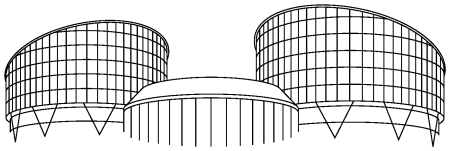

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF CIORCAN AND OTHERS v. ROMANIA

(Applications nos. 29414/09 and 44841/09)

JUDGMENT

STRASBOURG

27 January 2015

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 Ciorcan and Others v. Roumania,

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

Josep Casadevall, *President,*
Luis López Guerra,
Ján Šikuta,
Dragoljub Popović,
Kristina Pardalos,
Johannes Silvis,
Iulia Antoanella Motoc, *judges,*
and Marialena Tsirli, *Deputy Section Registrar,*

Having deliberated in private on 6 January 2015,

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

PROCEDURE

1. The case originated in two applications (nos. 29414/09 and 44841/09) against Romania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by thirty-seven Romanian nationals ("the applicants"), on 18 May 2009 and 11 August 2009 respectively. The applicants' details are set out in the table enclosed as an annex to this judgment. The applicants were represented by Mr O.L. Podaru, a lawyer practising in Cluj-Napoca.

2. The Romanian Government ("the Government") were represented by their Agent, Ms I. Cambrea, from the Ministry of Foreign Affairs.

3. The applicants, relying on Articles 2 and 3 of the Convention, alleged that the forceful and disproportionate intervention of State agents had put their lives in danger and subjected them to ill-treatment, and that the authorities had failed to conduct an effective investigation into the events in question. They further alleged that the events complained of had been the result of discriminatory attitudes towards people of Roma origin and entailed a violation of Article 14 of the Convention.

4. On 29 November 2011 the applications were communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants are thirty-seven Romanian nationals of Roma origin. They all live in the Apalina neighbourhood in the town of Reghin, Romania.

A. Background to the case

6. On 7 September 2006 at around 2.30 p.m. the applicant Augustin Biga and his friend C.A had a quarrel in a bar with R.O., a policeman who worked for the Mureş County police. Consequently, R.O. filed a criminal complaint against the two men, accusing them of insulting behaviour.

7. In the context of the investigation of the above-mentioned complaint, at around 4 p.m. the same day, the chief of the Mureş County police gave the order by telephone for several police officers to go to Apalina, the neighbourhood where Augustin Biga and C.A lived, in order to summon them before the prosecutor. He advised them to exercise particular caution, mentioning on the phone that it would be difficult to get there owing to a large number of people (several hundred) blocking the way armed with bats, pitchforks, axes and scythes, and that the law-enforcement authorities had been unable to secure the area. He also requested the assistance of officers from the local special forces police (*Detaşamentul de Intervenţie şi Acţiuni Speciale Mureş – DIAS*). According to the operation order completed by the chief of the local special forces unit on 7 September 2006, the reason for the request was "to ensure the protection of the policemen conducting an investigation for insulting behaviour towards policeman R.O."

8. Immediately afterwards, seven special forces officers (P.Ş., C.I., V.M., M.F., H.D.M., S.P. and G.P.J.) wearing special uniforms and masks covering their faces, together with two local police officers from the Reghin Police (B.M. and M.V.) and four plain-clothes officers from the investigations department of the Mureş County police (A.M., M.M., C.R.R. and S.C.L.) left for Apalina, taking a van and two cars.

B. Facts as submitted by the applicants

9. On 7 September 2006 around 5 p.m., on seeing the police vehicles, the applicants and other inhabitants of the neighbourhood, mostly women and children, started gathering in the street out of curiosity.

10. In order to disperse the crowd, the special forces officers threw several tear gas grenades, which sent everyone into a panic, pushing each other and running around in all directions. At that point the police officers

started shooting at the running crowd while backing up their vehicles and leaving the neighbourhood.

C. Facts as submitted by the Government

11. According to the prosecutor's decision of 16 July 2007 (see paragraph 51 below), shortly after the police officers arrived in the neighbourhood, the local residents started gathering and a fight broke out between them and the special forces officers, who were forced to use their weapons. The prosecutor gave details about the incident, noting that shortly after all the State agents (except the one driving the van) got out of their vehicles, they found themselves surrounded by eighty to a hundred people, who began to jostle against them and pull at their equipment. In the meantime, the police officers recognised the mother of Augustin Biga and told her they were going to summon her son for a hearing before the prosecutor. As this discussion was taking place, some of the policemen heard shouting and noticed that about a hundred Roma were attacking the special forces officers with bats, pitchforks, empty bottles and stones.

12. According to statements made by the special forces officers to the prosecutor, they initially used three defensive tear gas sprays. This only infuriated the crowd, who got even more aggressive and started to throw stones and bricks. Two of the officers then fired shots into the air. V.M. stated that since the Roma would not stop, he had fired his hunting weapon twice into the air. He was then attacked by ten people, who pulled at his clothes and hit him with sharp objects until he fell to his knees, at which point he fired rubber bullets into the crowd. The crowd then partially retreated.

13. The incident, as presented in the prosecutor's decision, continued with the State agents attempting to retreat while the Roma, hidden behind the houses, continued to throw stones, glass bottles and other objects at them.

14. As a result of the clash, six State agents suffered injuries which required medical treatment lasting between five and fourteen days (see paragraph 53 below).

D. Consequences of the incident

15. More than twenty-five Roma were reportedly injured and/or shot. Some of them were issued medical certificates confirming their injuries, which were considered to need between eight and forty-five days of medical treatment.

16. Ms Susana Ciorcan as well as the following twelve applicants suffered injuries confirmed by medical certificates:

1. Susana Ciorcan

According to her hospital observation sheet, Ms Ciorcan was shot in the stomach and was diagnosed with the following conditions: haemorrhagic shock, peritonitis, rupture of the iliac vein, rupture of the ureter, four traumatic lesions of the small intestine, and a lesion of the terminal ileum and colon. Following the incident, she underwent surgery and remained in hospital for eight days. Her forensic medical certificate issued on 11 October 2006 stated that the shooting had endangered her life, that she required forty to forty-five days of medical treatment, and that she and her aggressor had been face-to-face. Neither of the medical documents contained information about the type of bullet which might have caused her injuries.

2. Costel Ciorcan

According to his forensic medical certificate issued on 11 September 2006, he had several gunshot wounds in the right arm, left knee and left thigh, with six bullets remaining in his body. He underwent surgery on 8 September 2006 and six bullets were extracted from his wounds. He remained in hospital for three days. His injuries were considered to have been caused by rubber bullets and to require twelve to fourteen days of medical treatment.

3. Carol Ciorcan

According to his forensic medical certificate issued on 19 September 2006, he had an excoriation wound on the right cheek and a gunshot wound on the right elbow, with the bullet remaining in his body. His injuries were considered to have been caused by a rubber bullet and to require eight to nine days of medical treatment.

4. Ana Maria Paula Bidi (Beica)

According to her forensic medical certificate issued on 19 September 2006, she was shot in the left side of the thorax and also had a gunshot wound on her back in the left thorax area. Her wounds were considered to have been caused by rubber bullets and to require eight to nine days of medical treatment.

5. Denes Biga

According to his forensic medical certificate issued on 5 October 2006, he was shot in the right arm and the back right side of the chest, with several bullets remaining in his body. His injuries were considered to require twenty-two to twenty-four days of medical treatment. According to his

hospital observation sheet, he underwent surgery on 22 September 2006, but the doctors only managed to take out five rubber bullets from his chest.

6. Erika Biga

According to her forensic medical certificate issued on 8 September 2006 and hospital notes, she had multiple gunshot wounds in the right leg, with one bullet remaining in her body. Her injuries were considered to require sixteen to eighteen days of medical treatment. On 7 September 2006, she underwent surgery to have the bullet extracted. Neither of the medical documents contained information about the type of bullet which might have caused her injuries.

7. Ladislau Biga

According to his medical certificate issued by the hospital on 14 September 2006, he had gunshot wounds in the left chest and on the back of his thigh, with the bullets remaining in his body, and excoriation wounds on his right chest and arm. He underwent surgery on 13 September 2006 and several bullets were extracted. The medical document contained no information about the type of bullet which might have caused his injuries.

8. Rozalia Bucunea

According to her forensic medical certificate issued on 11 September 2006, she had a gunshot wound in the left side of the chest and three gunshot wounds in the left thigh, with two rubber bullets remaining in her body, and two contusions in the umbilical region. She was considered to require eleven to twelve days of medical treatment. On 8 September 2006, she underwent surgery to have the bullets extracted.

9. Petru Kalanyos Jr

According to his forensic medical certificate issued on 11 September 2006, he had a wound beneath the left eye which could have been caused by being hit with a hard object. He was considered to require three to four days of medical treatment.

10. Traian Kovacs

According to his forensic medical certificate issued on 19 September 2006, he had an excoriation wound in the left zygomatic region and several wounds and ecchymosis on the right side of the thorax and on the abdomen which could have been caused by being shot with rubber bullets. He was considered to require eight to nine days of medical treatment.

11. Mihai Moldovan Jr

According to his forensic medical certificate issued on 19 September 2006, he had a gunshot wound in the right side of the thorax, with a rubber bullet remaining in his body. He was considered to require eight to nine days of medical treatment.

12. Lela Potra

According to her forensic medical certificate issued on 19 September 2006, she had a gunshot wound and an excoriation wound on the interior side of the lower part of the right leg, which may have been caused by a rubber bullet. She was considered to require eight to nine days of medical treatment.

13. Lajos Panta

According to the certificate issued by the hospital on 9 September 2006 he had a contusion on the left shoulder.

17. The following twenty-two applicants: Ştefan Bidi, Margareta Biga, Iosif Biga Snr, Iosif Biga Jr, Liviu Bucunea Jr, Etelka Capo, Agneta Csiki, Edith Csiki (Biga), Lia Gabor, Ana-Narcisa Gorcs, Ladislau Horvath, Ildiko Kalanyos (Biga), Susana Kalanyos, Petru Kalanyos Snr, Ana Lingurar, Ancuţa Maria Moldovan, Violeta Pusuc, Edith Racz (Biga), Cornelia Simion (Biga), Ianos Ştefan, Ana Tina Snr and Ana Tina Jr declared to the national prosecutor that they had suffered various injuries, but did not produce any medical certificates to corroborate their claims. The remaining three applicants: Sonia Biga, Augustin Biga and Sorin Ciorcan, only complained about the injuries suffered by their mother, Susana Ciorcan.

E. Criminal proceedings

1. Investigation for attempted first-degree murder

18. On 7 September 2006 the Prosecutor's Office of the Mureş County Court ("the Mureş prosecutor's office") launched a criminal investigation against the special force officers for the attempted first degree murder of Susana Ciorcan, under Article 20 in conjunction with Articles 174 and 175(i) of the Criminal Code.

19. The investigation began with an examination of the crime scene the next day. In the prosecutor's report it was noted that:

> "The crime scene has suffered numerous alterations, namely the removal of the damaged vehicles, the bullets and bullet cases used by the State agents, as well as their other weapons, the transport of all of the victims to hospital ... finding the area has been cleaned to some extent compared to the rest of the street."

The report further stated that several traces of blood and holes were found on the ground, doors and walls of the houses surrounding the crime scene. The holes found on the houses were between 28 and 60 cm from the ground. Several clothes and other items stained with blood or presenting possible bullet holes were seized as evidence. According to the same report, the following materials were handed over to the investigators by the victims: three tear gas sprays, eleven STAR-70mm-RB-15 cartridge cases and nineteen 9x19-86-325 cartridge cases. Four other unidentified cartridge cases and two metal bullets were also collected. The objects allegedly used by the crowd to attack the policemen could not be found. In addition, a pitchfork and a 12 mm hunting gun were seized from the headquarters of the Reghin police. Fingerprints were also collected from the vehicles used by the police officers.

