

THIRD SECTION

**CASE OF GEORGEL AND GEORGETA STOICESCU v. ROMANIA**

*(Application no. 9718/03)*

JUDGMENT

STRASBOURG

26 July 2011

*This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.*

**In the case of Georgel and Georgeta Stoicescu v. Romania,**

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

Josep Casadevall, *President*,

Corneliu Bîrsan,

Alvina Gyulumyan,

Egbert Myjer,

Ineta Ziemele,

Luis López Guerra,

Mihai Poalelungi, *judges*,

and Santiago Quesada, *Section Registrar*,

Having deliberated in private on 5 July 2011,

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

PROCEDURE

1. The case originated in an application (no. 9718/03) against Romania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by two Romanian nationals, Mr Georgel Stoicescu and Mrs Georgeta Stoicescu, on 10 January 2001.

2. The Romanian Government (“the Government”) were represented by their Agent, Mr Răzvan Horațiu Radu, of the Ministry of Foreign Affairs.

3. The applicants alleged, in particular, a breach of their rights guaranteed by Article 3, 8 and 6 of the Convention.

4. On 11 May 2006 the Court declared the application inadmissible in respect of the applicant Georgel Stoicescu and decided to communicate the application to the respondent Government solely in respect of the applicant Georgeta Stoicescu. Under the provisions of former Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

5. On 10 September 2008 Mr Georgel Stoicescu informed the Court that his wife, Mrs Georgeta Stoicescu, had died on 29 December 2007 and that he wished to pursue the proceedings as her legal heir. For practical reasons, Mrs Georgeta Stoicescu will continue to be called “the applicant” although this qualification should be attributed to her heir (see *Dalban v. Romania* [GC], no. 28114/95, § 1, 28 September 1999).

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1929. She was retired and living in Bucharest before her death on 29 December 2007.

7. On 24 October 2000 the applicant, aged 71 at the time, was attacked, bitten and knocked to the ground by a pack of around seven stray dogs in front of her home in the Pajura neighbourhood, a residential area in Bucharest. As a result of the fall, the applicant suffered a head injury and fractured her left thigh bone which required four days’ hospitalisation in the CFR Hospital in Bucharest. After being discharged from hospital she was prescribed medical treatment which proved to be too expensive for her.

8. Following the incident, the applicant started suffering from amnesia and shoulder and thigh pains and had difficulty walking. In addition, she lived in a constant state of anxiety and never left the house for fear of another attack. By the year 2003 she had become totally immobile.

9. At the time of the incident the applicant and her husband were retired and their entire monthly income amounted to the equivalent in Romanian lei (ROL) of 80 euros. They claim that this amount was wholly insufficient for her medical treatment, and that they had to live at subsistence level. As a result, the applicant had lost weight.

10. The applicant’s state of health continued deteriorating with the result that two and a half years after the incident, on 4 June 2003, she was declared disabled by a medical panel of the Bucharest Local Council and was offered financial aid and free access to medical assistance and medicines.

#### *1. The civil action for damages against the Bucharest City Hall*

11. On 10 January 2001 the applicant, represented by her husband, filed a civil action with the Bucharest District Court (*Judecătoria Sectorului 1*) requesting damages of ROL 100,000,000 (EUR 4,000) under the provisions of the Civil Code on civil liability for torts, and claiming that, as a result of the attack, she had become disabled. The applicant filed the action against the Bucharest Mayor’s Office because, according to the words embossed on the stamp used on a letter from the Animal Control Agency (*Administrația pentru Supravegherea Animalelor* - ACA), the latter was a body under the authority of the Mayor’s Office.

12. At the first hearing the court noted that the applicant had not paid the statutory court fee and ordered the payment of ROL 6,145,000 (EUR 250). Being unable to pay this sum, which amounted to her entire

family income for four months, the applicant paid only ROL 500,000 (EUR 20), which she borrowed from various acquaintances.

13. By a judgment of 6 March 2001 the court declared the applicant's civil action invalid for non-payment of the full court fee.

14. On 19 June 2001 the Bucharest County Court (*Tribunalul Bucuresti*) allowed an appeal by the applicant against the judgment of 6 March 2001. The County Court held that the first-instance court should have decided the case within the limits of the court fee paid and that in any event, the applicant was exempted by law from paying a court fee for this type of action. The court further held that the amount already paid should have been treated as a deposit, to be returned at the end of the proceedings. With respect to the merits of the case, the court held that the ACA, a public body under the authority of the Bucharest Mayor's Office, had indeed not taken all necessary measures to avoid endangering the lives of the population and to preserve their health and physical integrity, and had thus violated the provisions of Bucharest Municipal Council decision no. 38/1996. According to that decision, the ACA had a duty to capture, control and sterilise all stray dogs in order to prevent any danger they may pose to the life, health and physical integrity of the population. The court further held that the attack had endangered the applicant's life and health, causing her physical and psychological suffering and depriving her of a normal life because she was so traumatised that she did not dare leave her apartment for fear of another attack.

Lastly, the County Court ordered the Bucharest Mayor's Office to pay the applicant non-pecuniary damages, within the limits of the deposit paid, namely, ROL 10,000,000 (approximately EUR 400), which was 10% of the damages claimed by the applicant.

