable the Roma to launch their entrepreneurial activities. The former President of NAR, Mr. Gruia Bumbu, informed an ERRC delegation in September 2008 that the centre would be equipped with weaving machines that Roma women would be trained to use, while the men would be trained in brick building (laying pavements in nearby villages etc).⁴² This, together with an absence of a local business plan,⁴³ clearly poses insurmountable obstacles to the Roma's chances of insertion into the local economic life.

³⁹ Throughout the duration of the Program there was very little certainty as to the number of houses that would be rebuilt/constructed within the Program and as to the identity of the beneficiaries. When representatives of the ERRC visited Hadareni in June 2007, they were informed by local officials that 36 houses would in fact benefit from investment under the Program.

⁴⁰ The list is available at

<http://www.undp.ro/download/files/projects/Hadareni/Hadareni%20Project%20Contracts%202007%20-%202008.pdf>

⁴¹ See Annex 7, op. cit. which also contains a report on the serious structural deficiencies identified in the local school before its delivery, dated 28 May 2008.

⁴² The UNDP Request for Quotation (RFQ) for "Design Services regarding 3 family houses, 1 medical/health village unit and one industrial building" notes that out of the 350 sq. meters of the building, 200 would be allocated for construction related activities while another 100 for textile-related ones.

⁴³ The formulation of such a plan will be within the mandate of the Business Development Expert (BDE), one of the UNDP-announced posts in September 2008.

35. The most paramount failure of the Program however is in the issue of housing, which was central in the two Moldovan judgments. To this day, the authorities have failed to provide adequate housing to the applicants and other victims of the pogroms.

First, it does not appear that the authorities have an accurate picture as to how many houses belonging to Roma living in Hadareni were destroyed or damaged and consequently as to how many would be entitled to housing rehabilitation, as well as their current state. However, the domestic proceedings provide a basis for evaluating the Government's Program.

36. According to the judgment of the Mureş Regional Court in the domestic proceedings, eighteen houses had been totally or partially destroyed,⁴⁴ thirteen of which belonged to the applicants in both cases.⁴⁵ As documented in the proceedings before the Court, prior efforts to rebuild were incomplete (affecting only eight houses) and marked by poor workmanship. According to the terms of the friendly settlement therefore, the Government should proceed at the very least with the rebuilding of the thirteen houses belonging to the applicants; moreover, given that the Government pledged to "implement... programs to rehabilitate housing and the environment *in the community*", the ERRC respectfully submits that the Government obligation with regard to housing extends beyond the applicants. Therefore, the Government should proceed with the reconstruction/renovation even of those houses not belonging to the applicants, i.e. of the eighteen houses that had been totally or partially destroyed, as noted by the Mureş Regional Court in its judgment. The ERRC notes that at least until 1995, the rebuilding of at least three of the houses was not stalled due to lack of funds but primarily because of the reluctance of local authorities, informed by racist considerations,⁴⁶ to proceed with their reconstruction.

37. It is against this background that the housing component of the Program is to be assessed. A total of 710,184 RON (200,000 euros) were to be spent on the renovation/construction of twenty houses. 150,000 euros (namely three quarters of the total funds allocated for housing) were to be spent in 2006, another 45,000 in 2007 and the remainder in 2008. One would therefore expect that 15 houses would have been renovated/constructed by the end of 2006 (thereby addressing the housing needs of most of the homeless Roma), another four in 2007 and the last one in 2008. Yet according to the October 2008 letter by NAR, three houses were to be constructed while another ten were in need of renovation. In other words, as of the end of 2008, only seven houses had been renovated according to NAR (and only six according to UNDP).⁴⁷ Moreover, there are reports that some of the houses constructed/renovated do not belong to Roma. Because no list with the names of the beneficiaries of the renovation work has been published, this cannot be confirmed. While the ERRC does not consider that non-Roma should not benefit from the Program, it considers it unacceptable that the victims of the 1993 events were not accorded priority in terms of their housing rehabilitation.

38. The reasons for the failure of the Program are manifold. Although the Program was supposed to take place over a period of three years, due to the various shortcomings

⁴⁴ *Moldovan No. 1*, op. cit., § 25. It should be noted that according to other information, a total of thirteen Roma houses had been totally destroyed while several more had been very badly damaged. *Ibid.*, § 15.