20. On 11 and 19 September 2006 the prosecutor ordered expert examinations of the guns used by the State agents during the incident, their cartridge cases and bullets, as well as the clothes and other items gathered from the crime scene. A first report issued on 14 September 2006 concluded that the eleven STAR-70mm-RB-15 cartridge cases had been fired from the hunting gun. The report did not state whether the eleven cartridge cases came from rubber bullets, but indicated that the bullets used in order to perform the tests had been hunting bullets. A second expert report issued on 10 October 2006 concluded that the other twenty-three cartridge cases had been fired from three of the pistols belonging to the special forces officers. However, with respect to the two metal bullets found at the scene of the incident it was noted that no resources were available to establish from which gun they had been fired.

21. Medical documents were also collected from the local hospital and requested from the Forensic Institute in respect of some of the Roma victims and all the police officers involved.

22. On 3 October 2006 twenty-seven victims of the incident filed a criminal complaint against the special forces officers for abusive conduct and causing bodily harm, a complaint which was joined to the pre-existing investigation. They were the applicants Liviu Bucunea Jr, Ancuţa Maria Moldovan, Mihai Moldovan Jr, Ana Tina Snr, Ana Tina Jr, Agneta Csiki, Lia Gabor, Ana-Narcisa Gorcs, Traian Kovacs, Costel Ciorcan, Lajos Panta, Ştefan Bidi, Etelka Capo, Violeta Pusuc, Ildiko Kalanyos (Biga), Susana Kalanyos, Edith Csiki (Biga), Cornelia Simion (Biga), Margareta Biga and eight other victims.

23. A report drafted on 6 October 2006 by an officer from the Mureş County police contained a list of the steps undertaken in the investigation to that date as well as a list of "questions to ask the Roma". The relevant parts read as follows:

> "Did the gypsies know that the police officers and DIAS forces were coming to Apalina and why?

Were the gypsies gathered near the houses of the two wanted criminals before the police officers arrived?

How many gypsies were there?"

The report also mentioned that, following a check of the census, it had been possible to identify the inhabitants of the neighbourhood who took part in the incident, some of whom had a criminal record.

24. On an unspecified date the criminal records of the Roma who had made statements to the prosecutor (see paragraph 25 below) were checked and the information was adduced to the investigation file. One of them had two previous convictions for theft and another had two convictions for robbery.

25. On 17 October 2006 eighteen of the applicants, Susana Ciorcan and three other victims made statements to the prosecutor. Their statements were consistent, in that they all said that on seeing the police vehicles they had come out of their houses with their spouses and children out of curiosity. While normal discussions had been taking place between Susana Ciorcan and the policemen, the special forces officers had started to spray the crowd with tear gas and throw tear gas grenades at them and as everybody ran around trying to protect their children and go back inside their houses, the same officers had started to shoot at them.

26. In her statement, Susana Ciorcan said that while she had been in her courtyard giving information to the plain-clothes officers about the whereabouts of her son, a "fight broke out between the masked men and the Roma" and a tear gas grenade had fallen by her feet. The five officers that she had been talking to ran away and one of them had shouted "Do not shoot!" and she had turned to run and hide inside her house. At that moment she had been shot in the back and lost consciousness.

27. In their statements, the applicants Ana Maria-Paula Bidi, Denes Biga, Erika Biga, Iosif Biga Snr, Iosif Biga Jr, Ladislau Biga, Rozalia Bucunea, Carol Ciorcan, Edith Csiki (Biga), Ladislau Horvath, Petru Kalanyos Snr, Petru Kalanyos Jr, Ana Lingurar and Lela Potra declared that they were thereby submitting complaints against the special force officers who ill-treated them and claiming compensation from them.

28. On 23 October 2006 the four officers from the investigations department of the Mureş County police were questioned by the prosecutor as witnesses. Their statements were practically identical, saying that while they had been talking to Susana Ciorcan, they had heard noise coming from where they had left their vehicles and when they had turned round they had seen: "...several armed individuals (around 100-150 ethnic Roma), attacking the DIAS fighters with bats, pitchforks, bottles, stones and other objects".

A.M., M.M. and C.R.R. declared that when they had left for the Apalina neighbourhood, they had not been aware that the "Roma from this neighbourhood might commit violent acts".

M.M., C.R.R. and S.C.L. further declared that they had neither assaulted nor been physically assaulted by the "ethnic Roma".

29. On 10 January 2007 the special forces officers made statements to the prosecutor. They all declared that they had been forced to use their guns in order to defend themselves and their colleagues.

30. Officer P.Ş., head of the special forces unit, stated:

> "Immediately upon our arrival in the neighbourhood, a large number of Roma ethnic people started to gather in their yards, on the side of the road and behind us; they headed towards us after we parked our vehicles ... These people initially only verbally attacked [us]... Shortly afterwards, [they] started to push our colleagues from the judiciary [investigations department], who were in plain clothes and were not carrying weapons. At that moment, seeing that [the officers] could not fulfil the purpose of their operation ... I considered that we must immediately ensure their protection and then leave the neighbourhood ... Because the use of sprays and sticks had no effect on the people in the area, who, on the contrary, became more aggressive and continued attacking us and throwing stones and bricks, me and two colleagues fired warning shots in the air with our pistols ... V.M., who had a rifle with rubber bullets, started using it. I did not see when he started shooting, I just heard the first shots."

31. Officer V.M. stated in his testimony:

> "Immediately upon our arrival, a large number of gypsies started to gather around us; ... When our colleagues from the judiciary [investigations department] were surrounded, and when I saw that they were being attacked by the gypsies, [who were] pulling their clothes, our commander gave us the order to get out of our vehicles and make a way for them to get out of the crowd ... When we got out of our vehicles, each of us was surrounded by a few furious gypsies, who started assaulting us ... I was equipped with the following: a tear gas spray, a double-barrel hunting rifle which had rubber bullets, and a 9 mm Glock pistol with nineteen rounds of live ammunition, which I didn't use ... I loaded my hunting rifle with two bullets and shouted 'Freeze, police! We will use firearms!' The shouting had no effect so I fired two shots in the air. These also had no effect on the furious crowd. My colleagues also fired their pistols with live ammunition in the air ... At one point, on hearing shouting coming from the upper side of the street, and seeing that stones were being thrown from that direction, I went to the crossroads and I saw a big crowd of gypsies coming towards us. I reloaded the gun with the intention of firing another shot in the air. At that moment, I was attacked by a group of around ten people, who were coming towards me. They started hitting me ... I was then hit in the head by a stone thrown by the group of people coming down the street ... After being hit, I fell to my knees and pulled the trigger of the gun, firing in the direction of the crowd."

32. Officer C.I. said in his statement that:

> "... I saw my colleague P.J., who appeared to have been wounded, lying on a fence. Because I had heard my colleagues warn the assaulters to back up or weapons would be used, I took out the pistol and in order to ensure that I had enough space and time to help my injured colleague, I fired four shots in the air ... I personally only saw our commander Mr P.Ş. fire several shots in the air ... As far as I noticed, all shots had been fired in the air."

33. Officer S.P. stated that he did not fire his gun saying that:

"Immediately upon our arrival, a large number of gypsies started to gather around us; ... When our colleagues from the judiciary [investigations department] were surrounded, and when I saw that they were being attacked by the gypsies, [who were] pulling their clothes, our commander gave us the order to get out of our vehicles and make a way for them to get out of the crowd ... When we got out of our vehicles, each of us was surrounded by some angry gypsies, who started assaulting us ... The gypsies were becoming more and more nervous ... We started defending ourselves, first using tear gas spray ... We then threw one or two grenades, also filled with tear gas ... We used our sticks ... I also had a Makarov pistol on me with live ammunition, but I did not manage to pull it out ... As far as I understood it, our boss and two other colleagues took out their guns and fired some shots in the air, in order to discourage the aggressors ... One of our colleagues, V.M., had a "hunting" type rifle with rubber bullets. This gun was used to fire several shots into the crowd ... After around three minutes, I managed to regroup with my colleagues in formation and make way for the two Logans [cars], which managed to retreat from the street ... I got behind the wheel of our vehicle and turned to leave the area."

34. Officer H.D.M. also stated that he did not use his gun declaring:

"Immediately upon our arrival, a large number of gypsies started to gather around us; ... When our colleagues from the judiciary [investigations department] were surrounded, and when I saw that they were being attacked by the gypsies, [who were] pulling their clothes, our commander gave us the order to get out of our vehicles and make a way for them to get out of the crowd ... When we got out of our vehicles, each of us was surrounded by some angry gypsies, who started assaulting us ... The gypsies were becoming more and more nervous ... We started defending ourselves, first using the tear gas spray ... We then threw one or two grenades, also filled with tear gas ... We used our sticks ... I also had a Glock pistol on me with live ammunition, but I did not manage to pull it out ... As far as I understood it, our boss and two other colleagues took out their guns and fired some shots in the air, in order to discourage the aggressors ... One of our colleagues, V.M., had a "hunting" type rifle with rubber bullets. This gun was used to fire several shots into the crowd. After around four minutes, I managed to regroup with my colleagues in formation and make way for the two Logans [cars], which managed to retreat from the street ... "

35. From officer G.P.J.'s testimony, it appeared that he too did not fire his gun:

"Immediately upon our arrival, a large number of gypsies started to gather around us; ... When our colleagues from the judiciary [investigations department] were surrounded, and when I saw that they were being attacked by the gypsies, [who were] pulling their clothes, our commander gave us the order to get out of our vehicles and make a way for them to get out of the crowd ... When we got out of our vehicles, each of us was surrounded by some angry gypsies, who started assaulting us ... I was immediately hit with a bat in the legs and then with a stone or brick in the head ... I fell to the ground ... A few moments later, I effectively lost consciousness and I cannot say what happened to my colleagues next ..."

36. Officer M.F. similarly declared that he did not use his gun. He further stated that:

"Because our warnings had no effect and we continued to be attacked, I heard several gunshots and I saw my colleague C.I. next to me, firing a few shots in the air with his pistol ... I saw my other colleague, V.M., the only one of us carrying a rifle

> and he also fired shots in the air ... As far as I noticed, all the shots had been fired in the air."

37. On 16 January 2007 the prosecutor decided to terminate the attempted first-degree murder investigation, with a decision not to bring charges against the State agents. He held that upon the arrival of the police officers in the neighbourhood, people started gathering in the street and "... a fight broke out between them and the DIAS unit". The decision mentioned that according to the agents' statements, on 7 September 2006 they had used "paralysing sprays and grenades, bats and firearms, discharged into the air in order to discourage the crowd"; V.M. had used a hunting gun with rubber bullets, shooting both into the air and at the crowd. Several people had been injured, both agents and local residents, but the injuries had not been very serious, with the exception of those sustained by Susana Ciorcan. Comparing the conclusions of Susana Ciorcan's forensic medical certificate with the statements of the individuals involved in the incident, the prosecutor concluded that the officers under investigation did not intend to take the victim's life, stating that "the agents' intention had obviously been to discourage the large number of people gathered there, not to kill them". The prosecutor's decision also stated that:

> "This lack [of intent] may also be deduced from the approach taken – the person concerned was not targeted, we are dealing with a random shooting ...The acts of the above-mentioned [individuals] might constitute the offence of causing serious bodily harm ... with respect to Susana Ciorcan."