15. The Bucharest City Hall lodged an appeal on points of law (*recurs*) against the judgment of 19 June 2001, claiming that it did not have legal capacity as defendant because the ACA was placed under the authority of the Bucharest Municipal Council, and not the Bucharest Mayor's Office.

16. By a final judgment of 17 December 2001, the Bucharest Court of Appeal allowed the appeal on points of law and dismissed the applicant's action on the grounds that it had been lodged against a party who did not have legal capacity as defendant. The court found that the ACA had been created by decision no. 38/1996 of the Bucharest Municipal Council and that therefore the latter institution was the one against which the applicant should have brought her court action.

## *2. The civil action for damages against the ACA and the Bucharest Municipal Council*

17. On 28 June 2002 the applicant, represented by her husband, filed a civil action with the Bucharest District Court requesting damages of ROL 50,000,000 (EUR 2,000) from the ACA and the Bucharest Municipal Council. The applicant did not pay the court fee.

18. On 3 December 2002 the Bucharest District Court dismissed the action, holding that the Bucharest Municipal Council did not have legal standing as defendant. With regard to the ACA, the court found that on 31 October 2001 the Municipal Council had adopted decision no. 287 by which the ACA was closed down and the control of stray dogs was transferred to the mayor's offices of the six Bucharest districts.

19. By a final judgment of 13 March 2003, the Bucharest Court of Appeal dismissed an appeal on points of law lodged by the applicant and upheld the judgment of the first-instance court.

## II. RELEVANT DOMESTIC LAW

### **A. Relevant legal provisions passed by the Government or Parliament**

#### *1. General organisation of the local administration*

20. Under section 5 of the Local Public Administration Act of 1991 (Law no. 69/1991), local self-

government was conferred on the local councils as legislative authorities and the mayor's offices as executive authorities.

21. That Act was replaced on 23 April 2001 by a new Local Public Administration Act (Law no. 215/2001). Section 21 of that Act provides:

“The local public administration authorities which ensure local self-government in municipalities and towns are the municipal authorities and the local town councils as legislative authorities, and the mayors' offices as executive authorities.”

## 2. *The services in charge of stray dogs*

22. Section 39 of Law no. 60 of 29 October 1974 provided that the local authorities of each department were in charge of ensuring proper veterinary activity and thus entitled, *inter alia*, to “organise the capture and destruction of stray dogs”.

23. Section 39 of Law no. 60/1974 was amended on 28 August 1998 to provide that the local authorities were in charge of “organising the capture of stray dogs and employing, for this purpose, specific techniques authorised by international veterinary norms”.

24. On 13 December 2001 Emergency Decree no.155/2001 on the stray dogs management programme entered into force. Its relevant provisions provide:

“1. The local councils must create, within 30 days from the entry into force of this decree, specialised services in order to manage the stray dogs situation.

[...]

4. Stray dogs shall be captured and transported to the shelters of specialised services set up for [this purpose], where they will be kept for up to seven days [...].

5. (1) Following an examination by the veterinary doctor, any stray dogs that are aggressive or suffer from chronic or incurable illnesses shall be euthanised immediately [...].

[...].

7. (1) Dogs which have not been claimed or adopted after the expiry of the seven-day time-limit referred to in Article 4 above shall be euthanised.

[...].”

25. Section 1(2) of Law no. 205/2004 on the protection of animals, which entered into force on 24 June 2004, provided that the rules governing stray dogs on the territory of Romania would be adopted by means of a specific law.

26. On 15 January 2008 Law no. 9/2008, amending Law no. 205/2004, entered into force. It forbade, *inter alia*, the euthanasia of stray dogs.

27. In November 2009 a draft Law on stray dogs was put on the agenda of Parliament. The draft, which provided, *inter alia*, for a duty on the authorities to capture and euthanise all stray dogs in order to preserve the safety and health of the population, was rejected by the Senate on 25 November 2009.

It is currently pending before the Chamber of Deputies, without any date set for its discussion so far, according to the web page of the Romanian Chamber of Deputies.

## **B. Relevant specific regulations in force in the City of Bucharest**

28. Article 1 of Decision no. 38 of 2 January 1996 of the Bucharest Municipal Council on the breeding, maintenance and circulation of animals in Bucharest provides as follows:

“With effect from the date of the present decision, the Municipal Knackers Service shall be renamed the Animal Control Agency, a public body with legal status functioning under the authority of the Bucharest Municipal Council and staffed by 33 to 50 employees.”

29. Annex no.1, Chapter 1, of Decision no. 75 of 16 May 1996 of the Bucharest Municipal Council on the breeding, maintenance and circulation of animals in Bucharest provides, in its relevant parts, as follows:

“a) The service provider within the Animal Control Agency has a duty to capture stray dogs on the basis of written complaints received from private or legal persons.

...

c) The captured animals shall be sterilised, vaccinated, disinfested and identified in an integrated database, with the exception of those that are to be euthanised.

d) Dogs shall be returned to the area in question upon request by the community (private or legal persons); these dogs shall have the protected status of community dogs (*câini comunitari*).

e) Responsibility for community dogs shall be assumed by the community requesting the dogs' return.”