⁴⁵ *Moldovan No. 2*, op. cit., § 19.

⁴⁶ The Court considered the Mayor's statements as "purely discriminatory". See *Moldovan No. 2*, § 111.

⁴⁷ See above, § 14.

noted below, work was effectively carried out for less than nine months altogether – the final three months of each year, the period which is the least favorable to major construction work due to adverse weather conditions.

39. The large gaps in Program implementation can be attributed to administrative incompetence and the failure of the Government to allocate the necessary funds in a timely manner. While it is not known to which extent, if at all, this failure was brought about by the shortcomings of the NAR, ultimate responsibility for the implementation of the program rested with the Government.⁴⁸ The latter should have, at the very least by the end of 2007, identified the difficulties faced by the NAR and either relieved it of its duties or provided it with the necessary assistance (in terms of funding, staff etc.) in order to enable it to perform its duties. Not only this did not happen, but the Government failed to release the 2008 funds in time as well. In hindsight however, its most important failure was to recognise that the NAR lacked the administrative capacity to complete the important tasks it was allocated. In particular, the Government should not have entrusted the supervision of construction projects to an organization that did not have experience in such matters.

40. The drafters of the Program had put in place a monitoring and evaluation procedure, while the payment of the funds was made contingent on the filing of financial reports. However, this procedure was fundamentally flawed because it vested responsibility for monitoring and implementation in the same body, the NAR; there was no provision for independent oversight. The NAR was assigned the task of coordinating, administering and monitoring the Program; the funds were not allocated by the state to the beneficiaries directly but through the NAR, while the latter was also charged, together with the competent agencies, with drafting the implementation, monitoring and evaluation procedures.⁴⁹ The palpable failure of the Program is in itself proof of the total breakdown of the monitoring and evaluation mechanisms. Due to the administrative incapacity of the NAR, implementation of the Program was effectively stalled throughout 2007.

41. To this date, no evaluation of the strengths and weaknesses of the Program has been undertaken, while in fact authorities have sought to minimize the importance of glaring omissions: referring to the delay in allocating 2008 funds until October 2008, the representative for NAR called this a “small error” on the part of the Government.⁵⁰ It would appear that there was a significant lack of coordination between the various agencies involved, even in very technical issues such as the transfer of funds. The ERRC respectfully agrees with the UNDP that “the Hadareni experience demonstrates that timely allocation of necessary resources and strengthened partnerships between central authorities, local authorities and beneficiary communities are essential.”⁵¹ However the importance of the above-mentioned parameters was highlighted in the instant case due to their absence, which led to the total failure of the program.

42. While the failure to provide adequate housing and other infrastructure is the most important shortcoming to date, the other activities supposedly carried out under the

⁴⁸ See Decision on the Merits, *European Roma Rights Centre (ERRC) v. Greece*, Complaint No. 15/2003, 3 June 2008, §§ 29, 42.

⁴⁹ GD 523/2006, *op. cit.*, p. 9.

⁵⁰ See Annex 8, *op. cit.*

⁵¹ UNDP Press Release, 27 January 2009, “UNDP Experience with Hadareni and Commitment Re-affirmed”, available at <http://www.undp.ro/download/files/projects/Hadareni/UNDP%20Experience%20with%20Hadareni%20and%20Commitment%20Re.pdf>

Program (public information, civic education, preventing and combating discrimination), have not yielded any tangible results. These activities were treated by the authorities as “one-off” activities that were concluded by the end of 2006, notwithstanding the fact that under the revised 2007 similar activities were budgeted for 2007 and 2008.

