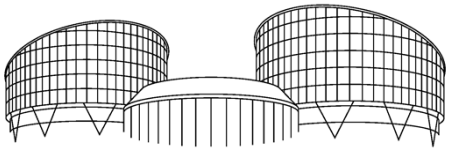

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF R.R. AND R.D. v. SLOVAKIA

(Application no. 20649/18)

JUDGMENT

Art 3 (substantive) • Inhuman or degrading treatment • Recourse to physical force by police during operation in Roma community • Failure of authorities to show use of force against applicants during course of arrest indispensable and not excessive • Applicants' injuries most likely caused by beating with batons • Use of force, batons being omitted, recorded retrospectively • Use of batons not justified and use against applicants indicative of presence of repressive element in intervention
Art 3 (procedural) • Effective investigation • Potential of new ordered investigation limited by initial failing investigative response due to the time elapsed since impugned facts • Lack of individual and verifiable assessment of the adequacy and necessity of the use of coercive measures against the applicants • Despite significant efforts during subsequent investigation, as a whole, investigation not effective
Art 14 (+ Art 3) • Lack of investigation into the alleged discrimination against Roma communities in the planning of the operation • State's positive obligation to take all reasonable steps to unmask any racist motive and to establish whether or not ethnic prejudice may have played a role in the applicants' treatment not complied with
Art 14 (+ Art 3) • No failure to examine alleged discrimination in execution of operation

STRASBOURG

1 September 2020

FINAL

01/12/2020

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

In the case of R.R. and R.D. v. Slovakia,

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

Paul Lemmens, *President,*
Alena Poláčková,
María Elósegui,
Gilberto Felici,
Erik Wennerström,
Lorraine Schembri Orland,
Ana Maria Guerra Martins, *judges,*
and Olga Chernishova, *Deputy Section Registrar,*

Having regard to:

the application (no. 20649/18) 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 two Slovak nationals, R.R. and R.D. ("the applicants"), on 25 April 2018;

the decision to give notice of the application to the Slovak Government ("the Government");

the decision not to have the applicants' names disclosed;

the observations submitted by the respondent Government and the observations in reply submitted by the applicants;

the comments submitted by the Public Defender of Rights (Ombudsman) of the Slovak Republic and Equity, a non-governmental organisation, who were granted leave to intervene by the President of the Section;

Having deliberated in private on 12 May and 7 July 2020,

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

INTRODUCTION

1. In connection with a large-scale police operation conducted on 19 June 2013 in a Roma-inhabited area in Moldava nad Bodvou, the application concerns allegations that, contrary to the requirements of Articles 3, 13 and 14 of the Convention, (i) the applicants had been mistreated by the police, (ii) the respondent State had failed to conduct an effective investigation into that mistreatment, (iii) their alleged mistreatment and lack of adequate investigation had been due to their Roma ethnicity, and (iv) they had been denied an effective remedy in that respect.

THE FACTS

2. The applicants were represented by V. Durbáková, a lawyer practising in Košice.

3. The Government were represented by their Agent, Ms M. Pirošíková.

4. The facts of the case, as submitted by the parties, may be summarised as follows.

I. BACKGROUND

5. Moldava nad Bodvou is a town and municipality in Košice-okolie district in the south of Košice Region in eastern Slovakia. There is a Roma community living mainly in two blocks of flats and a number of slums on Budulovská Street in this town. The applicants, who are of Roma ethnicity, live in this community.

6. The events giving rise to the present application revolve around a police operation carried out on Budulovská St on 19 June 2013. At the domestic level, the operation was classified under the term "action 100".

7. As will be explained in detail below, it is in dispute whether the true purpose of this operation was a search for wanted persons and items, as claimed by the Government and indicated in the pertaining documentation, or repression and retaliation for an incident that had occurred in the night from 15 to 16 June 2013 (see paragraph 11 below), as argued by the applicants.

8. The operation of 19 June 2013 is also the subject matter of a separate application before the Court (no. 14099/18). Another "action 100", which took place in the municipality of Vrbnica on 2 April 2015, is the subject matter of application no. 57085/18. These applications are still pending before the Court.

9. According to a press release issued by the Ombudsman of Slovakia on 14 July 2015 in connection with the said operation in Vrbnica, the number of general search operations carried out in areas with segregated Roma communities was disproportionate compared to the rest of Slovakia. For example, for 2013, 2014 and the first quarter of 2015 there were in total 259 of such operations carried out in the district of Prešov while there were none in Bratislava.

II. EVENTS PRECEDING THE OPERATION OF 19 JUNE 2013

10. On 14 June 2013 the Košice-okolie district directorate of the police issued a report on certain extraordinary events and criminal offences recently reported in that district. The Government submitted that this report showed a dramatic crime-rate increase and that this increase had taken place over the entire first half of 2013. They submitted that it had been this report that had formed the basis on which the "action 100" had been subsequently ordered and conducted in the community on Budulovská St in Moldava nad Bodvou. The applicants contested the latter claim as an unsubstantiated allegation.

11. On 15 June 2013 there was an event held on Budulovská St to mark the completion of a community project. The official programme was followed by music and dancing which continued into the evening. During this latter part of the event, in the early hours of 16 June 2013, there was an altercation between members of the community and a motorised police patrol, involving the throwing of stones at the police car.

