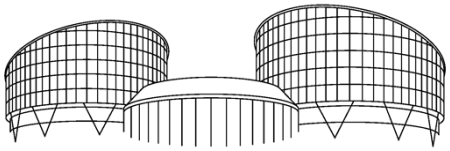

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF A.P. v. SLOVAKIA

(Application no. 10465/17)

JUDGMENT

Art 3 • Degrading treatment • Minor slapped in the face by police officer during arrest • Use of force not strictly necessary • Lack of effective investigation

STRASBOURG

28 January 2020

FINAL

28/05/2020

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of A.P. v. Slovakia,

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

Paul Lemmens, *President,*
Georgios A. Serghides,
Paulo Pinto de Albuquerque,
Helen Keller,
Alena Poláčková,
María Elósegui,
Erik Wennerström, *judges,*

and Stephen Phillips, *Section Registrar,*

Having deliberated in private on 17 December 2019,

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

PROCEDURE

1. The case originated in an application (no. 10465/17) against the Slovak Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Slovak national, Mr A.P. ("the applicant"), on 30 January 2017. The President of the Section acceded to the applicant's request not to have his name disclosed (Rule 47 § 4 of the Rules of Court).

2. The applicant was represented by V. Durbáková, a lawyer practising in Košice. The Government of the Slovak Republic ("the Government") were represented by their Agent, Ms M. Pirošíková.

3. The applicant alleged, in particular, that he had been ill-treated by municipal police officers and that the authorities had failed to conduct an effective investigation into the matter, in breach of the requirements of Article 3 of the Convention.

4. On 21 June 2017 the Government were given notice of the application.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1999, lives in Rudňany and is of Roma origin.

A. Events of 10 and 11 February 2015

6. On 10 February 2015 the father of a 15 years old Roma boy, M.Č., reported to the police that earlier that day M.Č. had been beaten by a group of boys. As it would later be reflected in a decision concerning this case (see paragraph 23 below), M.Č. did not know the attackers but believed to be

able to identify them by face. The matter was treated as a suspicion of a minor offence and it was agreed that the following morning the police with M.Č. and his father would attempt to identify the perpetrators in front of the local school.

7. The next morning, in front of the school, M.Č. identified the applicant, who was 16 years old at that time, and another Roma boy, A.T., as having been among the attackers. Municipal police officers, E.P. and R.M., who carried out the ensuing intervention, were later recorded in the decision referred to above as having stated that M.Č. had identified the applicant and A.T. as Roma and Gypsy.

8. From the applicant's perspective, at 7.45 a.m. on 11 February 2015 he was confronted by E.P. and R.M., in front of his school. One of the officers allegedly grabbed him by the hood, leaned him against a car and punched him in the face several times. Then he put him into a police car together with A.T. The applicant claimed that the officer had continued to punch him after having put him in the car.

9. The boys were then taken to the police station in Rudňany. According to the official record drawn up by the municipal police in Rudňany on 11 February 2015 (*úradný záznam o predvedenej osobe*), the applicant was taken to the police station at 7.50 a.m., released at 8.10 a.m. and did not have any injuries.

10. The applicant claimed that at the police station, both policemen had put on white gloves and had punched him in the face, and that they had put pressure on him to confess to having attacked M.Č.

11. Later the same morning, after his release, the applicant accompanied by his mother sought treatment in Spišská Nová Ves hospital. Two medical records were produced, one by Dr F.M., a surgeon, and another by Dr J.N., an otolaryngologist. The first record states:

> "[The applicant was] injured today, allegedly during police intervention. [By objective observation:] nose oedema and pain in the nose ..."

The second record reads:

> "He was treated at the medical centre after an injury caused during a police intervention. He was bleeding from his nose; he also has swelling of the upper lip."

12. At 8.57 p.m. on 11 February 2015, the applicant again visited the surgery of Dr I.D., who confirmed that the applicant had a superficial injury to his nose and that he had been beaten up at around 7.15 a.m.

B. Use of force

13. In the course of the proceedings before the Court, the Government submitted a record drawn up by the Rudňany municipal police on the use of coercive measures (*hlásenie o použití donucovacích prostriedkov*) dated 11 February 2015. According to that record, R.M. had grasped the applicant

by his elbow to prevent him from leaving. The applicant, however, had pulled away, spat on R.M., told him that he was not afraid of him and swung by his right arm against R.M., who had consequently had to grasp and hit him. According to the record, the applicant did not sustain any injuries.

14. The applicant claimed that he had complied with the request of the police voluntarily and had not actively resisted.

15. In a report of 25 August 2017, which the Government also submitted in the course of the proceedings before the Court, the Prosecutor General stated in relation to the use of force in front of the school:

> "... R.M. used a coercive measure against the applicant. He grasped his arm and used an elbow-lock grip. The applicant was still resisting. As a reaction to being spat on, R.M. slapped him. The applicant calmed down afterwards ..."

