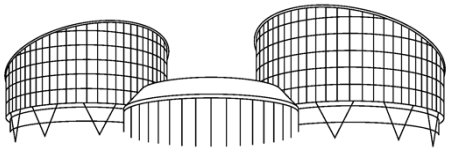

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF LINGURAR v. ROMANIA

(Application no. 48474/14)

JUDGMENT

STRASBOURG

16 April 2019

This judgment is final but it may be subject to editorial revision.

In the case of Lingurar v. Romania,

The European Court of Human Rights (Fourth Section), sitting as a Committee composed of:

Paulo Pinto de Albuquerque, *President,*
Egidijus Kūris,
Iulia Antoanella Motoc, *judges,*
and Andrea Tamietti, *Deputy Section Registrar,*

Having deliberated in private on 13 November 2018 and 26 March 2019,

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

PROCEDURE

1. The case originated in an application (no. 48474/14) against Romania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by four Romanian nationals ("the applicants") on 28 June 2014. A list of the applicants is set out in the appendix.

2. The applicants were represented by Ms M. Voinescu, a lawyer practising in Braşov, and by Romano CRISS, a non-governmental organisation based in Romania. The Romanian Government ("the Government") were represented by their Agent, Ms C. Brumar, from the Ministry of Foreign Affairs.

3. On 22 April 2015 the application was communicated to the Government.

4. On 24 August 2015, under Article 36 § 2 of the Convention and Rule 44 § 3 of the Rules of Court, the President of the Section granted the European Roma Rights Centre ("the ERRC") leave to intervene as a third party in the proceedings.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants are all Roma who live in Vâlcele.

A. The police raid of 15 December 2011

1. The applicants' version

6. At around 5 a.m. on the morning of 15 December 2011 several police officers and gendarmes, together with the local forest ranger – all wearing special intervention clothing – knocked on the applicants' door, claiming to be their neighbours. As the applicants hesitated, they broke down the unlocked front door and entered by force. Upon entering the applicants' home, the forest ranger placed a balaclava on his head. The police officers also wore balaclavas.

7. In the first room the police found the fourth applicant (Ms Elena Lingurar), her daughter (the second applicant, Ms Ana Maria Lingurar) and her daughter-in-law with a seven-month-old baby in her arms. The police dragged the two applicants out of their beds and started hitting them. The fourth applicant was hit on her collar bone with a police truncheon. When the second applicant asked the police why they were beating her mother, she was hit in the mouth and then forced to wash her face to remove the traces of blood.

8. When the police entered the next room they found the third applicant (Mr Aron Lingurar, born in 1985) with his wife. They dragged him onto the ground, kicked him and shouted abuse. The first applicant (Mr Aron Lingurar, born in 1949) was also taken into that room. He had also been beaten by the police.

9. Without allowing them to put any clothes on, the police took the first and third applicants out into the yard, pushed them onto the ground and hit them. They then put them in a police car, where the violence continued. The fourth applicant was not allowed to approach them or take them clothes.

10. The first and third applicants were taken to a police station, where they gave their statements. They were fined and sent back home.

2. The Government's version

11. On 12 December 2011 a forest ranger informed the Araci police that on 7 December 2011 the first applicant had taken home timber which had been illegally cut from the forest. When confronted by forest rangers, the first applicant had become aggressive. The forest ranger explained that the first applicant had exhibited a hostile attitude towards the forest rangers ever since his son, the third applicant, had been fined by the police, in spring 2011. He submitted that the first applicant had set a bad example for his community:

> "We consider that Mr Lingurar Aron, who sees himself as being the leader of the Roma in Vâlcele, by his attitude, instead of helping us solve the problems connected with the Roma community in Vâlcele – which in fact is more peaceful and hard-working than the community in Araci – creates more problems with the example he sets for the others."

12. In this context, and in order to reduce and prevent the criminal activity, to strengthen citizens' safety, to identify individuals without identity documents, to summon those suspected of having committed several crimes and to recover stolen goods, the police organised the raid of 15 December 2011.