30. Article 2 of Decision no. 82 of 19 April 2001, issued by the Bucharest General Council regarding the programme for the sterilisation of stray dogs in Bucharest, provides:

“Bearing in mind that the Animal Control Agency is placed under the authority of the Bucharest General Council, the analysis, supervision and monitoring of compliance with the programme for the sterilisation of stray dogs in Bucharest shall henceforth be entrusted to the commission created for this purpose by Decision no.149/2000 ....”

31. Article 1 of Decision no. 287 of 31 October 2001 of the Bucharest Municipal Council on the improvement of the ACA's activities provides:

“The Animal Control Agency shall cease its activity with effect from 15 November 2001.

From that date onwards, the organisation, control and monitoring of animals shall be undertaken by the mayor's offices of Bucharest districts nos. 1 to 6, each within its own area of authority.”

32. Article 1 of Decision no. 105 of 10 April 2003 of the Bucharest Municipal Council on the functioning of the ACA provides as follows:

“With effect from 15 April 2003, the Animal Control Agency, as a legal person having the aforesaid purpose, shall be placed under the authority of the Bucharest Municipal Council.”

### III. RELEVANT INTERNATIONAL INSTRUMENTS AND OTHER REPORTS

#### A. Relevant instruments of the Council of Europe

33. Article 12 of the European Convention for the Protection of Pet Animals, ratified by Romania on 6 August 2004 (ETS no.125 – Strasbourg, 13 November 1987), provides:

##### Article 12 – Reduction of numbers

“When a Party considers that the numbers of stray animals present it with a problem, it shall take the appropriate legislative and/or administrative measures necessary to reduce their numbers in a way which does not cause avoidable pain, suffering or distress.

a Such measures shall include the requirements that:

i if such animals are to be captured, this is done with the minimum of physical and mental suffering appropriate to the animal;

ii whether captured animals are kept or killed, this is done in accordance with the principles laid down in this Convention;

b Parties undertake to consider:

i providing for dogs and cats to be permanently identified by some appropriate means which causes little or no enduring pain, suffering or distress, such as tattooing as well as recording the numbers in a register together with the names and addresses of their owners;

- ii reducing the unplanned breeding of dogs and cats by promoting the neutering of these animals;
- iii encouraging the finder of a stray dog or cat to report it to the competent authority.”

## **B. Reports concerning the situation of stray dogs in Romania**

### *1. Media reports of stray dog attacks*

34. Since the mid-1990s the Romanian and foreign printed, on-line and audiovisual media have regularly reported on the large number of stray dogs on the streets and the problems that have ensued: attacks by stray dogs resulting in serious injuries to many people or even death in some cases; huge indignation caused in Romania and abroad by a number of actions taken by the authorities and with the purpose of euthanising some of the stray dogs; organisation of donation campaigns in favour of the sterilisation of stray dogs, and so on.

By the year 2000, the population of stray dogs in the city of Bucharest alone numbered some 200,000.

In March 2001 the mayor of Bucharest decided to have recourse to euthanasia, in the light of statistics for the city of Bucharest indicating that the population of stray dogs had doubled between 1996 and 2001; that in 2000 some 22,000 persons had received medical care following attacks by stray dogs; that from the beginning of 2001 more than 6,000 persons had been bitten by stray dogs; and that the persons most vulnerable to such attacks and seriously injured were children and elderly people. The international media widely reported on the mayor's attempt to tackle this issue, as well as on the other solutions envisaged by candidates in local elections throughout the country, and on the criticism of euthanasia measures by certain international public figures, such as the actress Brigitte Bardot, who in 2001 had donated some 100,000 euros to the City of Bucharest for the purpose of sterilising stray dogs instead of killing them.

The euthanasia campaign in Bucharest was stopped in 2003, after some 80,000 dogs had been euthanised.

In 2005 the media reported that the population of stray dogs had again risen alarmingly, and that between 40 and 50 complaints of dog attacks were being registered daily by the animal control service in the Bucharest City Hall.

The issue of the situation of stray dogs in Romania, as a public health issue, and the proposed ways of tackling it by legislative measures, was reportedly raised by various Romanian politicians with European Union bodies.

35. Specific incidents were also widely and regularly covered by the media from 2000. Thus, national newspapers such as *Evenimentul Zilei*, *Ziua* and *Adevărul* reported on their internet pages the death of a sixty-eight-year-old Japanese businessman after being bitten by a stray dog in the centre of Bucharest and the death of a two-year-old boy and a forty-five year old schizophrenic, both bitten by stray dogs in Craiova. Several news agencies, such as *Mediafax* and *Ziare.com*, and most newspapers reported on the death in similar circumstances of a six-year-old girl and of two other elderly persons in various major cities throughout Romania. In January 2011, an elderly woman was bitten to death by stray dogs in the centre of Bucharest.

36. According to the news agency *Hotnews*, the number of persons bitten by stray dogs in Bucharest has kept on increasing every year; for instance, it is reported that between November 2009 and February 2010, some 10,000 persons were bitten by stray dogs in Bucharest alone.

### *2. Official statistics of the Romanian authorities*

37. The Government have not submitted any official statistics or reports on the issue of stray dogs in Romania.

38. On 13 October 2009, the advisory body to the prefect, the Prefectural College, met and discussed, *inter alia*, the issue of stray dogs on the streets of Bucharest. In a statement published on the website of the

Bucharest Prefect's Office following this meeting, the prefect stated that the problem of stray dogs was not yet solved and mentioned that:

“... although they have been sterilised and have an identification microchip, they can still bite and therefore pose a threat to our health, our children's health and to visitors to Bucharest.”

