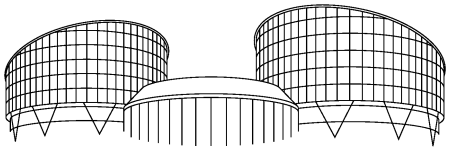

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF BOACĂ AND OTHERS v. ROMANIA

(Application no. 40355/11)

JUDGMENT

STRASBOURG

12 January 2016

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 Boacă and Others v. Romania,

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

András Sajó, *President,*
Vincent A. De Gaetano,
Boštjan M. Zupančič,
Krzysztof Wojtyczek,
Egidijus Kūris,
Iulia Antoanella Motoc,
Gabriele Kucsko-Stadlmayer, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having deliberated in private on 1 December 2015,

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

PROCEDURE

1. The case originated in an application (no. 40355/11) against Romania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by seven Romanian nationals ("the applicants"), on 13 June 2011. A list of the applicants is set out in the appendix.

2. The applicants were represented by Romani 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. The applicants alleged that I.B. had been a victim of police brutality, that the ensuing investigation was flawed, and that the victim had been discriminated against on the ground of his Roma origin.

4. On 29 January 2013 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants are all Romanian nationals of Roma origin and heirs of I.B., who, together with some of the applicants, initiated the domestic proceedings. Those proceedings were still pending when I.B. died on 1 April 2010.

6. I.B.'s heirs pursued the case before the domestic courts and lodged a complaint before the Court on his behalf and on their own behalf.

A. The incidents of 30 March 2006

1. The applicants' version

7. On 30 March 2006 at around 5 p.m. A.N., I.B.'s daughter-in-law, was attacked near I.B.'s home. I.B.'s three sons (the applicants nos. (1)-(3) in the appendix) and C.G.M., the victim's father, went to Clejani Police Station to report the assault.

8. In front of the police station they were allegedly attacked by a group of fifty villagers. When I.B. arrived there, attracted by the noise, he saw C.G.M. injured, with his head covered with blood. His sons' car was also damaged (the windows were broken and the car's bonnet was concertinaed). I.B. also saw the villagers chasing his sons and attacking them with stones, bats and bricks.

9. At around 6 p.m. police officers T.B. and M.N. from Clejani police station, accompanied by colleagues from the Giurgiu Rapid Intervention Squad (*Detaşamentul Poliţiei pentru Intervenţie Rapidă*) arrived at I.B.'s home to take him into custody. The police intervention team entered the yard and took him by force to the police car, while shouting abuse and calling him a gypsy (*ţigan*). To I.B.'s question whether they had a search warrant, T.B. pointed to the special squad and said "They are my search warrant!". Then the police made two children from the household, one aged 13 and one 14, lie down on their stomachs and called them wretched disgraceful gypsies (*ţigani borâţi*). The sixth applicant, Marian Boacă, who was 13 at the time, and M.D., I.B.'s daughter-in-law, were taken to the police station in the same car.

10. Later, the first three applicants, I.B.'s other sons, were apprehended on the street by ten masked police officers, who shouted at them to lie down and then kicked them in the stomach and face while shouting abuse and calling them "wretched disgraceful gypsies". They were also taken to Clejani police station, where they found the sixth applicant and M.D. standing with their arms up, facing the wall.

11. The interrogations took place in the chief of police's office. I.B. was taken there first. He was beaten up first by police officer T.B. and two masked officers. Two more masked officers joined them later. They kicked I.B. in the ribs, on his right side; they punched him and beat him with their weapon butts and shouted abuse. I.B. lost consciousness. The first three applicants were brought to the same office and tripped over their father's body, which was lying unattended on the floor. They were ordered to lie down and were hit and shouted at. T.B. called the chief of the Letca Noua Police Station and told him to come for "a match with the boys" *(la o*

partidă cu băieţii). Some ten to fifteen minutes later officers from Letca Noua joined the interrogations and started hitting the applicants. According to the applicants, the police officers who beat them up had been drinking alcohol.

12. At the applicant's request, the officers eventually allowed I.B. to leave the police station, but told the first three applicants that they had to sign confessions concerning the rape of a foreign woman and the theft of pipes. The statements had been written by the police officers. The applicants were not allowed to read the contents of those confessions. They denied committing any crime, but eventually signed the confessions and were allowed to leave the police station.

2. The Government's version

13. On 30 March 2006 an altercation broke out between the Boacă family and the G. family, both parties behaving aggressively towards each other and armed with dangerous objects. The altercation occurred in front of the Clejani police station, where the G. family (belonging to the Ursari Roma community – *ţigani ursari*) was going to make a criminal complaint against the applicants' family about a previous altercation that had occurred the same day. In their statements to the police, members of the G. family related that the third applicant had tried to hit them with the car and, driving dangerously, had managed instead to hit his father, I.B.

14. In this context, at 6.30 p.m. the Giurgiu Rapid Intervention Squad was called to restore public order. A team of four officers and a driver was in place from 7 p.m. to 6 a.m. the next day. According to the police agents' statements, there were no incidents during this operation, as the Boacă family members concerned willingly complied with the police orders given when they were apprehended. Four eyewitnesses, all proposed by I.B., declared they had seen him come out of the police station feeling ill, but with no apparent indications that he had been attacked.