13. On 14 December 2011 the Covasna Inspectorate of Police (*Inspectoratul de Poliție Județean Covasna;* hereinafter "the IPJ") drafted an intervention plan with a view to carrying out a raid in the villages in the municipality of Vâlcele. Describing the population of the applicants' village, the plan stated that out of 4,311 inhabitants, 826 had been released on parole, 432 had a criminal record, and 600 had been found guilty of violent crimes. The general context was described as follows:

> "The Vâlcele municipality consists of the villages Vâlcele, Araci, Hetea, and Ariuşd. Out of a total population of 4,300 inhabitants, 2,902 are of Roma ethnicity. Most of the members of this ethnicity do not have a steady income and make ends meet from social benefits, the sale of timber stolen from the forest, seasonal and occasional work, and from crime – mostly thefts. ...
>
> Of the individuals having committed crimes in 2011, it appears that 80% are of Roma ethnicity, with a variety of offences. ...
>
> As a result of the preventive activity carried out by the [IPJ] in Araci village, six criminal groups have been identified, made up of members of Roma families R., B., C., G., L., and N. [nb: the applicants' family is not mentioned among them]"

14. Given the range of issues to be tackled and the goals of the raid, the intervention involved: fifty-three police officers (eleven from the department for public order, four from the department for criminal investigations, eighteen from the Sfântu Gheorghe police department, six from Vâlcele police station, ten from the Rapid Intervention Squad (*Serviciul de Intervenţie Rapidă*; "SIR"), and two from the department for criminal forensics) and thirty gendarmes from the Covasna Gendarmerie Inspectorate (*Inspectoratul Județean de Jandarmi Covasna;* hereinafter "the IJJ"). They had thirteen cars at their disposal.

15. According to the police report of 15 December 2011, the police officers performed the following acts during the raid: they searched 140 cars and performed 190 identity checks; they issued eight administrative fines (*sancţiuni contravenţionale*); they confiscated fifteen cubic metres of timber; they took sixty-four individuals to the police headquarters for further criminal enquiries; they solved six criminal complaints and enforced two orders to appear (*mandat de aducere*); they identified ten individuals from police operational information; and they took fingerprints from and photographs of fourteen individuals.

16. The police officers approached the applicants' home after 6 a.m. and knocked on the door. When two women (the second and fourth applicants) exited the house, the police asked them to call the third applicant, who was wanted for questioning regarding several criminal acts. The third applicant

came out of the house, shouted abuse at the police officers and became physically violent. At that point the police immobilised and handcuffed him, and took him to one of the police cars. The first applicant then came out of the house shouting abuse at the police officers. For safety reasons, they handcuffed him and took him to the same police car where the third applicant was waiting. The second and fourth applicants were presumably injured in the process, as they tried to oppose the police actions. They pulled their own hair, slapped themselves on their faces, hit the gate with their fists and shouted, in order to intimidate the police officers.

B. Medical reports

17. On 15 and 16 December 2011 the applicants were examined in the emergency ward of the local hospital. Subsequently, they also underwent a forensic examination.

18. The forensic report delivered on 15 December 2011 states that the second applicant had dried blood on her lips and left cheek, but no bruises or dental pain. The reason for the bleeding could not be established. She refused to undergo further medical examinations. The conclusion of the report was that she did not present any traumatic lesions but that a trauma caused by an act of aggression could not be excluded.

19. On 20 December 2011 a forensic medical report was drawn up for the first applicant. It stated that he had complained of chest pain and had two bruises on his chest. An X-ray examination performed on the same day had not revealed any further damage. It was concluded that the trauma could have been caused by being hit with a hard object and that on account of the injuries, the first applicant needed one to two days of medical care.

20. On 20 December 2011 a forensic medical report was drawn up for the third applicant. The presence of bruises on the right eye, chest and right arm were recorded. The examiner concluded that the injuries could have been caused by a blow with a baseball bat and that the third applicant needed four to five days of medical care.

21. On 21 December 2011 a forensic medical report was drawn up for the fourth applicant. She complained of abdominal and chest pains and had a bruise on her lower chest. It was concluded that her injuries could have been caused by being hit with a hard object and that she needed one to two days of medical care.

C. Criminal prosecution

1. Prosecutor's decision of 11 March 2013

22. On 20 February 2012 the applicants lodged a criminal complaint against the forest ranger and the police officers on duty on

15 December 2011. They accused the officials of beating them and committing other acts of violence.

23. The case was investigated by the IPJ under the supervision of the prosecutor's office attached to the Braşov Court of Appeal. Thirteen police officers and three gendarmes were put under investigation. The prosecutor interviewed the applicants and the police officers and gendarmes, as well as three witnesses. The witnesses were the applicants' neighbours who had been present during the incidents. The applicants had proposed that they be questioned.

