



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

FOURTH SECTION

CASE OF PÂRVU v. ROMANIA

(Application no. 13326/18)

JUDGMENT

Art 2 (substantive) • Use of force not absolutely necessary during police operation where individual, wrongly identified as dangerous fugitive, was fatally shot • Doubts as to whether shooter honestly believed lives of other officers were in danger, given deficiencies in domestic investigation • Inadequate planning and control of operation to reduce to a minimum recourse to lethal force
Art 2 (procedural) • Effective investigation • Lack of reasonable expedition and thoroughness of criminal investigation lasting eleven years
Art 46 • Execution of judgment • General measures required

STRASBOURG

30 August 2022

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 Pârvu v. Romania,

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

Gabriele Kucsko-Stadlmayer, *President*,

Tim Eicke,

Faris Vehabović,

Iulia Antoanella Motoc,

Yonko Grozev,

Armen Harutyunyan,

Ana Maria Guerra Martins, *judges*,

and Ilse Freiwirth, *Deputy Section Registrar*,

Having regard to:

the application (no. 13326/18) against Romania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Romanian national, Ms Ana-Bianca Pârvu (“the applicant”), on 7 March 2018;

the decision to give notice to the Romanian Government (“the Government”) of the application;

the parties’ observations;

Having deliberated in private on 28 June 2022,

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

INTRODUCTION

1. The applicant complained that her husband was killed by the police on 26 September 2009 in breach of Article 2 of the Convention and that the national authorities had subsequently failed to carry out an effective investigation into the killing of her husband.

THE FACTS

2. The applicant was born in 1978 and lives in Brăila. She was represented by Ms Nicoleta Tatiana Popescu, a lawyer practising in Bucharest.

3. The Government were represented by their Agent, most recently Ms O.-F. Ezer, of the Ministry of Foreign Affairs.

4. The facts of the case may be summarised as follows.

I. THE EVENTS OF 26 SEPTEMBER 2009

5. On 26 September 2009 the applicant’s husband, Mr Sorin Pârvu, who at the material time was thirty years old, was driving the car of a friend, I.A.S., in Brăila, accompanied by the latter. At around 1.30 p.m., Mr Pârvu approached a crossing and stopped the car in the standard way at the red traffic light.

6. Suddenly, two vehicles arrived which did not have any particular markings on them. The first vehicle moved in front of the car driven by Mr Pârvu, to block it. Four armed men dressed as civilians jumped out of the vehicles. It later turned out that they were police officers from the General Inspectorate of the Romanian Police (*Inspectoratul General al Poliției Române* – “IGPR”). According to the Government, those men ordered Mr Pârvu and I.A.S. to get out of their car. According to the applicant, relying on eyewitness testimony, the police officers opened fire without warning. At that moment, according to what the applicant had later learned from I.A.S., not knowing that the men were police officers on a mission, and believing that he and his friend were being attacked by an armed gang, Mr Pârvu tried to escape by driving his car backwards. The car driven by Mr Pârvu hit the second vehicle that had been positioned to block it from behind. Three other armed men dressed as civilians jumped out of the second vehicle. One of the three men from the car behind, namely the police officer D.G., opened the back door on the left-hand side of the car driven by Mr Pârvu and shot him in the head, while he was still sitting in the driver’s seat. I.A.S., who was sitting in the front passenger seat, witnessed the tragic event.

7. According to the applicant, a few minutes later, the head of the Brăila Police arrived at their location and asked the other police officers who were dressed as civilians, “What have you done?” (*Ce ați făcut?*). One of the police officers participating in the operation answered, “We missed the target.” (*Am greșit ținta*).

8. According to the Government, immediately after Mr Pârvu had been shot, one of the police officers noticed that the victim was not the person the police were looking for to arrest that day.

9. The eyewitness, I.A.S., was handcuffed and taken to the police station until that evening.

10. An ambulance arrived fifteen minutes later and after unsuccessfully trying to resuscitate Mr Pârvu, it transported him to the Brăila emergency hospital, where the applicant herself was employed as a medical worker.

11. According to the applicant, a co-worker told her that her husband, who had been shot in the head, was being admitted to the hospital in a very severe condition. The applicant informed Mr Pârvu’s parents and brother, who arrived at the hospital. According to the applicant, the back entrance to the hospital was guarded by armed forces and the family was not allowed to see Mr Pârvu, nor did they receive prompt information about his condition. A hospital employee gave the applicant a small bag containing the personal effects found on her husband, including his identity document, driving licence, mobile telephone and some money, and she was left to wait for several hours with no initial official information about her husband. Later that day, the hospital sought her consent to transfer the victim to Galați hospital, owing to the extreme severity of his condition. At around 4 p.m., Mr Pârvu was taken to Galați hospital in an ambulance, accompanied by an armed

forces vehicle. State agents guarded Mr Pârvu during his entire stay at Galați hospital. At around 3 a.m. on the following night, the applicant was allowed by the State agents to see her husband for one minute, because the medical doctor on duty insisted that she be given permission to see him.

12. According to the applicant, she did not receive any official information regarding her husband the following morning. The hospital's press officer later told television reporters present on the premises that the victim had died at 12.25 p.m. A cousin who found out about this on television called the applicant to express her condolences, and this is how the applicant learned that her husband had died. Later Mr Pârvu's family was officially informed of his death.

II. CRIMINAL INVESTIGATIONS IN RESPECT OF MR PÂRVU

13. At 10 p.m. on 26 September 2009, the prosecutor attached to the Brăila County Court decided to open a criminal investigation (*începerea urmăririi penale*) in respect of Mr Pârvu based on Article 239 § 1 of the Criminal Code – committing an offence against a public servant (*ultraj*), (that legal qualification was later changed into attempted murder - see paragraph 44 below), on the following grounds:

“Having regard to the preliminary investigations carried out regarding Pârvu Sorin, residing in Brăila ... who was identified on 26 September 2009 around 1.30 p.m. driving a car ... on the intersection of Dorobanți and Școlilor streets by an IGPR and Police Inspectorate of Brăila police squad, which was on a mission to execute a European arrest warrant, [and those preliminary investigations being] corroborated by data resulting from the on-site search of the event (*coroborate cu datele rezultate din cercetarea la fața locului a evenimentului produs*), the result was that there were indications that Pârvu Sorin had committed an offence (*ultraj*) against public officials, namely the police in the exercise of their authority.”

14. The prosecutor's decision did not include any other details of the incident of 26 September 2009 involving the shooting of Mr Pârvu by the police. In particular, it did not mention the way in which the police officers were said to have been subject to an offence committed by the applicant, or if they had been injured in the mission.

III. CRIMINAL INVESTIGATION INTO THE KILLING OF MR PÂRVU

15. On 28 September 2009 an autopsy was conducted by a State forensic doctor from the Galați Forensic Service (*Serviciul de Medicină Legală Galați*). The autopsy report indicated that the victim's death was due to his being shot from behind by gunfire, in the cervical region of his head.

16. In addition to the introduction and the conclusions, the autopsy report included four sections: I. Case history (*Istoricul cazului*); II. Autopsy findings; III. Anatomopathological diagnosis; and IV. Complementary examinations.

17. Under Section I., Case history, the autopsy report indicated:

“From the information provided by the prosecutor’s office, it appears that on 26.09.2009, while [the victim] was driving a Ford Mondeo car in Brăila and had stopped at the red traffic light on the third lane before a street crossing, he received a legal warning from police officers, and he tried to escape the police checks and to run away by hitting the two police vehicles placed in front and at the back of the vehicle he was driving. At that moment, one of the police officers managed to open the Ford’s left-hand side back door, and asked the victim to stop the car. That police officer was hit by the car door when the victim drove backwards. Because [the police officer] was holding a gun, when he lost his balance, the police officer instinctively pulled the trigger, shooting the victim in his superior-median cervical zone.”

18. The investigation into the killing of the applicant’s husband was first conducted by the prosecutor’s office attached to the Galați Court of Appeal.