15. M.N., the head of Clejani police station, did not participate in the investigation out of fear of reprisals from the Boacă family.

B. Medical assessment of I.B.'s condition

16. I.B. was taken by ambulance to Giurgiu County Hospital, where he underwent pulmonary X-ray investigations but received no treatment. He was then taken to Bucharest University Hospital, where he remained from 31 March to 4 April 2006.

17. On 11 April 2006 a forensic doctor examined him. The medical certificate concluded that he had suffered a thoracic trauma inflicted by a "blow caused by a hard object or by body impact". He needed fifteen to nineteen days to recover.

C. The investigations into the brawl of 30 March 2006

18. Mihăileşti Police started investigating the events of 30 March 2006. The accusations were of theft of pipes by members of the Boacă family and of a brawl involving twenty-one people, mainly belonging to the two families (Boacă and G.). Statements were taken from all those involved in the altercation and from some eyewitnesses. In their various statements made during those investigations, I.B. and the applicants declared that they had been beaten up by police. Some members of the opposing family declared that I.B. had been hit by the car driven by his son, the third applicant.

19. On 9 May 2007 the prosecutor's office attached to Giurgiu County Court decided not to prosecute any of those involved in the incidents. He noted that the pipes had been returned to their rightful owner, who did not wish to seek damages from the applicants' family; as for the brawl, the prosecutor noted that there had been "reciprocal violence" and therefore decided to impose administrative fines on all involved.

20. It appears that the decision was not contested.

D. The investigations into the allegations of police brutality

21. On 1 June 2006 I.B. and the first three applicants lodged a criminal complaint with the prosecutor's office attached to Giurgiu County Court against the police officers who had allegedly ill-treated them. In his complaint to the police, I.B. stated that the police chief was friendly with the Ursari Roma from Clejani, with whom the Boacă family were in conflict. They also complained of discrimination, arguing that because of their Roma origin the police officers had been aggressive towards them and had called them racist names.

1. The first set of investigations

22. The prosecutor started the investigations. He took statements from the six police officers involved in the events, including T.B. and M.N. They all denied having harmed the plaintiffs in any way. The prosecutor examined the intervention squad's official report from 30 March 2006 as well as the prosecution file concerning the accusations brought against the members of the two families involved in the fight on 30 March (see paragraph 18 above).

23. On 18 December 2006 the prosecutor's office dismissed the complaint on the ground that the police officers' actions did not disclose any appearance of a criminal offence. The prosecutor noted that the rapid intervention squad was called to the scene of an altercation which the local police could no longer contain. In the squad's official report it was explained that intervention was required "for an altercation between

two Gypsy clans" (*scandal între două grupuri de ţigani*). The prosecutor considered that the plaintiffs had failed to provide medical evidence of the injuries they had sustained, or that injuries had been inflicted by police officers.

24. The plaintiffs appealed against that decision to the prosecutor-in-chief, but their objection was dismissed on 29 January 2007. The applicants challenged that decision before the Giurgiu County Court, reiterating their complaints of ill-treatment and discrimination.

25. On 16 April 2007 the Giurgiu County Court upheld the prosecutor's decision, considering that the applicants had not provided proof of their allegations.

26. The plaintiffs appealed, and on 27 June 2007 the Bucharest Court of Appeal quashed the above-mentioned decision and ordered the prosecutor to continue the investigation. It considered that the prosecutor had not taken into account the forensic medical certificate delivered to I.B., had not heard either the applicants or the eyewitnesses, and had not allowed the applicants to produce evidence (medical evidence or witnesses).

2. The second set of investigations

27. On 29 August 2008 the prosecutor's office refused to institute criminal proceedings against the police officers. The prosecutor considered that the plaintiffs had not substantiated their allegations of ill-treatment and discrimination. It found that the police officers had acted lawfully and had been trying to counter the plaintiffs, who had used gas guns and sharp objects. One eyewitness was heard by the prosecutor.

28. I.B. and the first three applicants appealed against the prosecutor's decision, but on 21 October 2008 the prosecutor-in-chief dismissed their objections and thus upheld that decision. On 28 October 2008 I.B. and the first three applicants appealed once again before the Giurgiu County Court.

29. On 3 February 2009 the Giurgiu County Court allowed the appeal lodged by the four plaintiffs, quashed the decisions of the prosecutor and of the prosecutor-in-chief, and sent the case back to the prosecutor, on the ground that the investigations ordered by the court had not been carried out by the prosecutor.

30. The prosecutor's office challenged that decision, and on 12 June 2009 the Bucharest Court of Appeal allowed the appeal on points of law in part. It found that the criminal investigation should be continued regarding I.B.'s injuries. As far as the first three applicants were concerned, it considered that the criminal investigation should be closed because, in failing to sign the appeal against the decisions of 29 August 2007 and of 21 October 2008, they had in fact not endorsed the application for an investigation. The court considered that by failing to sign the application for leave to appeal within the assigned deadline the applicants had lost the right to lodge that appeal.

3. The third set of investigations

31. On 28 October 2009 the prosecutor's office refused to institute criminal proceedings against the police officers, on the ground that their actions were consistent with their professional duties. He heard evidence from four eyewitnesses, who had seen I.B. being taken into the police station and then had seen him coming out. They reported that they could not see any signs of violence on him. One witness said that he could hear I.B. screaming and wailing in the police station, and that when he came out he had asked them to call an ambulance because he did not feel well.