38. The person who shot Susana Ciorcan or the type of bullet which cause her injuries were not identified and no explanation was given in this regard. The officers who fired their guns were not clearly identified in the decision either.

39. The Mureş prosecutor also acknowledged that twenty-seven victims had filed a criminal complaint requesting the investigation of the special force officers for the crimes of abusive conduct and causing serious bodily harm. Therefore, he ultimately decided that the investigation for the crimes of abusive conduct and causing serious bodily harm under Articles 180 and 182 of the Criminal Code should be continued by the Prosecutor's Office of the Reghin District Court ("the Reghin prosecutor's office").

40. Susana Ciorcan's representative lodged an appeal with the hierarchically superior prosecutor against the Mureş prosecutor's decision of 16 January 2007. The core of his complaint was that the perpetrator had not been identified and that the evidence (expert reports) adduced to the file, which proved that there had been guns there that day which had not only used rubber bullets but also live ammunition, had been completely ignored. The State agents should have been aware that the use of such ammunition could have resulted in the death or fatal injury of the people they had shot at. Furthermore, not only had the perpetrator not been identified, no steps

had been taken to establish whether Susana Ciorcan had been shot by a rubber bullet or a regular one.

41. On 29 June 2007 the appeal was dismissed as ill-founded by the Prosecutor's Office of the Târgu Mureş Court of Appeal. The investigation was considered to have been properly conducted.

42. Susana Ciorcan's representative also lodged a complaint with the Mureş County Court, stating that the prosecutor had not considered all the evidence in the file and had mainly relied on the version of events as presented by the State agents. He then reiterated the argument that the use of live ammunition shot at random should have made identifying those who had fired the shots a necessity. A ballistic report was also required in this regard. Attention was brought to two of the agents' statements, one of them made by Mureş County police officer S.C.L., who said that "neither I nor any of my colleagues in our vehicle attacked the Roma or were attacked by them". This was confirmed by M.M., who admitted that he had not been hurt at all. In another piece of evidence it was mentioned that none of the blunt objects allegedly used to damage the State agents' vehicles had been found at the scene of the incident. In such circumstances, the conclusions drawn by the prosecutor appeared unfounded.

43. The complaint also claimed that there had been racist motives behind the ill-treatment Ms Ciorcan and the rest of the victims had been subjected to, with a request that this allegation be clarified. In this respect, relying on the Court's case-law in *Nachova and Others v. Bulgaria* ([GC], nos. 43577/98 and 43579/98, ECHR 2005-VII) Ms Ciorcan's representative complained that the disproportionate reaction of the State agents towards Ms Ciorcan and the rest of the victims constituted discrimination and together with the subsequent ineffective investigation were in breach of Articles 2 and 14 of the Convention.

44. On 3 July 2008 the Mureş County Court, basing its decision on the documents in the prosecutor's investigation file, dismissed the complaint, holding that the prosecutor's decision of 16 January 2007 had been correct. The existence of possible racist motives behind the victims' ill-treatment had not been analysed by the court.

45. The applicants' representative lodged an appeal on points of law against this decision, reiterating all the complaints submitted before the first-instance court, and requesting that a further investigation for serious first-degree murder also be conducted, under Article 176 of the Criminal Code.

46. On 26 July 2008 Susana Ciorcan died at the age of fifty-six, two years after the incident. The proceedings were continued by her sons and daughters: Costel Ciorcan, Sorin Ciorcan, Carol Ciorcan, Sonia Biga, Ildiko Kalanyos (Biga), Augustin Biga and Edith Csiki (Biga).

47. The Târgu Mureş Court of Appeal dismissed the appeal by final decision of 19 November 2008, holding that the first-instance court had

meticulously analysed the file and correctly concluded that there had been no intention to commit the offences under investigation, the agents having acted in accordance with the standard procedure regulating that kind of intervention.

2. Investigation for abusive conduct

48. Following the Mureş prosecutor's decision to relinquish jurisdiction, a criminal investigation was launched by the Reghin prosecutor's office for abusive conduct, under Article 250 of the Criminal Code.

49. The prosecutor questioned the State agents, who reiterated their previous statements. Eleven of the applicants amongst the twenty-seven victims who had filed the complaint on 3 October 2006 also made statements. Two of them had also made a statement to the Mureş prosecutor. The applicants Ancuţa-Maria Moldovan and Liviu Bucunea Jr alleged that the special forces officers had shouted: "go inside your house or I will kill you" and "go inside your house or I will blow your brains out" respectively.

50. The prosecutor also questioned eight other Roma victims, who had not made statements to the Mureş prosecutor's office. They expressed their wish for the individuals who assaulted them to be held liable for their actions and declared that they would be claiming compensation in that regard.

51. On 16 July 2007, upholding the same facts as established in the decision issued by the Mureş prosecutor's office, the Reghin prosecutor issued a decision not to bring charges against the seven officers under investigation, concluding that they had acted in self-defence, which under Article 10(1)(e) of the Code of Criminal Procedure eliminated the criminal element of the acts committed. In connection with the course of events, the decision started by repeating the Mureş prosecutor's office findings that:

> "... superior officers from the Mureş County police ... pointed out that the scene could not be reached because there were a large number of people (several hundred) armed with bats, pitchforks, axes and scythes and the law-enforcement authorities could not secure the area ...
>
> Almost immediately upon arriving at the scene, several local residents started to gather and a fight broke out between them and members of the DIAS."

52. Also referring to the facts, the decision mentioned that the special forces officers declared they had been grouped together during the incident, while quoting in support of this finding the statement made by H.D.M., who stated that they had initially been grouped together but had disbanded on being attacked by fifteen to twenty Roma each.

53. In order to substantiate the decision, the prosecutor first listed the injuries suffered by the State agents as follows:

> "H.D.M. was hit in the legs and the face, and according to the medical certificate ... suffered injuries which required eight to nine days of medical care;

M.F. was hit in the right shoulder, in both cheeks, above the left temple, the right leg above the knee and all fingers, and according to his medical certificate ... suffered injuries which required eight to nine days of medical care;

G.P.J. was hit with a stick in the legs and then immediately with a stone or a brick in the head, and according to his medical certificate ... suffered injuries which required seven to eight days of medical care;

V.M. was hit with a stone in the head, and according to his medical certificate ... suffered injuries which required five to six days of medical care;

C.I. was hit in the ribs, the right ankle, the tibia and calf of the right leg and the left shoulder area, and according to his medical certificate ... suffered injuries which required twelve to fourteen days of medical care;

S.P. was hit in the legs, the head, the back and the hands, and according to his medical certificate ... suffered injuries which required eight to nine days of medical care."

54. The prosecutor then gave details of the gunshot injuries suffered by thirteen Roma victims, including Susana Ciorcan, who was held to have been shot in the back.

55. Further on, the prosecutor listed the damage sustained by the vehicles used by the police officers to get to the Apalina neighbourhood on the day of the incident, namely cracks in the windscreen or side windows, scratches and bumps.

56. In view of the above elements and citing parts of the statements made by the special forces officers, the prosecutor concluded that the State agents could not be held liable for abusive behaviour as they had acted in self-defence.

57. Neither the officers who fired their guns nor the person who shot Susana Ciorcan were identified, nor was any explanation given in this regard.

58. The applicants' representative complained against the 16 July 2007 decision on behalf of the same twenty-seven victims who had joined the criminal proceedings on 3 October 2006 (see paragraph 22 above). He alleged that the incident had been caused by the authorities' lack of adequate preparation for their operation, the purpose of which had been to summon two individuals to appear before the prosecutor for the investigation of an alleged non-violent offence. He further complained that only the alleged perpetrators' statements had been used as a basis for the prosecutor's decision, and had disproportionately referred to the evidence favourable to them, without making the slightest attempt to try and identify who had fired their guns or the type of ammunition used. In addition, he complained that the prosecutor's decision had completely failed to mention certain crucial elements, in particular the severity of the injuries inflicted by the State agents on the victims. Furthermore, the number of days of recommended medical treatment in the medical reports could not be relied on when determining the seriousness of the injuries suffered by the victims.

For example, several applicants who were shot were considered to require the same number of days of medical care as State agents whose injuries had been visibly less serious.

59. On 31 August 2007 the complaint was rejected and the decision not to bring charges was upheld by the chief prosecutor.

60. The applicants' representative contested the prosecutor's decision before the Reghin District Court on behalf of the same twenty-seven victims who had joined the criminal proceedings on 3 October 2006 (see paragraph 22 above). He asked the court to order a reopening of the criminal investigation in order to efficiently identify the perpetrators and bring them to justice. He drew the court's attention to the extraordinary and urgent deployment of police forces (two hours after the commission of the alleged offence) in order to serve two summonses which are normally sent by post, a situation which would never happen in cases involving non-Roma people.

61. On 16 July 2008 the Reghin District Court, basing its decision on the documents in the prosecutor's investigation file, dismissed the complaint, holding that the prosecutor's decision of 16 July 2007 had been correct. In dismissing the complaint, the court briefly stated that even if guilt had been established, the application of Article 44 of the Criminal Code (self-defence) made it necessary for the prosecutor to adopt the decision not to bring charges.

62. The applicants lodged an appeal on points of law with the Mureş County Court, but it was dismissed on 12 February 2009.

63. Meanwhile, on 3 November 2008 the representative of the applicants Ana Maria-Paula Bidi (Beica), Denes Biga, Erika Biga, Iosif Biga Snr, Iosif Biga Jr, Ladislau Biga, Rozalia Bucunea, Carol Ciorcan, Edith Csiki (Biga), Ladislau Horvath, Petru Kalanyos Snr, Petru Kalanyos Jr, Ana Lingurar and Lela Potra, whose names were not mentioned by the prosecutor in the 16 January 2007 decision, submitted a request to the Mureş prosecutor's office seeking information concerning the progress of their complaints against the special forces officers. On 10 December 2008 they were informed that the file concerning the death of Susana Ciorcan had been terminated with a decision not to bring charges, and that the investigation for the alleged abusive conduct on the occasion of the incident of 7 September 2006 was currently under way with the Reghin prosecutor's office. They were informed that the statements they had made to the Mureş prosecutor had also been forwarded to the Reghin prosecutor's office. Following this reply, the fourteen applicants submitted a request to the Reghin prosecutor's office detailing their situation and seeking information about the current status of their complaints. On 31 July 2009 they received a reply, informing them that they had failed to quote the correct case number. They were asked to provide this information in order to receive a response.

3. Disciplinary proceedings against A.M.

64. On 21 December 2006 the Disciplinary Council held a meeting to assess whether A.M., the officer who ran the operations on behalf of the Mureş County police, had breached police disciplinary rules when fulfilling the order of 7 September 2006 given by his chief.

65. According to the minutes of the meeting, the Council heard evidence from A.M., as well as a witness in his defence, A.A., the prosecutor in charge of the investigation of the complaint for insulting behaviour filed by R.O.

66. In his statement A.M. first described the circumstances leading up to the incident. He stated that:

> "After a discussion with officer R.O., during which he told me about the incident that took place on the terrace of the "Ceres" bar in Reghin, I asked him to prepare a written report. Because it was not clear whether a crime had been committed, I decided that a team of officers should go to the bar in order to find witnesses and take statements from them, while I, together with another team, should go to the Apalina neighbourhood to take statements from the two suspects ..."

He further described how the special forces agents were attacked by the "Roma", while A.A. told the Council:

> "I consider that it was the strange reaction that Roma people have on seeing police cars or policemen that led to the clash that day."