24. The prosecutor established that the operation had been organised in accordance with the intervention plan drawn up by the IPJ and the IJJ. The assignment had been to take to the Vâlcele police station several individuals needed for questioning concerning several criminal complaints linked to various criminal investigations.

25. Relying on the statements given by the forest ranger and the police, the prosecutor established that the forest ranger had not participated in the events, and that the raid had started at 7 a.m. and not at 5 a.m. as indicated by the applicants and their neighbours.

26. The gendarmes denied having committed acts of violence or having seen traces of injuries on the applicants. Police officer P.A. explained that the use of force and the handcuffing had been necessary because of the applicants' violent behaviour. Concretely, the first applicant had opposed the police intervention, claiming that he was a local counsellor for Roma matters, and had shouted abuse and threats at the police.

27. On 6 July 2012 the investigators examined the applicants' front door. They noted that some of its window panels had been broken, the wood had been splintered, and the paint was missing from the bottom of the door; they were unable to establish when the door had been damaged.

28. On 11 March 2013 the prosecutor concluded that there was not enough evidence to institute proceedings against the police officers.

2. Prosecutor's decision of 17 April 2013

29. The applicants objected to the prosecutor's decision. They argued mainly that the prosecutor, without justification, had given preference to the statements made by the police to the detriment of those made by the applicants. They also averred that the investigation had failed to provide an explanation for the violence perpetrated against them. They stressed that it was the established and frequent practice of the police in the area to attack members of the Roma community without any justification.

30. On 17 April 2013 the prosecutor-in-chief from the prosecutor's office attached to the Braşov Court of Appeal dismissed the objection on the following grounds:

- the intervention had been lawful;

- the applicants' immobilisation and the use of handcuffs had been lawful and made necessary by their aggressive behaviour; they had therefore been taken to the police station, interviewed and fined;

- the investigation had been completed;

- the prosecutor had clarified all aspects of the case and examined the evidence gathered;

- the decision had represented the prosecutor's own conviction based on the evidence in the file, and the reasons given had been adequate;

- the other assertions made by the applicants had not been substantiated by evidence.

3. Court's decision of 23 May 2013

31. The applicants challenged the prosecutors' decisions, reiterating the arguments put forward in their objection (see paragraph 29 above).

32. The Braşov Court of Appeal heard the case and in a decision of 23 May 2013 it sent the case back to the prosecutor's office for further investigations. It mainly considered that the authorities had to provide justification for the injuries sustained by the applicants. The first and third applicants had been taken to the police station, and had thus been under police control for a few hours. The second and fourth applicants had sustained injuries which the prosecutor had failed to explain.

33. The court further noted that the prosecutor had not identified the person who had given the order to immobilise the first and third applicants and take them to the police station. Both the gendarmes and the police officers involved had denied having immobilised the applicants.

34. The court went on to question the lawfulness of the police intervention. It noted that at that time the applicants had not been the subject of any criminal investigation and that no order to appear before the police had been issued in their names. It further noted that the second and fourth applicants had not even been arrested.

35. The court concluded that the criminal investigation had not been exhaustive. It therefore ordered the prosecutor:

- to hear evidence from witnesses, in particular from other persons who had been targeted by that police intervention and neighbours who could clarify whether the police officers had entered the applicants' home;

- to hear the police officers involved in the operation and those responsible for mounting the operation, in order to find out who had given the order to immobilise the first and third applicants and who had carried out that order;

- to establish how the immobilisation of the first and third applicants had happened;

- to establish how the second and fourth applicants, who had not been immobilised by the police, had been injured;

- to establish who had participated in the operation on behalf of the authorities, whether police officers, gendarmes or other individuals.

4. New investigation

36. A new investigation was carried out under the supervision of the same prosecutor from the prosecutor's office attached to the Braşov Court of Appeal.

37. On 24 July 2013 the IPJ drafted a report on the investigation, confirming the previous findings concerning the use of force and the applicants' conduct. The injuries sustained by the second and fourth applicants were explained in the report as follows:

> "[The two women] had exhibited behaviour specific to Roma in such circumstances: they had started pulling their own hair, slapping themselves on their faces, hitting the gate with their fists and shouting in order to intimidate the police officers."

38. On 5 August 2013 the prosecutor's office decided not to prosecute. It considered that all the indications given by the court had been observed during the new investigation and that further clarifications concerning the case and the general situation in Vâlcele had been provided.