32. On 4 December 2009 the prosecutor-in-chief upheld that decision. I.B. appealed against both decisions before the Giurgiu County Court, which on 22 April 2010 dismissed his appeal. The court noted that the prosecutor heard I.B. and four villagers who were in front of the Clejani police station during the incidents. The four villagers declared that I.B. did not have any signs of violence on him when he left the police station. The court dismissed as unsubstantiated the allegations of discrimination made by I.B.

33. On 1 April 2010 I.B. died of causes unrelated to the present case and the first six applicants continued the proceedings instituted before the domestic courts.

34. On 14 December 2010 the Bucharest Court of Appeal upheld the decision delivered by the Giurgiu County Court and dismissed an appeal on points of law raised by I.B.'s heirs. It reiterated that the four witnesses had not seen the police officers beating the victims, and considered that the fact alone that there had been other witnesses who could have been heard by the prosecutor was irrelevant, given the evidence already gathered in the case.

II. RELEVANT INTERNATIONAL FINDINGS ON DISCRIMINATION AGAINST ROMA IN ROMANIA

A. The United Nations

35. The United Nations Committee on Elimination of Racial Discrimination in its 2010 Annual Report held with respect to the situation of Roma people 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

36. 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."

37. 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."

38. 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."

39. 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."

40. In his June 2014 report on Romania, CommDH(2014)14, the Commissioner for Human Rights stated as follows:

"196. The Commissioner wishes to underline the view expressed by NGOs that Roma are confronted at present mainly with institutionalised racism combined with excessive use of force by law-enforcement authorities. Although such incidents are not frequently reported, they seem to be a current problem in Romania, with several of them resulting in deaths or serious injury. In 2013, NGOs reported two cases of excessive use of force by the police during searches carried out in Roma homes in Reghin, Mureş county. In the previous year, on 31 May, 10 June and 28 July 2012, members of the police and gendarmerie in different parts of the country killed three Roma men during pursuits."

He further reiterated that the domestic authorities should display special diligence in investigating possible racist motives as the origin of violence inflicted on Roma:

"197. In this context, the Commissioner notes the Court's judgment in the case of *Stoica v. Romania* in which the Court found that the applicant's ill-treatment by the police had been motivated by his ethnic origin (Roma). In *Cobzaru v. Romania*, concerning the beating of a Roma man while in police custody, the Court found that the circumstances in the case disclosed no *prima facie* indication of racist motives behind the applicant's ill-treatment; however, the prosecuting authorities should have displayed special diligence in investigating possible racist motives at the origin of the violence inflicted on the applicant. Nevertheless, the authorities failed to investigate such motives and made racially biased remarks about the applicant's ethnic origin during the investigation. These cases are part of the *Barbu Anghelescu* group of 21 cases, concerning primarily ill-treatment inflicted on the applicants while they were under the responsibility of law enforcement officers, and the ineffectiveness of the investigations into the allegations of ill-treatment. The execution by Romania of the judgments delivered in this group of cases is under the supervision of the Council of Europe Committee of Ministers since 2005."

THE LAW

I. GOVERNMENT'S PRELIMINARY OBJECTION

41. The Government contested the seventh applicant's *locus standi*: she had not been part of the domestic proceedings and could not show that she was I.B.'s heir. They therefore asked the Court to dismiss her complaint as incompatible *ratione personae* with the Convention provisions.

42. The applicants contended that the fact that the seventh applicant and I.B. had been married to each other, lived most of their lives together and raised their six children together constituted a legitimate interest on her part in continuing the present application on behalf of her deceased husband.

43. They further averred that the fact that she had not been part of the domestic proceedings was of no consequence for the current application, given that the domestic proceedings had not provided them with an effective remedy.

44. The Court observes that the direct victim of the alleged violations of the Convention died before the present application was lodged. It will therefore examine the standing of all applicants to bring the complaints before the Court on behalf of I.B.

45. The Court reiterates that where the direct victim dies before the application is lodged with the Court, by virtue of an autonomous interpretation of the concept of "victim" it has been prepared to recognise the standing of a relative, either when the complaints raised an issue of general interest pertaining to "respect for human rights" (Article 37 § 1 *in fine* of the Convention) and the applicants as heirs have a legitimate interest in pursuing the application, or on the basis of the direct effect on the applicant's own rights. The latter cases, it may be noted, were brought before the Court following or in connection with domestic proceedings in which the direct victim himself or herself had participated while alive (see *Tagayeva v. Russia* (dec.), no. 26562/07, § 476, 9 June 2015; and *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 98, ECHR 2014, with further references).

46. Without losing sight of the strictly personal nature of the Article 3 right, the Court has not excluded that it may recognise standing in the context of complaints under Article 3 to applicants who complained about treatment exclusively concerning their late relative. Such applicants must show either a strong moral interest, besides the mere pecuniary interest in the outcome of the domestic proceedings, or other compelling reasons, such as an important general interest which required their case to be examined (see *Lambert and Others v. France* [GC], no. 46043/14, § 90, ECHR 2015 (extracts); and *Kaburov v. Bulgaria* (dec.), no. 9035/06, § 56, 19 June 2012, and *İlhan v. Turkey* [GC], no. 22277/93, §§ 53-55, ECHR 2000-VII).