19. On 6 November 2009 the applicant submitted a civil claim to the above-mentioned prosecutor’s office.

20. On 16 March 2010 a forensic report was produced by the National Institute of Forensic Expertise (*Institutul Național de Expertiză Criminalistică*), which described the gun used to shoot Mr Pârveu and the dynamics of the gunshot.

21. On 10 May 2010 the Chief Prosecutor at the prosecutor’s office attached to High Court of Cassation and Justice (HCCJ) decided to take over the criminal investigation because of its complexity. That decision noted that the police officer who had shot the victim had claimed that the gunshot was accidental because the arm in which he had been holding the gun had been hit by the open back door of the victim’s car.

22. On 11 June 2010 a prosecutor at the prosecutor’s office attached to the HCCJ decided to open a criminal investigation (*începerea urmăririi penale*) for qualified murder (*omor calificat*), based on Articles 174-175 of the Criminal Code, in respect of the police officer, D.G., who had shot Mr Pârveu in the head.

23. D.G was questioned on two consecutive days in July 2010. The police officers who had accompanied him were questioned twice. Three civilians were questioned (just once), out of whom one had been indicated by the claimants in the civil proceedings, namely the applicant and her in-laws.

24. On 20 January 2011 the prosecutor wrote to a private bank whose surveillance camera might have captured the sequence of events leading to the shooting of Mr Pârveu.

25. On 9 March 2011 the prosecutor dismissed a request for the admission of evidence which was made by the applicant and two of the victim’s relatives.

26. The eyewitness I.A.S. was not questioned during that period and no reconstruction seems to have been performed during that time, according to the letter of 2 August 2019 of the Prosecutor’s Office attached to the HCCJ, which summarised the investigative acts carried out.

27. On 7 July 2011 the above-mentioned prosecutor's office decided to terminate the criminal investigation (*scoaterea de sub urmărire penală*) in respect of D.G., considering that the death of Mr Pârvu was accidental.

28. The above-mentioned decision noted that the police had intended to enforce a European arrest warrant from the Italian authorities against X, for murder and robbery; the police had received information that he was present in Brăila that day and was hiding in someone else's flat. The police had had information that X was part of a criminal gang also frequented by I.A.S., the owner of the Ford Mondeo driven by the applicant on 26 September 2009. In order to find and arrest X, nine police officers from Bucharest had arrived in Brăila that day by car. Two of them had gone to the church where they had expected to see X arriving that day, while the other seven, accompanied by two police officers from Brăila who said they knew X, went to the block of flats where I.A.S.'s Ford Mondeo was parked. At around noon, the victim and I.A.S. had arrived at the car and had driven away. A police officer, H.E.R., who was participating in the operation was filming with a video camera, and some other police officers had watched the two men with binoculars and believed that they saw X. The decision noted that the accused police officer, D.G., was the head of the operation, and he had decided to follow the car driven by Mr Pârvu, believing that he was following X. During the incident in question, while trying to stop Mr. Pârvu, D.G. had managed to open the rear left-hand side door of the Ford Mondeo and, while holding his gun, he was slightly hit in the elbow and had lost his balance, with the consequence that he had shot Mr Pârvu by accident. The prosecutor noted that immediately after the shooting and before the ambulance arrived, the police officers had realised that the man who had been shot in the head was not the one they wanted to arrest, namely X.

29. On 21 December 2011 the Galați Court of Appeal granted an appeal by the applicant against the prosecutor's decision, quashed that decision, and decided to send the case back to the prosecutor's office to continue the criminal investigation, considering that not all the factual and legal aspects of the case had been clarified during the initial investigations. In particular, regarding the dynamics of the shooting by D.G., the Court of Appeal noted in its decision that it appeared from the photographs taken by the police, as well as from the record of the on-site investigation, that the right corner of the Ford Mondeo's front bumper was touching the front left side ("*este lipit de aripa stângă față*") of the police vehicle which had been placed to block the Ford Mondeo. Given this contact position, the court concluded that the backwards movement of the Ford Mondeo, which followed the initial forwards movement, and which was described in the prosecutor's decision as accidentally leading D.G. to lose his balance, was of very limited significance. In those circumstances, it had not been explained if the open back door of the vehicle had still been able to hit D.G.'s arm with such an intensity so as to accidentally pull the trigger. The Court of Appeal also noted

that the expert opinion produced during the investigations had not answered the question under point f) of the questionnaire given to the forensic expert by the investigators, about the possibility that the shot was accidental (“*care este opinia expertului în legătură cu posibilitatea ca focul să fi fost declanșat accidental*”). Instead, the expert had indicated that the opinion of a forensic doctor or a specialist neurologist was required to determine whether such an accidental shooting was possible. The Court of Appeal also noted that there were at least five gunshots before the fatal one, all five fired by different policemen from the police special intervention squad. The first gunshot was a warning shot in the air; three more gunshots were directed at the car’s front left tyre, that got flat and a fifth gunshot was directed at the rear right tyre of the car, which it had missed.

30. On 24 February 2012 the prosecutor notified D.G. of a change to the legal classification of the criminal charge brought against him to that of aggravated murder (*omor deosebit de grav*) under Article 174 and Article 175 § 1 (i) and (g) of the Criminal Code.

31. D.G. and the police officers who had accompanied him during the incident that led to the shooting of Mr Pârvu were questioned again by the prosecutor.

32. On 10 July 2013 the prosecutor questioned I.A.S. as a witness. The prosecutor subsequently dismissed another request for the admission of evidence which was made by two of the victim’s relatives.

33. On 30 August 2013 the prosecutor’s office attached to the HCCJ again decided to terminate the criminal investigation (*scoaterea de sub urmărire penală*) in respect of D.G., considering that he was not responsible for the death of Mr Pârvu, which had occurred accidentally by D.G.’s hand.

34. On 5 February 2014 the Galați Court of Appeal granted an appeal by the applicant against the above-mentioned prosecutor’s decision, quashed that decision, and decided to send the case back to the prosecutor’s office to continue the criminal investigation, considering that many factual and legal aspects of the case were still to be investigated. The Court of Appeal listed on four full pages all the aspects that had still to be determined through further criminal investigation, including the admission of the evidence suggested by Mr Pârvu’s relatives, who had the procedural standing of civil claimants; that evidence included, for example, the statement of the owner of a nearby kiosk who had witnessed the incident.

35. On 28 August 2014 the prosecutor decided to change the legal classification of the criminal charge brought against D.G. to murder under Article 188 of the new Criminal Code. That change in classification was notified to D.G. on 10 September 2014, when the prosecutor questioned him again.

36. On 23 September 2014 the applicant and three close relatives of Mr Pârvu were questioned by the prosecutor. Other witnesses were questioned in February and March 2015. The prosecutor included a record

and a transcription in the investigation file after viewing a “video recording concerning D.G.”.

37. On 29 April 2015 the prosecutor ordered a reconstruction of the events at a shooting range (*efectuarea unei reconstituiri în poligonul de tragere*).

38. On 3 July 2015 the prosecutor’s office attached to the HCCJ decided for the third time to end the criminal investigation (*clasarea*) against D.G., considering that he had acted in legitimate self-defence. An administrative appeal brought by the applicant against that decision was dismissed by the Chief Prosecutor on 12 October 2015.

39. On 26 February 2016 the Brăila County Court granted an appeal by the applicant against the above-mentioned prosecutor’s decision, quashed that decision and decided to send the case back to the prosecutor’s office to continue the criminal investigation, considering that the prosecutor had not followed or had only followed in part and superficially the indications given by the Galați Court of Appeal in its decision of 5 February 2014. In particular, the County Court noted:

“- The preparation and execution of the police operation were not completely elucidated, nor their compliance with the applicable legal requirements.

- The operational procedures that must be followed by the police when they want to stop a car in road traffic, including the prescribed methods to stop the person they are looking for, are missing from the file.

On this last point, the argument in the prosecutor’s decision of 12.10.2015 (at page 20, paragraph 4), according to which this document (operational procedures) is classified as secret (*secret de serviciu*) and only covers the procedures for offenders caught *in flagrante delicto*, cannot be accepted because with appropriate clearance and in conformity with the legal requirements even these documents have to be scrutinised.