12. On 17 June 2013 the head of the district directorate ordered an "action 100" to be carried out in the community on Budulovská St between 7 p.m. and 9 p.m. on 19 June 2013. But for one exception, the printed written version of the order refers to the operation as a "repressive search operation". The word "repressive" has been struck through by hand throughout the document. The Government argued that the strikethrough had been carried out on 18 June 2013 and that it had been a correction of a typographical error. The applicants argued to the contrary.

13. The exception where the operation is termed a "search operation" appears in one of the introductory paragraphs, indicating that the "search operation" was necessary because it could be presumed that wanted persons and objects acquired through criminal activities could be found at the target location.

14. According to a report filed by the commanding officer of the operation on 28 June 2013, the operation was preceded by a briefing held on 19 June 2013 at 6.30 p.m. on the premises of the district directorate, in the course of which the intervention team was handed lists of wanted individuals and was instructed to fill out lists of the people whose identity had been checked.

III. OPERATION OF 19 JUNE 2013

15. On 19 June 2013 the operation was carried out. The applicants' individual situations in connection with it and the operation itself may be described as follows.

A. First applicant

16. In his own submission, in the evening of 19 June 2013 the first applicant was at home when the police knocked on his door asking him to identify himself. Before he could do so, they broke his window; some fifteen to twenty officers entered his flat and one of them threw out of the broken window the groceries the first applicant had just brought. The police subsequently handcuffed and dragged him outside, beating him with batons all over his body, throwing him in the mud and making him lie in it, kicking him with military boots and repeatedly striking him with an electroshock weapon. As a result, he was unable to hold his urine and stool and soiled himself. He admitted to being intoxicated and disoriented, and not

understanding. He asked what was going on. He was taken to the police station where for a part of the time he was tied to a wall and abused again with kicks by people in military boots to his ribs and blows to his head and face from gloved hands. The police then took him to a doctor. The latter refused to treat him so the police left him there.

17. As regards the medical check-up last mentioned, pursuant to a note issued at 1.23 a.m. on 20 June 2013 by an on-call doctor who had seen the first applicant, the latter did not manifest signs of any injuries that would require medical treatment.

18. Nevertheless, another doctor who saw the applicant later that day (20 June 2013) issued a medical report (1.05 p.m.), in which he noted that the first applicant had an initial-stage haematoma on the front and front right side of his face, a cervical spine wrench, a fracture of the tenth rib, and stripe-shaped abrasions and haematomata on both sides of the back of his rib cage. In addition, the doctor noted traces of blood in the first applicant's urine. The doctor described his injuries as "minor" and assessed that they would take "up to forty-two days" to heal.

19. According to a decision of the district directorate of the police of 19 June 2013, following the first applicant's detention (*zaistenie*) under section 19(1)(b) of the Police Force Act (Law no. 171/1993 Coll., as amended), in the course of the operation the intervening officers encountered the first applicant, who was obviously intoxicated and was shouting and insulting others. As he refused to abide by an instruction to calm down, he was taken to a police station in order to document what was considered to be a suspicion that he had committed the minor offence of breach of the peace. As he actively resisted, coercive measures had to be applied consisting of holds, grabs, blows and kicks as well as handcuffs. In that connection, a reference was made to sections 51(1)(a), (b) and (c) and 52(1)(a) and (c) of the Police Force Act. As a result of these measures, the first applicant suffered minor injuries.

20. Identical observations on the use of coercive measures against the first applicant were included in a report on the use of these measures dated 19 June 2013. Moreover, the report indicated that "blows and kicks in self-defence in order to overcome resistance and repulse assault" within the meaning of section 50(1)(a) and (b) of the Police Force Act had been used and that, while at the police station, the first applicant had had to be attached to the wall since he had actively resisted and attempted to flee. The use of these coercive measures was later examined and found to have been justified by the deputy head of the police in the district. The report however provided no details in that connection.

21. According to a transcript of his questioning at the police station, in connection with the said suspicion that he had committed a minor offence, the first applicant stated that when the police had arrived in his community he had been consuming alcohol and had been manifestly under the

influence. When asked to show his identity card, which he had not had on him, he had asked why he had had to show it and had shouted at the police in rude language. He had resisted the police as he had not wished to go anywhere when they had attempted forcibly to bring him to the police station. He had only suffered minor injuries.

22. However, the first applicant claimed that he had not had an opportunity to read the transcript before signing it, that he had accordingly signed it unaware of its content, and that the content had been untrue.

23. In a report of 28 August 2014 a forensic medical expert assessed the first applicant's injuries on the basis of the note of 20 June 2013, photographs of the injuries, the contents of the investigation file, in particular the first applicant's factual allegations, and the expert's own examination of the first applicant as follows.

24. The first applicant had had an isolated fracture of the tenth rib, as a consequence of a circumscribed angular external impact. Such injuries were most commonly due to falling on and hitting an angular obstacle. As the first applicant had himself submitted that the officers had pushed him into a table, this was how the injury could have been caused.

25. The injuries on the first applicant's back had most likely been caused by blows with a baton.

26. The other injuries had not been those typically caused by a third person but had rather been of a kind that was often caused by accidentally hitting various obstacles. Very likely those other injuries had been caused randomly in the course of the use of coercive measures against the first applicant and while he had been restrained through holds and grabs.

27. The expert excluded a targeted attack of several trained officers in the form of kicks, as alleged by the first applicant. Such an attack would have caused much more numerous and much more severe injuries, which in view of his own submissions would moreover have to have been but had not been also on the first applicant's legs.

28. The expert also pointed to the fact that there had not been any open wound, excluded accordingly any massive bleeding, and also excluded an electroshock weapon as a cause of any of the first applicant's injuries.