C. Investigation of the incident

16. On 11 February 2015 the applicant, represented by his mother, lodged a criminal complaint with the Spišská Nová Ves district police. He amended his complaint on 3 March 2015.

17. On 13 March 2015 the investigator dismissed the complaint, as no reason had been found to press charges. He did so having heard the police officers, E.P. and R.M., and the father of M.Č. They had given consistent testimony that the applicant had shown disrespect, had been verbally aggressive and had spat on one of the officers. Officer R.M. had admitted to using an elbow-lock grip to get the applicant into the police car. Officer E.P. had further stated that R.M. had slapped the applicant in the face.

18. The applicant challenged the decision by lodging an interlocutory appeal (*sťažnosť*). He argued that the investigator had failed to hear independent witnesses to the incident, had not considered the medical reports submitted by him and had failed to consider the possibility of a racial motive on the part of the officers. He also claimed that if the police officers' version was true, they would have been obliged to report the use of coercive measures to their supervisor, which they had not done.

19. On 9 April and 6 May 2015 respectively, the investigator overruled his previous decision of 13 March 2015 and instituted criminal proceedings against the police officers on suspicion of abuse of power by a public official.

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

21. The investigator also heard A.T., who testified that he had been present during the incident in front of the school but had not precisely seen what had happened between the applicant and the officers under

investigation. He remembered that when he had reached the police car, the applicant had already been inside and his nose had been bleeding. He denied that the officers had beaten him or the applicant in the car or at the police station. However, he confirmed that the applicant's nose had still been bleeding after they had been released from the police station. The investigator also heard M.Č. and his father, who had been present in front of the school but testified that they had not witnessed the entire incident.

22. The authorities ordered an expert opinion on the applicant's injuries. According to the expert opinion, submitted on 16 June 2015, the applicant had suffered minor injuries corresponding to the effects of blunt force of a mild intensity having been applied to the face. The expert concluded that such injuries could have been caused to the applicant by a slap or by hitting his face against the police car while getting into it. The expert excluded the possibility that the applicant's injuries had been caused by a fist.

23. On 27 July 2015 the investigator discontinued the proceedings. Having examined all the evidence and circumstances, he concluded that the officers under investigation had acted in compliance with the applicable rules and that their actions had not amounted to the offence of abuse of power. In particular, it had been excluded that the applicant's injuries could have been caused in the way he had alleged, namely by blows with a fist. His injuries could have been caused by a slap or by accidentally hitting his face against the police car while entering it. The investigator observed that one of the officers had acknowledged having slapped the applicant in the face with an open palm in order to overcome his resistance.

24. The applicant lodged an interlocutory appeal. He argued in particular that the decision had been based solely on the officers' statements, which had not been corroborated by other evidence; that M.Č. and his father were biased; that none of the witnesses had directly seen the incident in front of the school; and that the investigator had not heard other witnesses present in front of the school. He further claimed that the investigation had failed to enquire into whether the coercive measures used against him had been lawful and proportionate, and whether the officers had reported the use of coercive measures to their supervisor. If there was no record of the use of coercive against him in the case file, the officers would be seeking retrospectively to legalise their unlawful actions. Moreover, the investigator had failed to investigate the possibility of a racial motive on the part of those officers. The applicant also argued that the officers had not warned him before using coercive measures, and that using coercive measures without prior warning was unlawful on its own.

25. On 7 September 2015 the Spišská Nová Ves district office of the Public Prosecution Service ("the PPS") dismissed the applicant's appeal as unfounded. It held that it had been sufficiently proven that the applicant – suspected of having committed a minor offence – had ignored the orders given by the police officers and had actively resisted arrest. Coercive

measures had therefore been used against him in accordance with the law. His injury had been light and could have been caused either by a slap in the face or by hitting the police car while getting into it. In any event, it could not have been caused by a blow with a fist as alleged by the applicant.

26. Those conclusions were in principle upheld by the Košice regional office of the PPS in a decision of 11 November 2015, in response to a request lodged by the applicant for a review (*podnet na preskúmanie*) of the decision of 7 September 2015.

27. On 12 February 2016 the Prosecutor General dismissed a further complaint lodged by the applicant as unfounded and containing no new relevant information.

D. Constitutional proceedings

28. On 18 April 2016 the applicant lodged 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 had used disproportionate force amounting to ill-treatment, that the investigation had been ineffective, and that the authorities had not investigated the possibility that the alleged ill-treatment had been racially motivated.

29. On 8 June 2016 the Constitutional Court rejected the complaint as manifestly ill-founded. It held, in particular, that the applicant had not supported his grievances with concrete statements substantiating his allegations of disproportionality and unlawfulness of the police intervention.