47. The Court has also accepted that discrimination may involve an important question of general interest, not only for the respondent State but also for other States Parties to the Convention, which warranted continuing examination of an application even in the absence of any heirs of the direct victim in order to contribute to elucidate, safeguard and develop the standards of protection under the Convention (see, *mutatis mutandis*, *Karner v. Austria*, no. 40016/98, § 27, ECHR 2003-IX).

48. In the case under examination, the Court notes that the applicants complained about ill-treatment inflicted by police on I.B. The victim died later of causes unrelated to the alleged ill-treatment. The Government did not challenge all the applicants' *locus standi* (see, *mutatis mutandis*, *Rogojină v. Romania*, no. 6235/04, § 14, 19 January 2010). The applicants, apart from the seventh applicant, accompanied the victim immediately after

the attack, were part of the domestic proceedings along with him, and eventually continued the proceedings on his behalf after his death (see *İlhan*, cited above, § 54). Furthermore, they bring the application on behalf of I.B.

49. The Court further observes that the object of the application, namely police brutality and discrimination based on ethnic grounds, raises serious issues under the Convention (see, in particular, *Bekos and Koutropoulos v. Greece*, no. 15250/02, § 63, ECHR 2005-XIII (extracts), *Stoica v. Romania*, no. 42722/02, § 126, 4 March 2008, and *Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, § 145, ECHR 2005-VII as well as paragraph 97 below). It reiterates that the effectiveness of an investigation into allegations of police brutality constitutes the most important, if not the only, issue of general interest in such a case (see *Kaburov*, cited above, § 57). The Contracting States' procedural obligation to investigate possible racist motives for acts of violence has repeatedly been stressed by the Court in cases similar to the present one (see paragraph 105 below). The first six applicants, some of whom were also parties to the domestic proceedings from their initiation and all continued those proceedings after I.B.'s death, had a strong moral interest in the case. Indeed, they also alleged that they had been victims of police brutality and discrimination, and the first three applicants made their own complaints along with their father's before the domestic authorities. They thus may claim to have been closely concerned with the events giving rise to this application and consequently to have more than a mere pecuniary interest in the case (see *İlhan*, cited above, § 54, and, in contrast, *Kaburov*, cited above, §§ 57-58, and *Brincat and Others v. Malta*, nos. 60908/11, 62110/11, 62129/11, 62312/11 and 62338/11, §§ 18-21 and 132, 24 July 2014).

50. For these reasons, the Court considers that the first six applicants had a legitimate interest in bringing before the Court the current application, which concerns issues of general interest pertaining to respect of human rights. They may therefore be considered indirect victims.

51. However, for the reasons given before, the seventh applicant may not be considered an indirect victim (see, among many other authorities, *Ioannis Anastasiadis and Others v. Greece*, no. 45823/08, §§ 18-19, 18 April 2013; *Makri and Others v. Greece* (dec.), no. 5977/03, 24 March 2005; and, in contrast, *Marie-Louise Loyen and Bruneel v. France*, no. 55929/00, §§ 17, 29-30, 5 July 2005). Accordingly, the Court allows the Government's preliminary objection.

52. In its further examination of the case, "the applicants" shall be considered to refer only to the first six applicants in the appendix.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

53. Relying on Article 3 of the Convention, the applicants complained in their own name and on behalf of I.B. that on 30 March 2006 I.B. and the first three applicants had been subjected to ill-treatment in the Clejani Police Station. Citing Article 6 § 1 of the Convention, alone and in conjunction with Article 13 of the Convention, the applicants further complained in their own names and on behalf of I.B. that there had been no effective investigation and that the criminal proceedings had been unfair.

54. As the Court is master of the characterisation to be given in law to the facts of the case, it does not consider itself bound by the characterisation given by the parties. A complaint is characterised by the facts alleged in it and not merely by the legal grounds or arguments relied on (see *Guerra and Others v. Italy*, 19 February 1998, § 44, *Reports of Judgments and Decisions* 1998-I; *Schwizgebel v. Switzerland*, no. 25762/07, § 69, ECHR 2010 (extracts); or *Karrer v. Romania*, no. 16965/10, § 25, 21 February 2012). In the present case, the Court notes that the complaint raised under Articles 6 and 13 of the Convention mainly focuses on the effectiveness of the investigation. Therefore, by virtue of the *jura novit curia* principle and in line with the Court's constant case-law in the matter, the Court considers that the complaint is to be examined only under Article 3 of the Convention, which reads as follows:

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

A. Admissibility

55. The Court notes at the outset that in so far as the complaint concerns the alleged ill-treatment suffered by the first three applicants at the hands of the police and the investigation into those allegations, the applicants failed to provide any evidence (medical or otherwise) supporting their assertions. Moreover, it notes that as far as they are concerned the domestic proceedings ended on 12 June 2009, when the domestic court established, by means of its final decision, that they had failed to complain in due manner against the prosecutor's decisions (see paragraph 30 above). They no longer objected to that decision, and the remaining proceedings were continued by I.B. or on his behalf alone.