29. In so far as blood had been found in the first applicant's urine, the expert observed that in the absence of any injuries to the applicant's internal organs, various causes could be speculated on given that the matter had not been investigated any further.

30. In a report of 29 September 2014 a toxicologist assessed the state of the first applicant's intoxication in the evening of 19 June 2013, finding that during the course of the evening he had progressed from a condition of alcohol poisoning (until 9 p.m. of 19 June 2013), through a state of heavy intoxication (until 1.30 a.m. of 20 June 2013), to a condition of medium intoxication (after 1.30 a.m. of 20 June 2013).

B. Second applicant

31. In his own submission, in the course of the operation three or four police officers entered the second applicant's house and simply ordered him to go out, without asking him to identify himself, but uttering "get out, today Gypsies you will perish". Once he was in front of the building, the police beat him more than ten times with great intensity and hit him two or three times with an electroshock weapon. He received blows from baton on his right shoulder, his back and the left side of his legs. The police then again entered his house where they broke his television and various pieces of furniture. Once he was taken to the police station, in handcuffs, he was not beaten any more, but he did see police officers hitting and kicking the first applicant. As a result of tight handcuffing he suffered an injury to his right forearm resulting in lasting effects, such as a tingling sensation in his thumb and index finger.

32. According to a decision of the district directorate of the police of 19 June 2013 on the second applicant's detention under section 19(1)(b) of the Police Force Act, in the course of the operation the intervening officers encountered the second applicant, who was shouting loudly and insulting the law and others. As he refused to abide by an instruction to calm down, he had to be taken to the police station in order to document what was considered to be a suspicion that he had committed the minor offence of breach of the peace. Since he actively resisted, coercive measures had to be applied consisting of holds, grabs, blows and kicks as well as handcuffing. In that connection, a reference was made to sections 51(1)(a), (b) and (c) and 52(1)(a) and (c) of the Police Force Act. As a result of these measures, the second applicant suffered minor injuries.

33. Identical observations regarding the use of coercive measures against the second applicant were included in a report on the use of these measures dated 19 June 2013. Moreover, the report indicated that "blows and kicks in self-defence in order to overcome resistance and repulse assault" within the meaning of section 50(1)(a) and (b) of the Police Force Act had been used. The use of these coercive measures was later examined and found justified by the head of the police in that district. Similarly as in the case of the first applicant, the report contains no details of that examination and assessment.

34. The police took the second applicant to an on-call doctor, who, pursuant to a note issued by him at 1.20 a.m. on 20 June 2013, observed that the second applicant did not manifest signs of any injuries that would require medical treatment.

35. In a statement that a general practitioner later (18 June 2014) made for the purposes of an expert analysis of the second applicant's injuries, she acknowledged having seen the second applicant on 20 June 2013, when he had stated that he had been beaten with a baton by the police. She observed

discolouration on his back and right shoulder and an unrelated older cut on his right forearm. She considered his injuries to be minor.

36. According to the transcript of the second applicant's questioning at the police station, which he contested on the same grounds as the first applicant, he submitted that when he had been asked to identify himself in the course of the operation he had given a different name, that he had been shouting at the police, that he had consumed alcohol, that he had resisted being taken to the police station, and that he had suffered no injuries.

37. In a report of 17 August 2014 a forensic medical expert assessed the second applicant's injuries on the basis of the above-mentioned general practitioner's statement, photographs of those injuries, the contents of the investigation file, in particular the second applicant's factual allegations, and the expert's own examination of the second applicant as follows.

38. The documented injuries had been caused by external blunt oblong flat object and circumscribed violence in the form of repeated blows with the same object – very probably a baton – of up to medium intensity. The injuries had been minor, and had not necessitated any sick leave and any treatment longer than seven days and had not had any lasting effects. The expert excluded any deterioration of the second applicant's previous and unrelated cut on his right forearm as a result of the mistreatment he had allegedly suffered at hands of the police, and that an electroshock weapon could have caused any of his injuries.

C. Operation in general

39. The operation was carried out by sixty-three officers, with twenty three vehicles. Fifteen of the officers were of the rapid-reaction force. The general description of its course by the parties varies as follows.

40. The applicants submitted that the police had barely been interested in checking the identity of anyone. They had entered random dwellings without authorisation, physically assaulting selected members of the community, uttering racist slurs and using the language of revenge, and had wilfully damaged property. When resorting to coercive measures, the police had used excessive violence, including the use of batons and electroshock weapons.

41. The Government claimed that the intervening officers had been equipped and armed as for an ordinary on-foot patrol with no special equipment and, specifically and categorically no electroshock weapons or riot guns. They further submitted that there had been no entry into dwellings other than with the consent of those inside, no excess of powers and no abuse, and that any coercive measures had only been used lawfully against those who had failed to abide by the given instructions, actively resisted them or behaved aggressively.

42. It has not been disputed that in the course of the operation not only the applicants but also some other people were brought to the local police station for the purposes of establishing their identity and owing to the suspicion that by their disorderly conduct in the course of the operation they had committed the minor offence of breach of the peace. The specific numbers of people stated as having been brought to the police station varied up to a maximum of fifteen individuals.

43. None of the individuals sought was among those taken to the police station and no object originating from criminal activities was found.

44. According to a file note of the district directorate of 20 June 2013 the operation enabled the localisation and later arrest of one of the wanted people.

IV. AFTERMATH OF THE OPERATION OF 19 JUNE 2013

45. In his report of 28 June 2013 the commander of the operation observed that it had lasted forty minutes and concluded that it had been carried out professionally and in full compliance with the instructions and regulations. In so far as the taking of persons to the police station had necessitated the use of coercive measures, these had been duly recorded.