- The manual for the use of the 9 mm semi-automatic Glock pistol, of the type used by [D.G.] was not included [in the file] in order to see the recommended use.

- The reason for the intervention of [D.G.], who belonged to the squad whose mission was to identify and locate the suspect (*compartimentul înainte urmărite*), knowing that SI[I]AS¹ fighters, whose mission was to immobilise the suspect were also participating in the operation.

- [The prosecutor] failed to seek the expert opinion of a neurologist to determine if a hit to the elbow such as the one described in the present case could have led to a reflex contraction of the fingers of such an intensity that the pistol trigger was pulled – despite the fact that this investigative act was ordered by the Galați Court of Appeal in both decisions nos. .../2011 and .../2014.

- [The prosecutor] failed to identify and seek information from the O. television company regarding a videotape that could make a contribution to the elucidation of the case – as was requested by the Galați Court of Appeal in decision no. .../2014.

- The confrontations ordered by the same decision were not carried out (page 60, paragraph 5 (e))”

¹ Acronym for *Serviciul Independent pentru Intervenții și Acțiuni Speciale*, a police force for special missions.

40. The County Court also stated in the above-mentioned decision that the investigations that the Court of Appeal had requested to be carried out were compulsory, not mere recommendations. According to the County Court, the failure to comply with those requirements rendered the investigations incomplete.

41. On 15 July 2016 the superior body to the National Institute of Forensic Medicine (*Comisia de Avizare și Control de pe lângă Institutul Național de Medicină Legală*) upheld a forensic report of 2 October 2009, which stated that “any unexpected impact on the arm with fingers compressed on an object can lead to an unconditional reflex of increasing the fingers’ flexion; there was no need in practice for a strong impact on the hand of the suspect to generate the unconditional reflex of contracting his hand, as referred to in his statement of 12.11.2012” (“*orice lovire bruscă a membrului superior cu degetele în compresiune asupra unui obiect poate conduce la un reflex necondiționat de accentuare a flexiei degetelor, practic nefiind nevoie de o lovitură puternică a mâinii suspectului pentru declanșarea reflexului necondiționat de strângere a mâinii la care a facut referire suspectul în cadrul depoziției din 12.11.2012.*”).

42. On 3 August 2016 the prosecutor requested that the Ministry of the Interior communicate the operational procedures which applied to the police. On 30 August 2018 the manual for the use of semi-automatic Glock pistols was also requested from the police, and on 19 September 2018, a translation of that document was requested. Other documents relating to the preparation of the police operation were further requested for the first time during the investigations into the shooting of Mr Pârvu.

43. On 7 June 2018 the prosecutor’s office attached to the HCCJ decided for the fourth time to end the criminal investigation (*clasarea*) in respect of the police officer, D.G., considering that he had acted in legitimate self-defence to defend the life of the three other police officers participating in the operation, namely H.E.R, S.A. and M.L., who had been endangered by Mr Pârvu moving his car backwards and forwards. According to the prosecutor, the fact that, thanks to their skills, the three police officers had managed to avoid the impact and to avoid suffering serious traumatic injuries could not cast any doubt on Mr Pârvu’s intent and could not change the nature of the attack that he had carried out against the police officers.

44. By the same decision of 7 June 2018, the prosecutor’s office attached to the HCCJ decided to end the criminal investigations in respect of Mr Pârvu for the attempted murder of a State agent, because of his death.

45. On 6 March 2019 the Brăila County Court allowed an appeal by the applicant against the prosecutor’s decision of 7 June 2018, quashed that decision, and decided to send the case back to the prosecutor’s office to continue the criminal investigation, considering that some of the investigative measures required by previous judicial decisions were still missing and many aspects of the case had still not been elucidated, including the confrontation

between the witnesses needed in order to solve the contradictions between their previous statements, despite that investigative measure having been ordered twice by previous court judgments of 5 February 2014 and 26 February 2016.

46. In 2019 and 2020 the prosecutor organised confrontations between the police officers who had witnessed the incident and other witnesses who did not work for the police.

47. On 25 June 2020 the prosecutor's office attached to the HCCJ decided for the fifth time to end the criminal investigation (*clasarea*) in respect of D.G., considering that he had acted in legitimate self-defence to stop the attack carried out by Mr Pârveu by moving his car back and forth, that had endangered the life of three police officers, namely H.E.R., S.A. and M.L., while also maintaining that the shooting had been accidental. The prosecutor concluded that the fact that none of the three police officers had suffered serious injuries and they had all managed to avoid any impact with the car could not change the nature of the attack perpetrated by Mr Pârveu. The prosecutor further concluded that the police operation had relied on the action plan to identify the international fugitive X, and that action plan had been drafted and regularly approved. The plan had included the participation of the Independent Special Interventions and Actions Service (*Serviciul Independent pentru Intervenții și Acțiuni Speciale*), which, on 28 September 2009, had approved the group of four police officers. The prosecutor noted that the participation of the special police force had been requested by telephone on an unspecified date, in the knowledge that the police internal procedures allowed for its registration even after the mission had been completed. The prosecutor further noted that it appeared from their statements that the police officers from Bucharest had relied on the fact that the two police officers from Brăila had indicated that they recognised the fugitive X when Mr Pârveu had come out of the building to approach the Ford Mondeo. The prosecutor also noted that one of the police officers from Brăila had stated that he knew the suspect X and, when looking through the camera without a zoom lens, filming from a distance of 50 or 60 metres, he had seen someone of the size and shape of the suspect. The other police officer from Brăila had stated that he did not know the fugitive very well. The prosecutor further noted that police officers from the special forces had fired warning shots (*foc de avertisment în plan vertical*) and into the tires of the Ford Mondeo, while avoiding being hit by the car driven by Mr Pârveu. Several witnesses present in the area, and not related to the police, stated that they had not heard the warning "Police". Some of them had only heard the police officer say "Stop". The prosecutor further considered that these witnesses were not eyewitnesses and their statements were not reliable.

48. The applicant lodged an appeal against that decision on the grounds, among others, that the prosecutor's conclusion of both legitimate self-defence and accidental shooting were incompatible.

49. On 8 April 2021 the Brăila County Court dismissed the applicant’s appeal against the prosecutor’s decision of 25 June 2020, considering that there was no contradiction in the prosecutor’s decision, as the conclusions concerning legitimate self-defence and accidental shooting “were reached with regard to different moments in time and under different hypotheses” (*cele două elemente din cadrul ordonanței nu sunt incompatibile, fiind reținute în momente diferite și în ipoteze diferite*). In particular, the County Court noted that, given the use made by Mr Pârvu of the car that he had driven so as to intentionally hit the police officers who were surrounding him, it was in legitimate self-defence that D.G. had first cocked his gun, as a reasonable precaution. Subsequently, when he had lost his balance because of the backwards movement of the open left-hand side back door of the Ford that had hit his left elbow, the cocked pistol had been discharged unintentionally (*In continuare s-a reținut că ulterior acestui moment în care suspectul a intervenit cu pistolul armat și a deschis ușa din spate stânga a autoturismului marca Ford, a intervenit al doilea moment în care a avut loc descărcarea accidentală a pistolului, eveniment nedorit de suspect care utilizează pistolul doar ca măsură de precauție, de autoapărare, datorat reculului ușii autoturismului marca Ford care a lovit accidental cotul mâinii stângi a suspectului în care acesta ținea pistolul.*).

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. RELEVANT DOMESTIC LAW AND PRACTICE

50. The relevant legal provisions concerning the use of firearms by the police, in the version in force at the material time, can be found in *Soare and Others v. Romania* (no. 24329/02, § 94, 22 February 2011) and *Andreea-Marusia Dumitru v. Romania* (no. 9637/16, §§ 62-64, 31 March 2020).

51. The provisions governing the organisation and functioning of the special forces units of the police are described in *Ciorcan and Others v. Romania* (nos. 29414/09 and 44841/09, §§ 71-72, 27 January 2015).

52. The applicable legal provisions of the Romanian Criminal Code, including those relating to murder and self-defence are described in *Ciorcan and Others* (cited above, § 73).