43. Recent developments support the tenor of ERRC’s contentions. According to a recent article, the Prefect of Mures County launched an administrative inquiry into the Hadareni program; according to reports he received from the Mayor of Chețani (to which Hadareni administratively belongs), whereas the construction company that had won a construction tender had received payment, it had literally disappeared (it was mentioned that the mayor could not raise the company’s representative on the phone) while the work it had performed was of sub-standard quality. Furthermore, the Prefect stated his office had not yet received from UDNP the annual reports for 2007 and 2008, which have to include the activities of the program, the outcomes and the impact of the activities, as well as the financial accounts, including supporting documents for 2007 and 2008.⁵²

44. In conclusion, **the Government has failed to address, first and foremost, the housing situation of the Roma in Hadareni.** Sixteen years after the events, following two judgments of the European Court of Human Rights and the nominal conclusion of a three year program, the housing problems of more than half the Roma victims have still not been adequately dealt with. Furthermore, the non-implementation of the local economic plan means that the Roma have not been afforded the opportunity of acquiring some basic vocational skills that would enable them to find employment and use their earnings in securing decent accommodation for their families. The persistent and lingering failure of the authorities to address adequately the problems of the Roma community of Hadareni not only has a pernicious effect on their integration into the local society but also heightens their anxiety regarding the true commitment of the authorities in discharging their obligations under the two Moldovan judgments.

⁵² See Annex 8, op. cit.

VI. The Program in Relation to Plăieșii de Sus and Casinul Nou Communities

45. The Court struck out of its list of cases the Kalanyos and Gergely applications in consideration of the unilateral undertakings made by the Romanian Government and despite the vehement opposition and concern expressed by the applicants at the time. The applicants argued that the general measures proposed by the Government, and which were practically copied from the Moldovan 1 friendly settlement, failed to take into account the special circumstances of the communities of Plaiesii de Sus and Casinul Nou, and would be largely ineffective. Furthermore, the applicants argued that the Hadareni Program was in an early phase of its implementation and therefore could not yet be taken as evidence of the Government's good faith; and that in any case the Hadareni Program already displayed considerable shortcomings which did not fare well for the implementation by the Government of its undertakings with regard to Plaiesii de Sus and Casinul Nou.⁵³

46. The judgments in Kalanyos and Gergely cases were rendered final on 26 July 2007, a date by which the Hadareni Program was under implementation for almost one year. As a result, one would expect that the Government would benefit from the Hadareni experience and proceed with all the stages of the implementation of the development programs in Casinul Nou and Plaiesii de Sus much more rapidly than happened in Hadareni. This, however, has not been the case. To this day, no program in relation to the two communities along the lines of the Hadareni Program exists. Indeed, in its OSCE / HDIM 7 October 2008 statement, the Government effectively admitted that that no such programs existed and that, depending on the success of the Hadareni one, the latter would serve as a model.⁵⁴

47. The Government put forth at least two reasons for this delay, but neither may serve as an adequate justification for what is already an inexcusable delay in the implementation of its commitments.

48. The NAR – the agency which by virtue of its involvement in the Hadareni Program took responsibility for the Gergely/Kalanyos implementation – hoped to achieve its objectives through a project carried out by the Romanian Fund for Social Development ("RFSD").⁵⁵ The project – the "Priority intervention program for poor Roma communities" – is part of the wider government-sponsored Romanian Social Inclusion Project planned to take place between 2007 and 2011. Within the project, the RFSD is entrusted with the financing of the poorest 100 communities in Romania with a prevalent Roma population for solving major problems of infrastructure and social services. Although the NAR proposed the Romani communities of Plaiesii de Sus and Casinul Nou for inclusion in the program, the RFSD did not include them among the beneficiaries of funding. The Government's obligation to implement the commitments it took before the Court in relation to the Gergely and Kalanyos cases are binding and their fulfillment may not depend on the willingness of a private agency to provide assistance. It is up to the Government now to identify adequate alternatives for compliance.

⁵³ See Annex 10, ERRC submission to the Court regarding the potential striking out of the cases, dated 26 January 2007.

⁵⁴ OSCE Human Dimension Implementation Meeting 2008, Working Session 6: Tolerance and non-discrimination I, *op. cit.*, p. 5.

⁵⁵ See Annex 4, *op. cit.*

49. The second reason for the delay, which became apparent during the 2006 visit of ERRC representatives in Plaiesii de Sus, and confirmed from various official sources, is the active opposition of local authorities in Plaiesii de Sus to any provision of support for the local Romani community. This harks back to the concerns expressed by the applicants before the Court prior to the strike out judgments regarding the specificity of the situation in Plaiesii de Sus and Casinul Nou and is related to the specific ethnic make-up of the local area and the high level of hostility between the Hungarian majority and the Romani minority. But lack of cooperation from local authorities may not constitute an excuse for non-implementation. On the contrary, this is an additional argument against further procrastination and for increased efforts from the Government to address the situation in Plaiesii de Sus/Casinul Nou.