56. It follows that, in lodging their complaint with the Court on 13 June 2011, the applicants failed to observe the six-month time-limit set by the Convention. This part of the complaint has thus been introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

57. In so far as the complaint concerns I.B., the Court notes that it 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' observations

58. The applicants contested the version of events presented by the Government, and pointed out that the authorities had stressed the existence of a prior conflict in order to discredit the applicants and present them as violent individuals, although it had been established by the investigators that the two families had been equally involved in the altercation that had occurred earlier on 30 March 2006.

59. They rejected the Government's explanations as to the nature of the injuries sustained by I.B. They further pointed out that of all those who had witnessed the incidents, only one had stated that I.B. had been hit by a car. Furthermore, the injury was not consistent with such an explanation: I.B. had been hit in the chest area, whereas his son was driving a regular saloon car, thus not high enough to produce such an injury. This explanation was also contradicted by the findings of the national courts, which had concluded that I.B. had been injured during the altercation. They rejected the latter point as well, considering that if the injuries had occurred during the altercation the police officers should have noticed signs of violence on I.B.'s body when they took him into the police station. They pointed out that police officers have a legal obligation to check a person's health when taking him to the police station.

60. The applicants further argued that the authorities gave no importance to the statements made by witnesses who had heard I.B. screaming and wailing in the police station. They explained that as the witnesses had not been present in the vicinity of the interrogation room, they could not have seen I.B. being beaten by police, but they had heard him cry out and had reported it in their statements.

61. The applicants reproached the authorities for making no effort to establish the identity of I.B.'s attackers and not offering a reasonable explanation as to why the use of force had been proportionate in the case.

62. The Government accepted that there had been physical contact between I.B. and the police officers when he was taken into the police station. However, they considered that the police intervention had been proportionate and necessary in order to re-establish public order. The domestic courts had confirmed that the police had been acting in their official capacity and within the scope of their powers.

63. They further argued that the applicant had not proved that the injuries sustained were caused by the police officers. Firstly, he had been involved in violent altercations prior to being apprehended, and witnesses

attested that he had been hit by a car; secondly, his own statements had been contradictory as to where and by whom he had been hit (on this point they reiterated, for example, that M.N., whom the applicant accused of having hit him, had not been involved in the investigations in any way); thirdly, his statements were contradicted by those of the police officers involved and were not sustained by the witnesses (who could not confirm having seen him being hit by police); and lastly, the medical evidence adduced was not consistent with the seriousness of the blows received, according to the applicant in his various statements.

64. The Government pointed out that it had been difficult for the authorities to establish who exactly had hit the applicant during the altercations, and all those involved had received administrative fines.

65. The Government averred that the domestic authorities had conducted a prompt and effective investigation into I.B.'s allegations of police brutality. The prosecutor's decision not to prosecute, upheld by the courts, had been based on extensive evidence. I.B.'s statements had not been disregarded by the authorities, but examined in the context of the remaining evidence (they referred in contrast to *Stoica*, cited above). The Government reiterated that it had been impossible for practical reasons for the authorities to determine who exactly had injured I.B. in the altercation. They pointed out that the criminal law itself acknowledged that difficulty when imposing a different system of sentencing for participants in a brawl. They lastly pointed out that the investigation in the case had been conducted by a civilian prosecutor, and that therefore no suspicions of lack of independence could be raised (they referred in contrast to *Dumitru Popescu v. Romania (no. 1)*, no. 49234/99, 26 April 2007, and *Stoica*, cited above).

2. The Court's assessment

(a) Substantive limb of Article 3 of the Convention

(i) Threshold of severity

66. The Court has stated on many occasions that Article 3 enshrines one of the most fundamental values of democratic societies. Even in the most difficult circumstances, such as the fight against terrorism and organised crime, the Convention prohibits in absolute terms torture and inhuman and degrading treatment or punishment, irrespective of the victim's conduct (see, among many other authorities, *Labita v. Italy* [GC], no. 26772/95, § 119, ECHR 2000-IV).

67. The Court reiterates that in order to fall within the scope of Article 3, ill-treatment must attain a minimum level of severity. The assessment of this minimum is relative by definition, and depends on all the circumstances of the case, including the duration of the ill-treatment, its physical and mental effects, and, in some cases, the victim's sex, age and state of health.

Further factors to be taken into account include the purpose of the ill-treatment and the underlying intention or motivation (see, for example, *El Masri v. "the former Yugoslav Republic of Macedonia"* [GC], no. 39630/09, § 196, ECHR 2012).

68. On the facts of the present case the Court considers that the severity of the injuries incurred by the victim, whether inflicted by State agents or private individuals, is sufficient to pass the threshold of Article 3 of the Convention. The Government did not contest this assertion.

(ii) Establishment of facts

69. The Court notes at the outset that the parties disagree as to the cause of and justification for the victim's injuries. While the applicants contended that the injuries had been caused by disproportionate police intervention, the Government argued that the intervention had been at the very least a proportionate and necessary response by police in order to re-establish public order (see paragraphs 58, 61 and 62 above).

70. In view of the subsidiary nature of its role, the Court 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 *El-Masri*, cited above, § 155). Moreover, it is not normally within the province of the Court to substitute its own assessment of the facts for that of the domestic courts and, as a general rule, it is for those courts to assess the evidence before them (see *Klaas v. Germany*, 22 September 1993, § 29, Series A no. 269).