II. RELEVANT LEGAL FRAMEWORK

30. Under section 10(1) of the Municipal Police Act (Law no. 564/1991 Coll., as amended), a municipal police officer ("officer") is entitled to seek necessary explanations from any person who may contribute to the clarification of circumstances necessary to uncover a minor offence and its perpetrator. The officer is entitled to order that person to appear immediately or at a given time at the municipal police station for the purpose of clarification of the minor offence.

31. If that person refuses to provide the explanation without an excuse or a good reason and the 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 the explanation. For that purpose and only if necessary, the officer can also use coercive measures (section 10(2)). If such measures are used, the officer must make an official report without delay (section 10(3)).

32. The officer is further entitled to ask persons ordered to provide an explanation to establish their identity. They are bound to comply with such

a request (section 9(1)). If they refuse to establish their identity or if their identity cannot be established despite their necessary cooperation, the officer is entitled to bring them to the municipal police station for the purposes of identification (section 9(2)).

33. Sections 13 *et seq*. regulate the use of coercive measures. Before using coercive measures, an officer is obliged to instruct the persons against whom such measures would be prospectively used to refrain from unlawful action and warn them that coercive measures may be used. Prior instruction and warning may be waived only if the officer is attacked, the life or health of others is at stake, the matter is urgent or there are other circumstances preventing them. The officer decides which coercive measure to use, depending on the concrete situation, in order not to cause disproportionate harm to the person against whom he intervenes.

34. The officer may use self-defence grips (*hamty*), grabs (*chvaty*), blows (*údery*) and kicks (*kopy*), *inter alia*, for the purpose of taking the person to the police station for identification or for providing an explanation (sections 9 and 10) only if such person exercises active resistance. If the person resists passively, the officer may use only grips and grabs. If the officer establishes that the person against whom coercive measures have been used has suffered injuries, the officer must provide first aid, if permitted by the circumstances, and must ensure that the person receives medical treatment (section 17(1)).

35. The officer must report the use of coercive measures to the head of the municipal police without delay. If there are doubts about the legitimacy or adequacy of the use of coercive measures or if their use has resulted in death, injury or damage to property, the head of the municipal police must investigate whether the coercive measures were used in accordance with the law and immediately submit a report with his findings to the PPS (section 17(2) and (3)).

III. RELEVANT INTERNATIONAL MATERIAL

36. On 19 June 2014 the European Commission against Racism and Intolerance ("ECRI") issued a report on Slovakia (CRI (2014)37). The report contains the following passages regarding anti-Roma violence:

> "68. NGOs reported nine violent criminal offences against Roma between 2009 and 2012. In other cases, Roma settlements were the target of vandalism that endangered the lives of the inhabitants. The worst incident so far, which received extensive biased media coverage justifying the killing, took place in June 2012 when three Roma were killed and two wounded by an off-duty municipal police officer in Hurbanovo.
>
> 69. Police ill-treatment (and generally speaking abusive behavior) towards Roma have also been reported by the media, civil society and international organizations."

37. The ECRI report recommended that "the Slovak authorities ensure effective investigations into allegations of racial discrimination or misconduct by the police and ensure as necessary that the perpetrators of these types of acts are adequately punished."

38. The UN Committee on the Elimination of Racial Discrimination adopted concluding observations in respect of Slovakia in 2013 (CERD/C/SVK/CO/9-10). In paragraph 10 the Committee reiterated its concerns "regarding the continued stigmatization of, and discrimination against Roma and their ongoing precarious socio-economic situation."

39. In the concluding observations of its 2018 report in respect of Slovakia (CERD/C/SVK/CO/11-12), the same UN Committee expressed serious concerns about reports of verbal and physical attacks against ethnic minorities, including Roma, and recommended, *inter alia*, that "all racially motivated crimes, including verbal and physical attacks, are investigated, that perpetrators are prosecuted and punished, and that motives based on race or on skin colour, descent or national or ethnic origin are considered as an aggravating circumstance when imposing punishment for a crime."

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 3 AND 13 OF THE CONVENTION

40. The applicant complained that he had been subjected to treatment prohibited under Article 3 of the Convention and that his allegations to that effect had not been properly investigated, contrary to the requirements of that provision and Article 13 of the Convention.

41. Reiterating that it is the master of the characterisation to be given in law to the facts of the case and finding that these complaints cover the same ground, the Court finds it appropriate to examine the applicants' allegations solely under Article 3 of the Convention (see *Bouyid v. Belgium* [GC], no. 23380/09, § 55, ECHR 2015).

Article 3 of the Convention reads as follows:

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

A. Substantive limb of Article 3 of the Convention

1. Admissibility

42. The Government objected that the applicant's injury had been of a light nature and that it had thus not attained the minimum level of severity required under the substantive limb of Article 3. In their opinion, the application was therefore incompatible *ratione materiae* with the provisions of the Convention.