46. The operation received wide media coverage, was twice debated on by the parliamentary committee for human rights and national minorities and the Minister of the Interior as well as the Prime Minister were several times reported in the media as having made statements supportive of the operation and of the results of the investigation into it (see below).

47. On 8 January 2014 the Government passed resolution no. 18, whereby it, *inter alia*, expressed grave concern over political and media attempts to abuse the topic of the impugned intervention to create an environment of hostility against the Roma and the police and recommended that the Prosecutor General ensure an independent investigation into the operation.

V. OMBUDSMAN'S REPORT

48. On 16 August 2013 the Ombudsman submitted for debate by Parliament an "Extraordinary report by the Ombudsman on facts indicating serious violations of basic rights and freedoms by the actions of certain organs". The report concerned various aspects of the situation of the Roma population in Slovakia and a part of it concerned specifically the police operation in Moldava nad Bodvou on 19 June 2013 from the perspective of the right to respect for home.

49. As the Ombudsman specified in her submission before the Court (see paragraph 140 below), the report had been preceded by an investigation by her staff, which had included an on-site inspection between 17 and

19 July 2013, interviews with a number of affected members of the Budulovská St community and various officials, and an examination of documentary evidence.

50. In the relevant part, the Ombudsman noted that although the proclaimed aim of the operation had been the search for wanted persons and objects, there had been a number of factors calling into question the authenticity of that aim, the urgency, necessity and efficiency of the operation and the adequacy of its planning and of the means employed.

VI. INVESTIGATION

A. Initial investigation (eastern unit of the Inspection Service)

51. Between 20 June and 17 July 2013 three criminal complaints and one application for a review of the lawfulness of the operation were lodged, including by the first applicant.

52. These complaints fell to be examined by the Office of the Inspection Service (*Úrad inšpekčnej služby* – hereinafter "the Inspection Service") of the Section of Inspection and Audit of the Ministry of the Interior (*Sekcia kontroly a inšpekčnej služby Ministerstva vnútra*). Within the Inspection Service, it was the eastern unit (*Odbor inšpekčnej služby Východ*), based in Košice, that had territorial competence in the matter.

53. In his criminal complaint, the first applicant submitted, *inter alia*, that there had been the risk that investigators of the eastern unit of the Inspection Service might be connected to the intervening officers under suspicion. He had demanded therefore that, in order to ensure objective and impartial investigation, the investigation had had to be carried out by a different unit of the Inspection Service.

54. On 16 August 2013, in response to the first applicant's request, the head of the Inspection Service decided not to remove the eastern unit from the investigation as he had found no important reasons for doing so.

55. On 23 August 2013 the eastern unit of the Inspection Service dismissed the first applicant's criminal complaint. It referred to documentation concerning the first applicant's case (see, in particular, paragraphs 17 *et seq*. below) and noted that he had been heavily intoxicated. This as well as other factors had lowered the credibility of his allegations. In sum, it was found that his injuries had been the result of the legitimate and proportionate use of coercive measures against him.

56. The first applicant challenged this decision by lodging an interlocutory appeal (*sťažnosť*) and, once that appeal was dismissed, applied for a review of the decision dismissing it (see the subsequent paragraph). In sum, he disagreed with the investigator's findings of fact and overall conclusions, arguing that the investigation had been insufficient,

one-sided and short of the requisite independence and stating that "a racist motive [could] not be excluded".

57. The first applicant's interlocutory appeal and application for review were dismissed by the Public Prosecution Service (PPS) at the Košice-okolie district prosecutor's level (17 October 2013) and the Košice regional prosecutor's level (9 January 2014), respectively.

58. However, in a letter of 9 May 2014, in response to another complaint by the first applicant, a prosecutor of the Office of the Prosecutor General acknowledged that in dealing with the first applicant's criminal complaint, interlocutory appeal and application for review the Inspection Service and the PPS had proceeded "inadequately" and had reached erroneous decisions. While these shortcomings were not specified in any detail, no corrective measures were ordered since the situation had meanwhile been rectified by the decision of 20 January 2014 to commence criminal proceedings in the case (see paragraph 61 below).

B. Subsequent investigation (central-Slovakia unit of the Inspection Service)

59. On 27 November 2013 the Prosecutor General ordered the opening of a criminal investigation into the operation of 19 June 2013 and ruled that it would be supervised by the Prešov regional prosecutor's office. The Government submitted that in the subsequent course of the proceedings the regional prosecutor's office had periodically and in total on nine occasions reported on the progress of the investigation to the Office of the Prosecutor General.

60. On 15 January 2014 the head of the Inspection Service ruled that the investigation would be carried out by the central-Slovakia unit of the Inspection Service (*Odbor inšpekčnej služby Stred*), based in Banská Bystrica. According to the Government, this way of organising the procedure gave rise to logistical challenges and special arrangements had to be put in place to ensure efficiency.

61. On 20 January 2014 an investigator of the central-Slovakia unit opened a criminal investigation into the operation on the suspicion that one or more officers unknown had committed the offences, *inter alia*, of abuse of official authority, actual bodily harm and inflicting torture or inhuman or degrading treatment in connection with the planning and carrying out of the operation itself and the treatment of the people taken to and kept at the police station following the operation.