II. RELEVANT COUNCIL OF EUROPE AND INTERNATIONAL MATERIAL

A. United Nations

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

B. Committee of Ministers of the Council of Europe

54. Resolution CM/ResDH(2021)106 on the execution of the judgments of the European Court of Human Rights in three cases against Romania (*Gheorghe Cobzaru v. Romania and 2 other cases*, nos. 6978/08, 14974/09 and 40374/11) adopted by the Committee of Ministers on 9 June 2021 at the 1406th meeting of the Ministers' Deputies, in its relevant parts, reads as follows:

“ ... Having regard to the final judgments transmitted by the Court to the Committee in these cases and to the violations of Articles 2 and 3 of the Convention due to the unjustified use of firearms by police during interventions or the lack of appropriate planning to prevent excessive use of force during an operation involving special intervention units, and the lack of effective criminal investigations and proceedings into these incidents;

Recalling the respondent State's obligation, under Article 46, paragraph 1, of the Convention, to abide by all final judgments in cases to which it has been a party and that this obligation entails, over and above the payment of any sums awarded by the Court, the adoption by the authorities of the respondent State, where required:

- of individual measures to put an end to violations established and erase their consequences so as to achieve as far as possible *restitutio in integrum*; and
- of general measures preventing similar violations;

Having invited the government of the respondent State to inform the Committee of the measures taken to comply with the above-mentioned obligation;

...

Recalling that the question of general measures required to prevent unjustified use of potentially lethal force during law enforcement interventions and operations and to guarantee effective criminal investigations and proceedings into such incidents continues to be examined within the framework of the *Soare and Others* group of cases and underlining that the closure of these cases in no way prejudices the Committee's evaluation of the general measures;

DECLARES that it has exercised its functions under Article 46, paragraph 2, of the Convention in these cases as regards the individual measures and

DECIDES to close the examination of these cases.”

55. The issue of deficiencies in the legislative framework governing the use of potentially lethal force during law enforcement interventions and operations and the lack of effective criminal investigations and proceedings into allegations of unjustified use of lethal or potentially lethal force, has been on the agenda of the Committee of Ministers for several years. For example, during the 1406th meeting held on 7-9 June 2021, the Ministers' Deputies adopted the following decision CM/Del/Dec(2021)1406/H46-24 concerning the *Soare and Others* group v. Romania (Application No. 24329/02):

“The Deputies

1. recalled that these cases mainly concern deficiencies in the legislative framework governing the use of potentially lethal force during law enforcement interventions and operations; the unjustified deployment of special intervention units in routine operations; and the lack of effective criminal investigations and proceedings into allegations of unjustified use of lethal or potentially lethal force, including their failure to address allegations of racist motives behind the treatment complained of by some of the applicants;

...

As regards general measures

4. noted the sustained efforts made by the authorities to bring the *legislative framework governing the use of potentially lethal force by the police* into line with the requirements of Article 2 of the Convention, as laid down in these judgments; recalled further their conclusions that *regulations adopted in 2009 on the operation of special intervention units* appeared capable of ensuring that their deployment was duly justified;

5. requested the authorities rapidly to make sure that the law restricts the use of firearms by law enforcement officials in all cases only to situations when this is absolutely necessary to avert a risk to life and limb and to take adequate measures guaranteeing that law enforcement operations, including those involving special intervention units, are planned and directed so as to avoid, as far as possible, the use of potentially lethal force;

6. noted further with satisfaction the measures recently adopted by the General Prosecutor to improve the *effectiveness of criminal investigations* into cases concerning use of lethal or potentially lethal force by law enforcement officials; called upon the authorities closely to follow up the impact of these measures and provide, in due course, a qualitative analysis to enable the Committee to assess whether these have sufficed to guarantee non repetition of the procedural violations found;

7. noting that the cases also disclose an *insufficient judicial review of such investigations* and regretting the prolonged absence of information in this regard, urged the authorities to inform the Committee about the steps taken or envisaged to address this issue;

...

9. requested the authorities to provide information on the individual measures in *Soare and Others*, *Ciorcan and Others* and *Andreea-Marusia Dumitru* and on the general measures referred to at paragraphs 5 and 7 by 15 December 2021 at the latest.”

56. The general measures taken by the Romanian authorities to restrict the use of potentially lethal force during law enforcement operations and to improve the effectiveness of criminal investigations, court proceedings and domestic remedies were under detailed consideration during the above-mentioned meeting held on 7-9 June 2021 (CM/Notes/1406/H46-24) (footnotes omitted):

“ ...

Status of execution

The Committee of Ministers’ previous examination of the cases then under its supervision took place in September 2017 (see CM/Notes/1294/H46-21). The authorities submitted new information on the individual and general measures on 16 April 2021 (DH-DD(2021)403), summarised below.

...

General measures:

1) Measures to restrict the use of potentially lethal force during law enforcement operations

...

In their latest submissions, the authorities provide information on new steps taken to improve the relevant legal framework. They refer to amendments brought in 2019 to the Police Act to regulate in more detail all the means of restraint (physical force, immobilisation devices, non-lethal devices and weapons, lethal weapons) the police can resort to, in which conditions and how. This Act now prescribes that police must resort to these gradually; give warning and time to conform (except when imminent danger of violence); make sure that their use does not exceed, in intensity and duration, the real needs to achieve the aim of the intervention; and stop using them as soon as this has been done. Use of non-lethal devices and weapons is restricted to situations where physical force is not apt to prevent or neutralise violent actions which may endanger life, limb or health. Use of potentially lethal force (firearms) is authorised in case of necessity in the situations and conditions regulated by the Firearms Regime Act.

Like the 2016 amendments in respect of firearms, the 2019 amendments prescribe *mandatory training for police staff* in the manner and conditions of use of all means of restraint. They also specify that this training must take account of the relevant case-law of the national courts and of the European Court.

A handbook issued in December 2019 provides *practical instructions* to police staff on applying the main police measures. *By-laws issued by the Minister of Interior in 2007 and 2010 regulate the planning of patrol and other police operations* and set up a “coordination and task tracing” group, *inter alia*, to *review such operations* and identify possible dysfunctions.

As regards the application of the legislative framework, the authorities indicate that over the past four years, the Romanian Police General Inspectorate (“RPGI”) registered 666 incidents in which police staff used firearms. In 36 cases, the suspects were injured and in 8, the suspects lost their lives. Police were injured in 17 cases and one officer lost his life. This, in the authorities’ view, shows that the measures adopted have been effective in restricting the use of potentially lethal force.

...

PÂRVU v. ROMANIA JUDGMENT

3) Measures to improve the effectiveness of criminal investigations, court proceedings and domestic remedies

- As regards criminal investigations: At the previous examination, the authorities referred to measures adopted by the General Prosecutor's Office for the execution of judgments concerning the lack of effective investigations into allegations of torture or ill-treatment of persons placed under the authority of State agents (police staff and gendarmes), whose supervision had been closed by the Committee (see Final Resolution CM/ResDH(2016)150 in *Barbu Anghelescu* (No. 1) group).

As these measures, however, did not cover all investigations concerning the use of potentially lethal force by the police, the Committee encouraged the authorities to extend their application accordingly.

In their latest submissions, the authorities indicate that this was done in April this year. The Prosecutor General issued *new instructions that investigations into all offences against life and limb committed through use of weapons by State agents would be henceforth carried out by specially appointed prosecutors.*

These investigations are moreover subjected to *a two-tiered monitoring* first by specially appointed prosecutors in the offices attached to the Courts of Appeal and then by the GPO [General Prosecutor's Office], whose specialised department can, if necessary, *issue general guidance* to improve their effectiveness. Cases involving use of weapons by State agents must be reported, from registration to the CPO's criminal investigation and forensic section.

- As regards court proceedings: At the previous examination, the Committee invited the authorities to indicate whether measures had also been taken or were envisaged to guarantee an effective judicial review of the relevant investigations. The authorities have not provided new information on this question.

- As regards remedies: The authorities consider that the measures adopted to guarantee the effectiveness of the investigations will enable victims or their next-of-kin to obtain redress through a civil action brought against the agent responsible or the State within criminal proceedings or subsequent to them.