43. The Court considers that the Government's objection raises issues which are closely related to the merits of the complaint. Accordingly, the Court finds that it is to be joined to the merits of that complaint.

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

2. Merits

(a) Parties' arguments

45. The applicant alleged that he had been beaten and subjected to psychological pressure by police officers.

46. The Government contested the applicant's allegations as to the seriousness of his injury and the treatment he had been exposed to.

In particular, on the evidence available, the applicant had sustained only a light injury – bruising of the nose and swelling of the upper lip, in contradiction with his allegations at the domestic level (see, for example, paragraph 8 above). In the Government's submission, the applicant's injury had been caused by the lawful and legitimate measures used to overcome his resistance during his arrest.

Moreover, the Government considered that the applicant's version of the incident was not credible. The expert had excluded the possibility that the injury could have occurred in the way described by the applicant (see paragraph 22 above) and none of the witnesses had confirmed his version of the events (see paragraph 21 above).

47. The applicant disagreed, reiterating his complaints and referring to the medical records and witness statements. He pointed out that the medical expert report on which the Government had relied had been produced four months after the incident, by which time the expert had been unable to assess the injuries he had sustained. He maintained that he had not resisted the arrest and that the record on the use of coercive measures (see paragraph 13 above) had been produced by the police officers with the purpose of justifying the alleged ill-treatment.

Emphasising that he was of Romani origin and that he had still been a minor at the time of the incident, the applicant contended that the minimum level of severity of the treatment had been reached and that he had been subjected to treatment reaching the threshold required for a breach of Article 3 of the Convention.

(b) The Court's assessment

48. The Court notes first of all that the applicant's initial factual submissions before it include allegations of ill-treatment during his arrest, in the police car, as well as at the police station. However, the proceedings

both at national level and before the Court concentrated on the circumstances of the applicant's arrest, and there are no material elements supporting any claim of subsequent ill-treatment.

49. The Court has recently summarised the applicable case-law principles in its judgment in the case of *Bouyid* (cited above, §§ 81-90), and in the context of arrest in the judgment of *Yusiv v. Lithuania* (no. 55894/13, §§ 53-56, 4 October 2016).

50. In the present case, the applicant was examined the day of the incident by two doctors, namely a surgeon and an otolaryngologist. The medical examination confirmed that he had a swollen upper lip and bruising to the nose (see paragraph 9 above). Those findings were subsequently confirmed by another examination by an expert in the course of the criminal proceedings (see paragraph 22 above).

51. The Government did not contest the findings of those medical examinations, nor did they argue that any of the applicant's injuries had been sustained before or after his arrest on 11 February 2015. The doctors who examined the applicant on 11 February 2015 confirmed that he had sustained minor injuries and did not dispute that they had been the result of the events as described by the applicant (see paragraph 11 above). In addition, the expert appointed by the authorities stated that the applicant had suffered minor injuries corresponding to the effects of blunt force of a mild intensity applied to the face, which could have been caused by a slap or by having hit his face against the police car while getting into it. He excluded the possibility that the applicant's injuries could have been caused by a fist (see paragraph 22 above).

52. The Court has explained that where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of persons within their control in custody, strong presumptions of fact will arise in respect of injuries occurring during such detention. The burden of proof is then on the Government to provide a satisfactory and convincing explanation by producing evidence establishing facts which cast doubt on the account of events given by the victim. In the absence of such explanation, the Court can draw inferences which may be unfavourable for the Government. That is justified by the fact that persons in custody are in a vulnerable position and the authorities are under a duty to protect them (see *Bouyid*, cited above, § 83, with further references). A person who is deprived of his liberty, or, more generally, is confronted with law-enforcement officers, any recourse to physical force which has not been made strictly necessary by his own conduct diminishes human dignity and is, in principle, an infringement of the right set forth in Article 3 (see *Bouyid*, cited above, § 88, with further references).

53. The Court observes that in order to benefit from the presumption mentioned in the preceding paragraph, individuals claiming to be the victims of a violation of Article 3 of the Convention must demonstrate that

they display traces of ill-treatment after having been under the control of the police or a similar authority. Many of the cases with which the Court has dealt show that such persons usually provide medical certificates for that purpose, describing injuries or traces of blows, to which the Court attaches substantial evidential weight (see *Bouyid*, cited above, § 92).

54. The Court further notes that the point of contention between the parties in this case was as to precisely how the applicant's condition had come about, rather than the extent of the injury.