67. The Disciplinary Council unanimously decided that the policeman under investigation was innocent.

F. Outcome of the investigation for insulting behaviour

68. The complaint for insulting behaviour filed by R.O. on 7 September 2006 was dismissed at a later date by the prosecutor, since at the time of the incident R.O. had been off-duty and had not been acting in his official capacity, and there had been no physical violence between the parties.

69. The two summonses which justified the police operation of that day were never served on the two suspects, who were never questioned by the prosecutor in connection with the complaint filed by R.O.

II. RELEVANT DOMESTIC LAW AND PRACTICE

70. A detailed presentation of the relevant legal provisions concerning the use of firearms can be found in the case of *Soare and Others v. Romania* (no. 24329/02, § 94, 22 February 2011).

71. The organisation and functioning of the special forces units was regulated at the relevant time by Order no. S 227031/2000 issued by the General Police Inspectorate, which is a classified document.

72. On 5 September 2003 the General Police Inspectorate issued Order no. 290 on the standard procedure to be followed by special intervention units, which was made available to the prosecutor for the purposes of the domestic investigation. In accordance with this Order, the responsibility of the special forces police is to support the ordinary police in hostage and kidnapping situations or in the search and apprehension of extremely dangerous criminals or criminals armed with firearms. The relevant provisions of the above-mentioned Order are as follows:

Article 2

With effect from the date of the present Order, activities concerning the freeing of hostages, on a national scale, which were under the competence of the Romanian police, shall fall within the competence of the Independent Service for Special Interventions and Actions.

Article 3

In independently undertaking police activities on their territory of competence, the intervention units shall:

...

c) disclose their identity and official capacity as well as the purpose of the stopping or questioning (*scopul interpelării*) ...

f) use force and other equipment gradually, starting with the simplest measures [escalating to] the measures which require using the weaponry supplied.

g) act without discriminating persons on grounds of race, citizenship, sex, religion, political affiliation, social status, or any other ground.

Article 4

In exercising police activities in cooperation with other police units, particularly in the search or apprehension of extremely dangerous criminals, the following rules shall be observed:

...

d) before the start of the activity all participants shall meet in order to be instructed about the purpose, place and duration of the activity, the measures of protection and identity of the persons involved, ways to secure the perimeter, the investigative, intervention and reserve teams, and anything else which might be a factor to the proper conduct of the activity.

73. The applicable legal provisions of the Romanian Criminal Code are as follows:

Article 44 – Self-defence

(1) An act proscribed by criminal law which is committed in legitimate self-defence does not constitute a criminal offence.

(2) A person acts in legitimate self-defence when he or she commits the act in order to remove a material, direct, immediate and unjust attack against him, some other

person or a general interest endangering the person or the rights of the one attacked or the general interest ...

(3) An act proscribed by criminal law committed in excess of the limits of self-defence but proportional to the seriousness of the danger and the circumstances of the attack shall not be considered an offence if the limits were exceeded because of the person's confusion or fear.

Article 174 – Murder

(1) Murder of a person shall be punishable by ten to twenty years' detention and the prohibition of certain rights.

(2) Attempted murder is also punishable.

Article 175 – First-degree murder

(1) Murder committed in one of the following circumstances:

... (i) in public

shall be punishable by fifteen to twenty-five years' detention and the prohibition of certain rights.

(2) Attempted first-degree murder is also punishable.

Article 176 - Serious first-degree murder

(1) Murder committed in one of the following circumstances:

...

g) by a magistrate, police officer, gendarme or member of the military, during or in connection with the fulfillment of their service or public duties,

shall be punishable by life imprisonment or fifteen to twenty-five years' imprisonment and the prohibition of certain rights.

(2) Attempted murder is also punishable.

Article 180 – Hitting or other forms of violence

(1) Hitting or any other act of violence causing bodily harm shall be punishable by one to three months' imprisonment or by a fine ...

Article 181 – Bodily harm

(1) Acts causing bodily harm or injury to health needing medical care of up to sixty days shall be punishable by six months to five years' imprisonment ...

Article 182 – Serious bodily harm

(1) Acts causing physical harm or injury to health needing medical care of more than sixty days shall be punishable by two to seven years' imprisonment.

(2) A punishment of two to ten years' imprisonment shall be imposed if the act caused one or more of the following consequences: loss of a sense or organ, cessation of their operation, a permanent physical or mental disability, mutilation, abortion or the person's life being put in danger.

Article 239 – Insulting behaviour

(1) A threat, direct or through a direct means of communication against a public servant exercising a position of State authority, during the exercise of his functions or for acts performed in the exercise of his functions shall be punishable by six months to two years' imprisonment or by a fine.

(2) Hitting or any other violence against a public servant who is exercising a position of State authority, during the exercise of his functions or for acts performed in the exercise of his functions, shall be punishable by three months to three years' imprisonment or by a fine.

Article 250 – Abusive conduct

(1) A public servant who verbally abuses a person while on duty shall be punished by one month to one year's imprisonment or by a fine;

(2) A public servant who threatens a person while on duty shall be punished by six months to two years' imprisonment or by a fine;

(3) A public servant who hits or otherwise behaves violently towards a person while on duty shall be punished by six months to three years' imprisonment or by a fine;

(4) A public servant who causes serious bodily harm to a person while on duty shall be punished by three to twelve years' imprisonment.

74. Excerpts from the relevant provisions of the Romanian Code of Criminal Procedure concerning the procedure for complaining against a prosecutor's decisions are set out in the case of *Stoica v. Romania* no. 42722/02, §§ 43 and 45, 4 March 2008.

III. RELEVANT INTERNATIONAL INSTRUMENTS AND OTHER REPORTS

A. United Nations sources

75. Excerpts from the relevant parts of the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials can be found in the case of *Soare and Others* (cited above, § 102).

76. The United Nations Committee on Elimination of Racial Discrimination in its 2010 Annual Report held with respect to the situation of Roma in Romania the following:

(15) The Committee notes with concern the excessive use of force, ill-treatment and abuse of authority by police and law enforcement officers against persons belonging to minority groups, and Roma in particular. It is also concerned about the use of racial profiling by police officers and judicial officials.

B. Council of Europe sources

77. The Council of Europe's Advisory Committee on the Framework Convention for the Protection of National Minorities published an opinion on 23 February 2006 regarding Romania's compliance with that Convention. The relevant parts of the opinion concerning respect of its Article 6 on tolerance and intercultural dialogue read as follows:

> 101. Although there has been significant improvement following the efforts made by the authorities, there continue to be reports of inappropriate behaviour by certain police members vis-à-vis persons belonging to the Roma community, in some cases involving violence, although such reports are now much less frequent. Non-governmental sources also indicate that there are shortcomings in the judicial investigations and prosecution of such incidents.
>
> 102. Despite the fact that the Ministry of the Interior has special investigation procedures and a special body to deal with complaints of abuse by police members and to apply sanctions where appropriate, the Advisory Committee notes that there are concerns with regard to the impartiality of such investigations ...
>
> 104. The authorities should identify the most appropriate solutions to ensure efficient and impartial investigation of complaints against members of the police forces. Additional measures should be taken to train and inform members of the legal profession to ensure that legislation on discrimination and the provisions of the Criminal Code regarding the fight against racism and intolerance are fully applied.

78. The Council of Europe High Level Meeting on Roma in October 2010 adopted the "Strasbourg Declaration on Roma". Under the heading "Access to justice", the Declaration recommends that member States:

> "(27) Ensure timely and effective investigations and due legal process in cases of alleged racial violence or other offences against Roma.
>
> (28) Provide appropriate and targeted training to judicial and police services."

79. In a letter addressed to the Romanian Prime Minister on 17 November 2010 the Council of Europe's Commissioner for Human Rights expressed particular concerns that Roma continue to face pervasive discrimination in Romania. The Commissioner also stated, *inter alia*, that "anti-Roma rhetoric is present in domestic political discourse. Some politicians have made stigmatising statements, among others linking Roma with criminality, blaming this population for not trying to integrate, and referring to popular stereotypes."

80. On 1 February 2012 the Committee of Ministers of the Council of Europe adopted a Declaration on the rise of anti-Gypsyism and racist violence against Roma in Europe in which deep concerns are expressed with respect to the fact that "In many countries, Roma are subject to racist violence directed against their persons and property. These attacks have sometimes resulted in serious injuries and deaths. This violence is not a new phenomenon and has been prevalent in Europe for centuries. However, there has been a notable increase of serious incidents in a number of member

States, including serious cases of racist violence, stigmatising anti-Roma rhetoric, and generalisations about criminal behaviour."

C. International documents on the situation of Roma in Romania

81. In its 2007 country report on Romania Amnesty International set out in detail the incident in Apalina when commenting on the police's attitude towards Roma:

> "In September, violent clashes between police and members of the Romani community in Reghin, Apalina district, reportedly resulted in injuries to two policemen and 36 Romani women, men and children. The incident reportedly began when a police officer alleged that he had been assaulted by two Romani men. Shortly afterwards, a violent altercation broke out after plain-clothes police officers and masked Special Forces police officers arrived at the Apalina district, reportedly to serve two subpoenas. The police claimed they were attacked by several Roma using rocks, metal bars and pitchforks. The Roma claimed that Special Forces officers provoked the violence by using excessive force, including by firing rubber bullets and tear gas. The initial police investigation cleared the officers of any wrongdoing. In November, following a visit by two members of the European Parliament, the General Police Inspectorate opened a preliminary investigation into the incident. The investigation was continuing at the end of the year."

The report also mentioned another similar incident, while concluding that Roma continued to face intolerance and discrimination, and that allegations of ill-treatment by law-enforcement officials continued to be widespread in Romania.

D. Media reports concerning the incident

82. The Romanian media reports constantly on police raids in Roma neighbourhoods, with numerous incidents involving the use of firearms by the special forces police wearing masks.

Immediately after the incident, several national newspapers and news agencies reported about the clash between the police and the inhabitants of the Apalina neighbourhood.

83. Newspapers such as *Adevărul* and *Evenimentul Zilei* published, in their online editions, the articles "*War between the Roma and the police*" and "*City of violins, loud with shootings*", which quoted sources from the police and gave statistics about the number of crimes allegedly committed by the Roma from Apalina over the years. Several newspapers and news agencies quoted police sources, saying that firearms had been used because the Roma had been trying to disarm the police officers (*Evenimentul Zilei* and *9AM.ro* news agency). Some of them even referred to the "violent incident" as a "new Hădăreni" (*amosnews.ro*).

84. In an article posted on its website on 19 September 2006, the Hotnews agency mentioned that two Hungarian members of the European

Parliament, Victoria Mohacsi and Katalin Levai, had expressed their concern about the incidents and had announced a visit to the Apalina neighbourhood.

85. In an article posted on its website on 14 September 2006 entitled "*A new clash between Roma and the police*", the *Divers* news agency reported that the excessive use of force by the police in Roma communities was recurrent in Romania.

THE LAW

I. JOINDER OF THE APPLICATIONS

86. Having regard to the similar subject matter of the applications, the Court finds it appropriate to join them in a single judgment, in accordance with Rule 42 § 1 of the Rules of Court.

II. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

87. The applicants Sonia Biga, Augustin Biga, Carol Ciorcan, Sorin Ciorcan, Costel Ciorcan, Edith Csiki (Biga) and Ildiko Kalanyos (Biga), namely the sons and daughters of the deceased Susana Ciorcan, complained that the State agents had used excessive force against their mother, which had put her life in danger, and that the national authorities had failed to subsequently conduct an adequate and effective investigation. They relied on Article 2 of the Convention, which reads as follows:

> "1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.
>
> 2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:
>
> (a) in defence of any person from unlawful violence;
>
> (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
>
> (c) in action lawfully taken for the purpose of quelling a riot or insurrection."