The Prefect of Bucharest further stated that the data received from the Institute of Infectious Diseases of Bucharest were worrying and showed that a total of 9,178 persons had been bitten by stray dogs in Bucharest during the first six months of 2009, of which 1,678 were children. He also quoted a report by the Animal Control Agency, according to which 38% of the dogs collected by that authority from the streets of Bucharest in the first half of 2009 were infested with leptospirosis, an infectious disease transmissible to humans and which can cause meningitis, liver damage and renal failure.

39. On 2 February 2010, in a press release published on the website of the Bucharest Prefect's Office, the same prefect stated that there were almost 100,000 stray dogs in Bucharest and that more than 10,000 people were bitten every year.

40. In an interview of 27 April 2010 the prefect of Bucharest indicated that, according to the latest statistics, the number of stray dogs in the streets of Bucharest was between 40,000, according to the NGOs, and 100,000, according to the local administration, that in 2009 around 7,000 persons had been bitten in Bucharest by stray dogs, that in the first four months of 2010 the number of persons bitten by stray dogs was more than 2,000, and the costs for the treatment of these persons was about 400,000 euros per year. The prefect further indicated that he had proposed a draft law allowing the euthanasia of stray dogs in certain circumstances.

## THE LAW

### I. ADMISIBILITY

41. In their observations on the admissibility and merits submitted on 4 September 2006, the Government raised the preliminary objection that the applicant Georgeta Stoicescu lacked victim status and requested the Court to declare the application inadmissible in his regard.

42. The Court points out that, in its decision of 7 April 2006, it had already declared the application inadmissible with respect to the applicant Georgeta Stoicescu.

43. On 10 September 2008 Mr Georgeta Stoicescu informed the Court that his wife, Mrs Georgeta Stoicescu, had died on 29 December 2007 and that he wished to pursue the proceedings as her legal heir. Having regard to the extensive case-law on this issue (see, for instance, *Vocaturu v. Italy*, no. 11891/85, § 2, 24 May 1991, and *Dalban v. Romania* [GC], no. 28114/95, § 1, 28 September 1999), the Court considers that Mr Georgeta Stoicescu may continue the present application as spouse of the deceased applicant Georgeta Stoicescu.

44. Furthermore, the Court finds that the application, as it had been submitted by the applicant Georgeta Stoicescu, is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further considers that it is not inadmissible on any other grounds. It must therefore be declared admissible.

### II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

45. Relying on Articles 3 and 8 of the Convention, the applicant complained about the attack on her by a pack of stray dogs, submitting that this was due to the failure by the authorities to implement adequate measures against the numerous stray dogs in Bucharest, which were a danger for the safety of the inhabitants.

The Court considers that in the particular circumstances of the present case these complaints fall to be examined under Article 8 of the Convention, which reads, in so far as relevant:

“1. Everyone has the right to respect for his private ... life ...

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

## A. The parties' submissions

46. The applicant complained that the attack on her on 24 October 2000 by a pack of stray dogs constituted a breach of her right to physical integrity. The attack had had severe consequences for her state of health, which, having regard to her advanced age and lack of financial means to pay for medical care, had caused her serious physical and mental suffering. She alleged that the incident and its consequences were due to the lack of action on the part of the Romanian authorities to solve the problem of stray dogs and ensure the safety and health of the population. Accordingly, the State had failed in its positive obligations under Article 8 to protect the applicant's physical and moral integrity and prevent intrusion into her private life.

47. The Government denied that the State authorities bore responsibility for the attack suffered by the applicant. They considered that the State's responsibility for actions that were not directly attributable to its agents could not extend to all occurrences of accidents or natural catastrophes. They relied in this connection on the cases of *Oneryildiz v. Turkey* ([GC], no. 48939/99, ECHR 2004-XII), *Osman v. the United Kingdom* ([GC], no. 23452/94, 28 October 1998, *Reports of Judgments and Decisions* 1998-VIII), and *Ignaccolo-Zenide v. Romania* (no. 31679/96, ECHR 2000-I, 25 January 2000).

More specifically, they contended that the situation of stray dogs in Romania had deep and complex causes and therefore the responsibility for incidents such as the one in the instant case lay not only with the State, but also with society (private persons and NGOs). They pointed out that in 2000, when the incident had occurred, the canine population had been protected by the NGOs for the protection of animals and could not be euthanised. It was only in 2001 that the euthanasia of dogs had been made possible, and, as a result, the Bucharest authorities, with the aid of inspectors in the field, had taken the appropriate measures to prevent the occurrence of such incidents.

## B. The Court's assessment

### 1. General principles

48. While the essential object of Article 8 is to protect individuals against arbitrary interference by the public authorities, it does not merely compel the State to abstain from such interference since it may also give rise to certain positive obligations to ensure effective respect for the rights protected by Article 8 (see, among other authorities, *X and Y v. the Netherlands*, no. 8978/80, § 23, 26 March 1985). The positive obligations under Article 8 of the Convention may involve the adoption of measures designed to secure respect for private life even in the sphere of the relations of individuals between themselves (see, amongst others, *Stjerna v. Finland*, no. 18131/91, § 38, 25 November 1994, and *Botta v. Italy*, no. 21439/93, § 33, 24 February 1998).