39. The prosecutor explained, in particular, that because of the problems with the Roma community in Vâlcele, the police and gendarmes had had to combine forces. He recalled that on 27 June 2013 a police officer had been injured and was currently in a critical state in hospital following a police intervention aimed at settling a conflict between two rival Roma clans. Likewise, on 15 July 2013 another police officer had had to open fire in self-defence against an individual who had broken the windscreen of a police car during a police intervention triggered by a distress call. The prosecutor noted that most of the inhabitants of Vâlcele, and in particular those from three villages (Hetea, Vâlcele and Araci), were known for breaking the law and were aggressive towards the police. The applicants' family members had been subject to investigations for the theft of wood or for disturbing public order.

40. The prosecutor held that the injuries sustained by the first and third applicants could be explained by the use of force during the immobilisation, which had been made necessary by the applicants' violent behaviour. The second and fourth applicants had been injured when they had attacked the police officers in order to prevent them from immobilising their family members. The prosecutor reiterated the explanation given in the police report about the behaviour allegedly exhibited by the second and fourth applicants. The identities of the four gendarmes who had executed the immobilisation were known, but had to be kept secret for their own protection.

41. The applicants objected to that decision, arguing that the prosecutor had failed to investigate whether the use of force had been proportionate and

justified. They also complained of the use of stereotypes in respect of Roma in the prosecutor's decision.

42. On 20 September 2013 the prosecutor-in-chief from the same prosecutor's office upheld the decision on similar grounds to those given in the decision of 17 April 2013 (see paragraph 30 above) and, in addition, on the ground that the prosecutor had complied with the orders made by the court (see paragraph 35 above).

5. The court decision of 16 January 2014

43. The applicants complained about the prosecutors' decisions, reiterating their previous arguments.

44. On 16 January 2014 the Braşov Court of Appeal dismissed the applicants' complaint as unfounded. The decision was final.

45. The court considered that the prosecutor had respected the requirements set by the previous court decision (see paragraph 35 above). Additional witnesses who did not belong to the police or gendarmerie had been heard. It also considered that the evidence adduced could not prove beyond any reasonable doubt that the police officers had injured the applicants. The applicants' statements and the medical reports, which remained the only elements supporting that theory, were not sufficient to change the conclusion. According to the Court of Appeal, the explanations offered by the prosecutor as to the cause of injuries were plausible and the police officers had not used excessive force. The court also considered that the applicants had an obligation to identify the alleged perpetrators. Lastly, the court noted that the investigations had not been influenced by the fact that the applicants were Roma.

II. RELEVANT DOMESTIC LAW

46. A detailed presentation of the relevant legal provisions can be found in *Ciorcan and Others v. Romania* (nos. 29414/09 and 44841/09, §§ 71-74, 27 January 2015).

III. RELEVANT INTERNATIONAL MATERIAL

47. The relevant international material concerning the situation of Roma in Romania is described in *Boacă and Others v. Romania* (no. 40355/11, §§ 35-40, 12 January 2016).

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 3 AND 14 OF THE CONVENTION

48. The applicants complained, under Articles 3, 6 and 14 of the Convention, that police officers had ill-treated them during a raid on 15 December 2011 and that the investigation into those events had not been effective. They further complained that the authorities had used stereotypical arguments to justify the police intervention, which had been accepted by the courts.

49. Being master of the characterisation to be given in law to the facts of the case (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, §§ 114 and 126, ECHR 2018), the Court considers that the applicant's complaints should be examined only from the standpoint of Articles 3 and 14 of the Convention, which read as follows:

Article 3

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

Article 14

"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

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

B. Merits

1. The parties' submissions

(a) The applicants

51. The applicants contended that the evidence in the file, namely medical reports and witness statements, contradicted the Government's version of facts (see paragraphs 11-16 above). They further argued that the domestic courts had ignored the conclusions of the forensic reports, as well as the witness statements, and had turned a blind eye to the racist overtones

of the abuse and to the abuse itself. There was no evidence that the applicants had been violent or provocative during the incidents, and remarks to that effect by the police were mere excuses to cover up their own abusive and violent conduct against the applicants. There was also no evidence to sustain the Government's position that the injuries had been self-inflicted. They lastly pointed out that the allegations that they had attempted to intimidate the police officers were unfounded. They reiterated that when the incident had occurred they had been aged 62, 17, 55 and 26 and had been unarmed; they had been tackled by eighty-three law-enforcement officers, all of whom had been carrying lethal weapons.