A. The parties' submissions

1. The applicants

88. The applicants firstly submitted that although the force used against Ms Ciorcan had not been lethal, it did not exclude the applicability of Article 2 of the Convention in the present case. They referred in this connection to the case of *Makaratzis v. Greece* (no. 50385/99, ECHR 2004-XI).

89. Secondly, they submitted that in the specific circumstances of the case, the use of firearms had not been "absolutely necessary" in order to achieve the aims set out in Article 2 § 2 of the Convention. They pointed out that the presence of the special forces officers in Apalina had not been lawful, since there had been no pre-existing factors which could have led to the presumption that the inhabitants of the neighbourhood would become aggressive towards the employees of the local police and, according to the statements of the police officers involved, the people started gathering around their vehicles only upon their arrival in the neighbourhood. The applicants pointed out that the people gathered in the street at the time of the incident, including themselves, had not been carrying any weapons and had not attacked the police officers and, therefore, the response of the State agents had been disproportionate since, besides the tear gas sprays and grenades, they had also used rubber bullet weapons and hunting guns with metal bullets.

90. The applicants emphasised that their mother, who had not been a wanted criminal and had not attacked the police officers, had been shot in the back while running towards her house and that, according to her medical certificate, her life had been endangered by her injuries.

91. Lastly, the applicants submitted that the authorities had failed to fulfill their procedural obligation under Article 2 to carry out an effective investigation into the potentially lethal use of force.

The applicants identified in this connection a series of shortcomings in the investigation. They claimed that the investigation had not been impartial since the individuals who had carried out the investigative measures under the supervision of the case prosecutor had been colleagues of the officers under investigation within the Mureş County police. They also argued that the authorities had failed to identify both the police officer who shot Ms Ciorcan and the type of bullet which caused her injuries. Taking into account the conclusion of her medical report, which stated that her life had been endangered by the shooting injury, the applicants averred that their mother had been shot with a firearm carried by the officers who were equipped with live ammunition, but this possibility was not analysed by the investigators.

The applicants also submitted that the investigation had been inadequate, as it had failed to clarify the facts, and had put undue emphasis on the statements of the alleged perpetrators.

2. The Government

92. The Government contended that the use of force had been absolutely necessary within the meaning of Article 2 § 2 (a) of the Convention. They emphasised that the use of force had been justified, on account of the aggressiveness of the crowd. The State agents had no intention of killing anyone as they had only used defensive weapons, such as paralysing sprays and grenades, bats, and hunting weapons with rubber bullets. They argued that the context of the operation should also be taken into account when analysing the State agents' acts, namely that two people had been accused of beating up a police officer and had to be summoned for investigation. Even so, the State agents had discharged their duties whilst minimising to the greatest extent possible the risk to life, by using verbal warnings and firing warning shots in the air before shooting at the crowd. They also pointed out that special forces officers had also been seriously wounded in the incident.

93. The Government also contended that the actions taken had been lawful under domestic law, which is formulated with sufficient precision in order to be predictable for its citizens.

94. The Government further submitted that there had been no inadequacies in the domestic investigation, which had been prompt and thorough. They stressed that shortly after the incident, the prosecutor had initiated an investigation. Numerous statements had been taken from the individuals who had filed complaints against the State agents, a thorough search had been conducted of the scene and complete expert examinations had been carried out in order to assess the forensic evidence on the clothes handed over by the victims and the weapons used during the clash.

95. The Government concluded that, unlike in the case of *Stoica* (cited above), in the instant case the domestic authorities did not deny that violence had been inflicted on the applicants, but found that their injuries had been caused by the State agents in self-defence, and therefore had not constituted abusive conduct.

B. Admissibility

96. The Court notes that the applicability of Article 2 of the Convention is not disputed between the parties. However, it must examine of its own motion the extent of its competence *ratione materiae*.

97. In the present case, the force used against Ms Ciorcan was not, in the event, lethal. This, however, does not exclude in principle an examination of the applicants' complaints under Article 2, the text of which, read as a

whole, demonstrates that it covers not only intentional killing but also situations where it is permitted to use force which may result, as an unintended outcome, in the deprivation of life. In fact, the Court has already examined complaints under this provision where the alleged victim had not died as a result of the impugned conduct (see *Ilhan v. Turkey* [GC], no. 22277/93, § 75, ECHR 2000-VII; *Makaratzis*, cited above, § 49; and *Soare and Others*, cited above, § 108).

98. Nevertheless, the case-law establishes that it is only in exceptional circumstances that physical ill-treatment by State agents which does not result in death may disclose a violation of Article 2 of the Convention. In this connection, the degree and type of force used and the intention or aim behind the use of force may, among other factors, be relevant in assessing whether a particular case falls within the scope of the safeguard afforded by this Article (see *Makaratzis*, cited above, § 51).

99. In the present case, it is not disputed that Ms Ciorcan was shot by State agents during a police operation and that a medical certificate attested to the fact that the injuries had endangered her life and required surgical intervention as well as forty to forty-five days of subsequent medical treatment (see paragraph 16 above).

100. The Court likewise accepts the Government's submission that the State agents had not intended to kill Ms Ciorcan. It observes, however, that the fact that the latter was not killed was fortuitous, taking into account the findings of the forensic medical examination which listed, among others, haemorrhagic shock, peritonitis and rupture of the iliac vein. The seriousness of these injuries is not in dispute between the parties.

101. In the light of the above circumstances, and in particular the degree and type of force used, the Court concludes that, irrespective of whether or not the police actually intended to kill her, Ms Ciorcan was the victim of conduct which, by its very nature, put her life at risk, even though, in the event, she survived (see *Soare and Others*, cited above, § 109).

102. Article 2 is thus applicable in the instant case.

103. The Court considers that the complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. The Court further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

C. Merits

1. Alleged failure of the authorities to protect the right to life

(a) General principles

104. Article 2, which safeguards the right to life and sets out the circumstances when deprivation of life may be justified, ranks as one of the most fundamental provisions in the Convention, from which no derogation

is permitted. Together with Article 3, it also enshrines one of the basic values of the democratic societies making up the Council of Europe. The circumstances in which deprivation of life may be justified must therefore be strictly construed (see *Makaratzis*, cited above, § 56). The object and purpose of the Convention as an instrument for the protection of individual human beings also requires that Article 2 be interpreted and applied so as to make its safeguards practical and effective (see *McCann v. the United Kingdom*, no. 19009/04, §§ 146-47, ECHR 2008).

105. The first sentence of Article 2 § 1 enjoins the State not only to refrain from the intentional and unlawful taking of life, but also to take appropriate steps within its internal legal order to safeguard the lives of those within its jurisdiction (see *Soare and Others*, cited above, § 127). This involves a primary duty on the State to secure the right to life by putting in place an appropriate legal and administrative framework to deter the commission of offences against the person, backed up by law-enforcement machinery for the prevention, suppression and punishment of breaches of such provisions.

106. As the text of Article 2 itself shows, the use of lethal force by police officers may be justified in certain circumstances. Nonetheless, Article 2 does not grant a carte blanche. Unregulated and arbitrary action by State agents is incompatible with effective respect for human rights. This means that, as well as being authorised under national law, policing operations must be sufficiently regulated by it, within the framework of a system of adequate and effective safeguards against arbitrariness and abuse of force (see, *Makaratzis*, cited above, § 58), and even against avoidable accident.

107. In view of the foregoing, and in keeping with the importance of Article 2 in a democratic society, the Court must subject allegations of a breach of this provision to the most careful scrutiny, taking into consideration not only the actions of the agents of the State who actually administered the force but also all the surrounding circumstances, including such matters as the planning and control of the actions under examination (see *McCann and Others*, cited above, § 150). In the latter connection, police officers should not be left in a vacuum when performing their duties, whether in the context of a prepared operation or a spontaneous chase of a person perceived to be dangerous: a legal and administrative framework should define the limited circumstances in which law-enforcement officials may use force and firearms, in the light of the international standards which have been developed in this area (see *Hamiet Kaplan and Others v. Turkey*, no. 36749/97, § 49, 13 September 2005).

(b) Application of these principles to the present case

108. Against this background, the Court must examine in the present case not only whether the use of potentially lethal force against the

applicants' mother was legitimate but also whether the operation was regulated and organized in such a way as to minimise to the greatest extent possible any risk to life.

109. The Court recalls that Susana Ciorcan was shot on 7 September 2006 in her courtyard by a State agent during a police search for two individuals suspected of insulting behaviour towards an off-duty police officer in a bar. The forensic certificate of 11 October 2006 concluded that she had suffered multiple injuries and that her life had been endangered by this shooting. At the time of the shooting she was neither armed nor did she attack any of the police officers or special forces officers present in any way. The Court notes that these facts are not contested by the parties.

110. In order to decide whether the operation was regulated and organised in such a way as to minimise to the greatest extent possible any risk to life, the Court will take account of the operation as a whole and will firstly analyse whether the presence of the special forces was necessary and justified at the scene of the incident.

111. In this connection, the Court notes that, according to the legal provisions available at the time, special forces units were responsible for offering support to the ordinary police in hostage and kidnapping situations, or those involving extremely dangerous criminals or criminals armed with firearms. However, turning to the facts of the case, no justification of an imminent danger was given in the operation order completed by the chief of the special forces unit (see paragraph 7 above). It is not disputed between the parties that it was the chief of the Mureş County police who requested their assistance, claiming that a large number of people armed with bats, pitchforks, axes and scythes had been blocking the way and that the authorities could not secure the area. However, according to the statements of all the State agents involved, the inhabitants of the neighbourhood started gathering in the street only upon the arrival of the police vehicles. Moreover, the officers from the Mureş County police declared that they had not been aware that the Roma from Apalina might commit violent acts (see paragraph 28 above). In addition, the Government submitted no information as to whether the police had reason to suspect that the people from Apalina might be armed with firearms or whether the two suspects were considered to be extremely dangerous criminals. On this point it must be noted that, in the course of the investigation that followed, the criminal records of some of the Roma victims were checked, and none of them were found to have any previous convictions for serious offences (see paragraph 24 above).

112. Under these circumstances, the Government's assertion that the operation had been conducted in the context of summoning before the authorities two individuals accused of having beaten up a police officer must be analysed in conjunction with the statement of A.M., the police officer conducting the preliminary investigation following the complaint submitted by R.O. for insulting behaviour. A.M. told the Disciplinary

Council that when the decision had been taken to go to Apalina, it had not been clear whether a crime had been committed against R.O. (see paragraph 66 above).

113. In view of the above, the Court considers that no plausible explanation was put forward in order to justify the request for the support of the special forces unit and their intervention on 7 September 2006. In these circumstances, the Court finds it unnecessary to analyse further the legal provisions regulating the operation.

114. Furthermore, with respect to the operation's organisation, the Court observes that the possibility of the State agents being taken by surprise by the fact that a number of people had gathered in the street must be excluded, since it appears from the file that the authorities had been well aware that it was usual in Roma neighbourhoods to gather in the street out of curiosity. This conclusion results from the statement of prosecutor A.A. given at the disciplinary proceedings against A.M. (see paragraph 66 above). In this context, the Court notes that the Government did not submit any information regarding any preparatory meeting or plan with a view to conducting a secure and successful operation on 7 September 2006. Moreover, no arguments were put forward to suggest that the operation had been urgent, which might have justified the absence of preparation owing to a lack of time. Consequently, the Court considers that the authorities should have foreseen that on seeing several police vehicles and the special forces officers wearing masks, the inhabitants of the neighbourhood would gather in the street, as this would have been an unusual thing to happen in a small town.