49. The Court has previously held, in various contexts, that the concept of private life includes a person's physical and psychological integrity and that the States have a positive obligation to prevent breaches of the physical and moral integrity of an individual by other persons when the authorities knew or ought to have known of those breaches (see *X and Y v. the Netherlands*, cited above, §§ 22 and 23; *Costello-Roberts v. the United Kingdom*, no. 38719/97, § 118, 10 October 2002; and *M.C. v. Bulgaria*, no. 39272/98, §§ 73



and 149, ECHR 2003-XII.). The Court has also held that a positive obligation exists upon States to ensure respect for human dignity and the quality of life in certain respects (see *L. v. Lithuania*, no. 27527/03, § 56, 11 September 2007, and, *mutatis mutandis*, *Pretty v. the United Kingdom*, no. 2346/02, § 65, ECHR 2002-III).

50. Furthermore, in its recent ruling in *A.B. and C. v. Ireland* ([GC], no. 25579/05, 16 December 2010, §§ 247-249, with further references), the Court reiterated the following principles on the notion of positive obligations:

“247. The principles applicable to assessing a State’s positive and negative obligations under the Convention are similar. Regard must be had to the fair balance that has to be struck between the competing interests of the individual and of the community as a whole, the aims in the second paragraph of Article 8 being of a certain relevance (*Gaskin v. the United Kingdom*, 7 July 1989, § 42, Series A no. 160; and *Roche v. the United Kingdom* [GC], cited above, § 157).

248. The notion of “respect” is not clear cut especially as far as positive obligations are concerned: having regard to the diversity of the practices followed and the situations obtaining in the Contracting States, the notion’s requirements will vary considerably from case to case (*Christine Goodwin v. the United Kingdom* [GC], cited above, § 72).

Nonetheless, certain factors have been considered relevant for the assessment of the content of those positive obligations on States. Some factors concern the applicant: the importance of the interest at stake and whether “fundamental values” or “essential aspects” of private life are in issue (*X and Y v. the Netherlands*, 26 March 1985, § 27, Series A no. 91; and *Gaskin v. the United Kingdom*, 7 July 1989, § 49, Series A no. 160); and the impact on an applicant of a discordance between the social reality and the law, the coherence of the administrative and legal practices within the domestic system being regarded as an important factor in the assessment carried out under Article 8 (*B. v. France*, 25 March 1992, § 63, Series A no. 232-C; and *Christine Goodwin v. the United Kingdom* [GC], cited above, §§ 77-78). Some factors concern the position of the State: whether the alleged obligation is narrow and defined or broad and indeterminate (*Botta v. Italy*, 24 February 1998, § 35, *Reports of Judgments and Decisions* 1998-I); and the extent of any burden the obligation would impose on the State (*Rees v. the United Kingdom*, 17 October 1986, §§ 43-44, Series A no. 106; *Christine Goodwin v. the United Kingdom* [GC], cited above, §§ 86-88).”

51. The obligation to adopt appropriate measures must be interpreted in a way that does not impose an impossible or disproportionate burden on the authorities. For the Court, not every claimed risk to the physical integrity can entail for the authorities a Convention requirement to take operational measures to prevent that risk from materialising. In the opinion of the Court, it must be established to its satisfaction that the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life or the physical integrity of an identified individual and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk (see *Amaç and Okkan v. Turkey*, no. 54179/00, 54176/00, § 46, 20 November 2007; *mutatis mutandis*, *Osman* cited above, §§ 116 and 121, and *Berü v. Turkey*, no. 47304/07, § 39, 11 January 2011).

52. Lastly, the Court has held that if the infringement of the right to life or to physical integrity is not caused intentionally, the positive obligation to set up an “effective judicial system” does not necessarily require criminal proceedings to be brought in every case and may be satisfied if civil, administrative or even disciplinary remedies were available to the victim (see, for example, *Vo v. France* [GC], no. 53924/00, § 90, ECHR 2004-VIII, and *Mastromatteo v. Italy* [GC], no. 37703/97, §§ 90 and 94-95, ECHR 2002-VIII).

## 2. Application of those principles to the present case

53. The Court notes at the outset that the applicant was attacked, bitten and knocked to the ground by a pack of about seven stray dogs in a residential area of Bucharest.

Undoubtedly, that attack and its consequences caused the applicant serious physical and psychological suffering (see paragraphs 7 to 10 above).

54. The Court further notes that the problem of stray dogs, regularly mentioned in the media after 1989, developed dramatically and became a public health and safety issue, having regard to the large number of

persons attacked and injured by these dogs (see paragraphs 34 to 36 above).

55. Accordingly, the question to be determined by the Court is whether the facts of the case disclose a failure by the authorities of the respondent State to protect the physical and psychological integrity of the applicant, in breach of Article 8 of the Convention.

56. It is not disputed between the parties that the authorities had broad and detailed information on this issue, in particular the large number of stray dogs in the city of Bucharest and the danger they represented to the physical integrity and health of the population. The data available to the authorities also confirmed the regular occurrence of such incidents in the City of Bucharest (see paragraphs 34 to 36 above).