62. The ensuing investigation involved questioning more than 280 witnesses, conducting seven face-to-face interviews, almost forty identity parades, and one investigative experiment, and obtaining reports from more than eighty expert witnesses. In addition, extensive documentary evidence

was obtained and examined and the investigation file amounted to more than 6,000 pages.

63. As for the applicants themselves, they were interviewed by the investigator on 20 and 21 February 2014, respectively. Moreover, they were involved in an identity parade and face-to-face interviews and expert evidence was obtained in respect of their injuries and state of intoxication (see paragraphs 23, 30 and 37 above) as well as psychological profiles (dated 17 November 2014 in respect of the first applicant and 10 January 2015 in respect of the second applicant).

C. Conclusion of the investigation

64. The investigation ultimately resulted in two separate decisions (23 November 2015 and 22 March 2016), both taken by an investigator of the central-Slovakia unit of the Inspection Service, dealing with various parts of the offences allegedly committed on the applicants and others in the context of the operation of 19 June 2013.

1. Decision of 23 November 2015

65. The first decision was dated 23 November 2015 and in so far as relevant concerned the charges of abuse of official authority and inflicting torture, inhuman and degrading treatment in connection with planning and commanding the operation of 19 June 2013 and the treatment of the applicants and others during their transfer to and detention at the local police station.

66. The investigator found that the decision leading to the operation of 19 June 2013 had been taken on 14 June 2013 (a Friday), and that a written version of the respective order had been produced on 17 June 2013 (a Monday) after the weekend that had lain in between. In addition to the simple timeline, this perspective also showed that there had been no direct correlation between the incident of the night from 15 to 16 June 2013 and the operation of 19 June 2013.

67. The operation had taken place within the framework of Regulation of the Ministry of the Interior no. 53/07 and Order of the director of the police force no. 36/1999, as amended by Order of the director of the police force no. 18/2003. This legislation envisaged no "repressive search operations", which was a further reason why the character of the operation of 19 June 2013 could not have been repressive. As clearly demonstrated by templates previously used in the context of similar operations, the term "repressive" appeared in the order of 17 June 2013 as a linguistic relic by a purely clerical error, which had duly been corrected prior to the operation of 19 June 2013. Moreover, the overall content of the order of 17 June 2013 had left no doubt that the purpose of the operation of 19 June 2013 had been the search for individuals and objects.

68. The operation had not been of the type "under a single command", which meant that the use of coercive measures had not been ordered by a central authority but had depended on the individual assessment of the intervening officers.

69. In 2013 there had been forty-two assaults of police officers in the given region and in none of those instances had there been any unlawful reprisals.

70. It was accordingly excluded that the operation had been any form of retaliation for the incident of the night from 15 to 16 June 2013.

71. In so far as there should have been any racial element, the respective allegations were twofold.

72. First, three police officers assigned to the area where Budulovská St was located should have had a long-term tense relationship with the local community. These tensions should have escalated in consequence of the incident of the night from 15 to 16 June 2013 and this should have resulted in the operation's being a retaliation for that incident. This allegation was in essence already rebutted by the arguments and findings concerning the purpose of the operation. Moreover, an examination of the three officers by an expert in psychology revealed no prejudice, bias or intolerance with regard to minorities.

73. Second, a member of the Budulovská St community arrested following the incident of the night from 15 to 16 June 2013 submitted that a police officer escorting him on 19 June 2013 to a remand judge should have uttered that "today the settlement burns down". This allegation was supported by that individual's brother. In that respect, the investigator had examined in detail the statements of those involved, had held a face-to-face interview among them and had taken into account evidence from an expert in psychology. The alleged sequence of events was incongruent. The versions of the inculpating witnesses excluded each other. Their principal allegation was not supported by any other elements. According to expert evidence, these witnesses had a pronounced tendency to distort facts and mislead and even deceive. In addition, it was implausible that, by making the alleged remark, the officer in question would reveal and thereby jeopardise an operation that was to be conducted later that day.

74. The investigator also reacted at length to the Ombudsman's report, finding her conclusions unsubstantiated and arbitrary.

75. As to the applicants themselves, the investigator noted the first applicant's state of inebriation and observed typical signs of that state as established by an expert (see paragraph 30 below). He also noted what he considered to be incongruities and irregularities in the evidence given by the first applicant and noted that the second applicant had initially alleged that he had suffered an injury to his right hand, while it had later been established that the second applicant had sustained that injury prior to the

operation of 19 June 2013, which the investigator interpreted as wilfully making a false accusation.

2. Appeal against the decision of 23 November 2015

76. The applicants lodged an interlocutory appeal (*sťažnosť*), challenging the decision of 23 November 2015 as arbitrary, premature and unsusceptible to review on account of lack of reasoning. Among other arguments, they contended that in view of the status of the Inspection Service and in connection with the public pronouncements of the Prime Minister and the Minister of the Interior, the investigation had not been independent. They also complained that the actual investigation had commenced only a significant period after the operation, that this had determined its potential and influenced its outcome, that the investigator's assessment of the evidence had in general been one-sided in favour of the official version, that his findings had been arbitrary, that he had failed adequately to examine the potential racist aspect of the case and that he had failed to investigate property the necessity and proportionality of the use of the coercive measures during the operation.

77. In a decision of 16 February 2016 the Prešov regional prosecutor's office dismissed the applicants' complaint. It fully upheld the challenged decision and endorsed the reasons behind it, complementing the reasoning as follows. The applicants' central argument concerned the institutional and hierarchical status of the Inspection Service. That matter had been addressed by a unifying decision of the Criminal Law Bench of the Supreme Court (see paragraphs 113 *et seq*. below) and the present case had on the specific facts to be distinguished from that of *Eremiášová and Pechová v. the Czech Republic* (no. 23944/04, 16 February 2012).