...

Analysis by the Secretariat

...

1) Issues related to the use of potentially lethal force and the planning and control of law enforcement operations

...

- the law still lacks any provisions aimed at guaranteeing that law enforcement operations, including those involving special intervention units, are prepared and directed in such a way as to avoid, as far as possible, the use of potentially lethal force. This gap in the legal protection of the right to life was at the origin of the violation in *Andreea-Marusia Dumitru*, where the Court noted the lack of preparation, direction, and assessment of the possible risks entailed by the operation which had put the applicant's life in danger. It moreover appears that the lack of such provisions in the primary legislation may lead to impunity for the State agents responsible for the planning and direction of operations, following the Constitutional Court's 2016 ruling clarifying the conditions in which officials can be held criminally accountable for negligence in performance of their duties.

PÂRVU v. ROMANIA JUDGMENT

The authorities could be requested rapidly to address these remaining deficiencies in the legal framework.

2) Issues related to criminal investigations and court proceedings and civil law remedies

- As regards criminal investigations: The Court did not criticise the legal framework but the manner in which the investigations at issue had been carried out. It noted significant delays, shortcomings in the taking of evidence and insufficient public scrutiny and protection of the applicants' interests during the investigation. Where the investigation concerned an operation involving special intervention forces, the Court found it insufficiently thorough because the relevant authorities had failed to address the issue of the planning and control, including whether the presence of the special forces had been necessary and in accordance with the law (*Ciorcan and Others*, § 126).

As noted at its previous examination, the Committee had deemed adequate the measures adopted by the authorities to address similar shortcomings in the investigation of allegations of serious human rights violations at the hands or under the control of law enforcement officials (*Anghelescu Barbu (No. 1) group*).

It is therefore positive that, in response to the Committee's last decision in the present cases, the General Prosecutor has recently ensured that all cases concerning use of lethal or potentially lethal force by law enforcement officials are likewise assigned to experienced prosecutors and that the manner these investigations are conducted, including their compliance with the relevant Convention requirements, is subjected to enhanced monitoring within the State Prosecutor's Office.

To allow an assessment whether these measures have sufficed to guarantee the effectiveness of such investigations, the authorities could be invited closely to follow-up and provide, in due course, a qualitative analysis of their impact. The questions related to accountability for deficiencies in the planning and control of police operations, appear to require legislative change, as explained under point 1 above.

- As regards court proceedings: As previously noted, in *Grămadă* the Court criticised the national courts for having established that the police officer who had shot and injured the applicant had justifiably overstepped the limits of self-defence ("justified excess") without carrying out a detailed inquiry to establish the circumstances in which force had been used (§ 74). In addition, these cases more generally raise questions about the effectiveness of the judicial review of the relevant investigations. All the applicants had challenged in court the prosecutor's decision to terminate them without charge and the domestic courts decided to uphold those decisions, without providing redress to the applicants' complaints that the investigations had been defective (as later found by the European Court). The authorities should therefore be urged to indicate how they have addressed or envisage addressing this issue.

- As regards the domestic civil law remedy: In the light of the Court's findings in *Soare and Others*, its effectiveness appears linked to that of the criminal investigations and court proceedings ..."

57. Complementary general measures taken by the Romanian authorities to improve the effectiveness of criminal investigations, court proceedings and domestic remedies were under consideration during the above-mentioned meeting, in which Ministers' Deputies also examined *Lingurar v. Romania* (Application No. 48474/14) (CM/Notes/1406/H46-22):

“In their latest submissions, the authorities highlight that the General Prosecutor of Romania has recently renewed the relevant instructions. By derogation to the common rules on competence, investigations into allegations of torture and ill-treatment by State agents continue to be carried out by specially appointed prosecutors within the prosecutor’s offices attached to the higher courts (and not by the judicial police). They are moreover subjected to a two-tiered monitoring first by specially appointed prosecutors in the offices attached to the Courts of Appeal and then by the GPO, whose specialised department can, if necessary, issue general guidance to improve their effectiveness.”

C. Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)

58. Relevant excerpts from the CPT’s report in respect of Romania (CPT/Inf (2022) 06) read as follows:

“26. One important step would be to enhance the independence as well as the thoroughness and promptness of investigations by ensuring that prosecutors have recourse to their own investigators and do not have to rely upon external police officers to carry out certain tasks. This would enable prosecutors to operate more autonomously and to react more promptly in investigating acts of alleged ill-treatment by law enforcement officials as opposed to relying on support, on an *ad hoc* basis, from officers of the Internal Control Bureau of the Police ...

Prosecutors charged with investigating such acts should be provided with the necessary resources to carry out investigations which comply with the criteria of effectiveness.

27. The CPT recommends that the Romanian authorities take steps to provide prosecutors charged with investigating allegations of ill-treatment by law enforcement officials with their own investigators as a means to enhance the independence as well as the promptness and thoroughness of the investigations.”

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLE 2 OF THE CONVENTION

59. The applicant complained that Mr Pârvu had been killed in breach of Article 2 of the Convention. She alleged that the police officers had used guns at very close range on unarmed men who were panicking because they thought they were being attacked by a criminal gang. She alleged that the police had used lethal force in circumstances where this was not absolutely necessary and had used such force in an excessive manner. She also complained that the police operation had not been properly prepared and had been badly directed.

60. The applicant further complained that the authorities had failed to conduct an effective investigation into Mr Pârvu’s death, because of the excessive length of the investigation which lasted more than eleven years, with four judicial decisions that sent the case back to the prosecutor’s office

and various deficiencies of the investigation identified by the domestic judicial decisions with no meaningful consequences for the applicant.

61. Article 2 of the Convention provides:

“1. Everyone’s right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:

(a) in defence of any person from unlawful violence;

(b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

(c) in action lawfully taken for the purpose of quelling a riot or insurrection.”

A. Admissibility

62. The Government raised a preliminary objection that the application was lodged out of the six-month time-limit, because the applicant ought to have displayed more diligence in lodging her application with the Court immediately after 26 February 2016, that is the date of the Brăila County Court’s judgment that decided to reopen the investigations into the death of Mr Pârvu, which was already more than six years after the death occurred and the investigation started. For the Government, the applicant had waited too long to bring the application on 7 March 2018.

63. The applicant rejected those arguments and pointed to the fact that the investigation was still ongoing when she had applied to the Court, and that she had availed herself of the existing means of redress before the national courts.

64. The Court reiterates the general principles regarding the six-month time-limit provided for by Article 35 § 1 of the Convention, described in *Mocanu and Others v. Romania* ([GC], nos. 10865/09 and 2 others, §§ 258-69, ECHR 2014 (extracts)). In particular, in cases concerning an investigation into ill-treatment, as in those concerning an investigation into the suspicious death of a relative, applicants are expected to take steps to keep track of the investigation’s progress, or lack thereof, and to lodge their applications with due expedition once they are, or should have become, aware of the lack of any effective criminal investigation (*ibid.*, § 263, with further references). As long as there is some meaningful contact between relatives and authorities concerning complaints and requests for information, or some indication, or realistic possibility, of progress in investigative measures, considerations of undue delay by the applicants will not generally arise (*ibid.*, § 269).

65. The Court notes that the applicant lodged her application with the Court on 7 March 2018, more than eight years after 6 November 2009, the

date on which she had lodged her civil claim with the prosecuting authorities (see paragraph 19 above), that had started the investigation into the killing of Mr Pârveu of their own motion. The investigation was still pending at that time, in March 2018, and investigative steps had been taken. During those years, there was meaningful contact between the applicant and the authorities with regard to the former's complaint about the progress in the investigation. In addition, there were tangible indications that the investigation was progressing, particularly the successive judicial decisions requesting further concrete investigative measures which were at least in part followed by the prosecuting authorities (see paragraphs 36-37 and 42, above). For these reasons, which remained valid at least until the time when the applicant lodged her application before the Court, she cannot be criticised for having waited too long.

66. Moreover, the final domestic decision in the applicant's case was the Brăila County Court's judgment of 8 April 2021 (see paragraph 49 above).