52. The applicants further contended that the investigation had been neither independent nor effective. They pointed out that the police investigators had been part of the same police unit as the police officers accused of ill-treatment, and that therefore an institutional and hierarchical relationship existed between them. They relied on *Anton v. Romania* (no. 57365/12, 19 May 2015). They reiterated that the Commissioner for Human Rights had urged the Romanian authorities to set up an independent and effective mechanism for investigating complaints against the police.

53. The applicants further claimed that the investigation had failed to examine the necessity and proportionality of the use of force. Moreover, the conclusion of the investigation had been based solely on the statements by the police officers, thus failing to reconcile the conflicting versions presented by the parties involved. The applicants concluded that the investigation had been conducted in a superficial and subjective manner.

54. The applicants complained that the prosecutor had justified the proportionality of the police intervention by using stereotypical arguments concerning what was perceived to be the attitude of Roma in general and by referring to other unrelated incidents involving members of the Roma community.

55. The applicants maintained that the Roma communities faced an institutional racist bias, manifested throughout police policies and procedures aimed at their communities. They argued that the police intervention plan of 15 December 2011 had clearly shown that the raid had been intended against the Roma community, which had been portrayed as a criminal community. The very essence of the police intervention had been, in their view, racist. Moreover, they averred that the statistical data provided in the intervention plan did not coincide with the figures available from the official census. In their view, this proved that the police had conducted their own census of the Vâlcele population and collected data on criminality based on the ethnic appurtenance of the suspects. Therefore the police portrayed the whole Roma community as being a criminal community and made generalisations which were incompatible with the requirements of Article 14 of the Convention.

56. The applicants denied the so-called "Roma behaviour" allegedly exhibited by the second and fourth applicants, which the authorities had used to justify the injuries suffered by those applicants (see paragraphs 37 and 40 above).

57. Lastly, the applicants argued that the prosecutor had failed to react to the evidence that the police action had been planned and justified in a purely racist manner.

(b) The Government

58. The Government accepted that the applicants had suffered physical harm at the hands of the police, but argued that the injuries had not reached a level of severity sufficient to bring them within the scope of Article 3 of the Convention. Moreover, they pointed out that the use of force had been justified and appropriate in the circumstances of the case, bearing in mind the breadth of the criminal activity in the area where the police intervention had occurred, and the applicants' provocative conduct. They considered that there was no reason for the Court to depart from the assessment made by the domestic courts in this respect.

59. The Government further pointed out that the police officers had not used firearms and that the police operation had been set up in order to tackle issues in the whole neighbourhood, so it had not been directly aimed at the applicants' family. Lastly, they reiterated that the State had a monopoly on the use of lawful violence and that anomy and disrespectful conduct towards the law-enforcement authorities should not be tolerated.

60. The Government noted that the prosecutor had initiated a very complex inquiry into the conduct of the police officers and that the decisions taken had been based on a significant amount of evidence, including statements from the applicants and from all the police officers involved, witness statements, medical reports and material evidence gathered at the scene of the incident. The decisions that the use of force had been legitimate had been supported by compelling evidence. The Government stressed that the Court's assessment must remain subsidiary to that of the domestic authorities.

61. The Government contended that the applicants had failed to substantiate in any manner the allegations of racial motives behind the police officers' actions. They further argued that the expression of concern 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 did not suffice to consider it established that racist attitudes had played a role in the current case. They contended that the police raid had been linked not to the applicants' ethnicity but rather to the need to curb the criminality in the area.

62. The authorities' conduct had not been provocative, but strictly defensive. The Government pointed out that the forest ranger had shown no bias against the Roma community, which he had commended for being peaceful and hardworking (see paragraph 11 above). As for the expression in the prosecutor's decision of 5 August 2013, they argued that it was no more than a description taken from the police report (see paragraphs 37 and 40 above), and was merely a case of linguistic negligence. The details given in the police reports were a sign of thoroughness in the preparation of their mission, rather than of bias against the applicants' ethnicity.