78. In particular, the prosecutor noted the extent of the investigation (see paragraph 62 above) and the fact that it had been conducted with exemplary level of respect for procedural rights of those concerned.

79. In his decision, the prosecutor noted that in order to ensure a thorough independent investigation he himself had taken part in a great many of the interviews and other investigative steps. In view of the sheer intensity of the media attention attracted by the investigation he had not tolerated any executive or other improper interference with it. He concluded that the investigation conducted by the central-Slovakia unit of the Inspection Service, based in Banská Bystrica under the direct supervision of the Prešov regional prosecutor's office and further supervision of the Office of the Prosecutor General, had been compatible with all requirements of lawfulness and independence.

80. As to the timeliness of the investigation, the prosecutor noted that, despite a massive long-lasting media campaign portraying the operation of 19 June 2013 in a negative light, there had been no fresh criminal complaints or other official applications lodged after the termination of the

initial investigation. The order of the Prosecutor General of 27 November 2013 that a criminal investigation be opened (see paragraph 59 above) had accordingly been issued on his own initiative after having received no earlier than on 14 October 2013 new evidence from the Ombudsman.

81. The investigator had examined in detail all the depositions and had identified what he considered to be profound incongruities not only between the versions of the alleged victims and the others but also among the alleged victims' versions themselves. Therefore, even if the investigated officers' version should have been disregarded as purposive, that of the applicants could not have been sustained.

82. In the prosecutor's assessment, in the climate of that time it was impossible to imagine that the alleged victims could have been abused as they alleged in the corridors of Moldava nad Bodvou police station, where officers of other units could have randomly passed and could have witnessed and recorded such treatment.

83. The presence and use of any electroshock devices in the operation had been excluded by expert and other evidence. Moreover, the applicants' allegations in that regard were totally devoid of any logic by the nature of things such as the type and size of such devices, the method of operating them, their performance and other tactical considerations.

84. The prosecutor noted that in the course of the operation the intervening officers had dealt with a number of heavily intoxicated individuals and that, except for the case of the first applicant, this had caused no complications. This in his view indicated that there had not been any inclination to resort to the use of coercive measures without good cause.

85. The prosecutor noted that no racist motive had been alleged in the previous course of the proceedings, the allegations as to the motive of the operation mainly having concentrated on the alleged revenge for the incident of 16 June 2013. Nevertheless, neither the fact that the targeted area had been inhabited by predominantly a Roma population nor any other factor revealed any racist motive in the planning and implementation of the operation.

86. Overall, the investigator considered as the most trustworthy and generally corresponding to his own findings the deposition from a member of the local council, who was of Roma ethnicity and who had been present on the scene shortly after the operation and who had submitted not having seen any evidence of injuries or damaged dwellings and property.

87. The prosecutor concluded that, in the circumstances, there was no appearance of any grounds for pressing any charges against members of the police in connection with the operation of 19 June 2013 on Budulovská St.

3. Decision of 22 March 2016

88. On 22 March 2016 the investigator terminated the proceedings with regard to the remaining charges, which included that of abuse of official

authority in connection with the carrying out of the operation on Budulovská St itself. He concluded that the alleged actions of the police either had not been established or had not amounted to a criminal offence. In addition to other matters that had already been taken into account in the decision of 23 November 2015, as to the individual cases of the applicants, the investigator relied first of all on the official records and expert evidence (see, in particular, paragraphs 17 *et seq*. and 32 *et seq*. above). He noted that the police had applied coercive measures against them. As later noted and evaluated by the respective superiors, the use of such measures had been warranted by the applicants' own resistance to the police and it had been legitimate, proportionate and lawful. The investigator noted in extensive detail the incongruities in the applicants' own submission at various stages of the proceedings at hand as well as in the minor-offence proceedings against them. He also noted what he found to be fundamental incoherence between the applicants' version and other evidence, including expert evidence. The investigator concluded that all verifiable elements of fact submitted by the applicants had proven to be untrue or distorted.

89. In his view, it was impossible in the modern technical era and in the circumstances to have committed the alleged excesses without any video or audio footage of them on mobile telephone devices to confirm that they had actually taken place. Any allegations that the police themselves had destroyed the telephones with recording devices of the residents of Budulovská St had been disproved. And it was equally relevant that no video footage had been made immediately following the departure of the police.

90. Last but not least, the investigator noted that in view of the intense media coverage of the affair, the municipality of Moldava nad Bodvou had decided to finance repairs on dwellings in Budulovská St without investigating who had been responsible. This explained the motivation of the residents to declare any state of disrepair on their houses as having been caused by the police. However, photographic material in the file showed the location in desolate state of disrepair already before the operation of 19 June 2013.

4. Appeal against the decision of 22 March 2016

91. The applicants challenged the decision of 22 March 2016 by way of an interlocutory appeal, advancing similar arguments as in their interlocutory appeal against the decision of 23 November 2015 (see paragraph 76 above). As to the alleged "possible racist motive" in the actions of the suspected officers, the applicants pointed out that all the alleged victims had been Roma and that the officers' motivation might have been to do with the victims' ethnicity.

92. On 19 May 2016 the regional prosecutor's office dismissed the complaint, essentially on the same grounds as in the decision of 16 February 2016 (see paragraph 77 above).