67. In the light of the foregoing, the Court considers that the application has not been lodged out of time. The Government's objection must therefore be dismissed.

68. The Court notes that the application is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

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

(a) The parties' submissions

69. The applicant submitted that the police had committed a gross error in attempting to arrest her husband during the police operation leading to his being killed by a gunshot, by mistakenly taking him for someone else, namely the international fugitive whom they had been tracking for several months. She also alleged the unnecessary and excessive use of lethal force against her husband during a chaotic police operation in which eleven police officers had participated without wearing any clear, distinctive identification, and she pointed out the fact that at the time that the killing of her husband took place there were no internal procedures to regulate that kind of police intervention. For the applicant, at no moment did Mr. Pârveu pose any threat to anyone's life, as his car had been stacked between two police cars, he had been surrounded by a large number of police officers, and had been shot in the head from behind, despite the fact that he had never attacked anyone.

70. The Government submitted that the domestic authorities had complied with all the requirements of Article 2 of the Convention when organising the police intervention that led to the applicant's gunshot injury, which had eventually caused his death the following day. In particular, the use of guns

during the police operation conducted to arrest an international fugitive had been conducted in accordance with internal police procedures. The Government argued, in this respect, that, contrary to *Gheorghe Cobzaru v. Romania* (no. 6978/08, 25 June 2013), the positive obligations to put in place a legislative framework for the use of force by the police had been complied with. During the police operation, the police had intervened with a gun given the reaction of Mr Pârvu, who had refused to obey the requests of the police officers dressed as civilians to stop his car, and had tried to escape by endangering their lives and physical integrity. However, the gunshot itself had been accidental.

(b) The Court's assessment

71. The Court reiterates the general principles regarding the right to life, especially in the context of policing operations, described in *Ciorcan and Others v. Romania* (nos. 29414/09 and 44841/09, §§ 104-07, 27 January 2015) and, more recently, *Andreea-Marusia Dumitru v. Romania* (no. 9637/16, §§ 85-88, 31 March 2020).

72. The text of Article 2, read as a whole, demonstrates that it covers not only intentional killing but also situations where it is permitted to “use force” which may result, as an unintended outcome, in the deprivation of life. The deliberate or intended use of lethal force is only one factor, however, to be taken into account in assessing its necessity. Any use of force must be no more than “absolutely necessary” for the achievement of one or more of the purposes set out in sub-paragraphs (a) to (c) of the second paragraph of Article 2. This term indicates that a stricter and more compelling test of necessity must be employed than that normally applicable when determining whether State action is “necessary in a democratic society” under paragraphs 2 of Articles 8 to 11 of the Convention. In particular, the force used must be strictly proportionate to the achievement of the permitted aims (see *Wasilewska and Kalucka v. Poland*, nos. 28975/04 and 33406/04, § 42, 23 February 2010, and *McCann and Others v. the United Kingdom*, 27 September 1995, §§ 148-49, Series A no. 324).

In that connection the Court reiterates that the use of force by agents of the State in pursuit of one of the aims delineated in paragraph 2 of Article 2 of the Convention may be justified under this provision where it is based on an honest belief which is perceived, for good reasons, to be valid at the time but which subsequently turns out to be mistaken (see *Armani Da Silva v. the United Kingdom* ([GC], no. 5878/08, §§ 247-48, 30 March 2016). To hold otherwise would be to impose an unrealistic burden on the State and its law-enforcement personnel in the execution of their duty, perhaps to the detriment of their lives and those of others (see *Makaratzis v. Greece* [GC], no. 50385/99, § 66, ECHR 2004 XI, and *McCann and Others*, cited above, § 200).

The Court also recalls that, when it comes to the use of potentially lethal force by State agents, it is incumbent on the State to provide a plausible explanation of the events leading to the death of a person, respectively to demonstrate that the use of potentially lethal force has to be regarded as “absolutely necessary” and justified under paragraph 2 of Article 2 of the Convention (*Andreea-Marusia Dumitru*, cited above, §§ 105-112, and *Soare and Others v. Romania*, no. 24329/02, § 140, 22 February 2011). In assessing evidence, the Court adopts the standard of proof “beyond reasonable doubt” (see *Ireland v. the United Kingdom*, 18 January 1978, § 161, Series A no. 25).

73. In line with the above-mentioned principle of strict proportionality inherent in Article 2, the national legal framework regulating arrest operations must make recourse to firearms dependent on a careful assessment of the surrounding circumstances, and, in particular, on an evaluation of the nature of the offence committed by the fugitive and of the threat he or she posed. As the text of Article 2 itself shows, the use of lethal force by police officers may be justified in certain circumstances. Nonetheless, Article 2 does not grant them *carte blanche*. Unregulated and arbitrary action by State agents is incompatible with effective respect for human rights. This means that, as well as being authorised under national law, policing operations must be sufficiently regulated by it, within the framework of a system of adequate and effective safeguards against arbitrariness and abuse of force (see *Makaratzis*, cited above, § 58, and *Andreou v. Turkey*, no. 45653/99, § 50, 27 October 2009).

74. Furthermore, the national law regulating policing operations must secure a system of adequate and effective safeguards against arbitrariness and abuse of force and even against avoidable accident (see *Makaratzis*, cited above, § 58). In particular, law-enforcement agents must be trained to assess whether or not there is an absolute necessity to use firearms, not only on the basis of the letter of the relevant regulations, but also with due regard to the pre-eminence of respect for human life as a fundamental value (see *Wasilewska and Kalucka*, cited above, § 47).

75. In determining whether the force used is compatible with Article 2, it may therefore be relevant whether a law enforcement operation has been planned and controlled to minimise to the greatest extent possible recourse to lethal force or incidental loss of life (see *Bubbins v. the United Kingdom*, no. 50196/99, § 136, ECHR 2005-II (extracts)).

76. Against this background the Court must examine in the present case not only whether the use of lethal force against Mr Pârvu was legitimate but also whether the operation was regulated, planned and organised in such a way as to minimise to the greatest extent possible any risk to his life (see *Makaratzis*, cited above, § 60, *Andreea-Marusia Dumitru*, cited above, §§ 87, 95, and *Ciorcan and Others*, cited above, §§ 107-108).

77. Turning to the facts of the present case the Court accepts that the police officers intervened in order to arrest an international fugitive who was

subject to a European arrest warrant and who was considered to be dangerous because of the crimes attributed to him, namely murder and robbery (see paragraph 28 above).

78. Regarding the fact that Mr Pârveu, who was believed to be that dangerous international fugitive, attempted to escape in his car, the Court notes that the officers were not wearing police uniforms, and that the investigation had not entirely clarified whether the officers had given a clear oral warning that they were police before opening fire on the car (see paragraphs 6 and 47 *in fine*). It was alleged that Mr Pârveu's actions created a danger for the police officers of being hit by his car. According to the final domestic decision, the police officers opened fire with the purpose of stopping the escaping suspect, who, according to the authorities, had made an attempt on the life or health of three police officers (see *Makaratzis*, cited above, § 66).

79. Having regard to the dual explanation provided by the domestic court in its final decision (see paragraph 49 above) and by the Government (see paragraph 70 above), combining the legitimate self-defence argument, which was valid in the first moments of the police operation, and the subsequent accidental shooting, the Court must therefore examine first whether the considerations which led the police to open fire were compatible with Article 2 of the Convention and whether the level of force used was absolutely necessary.

80. The Court refers to its findings that the domestic investigation into the events leading to Mr Pârveu's death was not effective (see paragraph 98 below). It lasted from September 2009 to April 2021 (see paragraph 96 below), with numerous judicial decisions to send the case back to the prosecutor because of various omissions in the investigation, and left open a number of questions as to the crucial factual elements of the case. Therefore the Court has doubts whether the use of potentially lethal force could be regarded as absolutely necessary and justified under paragraph 2 of Article 2 of the Convention and whether D.G., the police officer coordinating the police operation (see paragraph 28 above), could be considered as having honestly believed that other police officers had been exposed to a clear and immediate danger (compare and contrast *Wasilewska and Katucka*, cited above, § 52), having regard in particular to the fact that apparently they did possess weapons to defend themselves (see paragraph 47 above). In this connection, the Court notes that five shots had been fired before D.G.'s fatal shot, three of which had hit the tyres of the car (see paragraph 29 above).