115. In addition, the Court observes that the State agents present during the incident made contradictory statements regarding the reasons justifying the recourse to firearms. All seven special forces officers declared that they had been forced to intervene because their colleagues from the Reghin and Mureş County police were being attacked by the crowd. The officers from the Reghin and Mureş County police stated that they were not being attacked and declared, as also mentioned in the prosecutor's decision of 16 January 2007, that a fight had broken out between the special forces officers and the people gathered in the street (see paragraphs 28-37 above).

116. Under these circumstances, the Court considers that, even if the seven police officers who were wearing special suits and were equipped with shields, tear gas sprays, grenades and pistols had had to face a dangerous situation created by the attack of the crowd, it was not sufficiently established that the attack was so extremely violent as to justify shooting at random with live ammunition and risking Ms Ciorcan's life.

117. The foregoing considerations are sufficient to enable the Court to conclude that there has been a violation of Article 2 of the Convention under its substantial limb. In view of this conclusion, it is not necessary to

examine the life-threatening conduct of the State agents under the second paragraph of Article 2.

2. Alleged lack of an effective investigation

(a) General principles

118. The Court reiterates that the obligation to protect the right to life under Article 2 of the Convention, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within [its] jurisdiction the rights and freedoms defined in [the] Convention", requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force (see *McCann and Others*, cited above, § 161).

119. The essential purpose of such an investigation is to secure the effective implementation of the domestic laws which protect the right to life and, in those cases involving State agents or bodies, to ensure their accountability for deaths occurring under their responsibility (see *Mastromatteo v. Italy* [GC], no. 37703/97, § 89, ECHR 2002-VIII). The same reasoning applies in the case under consideration, where the Court has found that the force used by the police against Ms Ciorcan endangered her life (see paragraphs 99 to 102 above).

120. The investigation must be capable, firstly, of ascertaining the circumstances in which the incident took place, and, secondly of leading to a determination of whether the force used in such cases was or was not justified in the circumstances and to the identification and punishment of those responsible. This is not an obligation of result, but of means. The authorities must have taken the reasonable steps available to them to secure the evidence concerning the incident, including, *inter alia*, eyewitness testimony and forensic evidence. Any deficiency in the investigation which undermines its capability to establish the circumstances of the case or the person or persons responsible will risk falling foul of the required standard of effectiveness (see *Giuliani and Gaggio v. Italy* [GC], no. 23458/02, § 301, ECHR 2011 (extracts)).

(b) Application of these principles to the present case

121. The Court notes that in order to assess the effectiveness of the investigation into the injuries sustained by Ms Ciorcan, it needs to have a look at the investigation into the incident of 7 September 2006 as a whole.

122. It is true that, following the incident, a criminal investigation was promptly opened by the prosecutor. All the police officers present during the incident were interviewed, as were thirty-nine victims. Laboratory tests were conducted and medical reports were requested in order to collect evidence of the injuries sustained by both sides.

123. However, the Court observes that there were striking omissions in the conduct of the investigation. It attaches significant weight to the fact that the domestic authorities failed to identify which policemen fired their guns, in particular which officer shot Ms Ciorcan. In this respect, the Court notes that the flagrant contradiction between the statements of the special forces officers on the number of State agents who fired their guns, had not been analysed by the prosecutor. Hence, officer P.Ş., the head of the special forces unit, mentioned in his statement given before the Mureş prosecutor that, besides V.M., two of his colleagues had fired their guns (see paragraph 30 above). However, only officer C.I. admitted in his statement that he had fired his gun (see paragraphs 32-36 above).

124. Moreover, it is remarkable that it was not identified by way of an expert report whether Ms Ciorcan was shot with a rubber or metal bullet. This omission is more problematic in the context of the failure to identify who fired the two metal bullets found at the scene of the incident. Furthermore, according to the forensic medical certificate, Ms Ciorcan had been shot front-on while the applicants claimed, in accordance also with her statement, that she had been shot in the back when she was running towards her house. In its decision of 16 July 2007 the prosecutor also held that she had been shot in the back (see paragraph 55 above). The Government did not provide any explanation as to these conflicting versions.

125. The Court further notes that the investigation concerning Ms Ciorcan was terminated on the grounds that she had been injured as a result of a random shooting and that the police officers, who only used non-lethal weapons, had had no intention of killing her. However, the conclusion that only non-lethal weapons were used is challenged by the gravity of the injuries suffered by Ms Ciorcan and the conclusion of the forensic medical report in her respect. The Court also notes that although the prosecutor concluded that the acts of the alleged perpetrators might have constituted serious bodily harm against Ms Ciorcan, the subsequent investigation regarding that offence did not address or analyse her situation at all, and focused on the situation of self-defence the officers were considered to be in, against the rest of the victims (see paragraphs 49-57 above). No plausible explanation for the above omissions was ever provided by the Government.

126. Lastly, the Court cannot overlook the fact that the investigation authorities did not address the issue of the planning and control of the operation. In particular they did not investigate whether the presence of the special forces officers at the place of the incident was necessary and in accordance with the law or whether any special measures had been planned in advance in order to cope with the specific known attitude of the persons they were going to encounter (see paragraph 66 above, and, mutatis mutandis, Shchiborshch and Kuzma v. Russia, no. 5269/08, § 258, 16 January 2014).

127. Having regard to the above considerations and the investigation's failure to address such crucial points, the Court concludes that it fell short of being "thorough" as required by Article 2.

There has accordingly been a violation of Article 2 of the Convention in that regard.

III. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

128. All the applicants, with the exception of Sonia Biga, Augustin Biga and Sorin Ciorcan, complained that they had been victims of serious bodily harm which had put their lives in danger, and which had been inflicted upon them by State agents in breach of Articles 2 and 3 of the Convention. They further complained that the authorities had failed to conduct an effective investigation and to give them a fair trial into their above-mentioned allegations, in breach of Articles 2, 3 and 6 § 1 of the Convention.

129. The Court notes that it has already accepted the Government's argument that the police had not intended to kill the applicants. In addition, unlike in Susana Ciorcan's case, the applicants did not provide the Court with medical certificates stating that their life might have been endangered by the injuries they sustained. Therefore, in light of the above circumstances and taking into account the degree and type of force used against the applicants, the Court considers that the applicants' complaints must be examined exclusively in the light of the provisions of Article 3 of the Convention (see, *mutatis mutandis*, *Acar and Others v. Turkey*, nos. 36088/97 and 38417/97, §§ 77-79, 24 May 2005, and *Şandru and Others v. Romania*, no. 22465/03, §§ 51-54, 8 December 2009).

Article 3 of the Convention reads as follows:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

A. Admissibility

130. The Government submitted that the complaint under Article 3 of the Convention should be declared inadmissible for failure to exhaust domestic remedies with respect to fourteen of the applicants, namely Ana Maria-Paula Bidi, Denes Biga, Erika Biga, Iosif Biga Snr, Iosif Biga Jr, Ladislau Biga, Rozalia Bucunea, Carol Ciorcan, Edith Csiki (Biga), Ladislau Horvath, Petru Kalanyos Snr, Petru Kalanyos Jr, Ana Lingurar and Lela Potra. The Government contended that these applicants failed to join the rest of the applicants in contesting the Reghin prosecutor's decision of 16 July 2007 before the superior prosecutor and subsequently before the Mureş County Court.

131. The above-mentioned applicants replied that, not being represented by lawyer, they had said in their initial statements to the Mureş prosecutor's

office that they were thereby submitting complaints against the special forces officers who subjected them to ill-treatment and claiming compensation in that regard. However, their complaints were not recorded and in the prosecutor's decision of 16 January 2007 only the twenty-seven victims who had filed the complaint through their legal representative were mentioned. Hence their complaints had never been addressed by the authorities.

132. The Court notes that the above-mentioned applicants were informed that their statements had been forwarded to the Reghin prosecutor's office and that, after an exchange of letters, they did not attempt to pursue their request for information concerning the status of their complaints any further (see paragraph 63 above). They also did not join the rest of the applicants in appealing against the decision not to bring charges issued on 16 July 2007 by the Reghin prosecutor's office, where they could have raised their complaints.

133. In view of the above, the Court considers that the complaint under Article 3 in respect of the above-mentioned fourteen applicants must be rejected for non-exhaustion of domestic remedies in accordance with Article 35 §§ 1 and 4 of the Convention.

134. Lastly, the Court considers that the complaint under Article 3 as raised by the applicants Stefan Bidi, Margareta Biga, Liviu Bucunea Jr, Etelka Capo, Costel Ciorcan, Agneta Csiki, Lia Gabor, Ana-Narcisa Gorcs, Ildiko Kalanyos (Biga), Susana Kalanyos, Traian Kovacs, Ancuța Maria Moldovan, Mihai Moldovan Jr, Lajos Panta, Violeta Pusuc, Edith Racz, Cornelia Simion, Ianos Ștefan, Ana Tina Snr and Ana Tina Jr is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. The Court further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

135. The applicants complained that they had been subjected to inhuman and degrading treatment which was severe enough to reach the threshold of Article 3, since it might have endangered their lives. They stressed that they had not attacked the police and, on the contrary, that they had been attacked and had found themselves in a situation of self-defence.

136. The Government did not dispute that the applicants' injuries had been sufficiently serious as to amount to ill-treatment within the scope of Article 3 of the Convention. However, in the Government's view, the responsibility of the State could not be engaged in the current case since the domestic investigation had concluded that the use of force had been justified and that the State agents had acted in self-defence.

137. With respect to the complaint concerning the lack of an effective investigation, both the applicants and the Government reiterated the allegations they submitted in the complaint under Article 2 of the Convention (see paragraphs 91-95 above).

138. In addition, the applicants stressed that the investigation had failed to identify which police officer had fired his gun and why several inhabitants of the neighborhood had been shot in the back, an element which, in their opinion excluded the possibility of self-defence on the part of the State agents. The applicants also submitted that the investigative authorities had failed to take statements and request forensic medical certificates from all of the victims who had filed the criminal complaint.

2. The Court's assessment

139. As the Court has stated on many occasions, Article 3 of the Convention enshrines one of the most fundamental values of a democratic society. It prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the circumstances or the victim's behaviour (see, among other authorities, *Al-Skeini and Others v. the United Kingdom* ([GC], no. 55721/07, § 162, ECHR 2011).

140. The Court is sensitive to the subsidiary nature of its role and recognises that it must be cautious in taking on the role of a first-instance tribunal of fact, where this is not rendered unavoidable by the circumstances of a particular case (see, for example, *McKerr v. the United Kingdom* (dec.), no. 28883/95, ECHR 2001-III). Nevertheless, when allegations are made under Article 3 of the Convention, the Court must apply particularly thorough scrutiny – even where domestic proceedings and investigations have already taken place (see, *mutatis mutandis*, *Ribitsch v. Austria*, 4 December 1995, § 32, Series A no. 336; and *Avşar v. Turkey*, no. 25657/94, § 283, ECHR 2001-VII (extracts)).

141. The Court further reiterates that in assessing evidence, it has generally applied the standard of proof "beyond reasonable doubt". Such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. Moreover, the Court must reach its decision on the basis of the available evidence submitted by the parties. It will thus examine the issues that arise in the light of the documentary evidence adduced in the present case, in particular, the documents lodged by the Government regarding the investigation carried out in the case, as well as the parties' written observations (see, for example, *Menteşe and Others v. Turkey*, no. 36217/97, § 46, 18 January 2005).