55. Considering the medical evidence adduced by the applicant and by the authorities, as well as the witness statements (see paragraphs 11, 21 and 22 above), the Court finds that it has been established that the applicant was slapped in the face during his arrest and sustained the aforementioned injuries at the hands of the police (contrast *Adam v. Slovakia*, no. 68066/12, § 59, 26 July 2016). Thus it is incumbent on the Government to provide a plausible explanation for the cause of those injuries (see, among many other authorities, *Selmouni v. France* [GC], no. 25803/94, § 87, ECHR 1999-V, and *Yusiv*, cited above, § 59).

56. The Court emphasises in this regard that in respect of a person who is confronted with law-enforcement officers, any recourse to physical force which has not been made strictly necessary by his own conduct diminishes human dignity and is, in principle, an infringement of the right set forth in Article 3 (see *Bouyid*, cited above, § 88, and *Yusiv*, cited above, § 59).

57. In the present case, the Government denied that the injuries sustained by the applicant had attained the minimum level of severity to fall within the scope of Article 3 (see paragraph 42 above). Nonetheless, they submitted that those injuries had resulted from his own resistance to the lawful actions of the officers, who had had no other choice but to put him in the police car using physical force. The domestic pre-trial investigation concluded that while being apprehended in front of his school, the applicant had resisted the orders of the police and had had to be subdued (see, in particular, paragraph 25 above).

58. Although the applicant denied resisting or insulting the officers in any way and claimed that he had been arbitrarily beaten up, the domestic authorities considered that his allegations had been refuted by the consistent statements of the police officers.

59. In this connection, the Court notes that the domestic medical examination concluded that the applicant had sustained minor injuries corresponding to the effects of blunt force of a mild intensity applied to the face (see paragraph 22 above). It has been established that one of the police officers at least grasped the applicant's arm, used an elbow-lock grip and slapped him in the face (see paragraphs 13, 15 and 23 above). The allegation that the applicant had been slapped in the face was thus found credible (see and contrast *Brahmi v. Poland* (dec.), no. 4972/14, 17 December 2015). However, no assessment was made as to whether

inflicting those injuries on the applicant had been strictly necessary and proportionate in order to suppress his resistance (see *Yusiv*, cited above, § 61).

60. The Court further notes the absence of signs of physical injuries to the police officers which would indicate violent actions, such as kicking or biting, on the part of the applicant (see *Iljina and Sarulienė v. Lithuania*, no. 32293/05, § 50, 15 March 2011). The applicant in the present case was 16 years old at the time of his arrest and it was not alleged at any stage of the domestic proceedings that he might have been armed. Moreover, the incident happened without any prior warning from the police officers.

61. The Court has already considered that a slap to the face has a considerable impact on the person receiving it (see *Bouyid*, cited above, § 104). It has also had regard to the specificity of that part of the body in the context of Article 3 of the Convention (see *Samüt Karabulut v. Turkey*, no. 16999/04, §§ 41 and 58, 27 January 2009). In this regard, the Court reiterates that it may well suffice that the victim is humiliated in his own eyes for there to be degrading treatment within the meaning of Article 3 of the Convention. Indeed, it does not doubt that even one unpremeditated slap devoid of any serious or long-term effect on the person receiving it may be perceived as humiliating by that person (see *Bouyid*, cited above, § 105). Moreover, the public nature of the treatment, as in the instant case, may be a relevant or aggravating factor in assessing whether it is "degrading" within the meaning of Article 3 (see *Svinarenko and Slyadnev v. Russia* [GC], nos. 32541/08 and 43441/08, § 115, ECHR 2014 (extracts)).

62. Therefore, bearing in mind the vulnerability of minors in the context of Article 3 of the Convention (see, for example, *Rivas v. France*, no. 59584/00, § 42, 1 April 2004; *Darraj v. France*, no. 34588/07, § 44, 4 November 2010; and *Bouyid*, cited above, § 109), the requirement of professionalism and high level of competence on the part of law-enforcement officials (see *Bouyid*, cited above, §§ 108 and 110), and the fact that even if the applicant had indeed spat on the officers and had attempted to punch them (see, *mutatis mutandis*, *Yusiv*, cited above, § 61), it has not been shown that it was strictly necessary, in the particular circumstances of the case, for a trained police officer to resort to physical force in order to make the applicant more cooperative.

63. In the light of the above, the Court concludes that the severity threshold necessary for the applicability of Article 3 of the Convention in the present case has been attained. The Government have not demonstrated that the extent of the physical force used against the applicant had been strictly necessary in the circumstances. Accordingly, the Court concludes that the applicant was subjected to degrading treatment (see *Bouyid*, cited above, § 112), contrary to Article 3 of the Convention.

In sum, the Court rejects the Government's preliminary objection and holds that there has been a violation of Article 3 of the Convention in its substantive limb.

B. Procedural limb of Article 3 of the Convention

Admissibility

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

(a) Parties' arguments

65. The applicant complained that the domestic authorities had failed to conduct an effective, thorough and independent investigation into his credible assertion that he had been subjected to treatment contrary to Article 3 of the Convention.