81. In the present case it has been established by the domestic authorities that the lethal shot was fired at Mr Pârveu once his vehicle had stopped, and the police officers who were perceived to be in danger of being hit by the car had managed to avoid an impact (see paragraphs 43 and 47 above). As a result, the Court has serious doubts that at that moment there was a direct danger to the police officers. The domestic court itself, in its final decision,

maintained that the action of shooting Mr Pârvu in the head was in the end accidental, although the cocking of the pistol, as a preliminary action, was done in legitimate self-defence. In this respect, the final domestic decision clearly indicated that “subsequently, when he had lost his balance because of the backwards movement of the open left-hand side back door of the Ford that had hit his left elbow, the cocked pistol had been discharged unintentionally” (see paragraph 49 above). The Court also has serious doubts in respect of the domestic authorities’ findings as to the accidental nature of the shooting. The opinion issued on 15 July 2016, namely seven years after the beginning of the investigation into the tragic event leading to the death of Mr Pârvu, by the superior body to the National Institute of Forensic Medicine seems to support this conclusion (see paragraph 41 above). The Court notes, however, that the investigators failed to seek the expert opinion of a neurologist to determine if a hit to the elbow such as the one described in the present case could have led to the fatal shooting – despite the fact that this investigative act was ordered by the Galați Court of Appeal in its decisions of 21 December 2011 and 5 February 2014 and by the Brăila County Court in its decision of 26 February 2016 (see paragraph 39 above).

82. Against this background, the Court recalls that when confronted with divergent versions of the facts regarding the reality of the legitimate defence or of an accidental shooting, or of both combined, generally, it is not bound by the findings of the domestic jurisdictions and it can conduct its own assessment of the facts, on the basis of the evidence before it (*mutatis mutandis*, *Iambor v. Romania (no. 1)*, no. 64536/01, § 166, 24 June 2008, and *Gheorghe Cobzaru*, cited above, § 54). On the basis of the evidence before it and, notably of the deficiencies of the domestic investigation especially during its initial stages (see paragraphs 93-94 and 98 below), the Court is neither convinced by the arguments put forward by the Government regarding D.G.’s “honest belief” that the cocking of the firearm was absolutely necessary for self-defence in the specific situation, nor by the explanation of the ultimately accidental nature of the shooting.

83. Finally, regarding the conduct of the operation itself, the Court is also struck by the fact, noted by the Brăila County Court in its decision of 26 February 2016 (see paragraph 39 above), that while specially trained policemen were participating whose mission was to immobilise the suspect, police officer D.G., the author of the fatal gunshot, who was not part of that specialised police squad, intervened apparently outside his own mission which was limited to identifying the suspect. In this respect, the Court considers that this important aspect was not adequately addressed by the investigation (see paragraph 97 below).

84. Moreover, in the Court’s view, serious issues arise as to the planning and control of the operation. Firstly, it should be noted that Mr Pârvu was fatally injured not in the course of an unplanned operation which gave rise to developments to which the police were called upon to react (compare and

contrast *Makaratzis*, cited above, § 69), but in a planned operation in which significant police forces were deployed, although they acted upon unreliable information that the person driving the Ford Mondeo was the fugitive that they wanted to arrest, not Mr Pârvu. The Court is struck by the insufficiencies of the investigation conducted by the domestic authorities into the issue of the identification error committed by the police with respect to Mr Pârvu (see paragraph 97 below), who was not the person the police were looking for, a significant error which became obvious to the police only immediately after the fatal shooting. In particular, the Court notes that the prosecutor's decision of 25 June 2020 only superficially explained how that error was possible, because the police officers from Bucharest relied on their colleagues from Brăila who appeared to either not know the suspect very well, or to have been led into making an error by the unsuitable technology that was available, among which was a camera without the technical capacity to increase the relevant image (see paragraph 47 above). In the Court's view this identification error is an important factor engaging the responsibility of the authorities in respect of Mr Pârvu's death. Moreover, the Court finds nothing in the arguments presented by the Government or in the file that could show what kind of mitigating measures were considered in the preparation of the police operation in question in order to apply the principle of proportionality and to avoid the risk of mistakenly killing an innocent person when attempting to arrest a dangerous and potentially armed fugitive.

85. The Court further notes that the subsequent criminal proceedings cast doubt on whether the police officers who took part in the events in question were clearly identifiable as being from the police. In addition, in planning an operation designed to arrest a potentially dangerous suspect and involving a large number of officers, the police failed to arrange for an ambulance to be present (see *Wasilewska and Kalucka*, cited above, § 55). As a consequence, the victim had to wait for about fifteen minutes for one to arrive (see paragraph 10 above).

86. Lastly, the Court observes that the Government have failed to explain whether an adequate legislative and administrative framework had been put in place to safeguard citizens against arbitrariness and abuse of force (see *Wasilewska and Kalucka*, cited above, § 56).

87. Having regard to these circumstances the Court considers that the manner in which the police responded cannot be considered to have been "no more than absolutely necessary" to achieve the aim of preventing Mr Pârvu's escape and arresting him or averting the perceived threat posed by him. In particular, the operation was not planned so as to reduce to a minimum any recourse to lethal force.

88. The foregoing considerations are sufficient to enable the Court to conclude that there has been a violation of Article 2 of the Convention under its substantive limb.

2. *As regards the investigation into Mr Pârvu's death*

89. The applicant argued that the investigation had taken a very long time and had lacked effectiveness, despite the domestic courts' decisions which four times ordered the prosecutor's office attached to HCCJ to undertake supplementary investigative actions and to elucidate all the aspects of the case.

90. The Government argued that the investigation had complied with the requirements of Article 2 of the Convention.

91. The Court reiterates the general principles regarding the effectiveness of investigations, described in *Armani Da Silva v. the United Kingdom* ([GC], no. 5878/08, §§ 229-38, 30 March 2016), *Ciorcan and Others* (cited above, §§ 118-20) and, more recently, *Andreea-Marusia Dumitru* (cited above, §§ 124-26). A particularly stringent scrutiny must be applied by the relevant domestic authorities to the ensuing investigation where a suspicious death has been inflicted at the hands of a State agent (see *Armani Da Silva*, cited above, § 234). Of particular relevance in the present case are the requirements that an investigation must be prompt and be carried out with reasonable expedition (*ibid.*, § 237) and that it has to be adequate, meaning capable of leading to the establishment of the facts, a determination of whether the force used was or was not justified in the circumstances and of identifying and – if appropriate – punishing those responsible (*ibid.*, § 233). The investigation's conclusions must be based on thorough, objective and impartial analysis of all relevant elements. Failing to follow an obvious line of inquiry undermines to a decisive extent the investigation's ability to establish the circumstances of the case and the identity of those responsible (*ibid.*, § 234).

92. The Court notes that in order to assess the effectiveness of the investigation into the killing of Mr Pârvu, it needs to examine the investigation into the incident of 26 September 2009 as a whole.

93. The Court is first struck by the fact that, following the incident, a criminal investigation was immediately opened against the victim for committing an offence against a State agent, with a prosecutor's decision containing very few factual details (see paragraphs 13-14 above). Although an investigation into the death of the applicant's husband was also opened shortly after the incident, namely on 28 September 2009, it was not until 11 June 2010, nearly nine months after the shooting of Mr. Pârvu during a planned police operation, that a prosecutor at the prosecutor's office attached to the HCCJ decided to open a criminal investigation in respect of the police officer, D.G., who had fatally shot Mr Pârvu in the head (see paragraph 22 above). The Government have not put forward any explanation for this discrepancy in treatment by the prosecutor in charge of the investigation into the incident of 26 September 2009.