(c) The third party

63. The ERRC referred to various international reports and surveys (by the OSCE, Amnesty International, European Union Fundamental Rights Agency – "the FRA") concerning the increase, in recent years, of anti-Gypsy attitudes in Europe, evidenced in part by an increase in violence against Roma and by violent police raids apparently motivated by stereotypical views on Roma criminality. Various international bodies had shown their concern about reports of racial stereotyping and racist hate crimes against Roma in Romania: the UN Committee on the Elimination of Racial Discrimination ("the CERD"), the UN Committee against Torture, and the Council of Europe's European Commission against Racism and Intolerance ("ECRI"). In addition, surveys conducted between 2005 and 2015 by the National Council for Combating Discrimination and the National Institute for the Study of the Holocaust in Romania had indicated that between 41% and 68% of respondents would prefer not to have a Roma work colleague, neighbour, friend or family member; 21% considered Roma to be a threat; 61% thought that Roma were a source of shame for Romania; and 52% said that Roma should not be allowed to travel outside the country.

64. The ERRC further pointed out that, according to research done by the FRA and the UN Special Rapporteur on extreme poverty, Phillip Alston, Romania did not keep any record of racially-motivated crimes, lacking a comprehensive data-collection system. In the ERRC's view, the Romanian authorities' failure to compile data on racially motivated crimes was a symptom of institutional racism, which also undermined the ability to identify patterns of racist violence (they relied in this respect on *Milanović v. Serbia*, no. 44614/07, § 89, 14 December 2010). They pointed out that, according to information gathered from the mass media, the applicants' village belonged to an area with a significant Roma population and with a recent history of serious violence perpetrated against Roma, such as allegations of repeated police abuse, ethnic tensions, and alleged lynching.

65. The ERRC urged the Court to pay particular attention to (1) the lack of appropriate institutional arrangements for protecting Roma (such as lack of training or appropriate records and data); and (2) the evidence of negative stereotypes in respect of the behaviour of Roma or the credibility of

complaints brought by Roma. They argued that the racial stereotyping of Roma was likely to corrupt the assessment of the facts by the domestic authorities, particularly in the context of widespread anti-Roma sentiment. They contended that the police might be motivated by stereotypical views of "Roma criminality" in their choice of investigative priorities and by notions of "Roma violence" in choosing the means to intervene in a Roma neighbourhood, just as those stereotypes could affect the opinion of a judge reviewing a complaint concerning police intervention.

66. Lastly, the ERRC submitted that vulnerable victims – such as Roma – alleging racially motivated violence were unlikely to be able to prove beyond reasonable doubt that they had been subjected to discrimination, especially when they were also victims of a failure on the part of the domestic authorities to carry out an effective investigation. They asserted that the authorities' failure to implement appropriate legal measures and policies disclosed the existence of institutional racism.

2. The Court's assessment

(a) General principles

67. The Court refers to the general principles set out in its case-law concerning the prohibition of ill-treatment and the requirement of an effective investigation into such allegations, as enshrined in Article 3 of the Convention (see *Bouyid v. Belgium* [GC], no. 23380/09, §§ 81-90 and 114-23, ECHR 2015; *Boacă and Others v. Romania*, no. 40355/11, §§ 66-67, 74-75 and 81-84, 12 January 2016; and *Samachişă v. Romania*, no. 57467/10, §§ 59-64, 16 July 2015).

68. The Court makes further reference to the principles it established under Article 14 of the Convention taken together with Article 3. In particular, it reiterates that a difference in treatment is discriminatory if "it has no objective and reasonable justification", that is, if it does not pursue a "legitimate aim" or if there is not a "reasonable relationship of proportionality" between the means employed and the aim sought to be realised. Where the difference in treatment is based on race, colour or ethnic origin, the notion of objective and reasonable justification must be interpreted as strictly as possible (see *D.H. and Others v. the Czech Republic* [GC], no. 57325/00, § 196, ECHR 2007-IV). Moreover, 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 (see *Ciorcan and Others v. Romania,* nos. 29414/09 and 44841/09, §§ 156-59, 27 January 2015).

(b) Application of those principles to the present case

(i) Alleged ill-treatment

69. The Court notes that on the morning of 15 December 2011 the applicants received a visit from eighty-five armed law-enforcement officers (see paragraphs 6, 14 and 16 above). The applicants were unarmed and were not sought by the police for any violent crimes (see, *mutatis mutandis*, *Petruş Iacob v. Romania*, no. 13524/05, § 36, 4 December 2012). In the aftermath of that intervention, they were left with injuries that needed medical care. The Court considers that in the circumstances of the case, the injuries alleged by the victims, as established in the forensic medical reports described in paragraphs 18-21 above, attained the minimum level of severity required by Article 3 of the Convention (see, *mutatis mutandis*, *Boacă and Others v. Romania* [Committee], no. 40374/11, § 51, 17 January 2017).