VII. FINAL DECISION (CONSTITUTIONAL COURT)

93. On 18 April and 19 July 2016 the applicants challenged the termination of the proceeding by way of two separate complaints under Article 127 of the Constitution with the Constitutional Court.

94. They formulated their factual allegations in a similar fashion as at the earlier stages of the proceedings (see paragraphs 16 and 31 above) and alleged a violation of their rights under Articles 3 (the substantive as well as the procedural limb), 13 and 14 of the Convention and their equivalents under the Constitution and various other international instruments.

95. In particular, they contested the planning and implementation of the operation, arguing that its true aim had been to intimidate their community and thereby to curb crime rate. This was however at odds with the declared purpose of searching for wanted individuals and objects and incompatible with the applicable internal rules (Orders of the director of the police force nos. 36/1999 and 18/2003). The treatment they had been exposed to in the course of and in connection with the operation had amounted to torture.

96. The investigation into the matter had been short of the requirements of promptness, effectiveness, independence, thoroughness, being public and being pursued of the authorities' own initiative.

97. Moreover, the applicants complained that the investigators had failed to examine independently the lawfulness of the use of coercive measures against them and the possible racist motive, in particular as regards the planning of the operation, implying that operations of that type might predominantly have targeted Roma communities. The operation in their case had targeted a Roma-only community, all the alleged victims had been Roma, and instances of police mistreatment of Roma were common in Slovakia.

98. Lastly, the applicants submitted that the use of the remedies that they had had at their disposal had been futile and that, accordingly, these remedies had been ineffective.

99. Both complaints were examined in a single set of proceedings. On 12 September 2017 the Constitutional Court declared them inadmissible.

100. As to the applicants' factual allegations, the Constitutional Court noted that it was not a court of fact and that, under the principle of subsidiarity, its role was limited to reviewing the compatibility of the protection afforded to them by other bodies with the applicable constitutional rules. Under the same principle the Constitutional Court had no jurisdiction to review the decisions of the investigator, as these fell to be examined by the PPS. As to the decisions of the PPS, the Constitutional

Court cited extensively their content and found that the PPS had given adequate answers to all important factual and legal arguments presented on the applicants' behalf. In its assessment, the authorities had done their utmost to elucidate the facts and there could not be the slightest doubt that their investigation had been effective.

101. The applicants' allegations of abuse had either not been established or had corresponded to what was considered to have been legitimate use of coercive measures. The applicants' allegations of abuse had accordingly been devoid of any credible basis.

102. The Constitutional Court found that the delayed opening of the criminal investigation had had no negative impact on its effectiveness and that its overall length had been appropriate in view of its complexity. Any acceleration would have been at the cost of quality.

103. As to the independence of the investigation, the Constitutional Court endorsed the reasoning of the PPS, noting specifically the intensity and scope of the involvement of the PPS in the investigation.

104. Since there had been no interference with the applicants' rights under Article 3 of the Convention, in the Constitutional Court's view there could not have been any violation of Article 14 in conjunction with the former provision. As to the allegation that similar search operations were only conducted in Roma communities, the Constitutional Court observed that the proceedings at hand concerned the operation of 19 June 2013 and in the framework of those proceedings the authorities responsible for that operation could not be called to answer for other operations. Nevertheless, and in any event, the purpose and the goal of the operation of 19 June 2013 had been adequately examined and established by the authorities.

105. The decision was served on the applicants' lawyer on 9 November 2017 and no appeal lay against it.

VIII. MINOR-OFFENCE AND CRIMINAL PROCEEDINGS AGAINST THE APPLICANTS

106. In connection with their actions in the course of the operation of 19 June 2013 and their subsequent depositions, the applicants were charged with the minor offence of breach of the peace and the criminal offence of making a false accusation.

107. The minor-offence proceedings against the second applicant ended by a decision that became final on 16 January 2014, finding him guilty and sentencing him to a fine of 15 euros (EUR). The minor-offence proceedings against the first applicant were terminated on 29 January 2014 as it had not been established that he had committed the offence in question.

108. The criminal proceedings concerning the offence of making a false accusation are ongoing according to the Court's latest information.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. POLICE FORCE ACT

109. The Act governs the organisation and powers of the police. The police force comprises among other branches the Inspection Service (section 4(1)). These branches function in structures established and disbanded by the Minister of the Interior who also determines their functions and internal organisation (section 4(2)). The police force is subordinate to the Minister (section 6(1)). According to the wording applicable at the relevant time, the branches and structures of the police mentioned above (including the Inspection Service) were directed by the director of the police force, unless the Minister determined otherwise (section 6(2)), and the director was appointed and removed by and answerable to the Minister (section 6(3)).

110. The use of coercive measures (*donucovacie prostriedky*) by a police officer is addressed in Section (*oddiel*) 5 of Part (*hlava*) three. Under section 50(1), such measures include, among others, (a) holds (*hmaty*), grabs (*chvaty*), blows (*údery*) and kicks (*kopy*) in self-defence, (b) means for overcoming resistance and repulsing assault (*prostriedky na prekonanie odporu a odvrátenie útoku*) and (c) handcuffs.

111. Section 50(2) sets down the means for overcoming resistance and repulsing assault as including, *inter alia*, batons (*obušky*) and electroshock weapons (*elektrické paralyzátory*).

112. Under section 51(1) a police officer is empowered to apply the measures defined in section 50(1)(a) and (b) in order to, among other things: (a) ensure the safety of another or his or her own person from an assault; (b) prevent affray, a fight, wilful damage to property or other rough behaviour that disturbs the public peace; and (c) bring a person to a police station or secure, arrest, detain or bring an actively resisting person to jail for being remanded pending trial or for service of a sentence.