94. The Court further notes that an autopsy and laboratory tests were conducted and medical reports were requested. However, the autopsy report conducted by a State expert included a preliminary section titled "Case

history” which embraced from the very outset the version of the accidental shooting by the police officer who shot Mr Pârveu (see paragraph 17 above). Moreover, the Court notes that it was not until August 2015, six years after the incident and several prosecutor’s decisions and subsequent judicial decisions in the case, that the hypothesis of an accidental shooting was first replaced by that of the police officers’ self-defence (see paragraph 38 above), which eventually became a combined argument of acting in self-defence which resulted in an accidental shooting (see paragraph 49 above).

95. The Court observes, as also noted in paragraphs 80-81 and 83-84 above, that there were striking omissions in the conduct of the investigation that were all identified by the relevant domestic courts, in particular by the Galați Court of Appeal and the Brăila County Court (see paragraphs 29, 34, 39 and 45).

96. Furthermore, the criminal investigation into Mr Pârveu’s fatal gunshot injury lasted for more than eleven years with the case being sent back to the prosecutor four times because of significant omissions in the investigation.

97. Lastly, the Court cannot overlook the fact that the investigation authorities only superficially addressed the issue of the planning and control of the operation. In particular, they did not provide a reasonable explanation why, in the context of the specially trained forces’ presence at the incident location, in the exercise of a mission to immobilise potentially dangerous persons, D.G.’s intervention was necessary and in accordance with the law, or whether any special measures had been planned in advance in order to ensure the proper identification of the suspect to be arrested, or to cope with the specific situation of a possible uncertainty or error regarding the identification of the suspect. Moreover, the Court notes that more than six years after the tragic incident, on 26 February 2016, the Brăila County Court established that the police operational procedures were contained in a secret document, to which the prosecutor had not been given access (see paragraph 39 above).

98. Consequently, having regard to the proceedings as a whole, and in particular to the lack of reasonable expedition of the investigation (see paragraph 96 above) and its lack of thoroughness (see paragraph 97 above), it cannot be said that the domestic authorities have properly discharged the procedural obligation under Article 2 of the Convention to conduct an effective investigation into the shooting of Mr Pârveu.

The foregoing considerations are sufficient to enable the Court to conclude that there has also been a violation of Article 2 of the Convention under its procedural limb.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

99. 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

100. The applicant claimed 100,000 euros (EUR) in respect of non-pecuniary damage.

101. The Government considered the amount claimed by the applicant to be excessive.

102. The Court notes that the serious violations found in the present case must have caused the applicant suffering and frustration which cannot be compensated for by a mere finding of a violation. Therefore, having regard to its previous case-law and making its assessment on an equitable basis, the Court awards the applicant EUR 65,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

103. The applicant also claimed EUR 8,630 for the costs and expenses incurred before the Court. She submitted an itemised schedule of costs of legal assistance based on the contract she had concluded with her lawyer.

104. The Government does not oppose the Court awarding the applicant a reasonable amount for costs and expenses incurred before the Court, but points out that in two similar cases against Romania the Court has awarded lower amounts varying between EUR 3,600 and EUR 5,130.

105. According to the Court’s case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 8,630 for the proceedings before the Court, plus any tax that may be chargeable to the applicant, to be paid separately into the bank account indicated by the applicant’s representative.

III. APPLICATION OF ARTICLE 46 OF THE CONVENTION

106. Article 46 of the Convention provides:

“1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.

2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution.

...”

107. The Court notes Resolution CM/ResDH(2021)106 on the execution of the judgments of the European Court of Human Rights in three cases against Romania (*Gheorghe Cobzaru v. Romania and 2 other cases*, nos. 6978/08, 14974/09 and 40374/11) adopted by the Committee of Ministers on 9 June 2021 at the 1406th meeting of the Ministers’ Deputies, regarding the question of general measures required to prevent unjustified use of potentially lethal force during law enforcement interventions and operations and to guarantee effective criminal investigations and proceedings into such incidents, which “continues to be examined within the framework of the *Soare and Others* group of cases”; the Committee emphasised that “the closure of these cases in no way prejudices the Committee’s evaluation of the general measures” (see paragraph 54 above).

108. The Court notes that the finding in this case that there has been a violation of the right to an effective investigation provided for by Article 2 of the Convention is similar to those found in the above-mentioned cases (see paragraph 107 above).

109. In this connection, the Court reiterates that by virtue of Article 46, the High Contracting Parties have undertaken to abide by the final judgments of the Court in any case to which they are parties, execution being supervised by the Committee of Ministers of the Council of Europe. This means that when the Court finds a violation, the respondent State is under a legal obligation not just to pay those concerned the sums awarded by way of just satisfaction under Article 41, but also to take the necessary general and/or, if appropriate, individual measures to be adopted in their domestic legal order to put an end to the violation found by the Court and to redress as far as possible the effects. Subject to monitoring by the Committee of Ministers, the respondent State remains free to choose the means by which it will discharge its legal obligation under Article 46 of the Convention (see *Scozzari and Giunta v. Italy* [GC], nos. 39221/98 and 41963/98, § 249, ECHR 2000-VIII), in line with the principle of subsidiarity, so that the Court is not obliged to repeat its finding of a violation in a series of identical cases.

110. Furthermore, it follows from the Convention, and from Article 1 in particular, that in ratifying the Convention the Contracting States undertake to ensure that their domestic legislation is compatible with it (see *Maestri v. Italy* [GC], no. 39748/98, § 47, ECHR 2004-I).

111. Although it is in principle not for the Court to determine what remedial measures may be appropriate to satisfy the respondent State’s obligations under Article 46 of the Convention, the Court considers that general measures at the national level are undoubtedly called for in the execution of the present judgment (see *Association “21 December 1989” and Others v. Romania*, nos. 33810/07 and 18817/08, § 193, 24 May 2011).

112. Accordingly, the Court considers that the respondent State must put an end to the situation identified in the present case and found by it to have been in breach of the Convention, concerning the right of the persons affected, such as the individual applicant, to an effective investigation into the use of the potentially lethal force by the police. The respondent State must therefore comply with the requirements of Article 46 of the Convention, taking into account the principles set out in the Court's case-law in this area as described in the present judgment (see, *mutatis mutandis*, *Rumpf v. Germany*, no. 46344/06, § 73, 2 September 2010). Admittedly, it is not for the Court to indicate how States are to ensure effective investigations, since these processes raise complex legal and practical issues going beyond the Court's judicial function (see, *mutatis mutandis*, *Rezmiveş and Others v. Romania*, nos. 61467/12 and 3 others, § 116, 25 April 2017). Nevertheless, the Court would refer to the request made by the Committee of Ministers in the *Soare and Others* group v. Romania (CM/Notes/1406/H46-24), for the "the authorities rapidly to make sure that (...) law enforcement operations, including those involving special intervention units, are planned and directed so as to avoid, as far as possible, the use of potentially lethal force" and to the fact that the Committee of Ministers noted that the cases disclose an insufficient judicial review of such investigations (see paragraph 56 above). Moreover, the Court refers to the recommendations issued by the CPT, in the report in respect of Romania (CPT/Inf (2022) 06), according to which one "important step would be to enhance the independence as well as the thoroughness and promptness of investigations by ensuring that prosecutors have recourse to their own investigators and do not have to rely upon external police officers to carry out certain tasks" (see paragraph 58 above). Although these recommendations concern investigations into acts of alleged ill-treatment by law enforcement officials, they could also benefit to investigations regarding the use of lethal force by the police or by other State agents.

113. The Court leaves it to the respondent State, subject to supervision by the Committee of Ministers, to take the practical steps it deems appropriate to achieve the aims pursued by the above indications in a manner compatible with the conclusions set out in this judgment (see, *mutatis mutandis*, *Rezmiveş and Others*, cited above, § 120).

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 2 of the Convention under its substantive limb;

3. *Holds* that there has been a violation of Article 2 of the Convention under its procedural limb;
4. *Holds*
 - (a) that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
 - (i) EUR 65,000 (sixty-five thousand euros), plus any tax that may be chargeable, to the applicant in respect of non-pecuniary damage;
 - (ii) EUR 8,630 (eight thousand six hundred and thirty euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses to be paid into the bank account indicated by the applicant's representative;
 - (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;
5. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 30 August 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Ilse Freiwirth
Deputy Registrar

Gabriele Kucsko-Stadlmayer
President