66. The Government contested that argument. They contended that the applicant's criminal complaint had been thoroughly examined at several levels domestically and that the domestic authorities had properly reviewed all the necessary evidence. Furthermore, they pointed out that despite having been represented by a lawyer, the applicant had not submitted any further evidence attesting to the existence of his injuries. As regards the independence of the investigation, they stated that the municipal police were neither established nor supervised by the Ministry of the Interior. Therefore, the investigation conducted by the district police under the supervision of the PPS had been sufficiently independent.

67. In reply, the applicant disagreed and reiterated his complaints. In particular, he pointed out that the domestic authorities had not opened an official investigation until three months after he had lodged his criminal complaint, and had not heard all possible witnesses. Furthermore, the Government had failed to answer his argument concerning the lack of independence of the investigation.

68. In a further reply, the Government reiterated their previous statements and emphasised that the applicant had failed to adduce any evidence to support his contention that the police had fabricated the report on the use of coercive measures in order retrospectively to justify his ill-treatment.

(b) The Court's assessment

69. The Court reiterates that where an individual raises an arguable claim that he has suffered treatment infringing Article 3 at the hands of the police or other similar agents of the State, that provision, read in

conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within their jurisdiction the rights and freedoms defined in ... [the] Convention", requires by implication that there should be an effective official investigation. Such investigation should be capable of leading to the identification and punishment of those responsible (see, for example, *El-Masri v. the former Yugoslav Republic of Macedonia* [GC], no. 39630/09, § 182, ECHR 2012, with further references).

70. In this regard, the Court refers to the general principles set out in its *Bouyid* judgment (cited above, §§ 114-23).

71. In particular, the Court wishes to emphasise that for an investigation to be effective, the authorities must act of their own motion. The investigation should also be broad enough to permit the investigating authorities to take into consideration not only the actions of the State agents who directly used force but also all the surrounding circumstances. Although this is not an obligation of results to be achieved but of means to be employed, any deficiency in the investigation which undermines its ability to establish the cause of injuries or the identity of the persons responsible will risk falling foul of the required standard of effectiveness.

72. The investigation must also be prompt and thorough, which means that the authorities must always make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation. They must take all reasonable steps available to them to secure the evidence concerning the incident, including, *inter alia*, eyewitness testimony and forensic evidence (see *Mocanu and Others v. Romania* [GC], nos. 10865/09, 45886/07 and 32431/08, §§ 316-26, ECHR 2014 (extracts), and the cases cited therein).

73. As far as the present case is concerned, the Court notes that it has not been disputed that the applicant's allegations of ill-treatment contrary to the requirements of Article 3 of the Convention were sufficiently credible to give rise to an obligation on the part of the authorities to investigate them in compliance with the requirements of Article 3 of the Convention.

74. The domestic authorities concluded that the applicant had actively resisted arrest and therefore the coercive measures used against him had been lawful. On the other hand, the applicant claimed that he had not actively resisted arrest and that there had therefore been no reason to use coercive measures against him (see paragraph 14 above).

75. During the criminal proceedings, the investigative authorities heard the applicant, his mother, the two police officers under suspicion (E.P. and R.M.), A.T., and M.Č. and his father, B.Č. They also appointed a medical expert to assess the applicant's injuries.

76. The Court observes that the records produced by the police state that the applicant did not sustain any injuries during his arrest (see paragraphs 9 and 13 above).

77. Furthermore, B.Č. and M.Č. testified that at the police station, they had seen the applicant and A.T. and that neither of them had shown any traces of injury. On the other hand, A.T. testified that he had seen the applicant bleeding from the nose when he had been in the police car as well as after his release from the police station. He denied, however, that the police officers had used violence against them while they had been detained at the police station.

78. Nevertheless, the medical reports adduced by both the applicant and the police state that the applicant sustained bruising to his nose and a swollen upper lip while in the hands of the police. The Court observes that in the criminal proceedings, the domestic authorities seemed to rely predominantly on the medical expert report procured by the police some three months after the applicant had sustained his injuries, rather than on the medical reports adduced by the applicant and issued on the day of the incident.

79. Hence, there is a contradiction between the individual pieces of written evidence as well as between the witness statements which was not eliminated by the investigation. Although the case was subsequently examined by the PPS at three levels and eventually by the Constitutional Court, they were not able to eliminate those contradictions either. All instances held, in a rather general way, that the decisions had been sufficiently reasoned and that the authorities had done everything in their power to investigate the incident (see *Adam,* cited above, § 75).

80. Furthermore, the Government have not disputed that the incident took place at around 7.45 a.m. in front of a school. The Court also takes note of the applicant's argument that other individuals might have witnessed the incident, yet none of them were identified and questioned by the authorities (see *Yusiv*, cited above, § 73).