70. The Court notes that in their submissions the Government argued that the use of force had been necessary and proportionate and that the applicants had been provocative and disrespectful towards the law-enforcement authorities (see paragraphs 58 and 59 above). However, no action, be it criminal, administrative or civil, was taken against the applicants for alleged abusive behaviour. Moreover, it is to be noted that the applicants were faced with highly-trained officers specialised in rapid intervention, in a relatively confined space (their home). Nothing suggests that the four gendarmes who had immobilised the applicants and who were part of a police force of eighty-five officers present at the scene were overwhelmed by the applicants.

71. As to the authorities' hypothesis that the injuries suffered by the second and fourth applicants had been self-inflicted (see paragraphs 37 and 40 above), the Court notes that, other than the statements of the police officers present on the scene, there is no evidence to corroborate it (see, *mutatis mutandis*, *Bouyid*, cited above, § 97).

72. In the light of the above findings, the Court considers that neither the domestic courts nor the Government have convincingly shown that, in the particular circumstances of the present case, the force employed by the law-enforcement officers during the events of 15 December 2011 was proportionate (see, *mutatis mutandis*, *Boacă* [Committee], cited above, § 55).

73. Accordingly, there has been a breach of Article 3 of the Convention under its substantive limb.

(ii) Alleged racial motives for the organisation of the police raid

74. As for the allegations of discrimination, the Court must establish whether or not racial prejudice was a causal factor behind the police intervention (see, *mutatis mutandis*, *Ciorcan*, cited above, § 160).

75. In this connection, the Court notes that in the police intervention plan, drafted prior to the police raid of 15 December 2011, the authorities identified the ethnic composition of the targeted community and referred to the alleged anti-social behaviour of ethnic Roma and the alleged high criminality among Roma (see paragraph 13 above). The same assertions were made by the investigators, who explained the applicants' alleged aggressiveness by their ethnic traits or by habits "specific to Roma" (see paragraph 37 above). The prosecutor also considered that the police raid had been rendered necessary by the problems experienced with the Roma community and their criminal behaviour (see paragraph 39 above). The Court observes that the authorities extended to the whole community the criminal behaviour of a few of their members on the sole ground of their common ethnic origin (see paragraph 40 above).

76. Turning to the facts of the current case, the Court considers that the manner in which the authorities justified and executed the police raid shows that the police had exercised their powers in a discriminatory manner, expecting the applicants to be criminals because of their ethnic origin. The applicants' own behaviour was extrapolated from a stereotypical perception that the authorities had of the Roma community as a whole. The Court considers that the applicants were targeted because they were Roma and because the authorities perceived the Roma community as anti-social and criminal. This conclusion, also supported by the general reports of racial stereotyping of Roma presented by the third party (see paragraph 63 above), goes beyond a simple expression of concern about ethnic discrimination in Romania (see paragraph 61 above and, conversely, *Ciorcan*, cited above, § 160). It shows concretely that the decisions to organise the police raid and to use force against the applicants were made on considerations based on the applicants' ethnic origin. The authorities automatically connected ethnicity to criminal behaviour, thus their ethnic profiling of the applicants was discriminatory.

77. Reiterating its findings that the police response was disproportionate to the applicants' behaviour (see paragraph 72 above), the Court considers that in the case at hand, the Government failed to prove that considerations other than the applicants' ethnicity played an important role in the manner in which the police raid of 15 December 2011 had been organised and carried out.

78. It follows that there has been a violation of Article 14 of the Convention taken in conjunction with Article 3 of the Convention under its substantive limb.

(iii) Alleged lack of an effective investigation

79. The Court observes that the applicants complained to the authorities about what they perceived to be frequent and unwarranted acts of violence by police officers against the Roma community (see paragraphs 29, 31, 41

and 43 above). Nonetheless, the authorities accepted as justification for the use of force an assessment made by the police in which negative inference seemed to have been drawn from the ethnic composition of the community (see paragraphs 13 and 39 above). In accepting that justification, the domestic courts did not censure what seems to be a discriminatory use of ethnic profiling by the authorities. Moreover, the authorities fell back on references to cases in which members of the Roma community had been violent towards law-enforcement officials, without explaining how those examples were of any relevance to the case in issue, in so far as they bore no resemblance to the applicants' situation and had no direct link to the present case.