57. In that connection the Court notes that it was in 2001, after the occurrence of the incident in the present case, that the authorities acknowledged the special situation regarding the population of stray dogs, and on 19 April 2001 issued Decision no. 82 of the Bucharest General Council, and Emergency Decree no. 155/2001 on the stray dogs management programme, which entered into force on 13 December 2001. Both legal acts provided for stray dogs to be captured and neutered or euthanised (see paragraphs 24 and 30 above).

58. The Court acknowledges that, even before the incident in the present case occurred, regulations were in force in Romania providing a legal basis for the creation of specific structures in charge of the control of stray dogs (see paragraphs 20, 22 and 23 above). These regulations were modified several times after the incident in 2000. The changes concerned mainly the organisation and supervision of the structures in charge of controlling the population of stray dogs, and the treatment reserved to these dogs after their capture.

However, it notes that, despite these regulations, the situation continued to be critical, with several thousands of persons being injured by stray dogs in the City of Bucharest alone (see paragraphs 34 to 36 above). The Court agrees with the Government in this context that responsibility for the general situation of stray dogs in Romania also lies with civil society.

59. It is not the Court's task to substitute itself for the competent domestic authorities in determining the best policy to adopt in dealing with problems of public health and safety such as the issue of stray dogs in Romania. In that connection it accepts that an impossible or disproportionate burden must not be imposed on the authorities without consideration being given in particular to the operational choices which they must make in terms of priorities and resources (see *Osman* cited above, § 116, and *Hajduová v. Slovakia*, no. 2660/03, § 47, 30 November 2010); this results from the wide margin of appreciation States enjoy, as the Court has previously held, in difficult spheres such as the one in issue in the instant case (see, *mutatis mutandis*, *Hatton and Others v. the United Kingdom* [GC], no. 36022/97, §§ 100-101, ECHR 2003-VIII, and *Oneryildiz* cited above, § 107).

In assessing compliance with Article 8, the Court must make an overall examination of the various interests in issue, bearing in mind that the Convention is intended to safeguard rights that are "practical and effective". This is also true in cases where a general problem for the society reaches a level of gravity such that it becomes a serious and concrete physical threat to the population.

The Court must also look behind appearances and investigate the realities of the situation complained of. That assessment may also involve the conduct of the parties, including the means employed by the State and their implementation. Indeed, where an issue in the general interest is at stake, which reaches a degree of gravity such that it becomes a public health issue, it is incumbent on the public authorities to act in good time, in an appropriate and consistent manner (see, *mutatis mutandis*, *Hutten-Czapska v. Poland* [GC], no. 35014/97, § 168, ECHR 2006-VIII). In its assessment, the Court accepts that the measures and actions to be adopted and taken are not an obligation of result, but an obligation of means.

60. In this context, the Court notes that the judgment of 19 June 2001 of the Bucharest County Court addressed the merits of the applicant's complaints. It held that the Animal Control Agency, a public body, had not taken all necessary measures to avoid endangering the lives of the population and to preserve their health and physical integrity, and that the attack on the applicant had put her life and health in danger, causing

her physical and psychological suffering and depriving her of a normal life on account of her fear of another attack.

However, the above-mentioned judgment was quashed for procedural reasons and the applicant's subsequent attempts to have a court decision providing her appropriate redress failed as well.

61. Furthermore, the Court observes that, apart from arguing that society in general should bear responsibility for the current situation of stray dogs in Romania, the Government have not provided any indication as to the concrete measures taken by the authorities at the time of the incident to properly implement the existing legislative framework with a view to addressing the serious problem of public health and threat to the physical integrity of the population represented by a large number of stray dogs. Neither have they indicated whether the regulations or practices at the time of the incident or adopted later were capable of providing appropriate redress for the cases of victims of attacks by stray dogs. In this connection, the Court notes that the above mentioned situation seems to persist (see paragraphs 34 to 36 above).

62. In the light of the foregoing, the Court finds that the lack of sufficient measures taken by the authorities in addressing the issue of stray dogs in the particular circumstances of the case, combined with their failure to provide appropriate redress to the applicant as a result of the injuries sustained, amounted to a breach of the State's positive obligations under Article 8 of the Convention to secure respect for the applicant's private life.

63. Accordingly, there has been a violation of that provision in the present case.

### III. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

64. The applicant complained that by dismissing her two civil actions for damages against the Bucharest local authorities the domestic courts had breached her right to a fair trial guaranteed by Article 6 § 1 of the Convention, the relevant part of which reads as follows:

“In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ...”

65. The Government contested that argument.

#### A. The parties' submissions

66. The Government claimed that the fact of establishing procedural costs which were proportional to the amounts claimed in civil proceedings could not, in itself, represent an impediment to the right of access to a court. They relied on the Court's case-law, for instance *Z. v. the United Kingdom* ([GC], no. 29392/95, § 93, ECHR 2001-V) and *Tinnelly Sons Ltd and Others and McElduff and Others v. the United Kingdom* (10 July 1998, § 72, *Reports of Judgments and Decisions* 1998-IV).

They stressed that, in any event, the applicant's case had been dealt with on the merits by the Bucharest County Court, which had also decided that the applicant was exempted from paying court fees. The fact that the judgment of 19 June 2001 of the Bucharest County Court was later quashed did not mean that the applicant was denied the right to a court, but merely that she had not lodged her case against the correct defendant.

