



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

Communicated on 21 June 2017

**THIRD SECTION**

Application no. 10465/17  
A.P.  
against Slovakia  
lodged on 30 January 2017

**STATEMENT OF FACTS**

1. The applicant, Mr A. P., is a Slovak national of Roma origin, who was born in 1999 and lives in Rudňany. He is represented before the Court by Ms V. Durbáková, a lawyer practising in Košice.

**A. The circumstances of the case**

2. The facts of the case, as submitted by the applicant, may be summarised as follows.

*1. Events of 11 February 2015*

3. On 11 February 2015 at 7:45 am, the applicant, at the time sixteen years old, was confronted by two municipal police officers E.P. and R.M. in front of his school. One of the police officers allegedly grabbed him by the hood, leaned him against the car and hit him several times in his nose with a fist. Then he put him into a police car where another Roma boy A.T. was already waiting. The applicant claims that the police officer continued to hit him with a fist also after having put him in the car.

4. The boys were then taken to the police station in Rudňany. The applicant claims that at the police station both policemen put on white gloves and beat him in his face with fists and that they pressed him to confess to committing a minor offence, namely that he had attacked another Roma boy, M.Č.

5. The applicant was released the same morning. He alleges that he was bleeding from his nose. Accompanied by his mother he visited a doctor who confirmed that he suffered minor injuries - a swelling of the upper lip and contusion of the nose.

## *2. The investigation of the incident*

6. The same day the applicant, represented by his mother, filed a criminal complaint.

7. On 13 March 2015 the investigator of the Spišská Nová Ves District Police Directorate (“DPD”) rejected the criminal complaint as no reason was found to press charges. The investigator heard the police officers E.P. and R.M. and the father of M.Č. who was present in front of the school. They testified identically that the applicant showed disrespect, was verbally aggressive and should have spat on one of the police officers. The police officer R.M. admitted that he used an elbow lock grip to get the applicant into the police car.

8. The applicant complained against that decision. He argued that the investigator failed to hear independent witnesses of the incident, did not consider the medical report submitted by him and did not investigate possible racial motive of the police officers. He also claimed that if the version of the police officers was true, they would have been obliged to report the use of coercive measures to their supervisor which they did not.

9. On 9 April 2015 the investigator of the DPD quashed the challenged decision and on 6 May 2015 initiated the criminal proceedings on suspicion that a crime of abuse of power by a public official had been committed.

10. On 21 May 2015 the investigator heard the applicant and his mother. The same day he also heard the police officers E.P. and R.M. who both admitted that R.M. had slapped the applicant with an open hand in his face while trying to get him in the car in front of the school.

11. The investigator also heard A.T. who testified that he was present during the incident in front of the school but did not see what happened between the applicant and the police officer. He remembered that the applicant’s nose was bleeding. He denied that the police officers beat him or the applicant in the car or at the police station. The investigator also heard M. Č. and his father who were present in front of the school but testified that they did not witness the entire incident.

12. The authorities procured an expert opinion regarding the applicant’s injuries. According to the expert opinion submitted on 16 June 2015 the applicant suffered minor injuries corresponding to the effects of blunt force of mild intensity applied to the facial area. The expert concluded that such injuries could have been caused by a slap or a hit against a police car while getting into it. The expert excluded that the applicant’s injuries could have been caused by a fist.

13. On 10 July 2015 the investigator of DPD discontinued the proceedings after having concluded that no crime of abuse of power had been committed.

14. The applicant filed a complaint. He argued in particular that that decision was based solely on the statements of the police officers which were not corroborated by other evidence, that M.Č. and his father were biased, that none of the witnesses directly saw the incident in front of the school and that the investigator did not hear other witnesses present in front of the school. He further claimed that the investigator did not examine whether the coercive measures used against the applicant were lawful and proportionate, that he did not inspect whether the police officers reported the use of coercive measures to their supervisor and that he failed to

investigate possible racial motive of their actions. The applicant also argued that the police officers did not warn him before using coercive measures and that using coercive measures without prior warning was unlawful on its own.

15. On 7 September 2015 the Spišská Nová Ves District Prosecution Office dismissed his complaint as unfounded. It held that it was sufficiently proved that the applicant - suspected of having committed a minor offence - ignored instructions of the police officers, actively resisted the arrest and therefore coercive measures were used against him in accordance with the law.