71. However, in the circumstances of the case, as the facts are contested by the parties, the Court must give its own opinion on the events of 30 March 2006. It notes that the domestic authorities established in the case that I.B. was taken to the police station from his yard by six police officers. There is no evidence that at that point he showed signs of injuries on his body, and no medical report was drawn up at the police station. When he was released by police, hours later, he said that he felt ill and was taken to hospital; it was later documented that he had suffered a thoracic trauma inflicted by a "blow caused by a hard object or by body impact" which required several days to recover from (see paragraph 17 above). The Court cannot see how the police agents who interrogated him and thus were supposed to be in his close vicinity for a long period of time did not see such injuries with their trained eye during his stay in the police station. If they had seen them or suspected their existence they would have called an ambulance or, at least, have documented the victim's state of health at that moment. In the absence of any such record, the Court is satisfied that the victim was uninjured when he entered the police station.

72. The forensic evidence shows that the victim sustained injuries that day. No claims were made by the Government or the domestic courts that he might have sustained those injuries later, after being released from the

police station. The Court notes that when excluding the thesis of police violence, the domestic authorities relied on statements made by witnesses who did not see signs of injuries when the victim left the police station (see paragraphs 14 and 31 above). However, the Court is not convinced by the exclusive reliance on such evidence, especially to the detriment of forensic evidence which indicated the contrary, in particular as the injuries sustained were mainly in the chest area and thus not easy to detect with an untrained eye.

73. For these reasons, the Court finds it established, for the purpose of Article 3 of the Convention, that the victim entered the police station unharmed and left it injured.

(iii) Justification for the injuries sustained

74. The Court reiterates that where a person is injured while in detention or otherwise under the control of the police, any such injury will give rise to a strong presumption that the person was subjected to ill-treatment (see, among many other authorities, *Mrozowski v. Poland*, no. 9258/04, § 26, 12 May 2009). The Court also points out that where an individual is in good health when taken into police custody but is found to be injured at the time of release, it is incumbent on the State to provide a plausible explanation of how those injuries were caused, failing which a clear issue arises under Article 3 of the Convention (see *Selmouni v. France* [GC], no. 25803/94, § 87, ECHR 1999-V).

75. The Court further notes that in assessing evidence in a claim of a violation of Article 3 of the Convention, it adopts the standard of proof "beyond reasonable doubt". Such proof may, however, follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see *Farbtuhs v. Latvia*, no. 4672/02, § 54, 2 December 2004; *Bazjaks v. Latvia*, no. 71572/01, § 74, 19 October 2010; and *Krivošejs v. Latvia*, no. 45517/04, § 69, 17 January 2012).

76. Turning to the facts of the present case, the Court notes that, according to the Government, I.B. and the applicants willingly complied with police orders when apprehended, but that there was physical contact between I.B. and the police agents, which was necessary in order for public order to be re-established (see paragraphs 14 and 62 above). There is no assertion that the victim was violent or resisted arrest. In addition, he was outnumbered by the police squad. The Court finds therefore no argument that would justify the use of force against I.B.

77. As regards the thesis, advanced by the Government and rejected by the applicants, that I.B. had been hit by a car, the Court notes that it was not explored during the investigation, despite the fact that it was presented to the prosecutor (see paragraph 22 above). The Court has no reason to investigate any further.

78. As regards the time spent by I.B. in the police station, the Court notes that the authorities discarded the arguments of police brutality while nevertheless failing to establish who had injured the victim. The Court is aware of the difficulties that the authorities might have encountered, given the previous altercation in which the victim might have taken part. However, it reiterates that the fact that it is impossible to establish the exact circumstances in which a person was injured while under the control of the authorities does not prevent the Court from finding a violation of the substantive branch of Article 3, where the Government failed to prove in a convincing and satisfactory manner how the injuries were sustained (see *Rupa v. Romania (no. 1)*, no. 58478/00, § 100, 16 December 2008).

(iv) Conclusion

79. The Court concludes that the fact that the victim did not resist arrest, was not recorded as having any injuries upon arrival at the police station, but was recorded with injuries by the forensic doctors upon release (albeit less severe than those he claimed he had suffered at the hands of the police), coupled with the failure by the authorities (prosecutor's office, courts and Government) to provide a plausible explanation for the origin of those injuries, constitute sufficient elements to allow the Court to conclude that the victim suffered harm at the hands of the authorities.

80. There has accordingly been a violation of Article 3 of the Convention in its substantive limb.

(b) Procedural limb of Article 3

81. The Court reiterates that where an individual makes a credible assertion that he has suffered treatment infringing Article 3 at the hands of the police or other similar agents of the State, that provision, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within their jurisdiction the rights and freedoms defined in ... [the] Convention", requires by implication that there should be an effective official investigation (see *Mocanu and Others v. Romania* [GC], nos. 10865/09, 45886/07 and 32431/08, § 317, ECHR 2014 (extracts); and *Labita*, cited above, § 131).

82. An obligation to investigate "is not an obligation of result, but of means": not every investigation should necessarily come to a conclusion which coincides with the applicant's account of events. However, it should in principle be capable of leading to the establishment of the facts of the case and, if the allegations prove to be true, to the identification and punishment of those responsible (see *Mikheyev v. Russia*, no. 77617/01, § 107, 26 January 2006).