142. In the present case, the Court notes that it is not contested that the applicants were shot by police officers, and that the treatment described by the applicants was confirmed for most of them by medical reports and reached the threshold of severity necessary for the events in question to fall

within the ambit of Article 3 of the Convention. It therefore remains to be determined whether the State authorities should be held accountable under Article 3 of the Convention.

143. The Court notes that the applicants told the investigative domestic authorities that they had been attacked by the special forces officers without any provocation. However, the authorities decided to give more weight to the statements of the police officers who declared that they had acted in self-defence, failing to clarify the contradictory statements, to identify the police officers who used their firearms or to gather sufficient documentary evidence.

144. In these circumstances the Court therefore cannot conclude "beyond reasonable doubt" that the police officers intentionally shot the applicants without being provoked, and this difficulty is on account of the authorities' failure to clarify the facts of the case. This finding precludes the Court from making any assessment as to whether the State authorities could be held accountable for the applicants' injuries.

145. The Court therefore finds no violation of Article 3 of the Convention under its substantive limb.

146. That being so, the Court notes, however, that the absence of evidence in support of the applicants' allegations of ill-treatment stems to a large extent from the respondent Government's disregard of their procedural obligations under Article 3 of the Convention (see *Döndü Erdoğan v. Turkey*, no. 32505/02, § 50, 23 March 2010).

147. In this respect, the Court reiterates that Article 3 of the Convention also requires the authorities to investigate allegations of ill-treatment when they are "arguable" and "raise a reasonable suspicion". The minimum standards applicable, as defined by the Court's case-law, include the requirement that the investigation be independent and impartial. In addition, for an investigation to be considered effective, the authorities must take whatever steps they can to secure the evidence concerning the incident including, *inter alia*, a detailed statement concerning the allegations from the alleged victim, eyewitness testimony, forensic evidence and, where appropriate, additional medical reports (see, in particular, *Batı and Others, v. Turkey*, nos. 33097/96 and 57834/00, § 134, ECHR 2004-IV (extracts)).

148. The Court notes that in the current case, the investigation into the applicants' allegations of ill-treatment was terminated in its preliminary phase without clarifying the course of events or the contradictory statements given by the participants. The authorities also failed to identify which of the seven police officers fired their guns, why some of the victims were shot in the back and what type of bullet injured the applicants Erika and Ladislau Biga (see paragraph 16 above).

149. The authorities held during the investigation that a group of around one hundred people had attacked the seven special forces officers with bats and stones. In this connection it must be noted that only twenty-nine victims

were questioned by the prosecutor, and no other participants out of the hundred people allegedly present were identified or questioned during the investigation. In addition, no witnesses were identified and questioned during the investigation. Therefore, the number of people allegedly attacking the police officers was not undoubtedly established by the investigative authorities. Moreover, none of the objects allegedly used as weapons by the inhabitants of Apalina could be found at the scene of the incident during the search conducted by the investigative authorities.

150. The authorities also failed to request medical documents and to take statements in order to collect evidence of all the complaints of ill-treatment submitted before them. In this connection and in respect of the applicants who were unable to provide evidence of their injuries via medical reports, the Court reiterates that it has previously found violations of the procedural limb of Article 3 of the Convention in cases where the applicants were subjected to ill-treatment at the hands of State agents but did not produce medical proof themselves (see *Ghiga Chiujdea v. Romania*, no. 4390/03, §§ 45-49, 5 October 2010). The Court reiterates that a sufficiently detailed description of the ill-treatment allegedly suffered at the hands of State agents justifies an investigation on the part of the domestic authorities, which should include a collection of the victim's medical reports and comply with the provisions of Article 3 of the Convention (ibid., §§ 39 and 45).

151. Therefore, in view of the above and also in light of the reasoning which led to its findings under the procedural aspect of Article 2 (see paragraphs 121-127 above), the Court finds that there has been a violation of the procedural limb of Article 3 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION

152. Lastly, the applicants complained under Article 14 of the Convention taken in conjunction with Articles 2 and 3 that the police officers' and the investigating authorities' perception of them as Roma was a decisive factor in their attitude and acts.

Article 14 of the Convention provides:

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

A. Admissibility

153. In respect of those applicants for whom the complaints under Articles 2 and 3 were found to be admissible, the Court considers that the complaint under Article 14 in conjunction with Articles 2 and 3 of the

Convention is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. The Court further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

154. The applicants submitted that prejudice and hostile attitudes towards persons of Roma origin had played a decisive role in the events of 7 September 2006. They alleged that the police operation involving the intervention of special forces officers, as well as their subsequent unnecessary and excessive use of firearms, was due to the fact that they are of Roma origin. They claimed that the authorities had not shown that they had any reason to suspect that the inhabitants of Apalina were violent or carrying firearms, therefore the intervention of the special forces officers had only been because of their Roma ethnic origin. In addition, using seven special forces officers and six other policemen just to serve a summons which could have been delivered by post, was an excessive measure characteristic of the racist attitude the police in Romania have towards Roma. They pointed out that the Government failed to show that such operations are usually planned in similar situations concerning non-Roma people. They further argued that although they had raised their allegations that there had been racist motives behind their ill-treatment, the domestic authorities had failed to investigate those allegations.

155. Referring to the Court's findings in the case *Nachova and Others* (cited above), the Government considered the applicants' complaints of discrimination to be unsubstantiated and ill-founded. They contended that the expression of concern even by the Council of Europe's Advisory Committee on the Framework Convention for the Protection of National Minorities about allegations of violence against Roma by Romanian law enforcement officers and the repeated failure of the Romanian authorities to remedy the situation and provide redress for discrimination so far does not suffice to consider that it has been established that racist attitudes played a role in the instant case.

2. The Court's assessment

(a) General principles

156. The Court's case-law on Article 14 establishes that discrimination means treating differently, without an objective and reasonable justification, people in relevantly similar situations (see *Willis v. the United Kingdom*, no. 36042/97, § 48, ECHR 2002-IV). Racial violence is a particular affront to human dignity and, in view of its perilous consequences, requires from

the authorities special vigilance and a vigorous reaction. It is for this reason that the authorities must use all available means to combat racism and racist violence, thereby reinforcing democracy's vision of a society in which diversity is not perceived as a threat but as a source of its enrichment (see *Nachova and Others*, cited above, § 145).

157. The Court reiterates that in assessing evidence in this connection, it has adopted the standard of proof "beyond reasonable doubt". However, it has never been its purpose to borrow the approach of the national legal systems which use that standard. Its role is not to rule on criminal guilt or civil liability but on Contracting States' responsibility under the Convention. In the proceedings before it, the Court imposes no procedural barriers on the admissibility of evidence or pre-determined formulae for its assessment. It adopts the conclusions that are, in its view, supported by the free evaluation of all evidence, including such inferences as may flow from the facts and the parties' submissions. According to its established case-law, proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. Moreover, the level of persuasion necessary for reaching a particular conclusion and, in this connection, the distribution of the burden of proof are intrinsically linked to the specificity of the facts, the nature of the allegation made and the Convention right at stake. The Court is also attentive to the seriousness that attaches to a ruling that a Contracting State has violated fundamental rights (ibid., § 147).

158. The Court further reiterates that when investigating violent incidents, State authorities have an additional duty to take all reasonable steps to unmask any racist motives and to establish whether or not ethnic hatred or prejudice may have played a role in the events. Treating racially-induced violence and brutality on an equal footing with cases that have no racist overtones would be turning a blind eye to the specific nature of acts that are particularly destructive of fundamental rights. Failure to make a distinction in the way situations that are essentially different are handled may constitute unjustified treatment irreconcilable with Article 14 of the Convention (ibid., § 160).

159. Admittedly, proving racial motivation will often be extremely difficult in practice. The respondent State's obligation to investigate possible racist overtones to a violent act is an obligation to use its best endeavours and is not absolute; the authorities must do what is reasonable in the circumstances to collect and secure the evidence, explore all practical means of discovering the truth and deliver fully reasoned, impartial and objective decisions, without omitting suspicious facts that may be indicative of a racially induced violence (ibid.).

(b) Application of the above principles to the present case

160. Faced with the applicants' complaint under Article 14, the Court's task is to establish whether or not racial prejudice was a causal factor in the shootings which led to the life threatening injury of Ms Ciorcan and the applicants' ill-treatment as well as in the ensuing investigation so as to give rise to a breach of Article 14 of the Convention taken in conjunction with Articles 2 and 3.

161. The Court notes at the outset that the applicants did not refer to any specific facts in order to substantiate their claim that the violence they had sustained had been racially motivated but only referred to the excessive and unnecessary force used by the authorities against them (see *Cobzaru v. Romania*, no. 48254/99, § 94, 26 July 2007).

162. That being so, it may be inferred from the statement of the prosecutor A.A. (see paragraph 66 above) taken together with the order gave by the chief of Mureș County police on 7 September 2006 (see paragraph 7 above) that the Roma ethnic origin of the two searched persons and of the inhabitants of the neighbourhood was the reason for the intervention of the special forces. In this respect the Court observes that, when the decision to deploy special forces was taken, the authorities were not certain that a crime had indeed been committed and had no reasons to believe that the two suspects - or any other inhabitant of the neighbourhood - were armed or dangerous so as to require the intervention of a police force specially trained for interaction with terrorists and extremely dangerous and armed criminals. Thus, the authorities deployed a grossly excessive force in order to serve summonses to persons not known as dangerous or armed, for the investigation of a minor crime, an operation which could have been done also by post.

163. Whilst the planning of the operation and the State agents' conduct calls for serious criticism, the Court considers, however, that these elements are of themselves an insufficient basis for concluding that the treatment inflicted on Ms Ciorcan and the applicants was racially motivated. It has thus not been established beyond reasonable doubt that racist attitudes played a role in Ms Ciorcan's and the applicants' treatment by the State agents.

164. On the other hand, all the above-mentioned elements, seen against the background of the many published accounts of the existence in Romania of general prejudice and hostility against Roma and of continuing incidents of police abuse against members of this community (see paragraphs

76-81 above), called for verification. Indeed, the authorities were under the obligation to investigate a possible causal link between the alleged racist attitudes and the abuse suffered by Ms Ciorcan and the applicants at the hands of the police (see *B.S. v. Spain*, no. 47159/08, § 60, 24 July 2012).

165. In this respect, the Court notes that the authorities investigating the incident of 7 September 2006 were aware of the fact that State agents had

fired their guns with both rubber bullets and live ammunition in a populated area – the Roma district of the town – without regard for the safety of the public, a fact which led to the injury of various persons including Ms Ciorcan. However, the investigation paid no attention to this fact and the prosecutors omitted to question witnesses or the State agents involved about this.

166. Moreover, the chief of Mureş County police was not asked to explain why he had considered it necessary to require the intervention of the special forces and he was also not confronted with the contradicting statements made by his subordinates (compare with *Antayev and Others v. Russia*, no. 37966/07, § 127, 3 July 2014, where the Court held that, in the absence of any other explanation, the applicants' ethnic origin was the sole, or at least the decisive, reason for the involvement of a special police service in a search conducted within an investigation of a minor offence). Furthermore, no attempt was made to verify for example whether the chief of police or the special forces officers had previously been involved in similar incidents or whether they had been accused in the past of displaying anti-Roma sentiment (see *Nachova and Others*, cited above, § 167). Those failings were compounded by the behavior of the prosecutors, who, as the Court has found above, disregarded relevant facts and terminated the investigation with serious shortcomings.

167. The Court thus finds that the authorities failed in their duty under Article 14 of the Convention to take all possible steps to investigate whether or not discrimination may have played a role in the events.