81. Lastly, the Court notes that during the criminal proceedings the applicant argued that the police officers had failed to submit a report to their supervisor on the use of coercive measures against him, and that they were seeking retrospectively to cover up their wrongdoing (see paragraph 18 above). However, those objections remained unanswered during the criminal proceedings and appear to have been overlooked also by the Constitutional Court.

82. Therefore, the Court concludes that the authorities failed to act of their own motion and thoroughly to investigate all aspects of relevance, including whether the use of force against the applicant during his arrest had been strictly necessary and proportionate.

83. Given that the investigation, taken as a whole, was ineffective as concluded above, the Court considers that it is not required to address separately the issue of its independence (see, for example, *Yusiv*, cited above, §§ 69-70, and *Adam*, cited above, §§ 64 and 83).

84. In the light of the above considerations, the Court concludes that there has been a violation of the procedural limb of Article 3 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION

85. Lastly, the applicant alleged that his Roma origin had been a decisive factor in his ill-treatment and that the domestic authorities had failed to conduct a proper investigation into it. He relied on Article 14 of the Convention, which provides:

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

A. The parties' arguments

86. In support of his argument, the applicant referred to international reports according to which the relations between the Roma minority and the police were problematic, and there were documented cases of police ill-treatment, verbal and psychological abuse and threats. In a subsequent submission, he added that the authorities had been under an obligation to unmask the racial motive behind his ill-treatment and that they had failed to do so.

87. The Government objected that the allegations made by the applicant throughout the proceedings had been very vague and only of a general nature. He had not alleged that the police officers had made any concrete racist comments or had otherwise expressed any racist motive for their behaviour. His complaint was therefore unsubstantiated.

88. The European Roma Rights Centre (ERRC), in their third-party observations, pointed out that there was institutional racism in the Slovakian police services, which claim they sought to support by reference to public statements of influential politicians containing antigypsyism. They relied on a number of reports by international organisations expressing concerns about allegations of racially motivated police brutality in Slovakia. The ERRC concluded by urging the Court to revisit its approach to investigation of police violence against the Romani population in what they considered to be a well-documented climate of institutional antigypsyism.

B. The Court's assessment

89. The Court is aware of the seriousness of the applicant's allegations and of the sensitive nature of the situation related to Roma in Slovakia at the relevant time (see paragraphs 36-39 above; see also, *mutatis mutandis*,

Adam, cited above, §§ 32 and 81, and *Koky and Others v. Slovakia*, no. 13624/03, § 239, 12 June 2012).

90. However, when exercising its jurisdiction under Article 34 of the Convention, it has to confine itself, as far as possible, to the examination of the concrete case before it. Its task is not to review domestic law and practice *in abstracto*, but to determine whether the manner in which they were applied to or affected the applicant gave rise to a violation of the Convention (see *DRAFT – OVA a.s. v. Slovakia*, no. 72493/10, § 65, 9 June 2015, with further references). Its sole concern is accordingly to ascertain whether in the case at hand the applicant's ill-treatment and the authorities' failure to ensure an effective investigation into it were the result of racism. In the absence of any further information or explanations, it must conclude that it has not been established that racist attitudes played a role in the violation of the applicant's rights under Article 3 as found above (in that respect, see *Ognyanova and Choban v. Bulgaria*, no. 46317/99, § 147, 23 February 2006, with a further reference).

91. The Court notes that although the applicant has complained throughout the proceedings of the domestic authorities' failure to investigate the potential racial motive on the part of the police, his allegations to that effect were at all stages of a general nature and did not comprise any individual elements imputable to the officers involved in the present case or in any other way linked to the specific circumstances. Neither can any racist connotation be deduced from the incident leading to the police intervention against the applicant or the circumstances of his arrest. That incident was among private parties and the victim to it (M.Č.) was another Roma boy. The police intervention was an official response to it prompted by the complaint by the father of M.Č. In so far as officers E.P. and R.M. were recorded as later stating that in the course of the applicant's arrest M.Č. had referred to him and A.T. as Roma and Gypsy, this was an account of what M.Č. had said and it has never been argued by the applicant or anyone else at the domestic level or before the Court as carrying any racist element.

92. The Court is of the view, therefore, that the present case must be distinguished from cases in which the burden of proof as regards the presence or absence of a racist motive on the part of the authorities in an Article 3 context has been shifted to the respondent Government (see *Adam*, cited above, § 94, with further references). Thus, the authorities cannot be said to have had before them information that was sufficient to bring into play their obligation to investigate on their own initiative possible racist motives on the part of the officers involved (see *Mižigárová v. Slovakia*, no. 74832/01, §§ 122 and 123, 14 December 2010).