16. The applicant turned to the Košice Regional Prosecution Office which set aside his complaint as unsubstantiated. He then complained to the General Prosecutor who dismissed his submission as unfounded.

### *3. Constitutional proceedings*

17. On 18 April 2016 the applicant filed a complaint with the Constitutional Court claiming a violation of Articles 3, 13 and 14 of the Convention and their Constitutional equivalents. He argued that the police used disproportionate force which amounted to ill-treatment, the investigation was ineffective, and the authorities did not investigate possible racial motive of the alleged ill-treatment.

18. On 8 June 2016 the Constitutional Court rejected the complaint as manifestly ill-founded. It held in particular that the applicant did not support his grievances with concrete statements which would substantiate his allegations about disproportionality and unlawfulness of the police intervention.

## **B. Relevant domestic law**

19. According to Section 10 § 1 of the Municipal Police Act, the municipal police officer (“officer”) is entitled to seek a necessary explanation from any person who may contribute to the clarification of circumstances that might be necessary to uncover a minor offence and its perpetrator. The officer is entitled to request that person to appear immediately or at a given time at the municipal police station for the purpose of clarification of the minor offence.

20. If that person without justification or serious reasons refuses to provide explanation and an explanation is necessary to uncover the minor offence, the officer is entitled to bring such person to the municipal police station for the purpose of providing an explanation. For that purpose and only if necessary, the officer can also use coercive measures (Section 10 § 2). The officer shall without delay make an official report thereof (Section 10 § 3).

21. The officer is further entitled to ask the person, who is requested to provide an explanation of the above provision, to establish his identity and this person is obliged to comply with such request (Section 9 § 1). If that person refuses to establish identity or if his identity cannot be established despite previous necessary cooperation, the officer is entitled to bring that person to the municipal police station for the purposes of identification (Section 9 § 2).

22. Sections 13 et seq. of the Municipal Police Act regulates the use of coercive measures. Before using coercive measures the officer is obliged to instruct a person to refrain from unlawful action and warn him that coercive measures may be used. Prior instruction and warning may be waived only in cases when the municipal officer is attacked, the life or health of other person is at stake, if the matter is urgent or there are other circumstances preventing their use. The officer decides which coercive measure to use depending on the concrete situation in order not to cause disproportionate damage to the person against which he intervenes.

23. The officer may use seizures, grips, blows and kicks of self-defence, *inter alia*, for the purpose to bring the person to the police station for identification or providing an explanation (Sections 9 and 10) only if such person exercises active resistance. In case the person resists passively, the officer may use only seizures and grips. If a person against whom coercive measures were used suffers injuries, the municipal police officer shall secure first aid and medical treatment.

24. The municipal police officer is obliged to report the use of coercive measures to the head of municipal police without delay. If there are doubts about the legitimacy or adequacy of use of coercive measures or if their use caused death, injury or damage to property, the head of the municipal police is obliged to investigate whether coercive measures were used in accordance with the law and shall submit a report with his findings to the prosecutor (Section 17).

## COMPLAINTS

25. The applicant complains under Articles 3, 13 and 14 of the Convention that he was subjected to ill-treatment by beatings and psychological pressure inflicted by the police officers, that the authorities failed to conduct an effective investigation into the ill-treatment and failed to investigate possible racial motive of the ill-treatment. He claims that his Roma origin was a decisive factor in the ill-treatment suffered in the contact with authorities as well as subsequent failure to properly investigate the case.

## QUESTIONS TO THE PARTIES

1. Considering the alleged ill-treatment of the applicant during his apprehension, transport and at the police station, has the applicant been subjected to treatment incompatible with Article 3 of the Convention? Was the use of coercive measures against the applicant during apprehension strictly necessary by his own conduct and was it excessive (see *Yusiv v. Lithuania*, no. 55894/13, § 55, 4 January 2017)?

2. Having regard to the procedural protection under that provision (see *Labita v. Italy* [GC], no. 26772/95, § 131, ECHR 2000-IV), was the

investigation into the applicant's complaints in the present case by the domestic authorities compatible with Article 3 of the Convention?

3. Did the applicant have at his disposal an effective domestic remedy for his complaints under Articles 3 and 14 of the Convention, as required by Article 13 of the Convention?

4. Has the applicant suffered discrimination in the enjoyment of his Convention rights on the ground of his Roma origin contrary to Article 14 of the Convention, read in conjunction with Articles 3 and 13 of the Convention?