80. In the Court's view, in situations where there is evidence of patterns of violence and intolerance against an ethnic minority, the positive obligations incumbent on member States require a higher standard of response to alleged bias-motivated incidents (see the case-law quoted in paragraph 68 above). The Court is mindful of the evidence produced by the parties and the available material which show that, in the respondent State, the Roma communities are often confronted with institutionalised racism and are prone to excessive use of force by the law-enforcement authorities (see the references in paragraph 47 above). In this context, the mere fact that in the present case stereotypes about "Roma behaviour" feature in the authorities' assessment of the situation (see paragraph 37 and 40 above), may give rise to suspicions of discrimination based on ethnic grounds. Such suspicions, coupled with the modalities of the intervention of 15 December 2011, should have prompted the authorities to take all possible steps to investigate whether or not discrimination may have played a role in the events. However, the applicants' allegations of discrimination against and criminalization of the Roma community have been dismissed by the domestic authorities and courts without any in-depth analysis of all the relevant circumstances of the case (see paragraphs 30 and 45 above).

81. It follows that there has been a violation of Article 14 of the Convention taken in conjunction with Article 3 of the Convention in its procedural aspect.

82. Lastly, the Court notes that the applicants complained under the procedural limb of Article 3, that the criminal investigation had been ineffective (see paragraph 48 above). In particular, they argued that the investigation had been conducted in a superficial and subjective manner (see paragraph 53 above). Therefore this complaint is related to the one already examined under Article 14 of the Convention taken in conjunction with Article 3. Having found a violation of Articles 3 and 14 together (see paragraph 81 above), the Court considers that no separate issue arises under Article 3 of the Convention (see, *mutatis mutandis, Hirst v. the United Kingdom (no. 2)*, no. 74025/01, § 87, 6 October 2005).

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

83. 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

84. The applicants claimed the following amounts in respect of non-pecuniary damage:

(a) 25,000 euros (EUR) each for the first, second and fourth applicants; and

(b) EUR 30,000 for the third applicant.

They also asked that the State adopt a plan of measures of general interest aimed at preventing similar cases from arising in the future.

85. The Government argued that the claim was excessive and made reference to the awards granted by the Court in similar cases.

86. Having regard to all the circumstances of the present case, the Court accepts that the applicants must have suffered non-pecuniary damage which cannot be compensated solely by the finding of a violation. Making its assessment on an equitable basis, the Court awards each applicant EUR 11,700 in respect of non-pecuniary damage, plus any tax that may be chargeable thereon.

B. Costs and expenses

87. The applicants also claimed EUR 2,251 for the costs and expenses incurred before the domestic courts and before the Court, to be paid directly into the bank account of Romano CRISS.

88. The Government contested the reality and the necessity of those costs.

89. Regard being had to the documents in its possession and to its case-law, the Court considers it reasonable to award the sum of EUR 2,251 covering costs under all heads, to be paid directly into the bank account of Romano CRISS (see, *mutatis mutandis*, *Khlaifia and Others v. Italy* [GC], no. 16483/12, § 288 and point 12 (a) of the operative part, ECHR 2016 (extracts)).

C. Default interest

90. 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. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 3 of the Convention in its substantive limb;

3. *Holds* that there has been a violation of Article 14 read in conjunction with Article 3 in its substantive limb;

4. *Holds* that there has been a violation of Article 14 of the Convention read in conjunction with Article 3 in its procedural limb;

5. *Holds* that no separate issue arises concerning the procedural limb of Article 3 alone;

6. *Holds*
   (a) that the respondent State is to pay, within three months, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 11,700 (eleven thousand seven hundred euros) to each applicant, plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 2,251 (two thousand two hundred and fifty-one euros), plus any tax that may be chargeable to the applicants, in respect of costs and expenses, to be paid into the bank account of the applicants' representative Romano CRISS;
   (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;

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

Done in English, and notified in writing on 16 April 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Andrea Tamietti	Paulo Pinto de Albuquerque
Deputy Registrar	President

Appendix

List of Applicants

1. Mr Aron Lingurar, who was born in 1949
2. Ms Ana Maria Lingurar, who was born in 1994
3. Mr Aron Lingurar, who was born in 1985
4. Ms Elena Lingurar, who was born in 1957