It follows that there has been a violation of Article 14 of the Convention taken in conjunction with Articles 2 and 3 of the Convention in their procedural aspect.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

168. 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

1. Application no. 29414/09

169. The applicants Sonia Biga, Augustin Biga, Carol Ciorcan, Sorin Ciorcan, Costel Ciorcan, Edith Csiki (Biga) and Ildiko Kalanyos (Biga) claimed jointly a total amount of 2,000,000,000 euros (EUR) in respect of pecuniary and non-pecuniary damage including costs and expenses for the

pain and suffering caused by the use of excessive force against their mother and the lack of a subsequent effective investigation.

170. The Government requested the Court to dismiss the applicants' claims since they were exaggerated and unsubstantiated.

171. The Court notes that the applicants' mother's life was endangered by the numerous internal injuries she suffered at the hands of State agents in an operation which lacked adequate planning and organisation. It must also be noted that the applicants provided the Court with medical documents certifying that Ms Ciorcan's life had been endangered.

172. The Court has found the authorities of the respondent State to be in breach of Article 2 taken alone and in conjunction with Article 14 on account of the above-mentioned treatment and on account of the authorities' subsequent failure to conduct an effective investigation into the incident. In these circumstances, having regard to its previous case-law (see *Makaratzis*, cited above; and *Nachova and Others*, cited above) and to the family ties existent between the applicants and the victim, the Court considers that the applicants' suffering and frustration cannot be compensated solely by the finding of a violation.

173. Therefore, on the basis of the above considerations and making its assessment on an equitable basis the Court awards in respect of non-pecuniary damage EUR 42,000 jointly to the above-mentioned applicants.

2. Application no. 44841/09

174. For the ill-treatment suffered at hands of State agents, the subsequent failure of the authorities to conduct an effective investigation into their complaints, the applicants requested the following amounts in respect of pecuniary and non-pecuniary damage including costs and expenses: Costel Ciorcan requested EUR 100,000; Margareta Biga and Mihai Moldovan Jr requested EUR 30,000; Liviu Bucunea Jr requested EUR 25,000; Etelka Capo, Edith Racz and Cornelia Simion requested EUR 20,000; Ştefan Bidi, Lia Gabor, Ildiko Kalanyos (Biga), Susana Kalanyos, Lajos Panta, Violeta Pusuc, Ianos Ştefan, Ana Tina Snr and Ana Tina Jr requested EUR 15,000; and Agneta Csiki, Ana-Narcisa Gorcs, Traian Kovacs and Ancuţa Maria Moldovan requested EUR 10,000.

175. The Government requested that the Court dismiss the applicants' claims as exaggerated and unsubstantiated.

176. The Court notes that the serious violations found in the present case must have caused the applicants suffering and frustration which cannot be compensated for by a mere finding of a violation. Therefore, having regard to its previous case-law and making its assessment on an equitable basis, the Court awards in respect of non-pecuniary damage EUR 7,500 to each of the above-mentioned applicants.

B. Costs and expenses

177. The applicants claimed a joint amount for costs and expenses with their claims in respect of pecuniary and non-pecuniary damage, without submitting any details (see paragraphs 169 and 174 above).

178. The Government requested that the Court dismiss the applicants' claims as unsubstantiated.

179. 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 (see *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 54, ECHR 2000-XI). In the present case, regard being had to the documents in its possession and the above criteria, the Court rejects the claim for costs and expenses.

C. Default interest

180. The Court considers it appropriate that the default interest rate 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, UNANIMOUSLY,

1. *Decides* to join the applications;

2. *Declares* the complaint under Article 2 of the Convention raised by the applicants Sonia Biga, Augustin Biga, Carol Ciorcan, Sorin Ciorcan, Costel Ciorcan, Edith Csiki (Biga) and Ildiko Kalanyos (Biga) admissible;

3. *Declares* the complaint under Article 3 of the Convention admissible for the applicants Ştefan Bidi, Margareta Biga, Liviu Bucunea Jr, Etelka Capo, Costel Ciorcan, Agneta Csiki, Lia Gabor, Ana-Narcisa Gorcs, Ildiko Kalanyos (Biga), Susana Kalanyos, Traian Kovacs, Ancuţa Maria Moldovan, Mihai Moldovan Jr, Lajos Panta, Violeta Pusuc, Edith Racz, Cornelia Simion, Ianos Ştefan, Ana Tina Snr and Ana Tina Jr;

4. *Declares* the complaint under Article 3 of the Convention inadmissible for the applicants Ana Maria-Paula Bidi, Denes Biga, Erika Biga, Iosif Biga Snr, Iosif Biga Jr, Ladislau Biga, Rozalia Bucunea, Carol Ciorcan, Edith Csiki (Biga), Ladislau Horvath, Petru Kalanyos Snr, Petru Kalanyos Jr, Ana Lingurar and Lela Potra;

5. *Declares* the complaint under Article14 taken together with Articles 2 and 3 of the Convention *admissible* for the applicants Sonia Biga, Augustin Biga, Carol Ciorcan, Sorin Ciorcan, Costel Ciorcan, Edith Csiki (Biga), Ildiko Kalanyos (Biga), Ştefan Bidi, Margareta Biga, Liviu Bucunea Jr, Etelka Capo, Agneta Csiki, Lia Gabor, Ana-Narcisa Gorcs, Susana Kalanyos, Traian Kovacs, Ancuţa Maria Moldovan, Mihai Moldovan Jr, Lajos Panta, Violeta Pusuc, Edith Racz, Cornelia Simion, Ianos Ştefan, Ana Tina Snr and Ana Tina Jr and the remainder of this complaint inadmissible;

6. *Holds* that there has been a violation of Article 2 of the Convention under its substantial and procedural limbs in respect of the applicants Sonia Biga, Augustin Biga, Carol Ciorcan, Sorin Ciorcan, Costel Ciorcan, Edith Csiki (Biga) and Ildiko Kalanyos (Biga);

7. *Holds* that there has been no violation of the substantive limb of Article 3 of the Convention;

8. *Holds* that there has been a violation of the procedural limb of Article 3 of the Convention in respect of the applicants Ştefan Bidi, Margareta Biga, Liviu Bucunea Jr, Etelka Capo, Costel Ciorcan, Agneta Csiki, Lia Gabor, Ana-Narcisa Gorcs, Ildiko Kalanyos (Biga), Susana Kalanyos, Traian Kovacs, Ancuţa Maria Moldovan, Mihai Moldovan Jr, Lajos Panta, Violeta Pusuc, Edith Racz, Cornelia Simion, Ianos Ştefan, Ana Tina Snr and Ana Tina Jr;

9. *Holds* that there has been a violation of Article 14 of the Convention taken in conjunction with Articles 2 and 3 of the Convention under their procedural limb in respect of the applicants Sonia Biga, Augustin Biga, Carol Ciorcan, Sorin Ciorcan, Costel Ciorcan, Edith Csiki (Biga), Ildiko Kalanyos (Biga), Ştefan Bidi, Margareta Biga, Liviu Bucunea Jr, Etelka Capo, Agneta Csiki, Lia Gabor, Ana-Narcisa Gorcs, Susana Kalanyos, Traian Kovacs, Ancuţa Maria Moldovan, Mihai Moldovan Jr, Lajos Panta, Violeta Pusuc, Edith Racz, Cornelia Simion, Ianos Ştefan, Ana Tina Snr and Ana Tina Jr;

10. *Holds*

(a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement plus any tax that may be chargeable:

(i) EUR 42,000 (forty-two thousand euros) jointly to the applicants Sonia Biga, Augustin Biga, Carol Ciorcan, Costel Ciorcan, Sorin Ciorcan, Edith Csiki (Biga) and Ildiko Kalanyos (Biga);

(ii) EUR 7,500 (seven thousand five hundred euros), to each of the applicants Ştefan Bidi, Margareta Biga, Liviu Bucunea Jr, Etelka Capo, Costel Ciorcan, Agneta Csiki, Lia Gabor, Ana-Narcisa Gorcs, Ildiko Kalanyos (Biga), Susana Kalanyos, Traian Kovacs, Ancuţa Maria Moldovan, Mihai Moldovan Jr, Lajos Panta, Violeta Pusuc, Edith Racz, Cornelia Simion, Ianos Ştefan, Ana Tina Snr and Ana Tina Jr;

(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;

11. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 27 January 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Marialena Tsirli
Deputy Registrar

Josep Casadevall
President

ANNEX

No.	Applicant's name, date of birth and place of residence	Application No.
1.	**Costel CIORCAN** 2/02/1978, Reghin	29414/09 44841/09
2.	**Sorin CIORCAN** 21/09/1979, Reghin	29414/09
3.	**Carol CIORCAN** 2/07/1981, Reghin	29414/09 44841/09
4.	**Sonia BIGA** 22/12/1974, Reghin	29414/09
5.	**Augustin BIGA** 14/03/1973, Reghin	29414/09
6.	**Ildiko KALANYOS (BIGA)** 16/05/1971, Reghin	29414/09 44841/09
7.	**Edith CSIKI (BIGA)** 16/05/1971, Reghin	29414/09 44841/09
8.	**Ana Maria-Paula BIDI (BEICA)** 26/05/1987, Reghin	44841/09
9.	**Ştefan BIDI** 19/05/1981, Reghin	44841/09
10.	**Deneş BIGA** 15/06/1956, Reghin	44841/09
11.	**Erika BIGA** 25/02/1975, Reghin	44841/09
12.	**Iosif BIGA (Jr)** 16/11/1973, Reghin	44841/09
13.	**Iosif BIGA (Snr)** 10/04/1950, Reghin	44841/09
14.	**Ladislau BIGA** 30/01/1989, Reghin	44841/09
15.	**Margareta BIGA** 30/09/1951, Reghin	44841/09

16.	**Liviu BUCUNEA (Jr)** 8/06/1985, Reghin	44841/09
17.	**Rozalia BUCUNEA** 28/12/1964, Reghin	44841/09
18.	**Etelka CAPO** 25/07/1980, Reghin	44841/09
19.	**Agneta CSIKI** 29/11/1972, Reghin	44841/09
20.	**Lia GABOR** 14/01/1974, Reghin	44841/09
21.	**Ana-Narcisa GORCS** 15/09/1978, Orăştie	44841/09
22.	**Ladislau HORVATH** 25/03/1960, Reghin	44841/09
23.	**Petru KALANYOS (Snr)** 16/11/1965, Reghin	44841/09
24.	**Petru KALANYOS (Jr)** 19/02/1990, Reghin	44841/09
25.	**Susana KALANYOS** 28/04/1937, Reghin	44841/09
26.	**Traian KOVACS** 20/02/1974, Reghin	44841/09
27.	**Ana LINGURAR** 18/03/1957, Reghin	44841/09
28.	**Ancuţa Maria MOLDOVAN** 1/06/1984, Reghin	44841/09
29.	**Mihai MOLDOVAN (Jr)** 28/09/1988, Reghin	44841/09
30.	**Lajos PANTA** 24/04/1976, Reghin	44841/09
31.	**Lela POTRA** 24/12/1975, Reghin	44841/09
32.	**Violeta PUSUC** 17/02/1967, Reghin	44841/09

33.	**Edith RACZ (BIGA)** 24/10/1984, Reghin	44841/09
34.	**Cornelia SIMION (BIGA)** 4/01/1981, Reghin	44841/09
35.	**Ianos ȘTEFAN** 30/12/1964, Reghin	44841/09
36.	**Ana TINA (Snr)** 21/11/1944, Reghin	44841/09
37.	**Ana TINA (Jr)** 10/08/1970, Reghin	44841/09