83. Any investigation into allegations of ill-treatment must be thorough. This means that the authorities must make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close

their investigation or as the basis for their decisions (see A*ssenov and Others v. Bulgaria*, 28 October 1998, §§ 103 et seq., *Reports* 1998-VIII). They must take all reasonable steps available to them to secure the evidence concerning the incident, including, *inter alia*, eyewitness accounts and forensic evidence. Any deficiency in the investigation which undermines its ability to establish the cause of injuries or the identity of the persons responsible will risk falling foul of the applicable standard (see *Mocanu and Others*, cited above, § 322; and *Mikheyev*, cited above, § 108).

84. The investigation must also be effective in the sense that it is capable of leading to a determination of whether the force used by the police was or was not justified in the circumstances (see *Kaya v. Turkey*, 19 February 1998, § 87, *Reports* 1998-I).

85. Turning to the facts of the present case, the Court notes that the investigation lasted for more than four years, from 1 June 2006 to 14 December 2010, which itself is very long for the prosecution phase alone. Moreover, two referrals back to the prosecutor were needed in order for the latter to comply with the instructions given by the court and complete the investigations.

86. As regards the effectiveness of the investigation as a whole, the Court notes that only four eyewitnesses were heard by the prosecutor, although the applicant asked for all of them to be heard; no member of the Boacă family was interviewed, not even the first three applicants, who were also part of the investigation. While it is true that the prosecutor took into account the prosecution file from the brawl between the two families (see paragraph 22 above), the Court cannot but note that those investigations did not concern the alleged acts of violence perpetrated by the police against I.B., and did not identify any guilty party in respect of the injuries sustained by him (see paragraph 19 above). In their statements made in those proceedings, the applicants mentioned consistently that I.B. and themselves had been beaten by police (see paragraph 18 above), but this was not investigated any further by the authorities.

87. The court of last resort considered that the fact that several witnesses had not been examined by the prosecutor was irrelevant in the context of the evidence already gathered (see paragraph 34 above). The Court cannot support such a finding, in so far as the authorities failed to establish how the victim had sustained his injuries.

88. The foregoing considerations are sufficient to enable the Court to conclude that the investigations into the allegations of police brutality were not effective.

There has accordingly been a violation of the procedural limb of Article 3 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION TAKEN TOGETHER WITH ARTICLE 3 OF THE CONVENTION

89. The applicants claimed that the ill-treatment suffered by the first three applicants and by I.B. and the decision not to bring criminal charges against the police officers who had beaten them were predominantly due to their Roma ethnicity, contrary to the principle of non-discrimination set forth in Article 14 of the Convention taken together with Article 3.

90. Article 14 of the Convention reads as follows:

> "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

91. The Court reiterates having found that, in so far as the first three applicants are concerned, the domestic proceedings had ended on 12 June 2009 (see paragraph 55 above). Therefore, in lodging their complaint with the Court on 13 June 2011, the applicants failed to observe the six-month time-limit set by the Convention (see paragraph 56 above). This part of the complaint has thus been introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

92. In so far as this complaint concerns I.B., the Court notes that this complaint 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' observations

93. The applicants submitted that the mere use of the word "Gypsies" in the police reports denoted a stereotypical approach to any situation involving Roma. They rejected the Government's arguments that the authorities repeated words that the applicants themselves used, by observing that the word had been used in the police report before the applicants themselves had given any statements in the case. Moreover, they reiterated that the fact that a pejorative term is used by the population in order to identify members of a group did not justify the use of such a term by the authorities.

94. Lastly they argued that their complaints about discrimination had been dismissed by the domestic courts in violation of the standards imposed by the Court in the matter.

95. The Government contended that the police intervention had not been racially motivated. They had been called to intervene to protect life and limb and restore public order. The fact that the participants in the altercation were mostly Roma had no bearing on the scope or nature of the intervention.

96. They argued that the fact that the police report featured the word "Roma" did not constitute a sufficient basis for finding racial motives for the operation. Moreover, they pointed out that the families belonging to the Roma community in Clejani identified themselves as "*țigani ursari*".

2. The Court's assessment

(a) Whether the respondent State is liable for the police violence on the basis of the victim's race or ethnic origin

97. The Court has established above that agents of the respondent State were responsible for the injuries suffered by I.B. in violation of Article 3 of the Convention. Accordingly, the facts of the case fall within the ambit of Article 3, and Article 14 is applicable.

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. 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).

98. Faced with the applicants' complaint of a violation of Article 14, as formulated, the Court's task is to establish whether or not racism was a causal factor in the police abuse to which I.B. fell victim, so as to give rise to a breach of Article 14 of the Convention taken in conjunction with Article 3 (substantive branch).

99. It notes in this connection that, in assessing evidence, the Court 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 that use that standard. Its role is not to rule on criminal guilt or civil liability, but on Contracting States' responsibilities under the Convention. The specificity of its task under Article 19 of the Convention - to ensure the observance by the Contracting States of their engagement to secure the fundamental rights enshrined in the Convention - conditions its approach to the issues of evidence and proof. In proceedings before the Court there are no procedural barriers to the admissibility of evidence or predetermined 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 (see, among others, *Ciorcan and Others v. Romania*, nos. 29414/09 and 44841/09, § 157, 27 January 2015; and N*achova and Others*, cited above, § 147).