93. Accordingly, the Court finds that the applicant has failed to make out that his treatment by the police officers and the subsequent investigation into the incident were discriminatory.

It follows that the remainder of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

94. 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

95. The applicant claimed 5,000 euros (EUR) in respect of non-pecuniary damage.

96. The Government contested the claim as being excessive.

97. The Court accepts that the applicant has suffered non-pecuniary damage. Having regard to all the circumstances and the amount of the applicant's claim, it awards him EUR 5,000, plus any tax that may be chargeable, under that head.

B. Costs and expenses

98. The applicant also claimed EUR 749.92 for the costs and expenses incurred before the domestic courts, EUR 5,136 for those incurred before the Court, and EUR 336 for administrative expenses incurred both domestically and before the Court. In support of this claim, he submitted a pro-forma invoice from his lawyer, itemising the fees and expenses incurred.

99. The Government contested the applicant's claim for the costs and expenses incurred in the criminal proceedings (EUR 437.58). They argued that those costs had not been incurred actually and necessarily in order to prevent or rectify a violation of the Convention. Concerning the costs and expenses incurred in the proceedings before the Constitutional Court and the Court, the Government contested the claim as being excessive.

100. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum (see *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, §§ 54 and 55, ECHR 2000-XI, with further references).

101. The Court observes that the criminal proceedings in the present case were initiated and pursued by the applicant with a view to asserting, *inter alia*, his Article 3 rights. Thus the expenses incurred in the process can in principle be seen as necessarily incurred in terms of the Court's case-law.

Having regard to the documents in its possession and the applicable criteria, the Court considers it reasonable to award the applicant the sum of EUR 4,500, plus any tax that may be chargeable to him, covering costs and expenses under all heads.

C. Default interest

102. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT

1. *Decides*, unanimously, to join to the merits the Government's objection of incompatibility *ratione materiae* with the provisions of the Convention of the complaint under the substantive limb of Article 3 of the Convention;

2. *Declares*, unanimously, the complaints under the substantive and procedural limbs of Article 3 of the Convention admissible;

3. *Declares*, by a majority, the remainder of the application inadmissible;

4. *Holds*, unanimously, that there has been a violation of Article 3 of the Convention in its substantive limb and rejects the Government's incompatibility objection in respect of the complaint under that provision;

5. *Holds*, unanimously, that there has been a violation of Article 3 of the Convention in its procedural limb;

6. *Holds*, unanimously,
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
      (i) EUR 5,000 (five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 4,500 (four thousand five hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement, simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period, plus three percentage points;

7. *Dismisses*, unanimously, the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 28 January 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips	Paul Lemmens
Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judges Keller and Serghides is annexed to this judgment.

P.L.
J.S.P.

JOINT PARTLY DISSENTING OPINION OF JUDGES KELLER AND SERGHIDES

1. We wholeheartedly concur with the Court's judgment as to the applicant's complaints under Article 3 of the Convention. However, we respectfully disagree with the manner in which the Court avoids assessing the merits of the applicant's complaint under Article 14 of the Convention. The Court should have cut straight to an examination of the merits, as it has done in similar cases (see, for example, *Stoica v. Romania*, no. 42722/02, § 116, 4 March 2008).

2. The Court reasons that the applicant failed to properly make out that he individually suffered racial discrimination and that the domestic authorities were accordingly under no obligation to investigate the possibility of racism (see paragraphs 89–93 of the judgment). In our view, the Court's approach attaches insufficient weight to the emphasis that was placed on the applicant's racial identity in the order of 27 July 2015, closing the investigation into his criminal complaint, to which the Court refers at paragraph 21 of its judgment. In addition, the Court only briefly describes the context, which it should have considered more deeply: "the sensitive nature of the situation related to Roma in Slovakia at the relevant time" (see paragraph 87 of the judgment). The applicant provided evidence to support his claim that this context encompassed systemic police bias, as did the European Roma Rights Centre in third party observations subsequently adopted by the applicant (compare *Talpis v. Italy*, no. 41237/14, § 141, 2 March 2017).

3. We wish to caution against setting an excessively high threshold for the Court to address the merits of complaints under Article 14, especially those brought by applicants belonging to groups subject to discrimination. The Court should not shy away from the substance of allegations of racial discrimination, an "invidious kind of discrimination [which has] perilous consequences" (see *D.H. and Others v. the Czech Republic* [GC], no. 57325/00, § 176, ECHR 2007-IV).

4. In the context of racial discrimination against Roma, the Grand Chamber has called for "special vigilance and a vigorous reaction" on the part of domestic authorities (ibid.). Confronted with the degrading treatment of a Roma boy by police against a background of racial tension, the Court ought to have demonstrated similar attentiveness by examining the merits of the complaint under Article 14.