50. The only development so far has been the adoption of Governmental Decision 1283 of 8 October 2008.⁵⁶ The preamble to the decision makes explicit reference to the responsibilities undertaken by the Government before the European Court of Human Rights in the field of protection of human rights and particularly of the rights of the Roma minority, and consisting of the adoption of general measures regarding the prevention and combating of discrimination, the stimulation of the Roma community's participation in the local social, economic and cultural life and so forth. These measures are directed to the members of the local communities of Plăieșii de Sus and Casinul Nou. The decision lays down a two year program, to be financed and administered by the National Council for Combating Discrimination (CNCD). The decision contains a meticulous description of the various activities planned (mostly consisting of information campaigns, workshops and seminars with local judicial, educational and police officials and so forth), their timeframe as well as their estimated cost. Article 5 of Annex 2 requires the drafting of a study regarding the required infrastructure interventions in the two communities; the study is expected to be completed by July 2009 and presumably shortly thereafter (and depending on the findings of the report) the implementation of the programs will commence.

51. In conclusion, almost two years following the issuing of the judgment in the *Kalanyos and Others v. Romania* and *Gergely v. Romania* cases, the respective programs are effectively still on the drawing board.

⁵⁶ Official Journal Volume 1, no. 700, dated 15 October 2008.

VII. Conclusions

52. The ERRC has adduced strong evidence that the Hadareni Program has ultimately failed to meet even the most basic of its objectives; at the same time, the Government has not to this day undertaken any evaluation as well as an impact assessment of the program in order to identify its shortcomings and ensure that they will not be replicated in the future, in light of their systemic nature. While it is true that the UNDP has suggested that the program be extended for another year,⁵⁷ a suggestion the ERRC welcomes, to this day the Government remain silent on this. In any case, the ERRC is concerned that even if the Government extends the program until the end of 2009 as UNDP has suggested, the program will likely run into the same obstacles caused by bureaucratic inertia and lack of effective administration that caused it to fail in the first place. As a result, the ERRC considers it imperative that a thorough investigation into the failings of the program be conducted so that similar shortcomings be avoided in the future.

53. The ERRC is equally concerned about the progress of the respective programs in the Plăieșii de Sus and Casinul Nou communities. Although the involvement of NCCD is an important safeguard, it is not known what role (if any) it will subsequently play in the programs' implementation.

54. In the light of the above, the 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 them in the context of the aforementioned four cases. Given the long period from the issuing of the judgments until today and in light of the nominal conclusion of the Hadareni Program, the Government cannot justify its failure to comply with its obligations by arguing that the ERRC's allegations are premature. At the same time, the fact that the failure should be attributed to the systemic malfunctioning of the whole bureaucratic apparatus involved in the Hadareni Program 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 welcomes the recent statement by the Romanian President Basescu, that "Beyond the formal adhesion to general principles, we are lacking such concrete measures to help the Roma community overcome difficulties it is in", adding that "Solutions exist, but implementing them depends mostly on the active involvement of the state institutions."⁵⁸ The statement represents an accurate assessment of the reasons behind the failure of the Hadareni Program.

⁵⁷ In early January 2009, UNDP noted on its website that the "Hadareni Program's" implementation would continue in 2009; UNDP would administer the funds until 31 December 2009, when the program would end. The budget for 2008-2009 was estimated at 1,035,171 USD, with UNDP contributing 90,000 USD (see http://www.undp.ro/download/files/projects/Hadareni/Hadareni%20Project%20Document%20in%20EN%202008-2009_1st%20pager.pdf)

⁵⁸ See article in the *Financiarul* newspaper, issue of 21 February 2009, available in English at <http://www.financiarul.ro/2009/02/21/president-basescu-we-are-lacking-concrete-measures-to-help-roma-people-overcome-difficulties/>