100. The applicants made several allegations that abusive and racist language was used against them by law-enforcement officers, and they maintain that sufficient inferences of a racist act can be drawn from them (see paragraphs 9, 10 and 11 above). The Court notes that the only documented use of the word "*ţigani*" by the authorities is in the mission statement concerning the police intervention to settle the brawl (see paragraph 23 above). Apart from the remarks made in the police mission statement, the allegation of use of abusive language by the authorities remains unsubstantiated. Indeed, the Court is aware that the main reason the allegations could not be substantiated is because the investigations did not consider them at all. However, this is a matter to be examined under the procedural aspects of Article 3 read in conjunction with Article 14 (see paragraphs 107 to 109 below).

101. Moreover, although the victim was apprehended by six police officers, which seems rather excessive, the Court must look at that act in the context of the events of 30 March 2006, which undisputedly began with a brawl between twenty people, including the victim and the applicants. In this context, the massive presence of police forces might not be disproportionate.

102. In the absence of more concrete evidence, it is not possible to speculate on whether the victim's Roma origin had any bearing on the police officers' perception of them (see *Ciorcan and Others*, cited above, § 163; and *Nachova and Others*, cited above, § 152).

103. In sum, having assessed all the relevant elements, the Court does not consider that it has been established that racist attitudes played a role in the police actions of 30 March 2006 towards the victim.

104. It thus finds that there has been no violation of Article 14 of the Convention taken in conjunction with Article 3 in its substantive aspect.

(b) Whether the respondent State complied with its obligation to investigate possible racist motives

105. The Court 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 (see *Ciorcan and Others*, cited above, § 158; *Nachova and Others*, cited above, § 160, and *Makhashevy v. Russia*, no. 20546/07, §§ 138 and 144, 31 July 2012).

106. 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 racially induced violence (ibid.).

107. On the facts of the case, the Court reiterates that it found flaws in the investigation into the allegations of ill-treatment which led to a violation of Article 3 of the Convention. It further notes that although the applicants specifically complained about discrimination, the domestic authorities dismissed their complaint as unfounded. However, the reasons given by the domestic courts in their decisions or by the Government in their submission to the Court are not sufficient to offer an objective and reasonable justification for the State's lack of action in this respect.

108. All the above-mentioned elements, seen against the background of the many published accounts of the existence in Romania of general prejudice and hostility towards Roma people and of continuing incidents of police abuse against members of this community (see paragraphs 35 to 40 above), called for verification. Indeed, the authorities were under the obligation to investigate a possible causal link between the alleged racist attitudes exhibited by the police officers and the abuse suffered by I.B. at their hands (see *B.S. v. Spain*, no. 47159/08, § 60, 24 July 2012).

109. The foregoing considerations allow the Court to conclude that the lack of any apparent investigation into the complaint of discrimination amounts to a violation of Article 14 taken together with Article 3 of the Convention in its procedural head.

There has therefore been a breach of those two Articles combined.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

110. 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

111. The applicants claimed 215,000 euros (EUR) in respect of non-pecuniary damage, divided as follows:

(a) EUR 25,000 for each of the first three applicants for the abuse suffered by themselves at the hands of the police on 30 March 2006;

(b) EUR 140,000 requested by all applicants and Ms. Nina Niculae together for the abuse suffered by the victim I.B.

They also requested that the Government adopt a plan for measures of general interest aimed at preventing that similar cases occur in the future.

112. The Government pointed out that the request made at point (a) above was unrelated to the alleged violations examined by the Court in the present application. As for the request made under point (b), the Government argued firstly that the applicants had failed to prove the existence of a causal link between I.B.'s alleged suffering and the acts of the police agents. Secondly, they considered that, should the Court conclude that the Convention had been breached in the case, the judgment adopted by the Court could constitute sufficient just satisfaction. Lastly, they argued that in any case the request was excessive in comparison with the Court's case-law in the matter.

113. The Court reiterates that it has found a violation of Articles 3 and 14 of the Convention in connection with the abuse suffered by I.B. It therefore awards jointly to the applicants EUR 11,700 in respect of non-pecuniary damage.

B. Costs and expenses

114. The applicants made no claim under this head.

115. Accordingly there is no call for an award.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible in so far as it concerns the complaints raised about I.B. by the first six applicants in the appended list and the remainder of the application inadmissible;

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 3 of the Convention in its procedural limb;

4. *Holds* that there has been no violation of Article 14 read in conjunction with Article 3 of the Convention in its substantive limb;

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

6. *Holds*
(a) that the respondent State is to pay the applicants jointly, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 11,700 (eleven thousand seven hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount 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 12 January 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

András Sajó
President

APPENDIX
LIST OF APPLICANTS

1. Leon BOACĂ born on 14 December 1979 and living in Clejani;
2. Cristian BOACĂ born on 25 September 1984 and living in Clejani;
3. Nicuşor BOACĂ born on 16 May 1988 and living in Clejani;
4. Tănţica BOACĂ born on 23 May 1986 and living in Bucharest;
5. Costel NICULAE born on 22 November 1981 and living in Clejani;
6. Marian BOACĂ born on 2 June 1993 and living in Clejani;
7. Nina NICULAE born on 12 May 1956 and living in Clejani.