67. The applicant complained that following the incident she had lived in a constant state of anxiety and was afraid to leave the house. Her psychological suffering had been aggravated by the impossibility of obtaining compensation and the authorities' response to her complaints, namely, the dismissal of her civil actions, the fact that she had been sent from one institution to another and had even lost the amount of money she had paid in court fees.

#### B. The Court's assessment

68. The Court reiterates that Article 6 § 1 of the Convention guarantees everyone's right to have his or her civil rights and obligations determined by a court. It thus enshrines a "right to a court", of which the right of access, namely the right to apply to a court in civil proceedings, is only one aspect. However, the "right to a court" is not absolute. It lends itself to limitations since, by its very nature, it requires regulation by the State, which may select the means to be used for that purpose. However, these limitations must not restrict exercise of the right in such a way or to such an extent that the very essence of the right is impaired. They must pursue a legitimate aim and there must be a reasonable proportionality between the means employed and the aim sought to be achieved (see, among other authorities, *Fayed v. the United Kingdom*, 21 September 1994, § 65, Series A no. 294-B; *Bellet v. France*, 4 December 1995, § 31, Series A no. 333-B; and *Levages Prestations Services v. France*, 23 October 1996, § 40, *Reports of Judgments and Decisions* 1996-V).

69. The Court has held that the amount of the fees, assessed in the light of the particular circumstances of a given case, including the applicant's ability to pay them and the phase of the proceedings at which that restriction has been imposed, are factors which are material in determining whether or not a person enjoyed his or her right of access to a court or whether, on account of the amount of fees payable, the very essence of the right of access to a court has been impaired (see *Tolstoy Miloslavsky v. the United Kingdom*, 13 July 1995, § 63, *Series 316-B*, and *Kreuz (no. 1) v. Poland*, no. 28249/05, § 60, ECHR 2001-VI).

70. Furthermore, the Court has considered to be excessive, and therefore impairing the very essence of the right of access to a court, high court fees, which were not justified by the applicant's financial situation, but calculated on the basis of a set percentage laid down by law of the sum at stake in the proceedings (see *Weissman and Others v. Romania*, no. 63945/00, §§ 39 to 42, ECHR 2006-VII).

71. Finally, the Court has held that when a public entity is liable for damages, the State's positive obligation to facilitate identification of the correct defendant is all the more important (see *Plechanow v. Poland*, no. 22279/04, § 109, 7 July 2009).

72. In the present case the Court observes that, theoretically, Romanian law afforded the applicant the possibility of bringing judicial proceedings for compensation under the Civil Code. The applicant availed herself of this possibility, claiming that the administration bore responsibility for the attack she had suffered. Despite her indigence, she had to pay court fees in order to have her case heard, but, given the domestic law providing that court fees be calculated on a percentage of the claims, she had to limit her claims before the domestic courts. Moreover, although the Bucharest County Court ruled on 19 June 2001 that the applicant was exempted from paying the court fee, the money she had paid on that account was never returned to her.

73. The Court further notes that even after partially overcoming the obstacle of the court fee, the applicant did not obtain a final ruling on the merits of her civil claim because her case was repeatedly dismissed without an examination of the merits, on the ground that she had failed to identify specifically the local authority supervising the body in charge of stray dogs: in the first set of proceedings the Bucharest Municipal Council and not the Bucharest mayor's office, and in the second set of proceedings, the Bucharest district mayor's offices and neither the Bucharest Municipal Council nor the ACA.

74. The Court observes that the fact of having access to domestic remedies only to be told that the action is dismissed as a result of interpretation of the legal capacity of a defendant authority, compared with that of one of its departments or executive bodies, can raise an issue under Article 6 § 1. The degree of access afforded by the national legislation and its interpretation by the domestic courts must also be sufficient to secure the individual's "right to a court", having regard to the principle of the rule of law in a democratic society. For the right of access to be effective, an individual must have a clear, practical opportunity to challenge an act that is an interference with his or her rights (see, *mutatis mutandis*, *Bellet*, cited above, § 36, and *F.E. v. France*, 30 October 1998, §§ 46 and 47, *Reports* 1998-VIII).

75. In this connection the Court notes that, according to both Local Administration Acts (no. 69/1991 and no. 215/2001), the mayor's offices are the executive bodies of the municipal councils, the latter being in charge of setting up services for stray dogs, while the former implement this specific policy. In the present

case the stamp on the paper issued by the ACA had the name of the Bucharest Mayor's Office embossed on it (see paragraph 11 above).

The applicant could therefore reasonably believe, and neither the Bucharest County Court in the first set of proceedings nor the defendant authority had stated otherwise, that the Bucharest's Mayor Office had legal standing before a court in a matter concerning the ACA's activity and responsibilities.

The Court therefore finds that, in the context of local organisational changes in the field of animal control, shifting onto the applicant the duty of identifying the authority against which she should bring her claim was a disproportionate requirement and failed to strike a fair balance between the public interest and the applicant's rights.

76. Consequently, the Court finds that the applicant did not have a clear, practical opportunity of claiming compensation in a court for the attacks suffered.

Therefore, in the light of all the above elements, the Court considers that the applicant did not have an effective right of access to a court. There has therefore been a breach of Article 6 § 1.

#### IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

77. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

##### **A. Damage**

78. The applicant submitted that she was entitled to non-pecuniary damages on account of the infringement of her right to physical integrity and private life but left the amount to the Court's discretion.

79. The Government contended that a finding of a violation of the Convention would in itself constitute sufficient just satisfaction.

80. The Court considers that the applicant must have suffered distress and psychological trauma resulting from the attack as well as from the shortcomings found in the authorities' approach in the present case, namely, dismissing her civil actions for damages and sending her from one institution to another without awarding compensation. Moreover, in assessing the suffering that the applicant must have been experienced regard must also be had to her dire financial situation, her advanced age and deteriorating state of health and to the fact that she was unable to benefit from free medical assistance and medicines until two and a half years after the incident.

In conclusion, the Court, having found a breach of the State's positive obligations under Article 8 of the Convention and of the applicant's right to a court under Article 6 § 1 of the Convention in the present case, therefore makes an assessment on an equitable basis as provided for by Article 41 of the Convention and awards the applicant EUR 9,000 in respect of non-pecuniary damage.

##### **B. Costs and expenses**

81. The applicant also claimed ROL 500,000 (EUR 20) in respect of expenses incurred before the domestic courts, namely, the court fee paid in order to file her first civil action with the Bucharest District Court.

82. The Government did not dispute the applicant's claim.

83. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are

reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 20 for costs and expenses in the domestic proceedings.

### **C. Default interest**

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

## **FOR THESE REASONS, THE COURT**

1. *Dismisses* unanimously the Government's preliminary objection;
2. *Declares* the application admissible unanimously;
3. *Holds* by six votes to one that there has been a violation of Article 8 of the Convention;
4. *Holds* unanimously that there has been a violation of Article 6 § 1 of the Convention;
5. *Holds* unanimously
  - (a) that the respondent State is to pay Mr Georgel Stoicescu, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the national currency at the rate applicable at the date of settlement, plus any tax that may be chargeable on these amounts:
    - (i) EUR 9,000 (nine thousand euros) in respect of non-pecuniary damage;
    - (ii) EUR 20 (twenty euros) in respect of costs and expenses;
  - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

Done in English, and notified in writing on 26 July 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada Josep Casadevall  
Registrar President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge López Guerra is annexed to this judgment.

J.C.M.  
S.Q.

**PARTLY DISSENTING OPINION OF JUDGE  
LÓPEZ GUERRA**

I concur with the Section's opinion concerning a violation of Article 6 § 1 of the Convention and the corresponding award of just satisfaction. However, I disagree with the Section's assessment with respect to a violation of Article 8 of the Convention on account of the Romanian authorities' alleged failure to act.

In my opinion, this assessment is the result of an undue extension of the concept of positive obligations. The judgment correctly makes reference to the Court's case-law in *Amac and Occan* (2007) and *Osman* (1998). As the judgments in those cases underscore, in order to determine that a member State has failed to fulfil its positive obligations, the Court ruled that the authorities must have had knowledge "of the existence of a real and immediate risk to the life or the physical integrity of an identified individual and have failed to take measures within the scope of their powers" (see paragraph 51 of the judgment). In the present case it is obvious that the authorities had no knowledge of the existence of a real and immediate, individual risk to the applicant, but were aware of a general situation of risk that might affect citizens in general, rather than only (and specifically) this individual applicant.

According to the Court's case-law, it is certainly justified to require the member State authorities to take action to prevent probable and immediate risks with respect to rights guaranteed under the Convention that affect specific and identified persons. But I do not deem warranted the present extension of this principle to demand that authorities adopt all necessary measures to protect all people from all forms of danger in general. The public powers are required to meet practically unlimited needs with inevitably limited means. They must provide vital services such as clean water, sewer systems, waste disposal, health care, traffic safety and public safety, among many others. And the number of victims of the faulty delivery of those services may be considerable. But it is the competent authorities of each country and not this Court who must establish priorities and determine preferences when allocating efforts and resources.

In the present case, the problem of stray dogs in Bucharest undoubtedly posed a fairly serious problem. But I believe that this Court does not have the jurisdiction to determine that it was precisely that problem that warranted preferential attention over other needs, and to find that the Romanian authorities violated Article 8 of the Convention by not giving priority to eradicating the problem of stray dogs.

In accordance with Romanian legislation, the County Court ruled that the competent administrative authorities had not taken adequate measures in this case and awarded the applicant 400 euros in damages (see paragraph 14). Subsequent judgments of other courts reversed that decision, depriving the applicant of that compensation, which this Court has hereby declared to be in violation of Article 6 § 1 of the Convention. In my opinion, the acknowledgement of that violation and the award of just satisfaction are sufficient redress for the infringement of the applicant's rights, which did not warrant giving an opinion concerning the Romanian authorities' obligations with respect to general policies.

GEORGEL AND GEORGETA STOICESCU v. ROMANIA JUDGMENT

GEORGEL AND GEORGETA STOICESCU v. ROMANIA JUDGMENT

GEORGEL AND GEORGETA STOICESCU v. ROMANIA JUDGMENT  
SEPARATE OPINION

GEORGEL AND GEORGETA STOICESCU v. ROMANIA JUDGMENT