II. UNIFYING DECISION OF THE CRIMINAL LAW BENCH OF THE SUPREME COURT

113. On 29 September 2015 the Criminal Law Bench of the Supreme Court issued a unifying decision (*zjednocujúce stanovisko*) with a view to consolidating divergent practices as regards, *inter alia*, the role played by the Inspection Service in criminal prosecutions under the Code of Criminal Procedure (Law no. 301/2005 Coll., as amended – "the CCP").

114. The gist of the relevant part of the decision was the lawfulness of the status of the Inspection Service and its repercussions on the fairness of proceedings involving investigation by the Inspection Service, seen from

the perspective of a criminal defendant (i.e. investigation of police offices by other officers belonging to the police).

115. The decision noted the institutional and procedural status of the Inspection Service and observed that under the existing system the procedural rights of the defendant were ultimately safeguarded by a court.

116. The decision acknowledged the Court's case-law, such as *Eremiášová and Pechová* (cited above) and *Kummer v. the Czech Republic* (no. 32133/11, 25 July 2013). However, it drew attention to the fact that these judgments did not concern the fairness of the criminal proceedings from the point of view of the defendant but rather the effectiveness and independence of the investigation from the point of view of the victim. It considered that, from the victim's perspective, the system currently in place fell short of the requirements stemming from the aforesaid case-law of the Court.

117. In particular, the guarantee of independence provided to the defendant by a court was unavailable to the victim if the case did not reach the stage of a judicial examination on the merits.

III. ACTION FOR PROTECTION OF PERSONAL INTEGRITY

118. Protection of personal integrity is governed by the provisions of Articles 11 *et seq*. of the Civil Code (Law no. 40/1964 Coll., as amended). In so far as relevant, they provide as follows:

> "Article 11
>
> Every natural person shall have the right to protection of his or her personal integrity, in particular his or her life and health, civil honour and human dignity, as well as privacy...
>
> ...
>
> Article 13
>
> 1. Every natural person shall have the right, *inter alia*, to request an order restraining any unjustified interference with his or her personal integrity, an order cancelling out the effects of such interference and an award of appropriate compensation.
>
> 2. If the satisfaction afforded under paragraph 1 of this Article is insufficient, in particular because the injured party's dignity or social standing has been considerably diminished, the injured party shall also be entitled to financial compensation for non-pecuniary damage.
>
> 3. When determining the amount of compensation payable under paragraph 2 of this Article, the court shall take into account the seriousness of the harm suffered by the injured party and the circumstances in which the violation of his or her rights occurred."

IV. INTERNATIONAL MATERIAL

A. Council of Europe sources

119. The Report of the European Commission against Racism and Intolerance (ECRI) (Fifth Monitoring Cycle) of 19 June 2014 on Slovakia (CRI[2014]37) contains the following passages:

"...

3. Racist and homo/transphobic violence

- Data

69. Police ill-treatment (and generally speaking abusive behaviour) towards Roma have also been reported by the media, civil society and international organisations (IOs)...

...

- Authorities' response

...

76. Another area in which the response of the authorities can be improved is that of complaints concerning police violence. The [Inspection Service] is competent for internal investigations of police misconduct. However, this service is reported to dismiss, within one month of their reception, more than 80% of complaints on the basis of insufficient evidence; it does not keep a record of the number and nature of cases of racist behaviour of the police and their follow-up by the judiciary. According to the Ombudsman the lack of an independent police investigation mechanism 'not only elicits distrust in the police, but also creates room for a quite easy concealment of cases of police abusive behaviour, especially when the police interfere by its own action with fundamental rights and freedoms of individuals'.

...

79. ECRI reiterates its recommendation that... the Slovak authorities provide for a body which is independent of the police and prosecution authorities, entrusted with the investigation of alleged cases of racial discrimination and misconduct by the police.

80. ECRI also strongly reiterates its recommendation 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.

..."

120. The Report of 13 October 2015 (CommDH(2015)21) by Nils Muižnieks, Commissioner for Human Rights, following his visit to the Slovak Republic from 15 to 19 June 2015, contains the following passages:

"76. In this context, the Commissioner notes that the Ombudsperson and NGOs have repeatedly raised the issue of the lack of an independent police complaints mechanism in Slovakia. NGOs have noted that the [Inspection Service] rarely initiates *ex officio* prosecution of alleged ill-treatment. Moreover, the vast majority of

complaints are rejected during the preliminary investigations, without any charge being brought against the perpetrators.

77. The Commissioner notes the view expressed by the Ministry of Interior that the prosecution represents an independent investigation mechanism in respect of allegations of offences committed by members of the police. However, according to information provided by the ministry, the prosecution usually has only a supervisory role in the investigations, which are carried out by members of the police forces. The Commissioner wishes to draw the Slovak authorities' attention to the Court's judgment in the case of *Kummer v. the Czech Republic*, in which the Court found that the prosecutor's merely supervisory role is not sufficient to make the police investigation comply with the requirement of independence. Moreover, in the case of *Ramsahai and Others v. the Netherlands*, the Court underlined that prosecutors 'inevitably rely on the police for information and support' and emphasised the importance not only of the hierarchical and institutional independence but also of the practical independence of the investigator."

B. UN Human Rights Treaty Bodies

121. The concluding observations of 8 September 2015 (CAT/C/SVK/CO/3) of the Committee against Torture on the third periodic report of Slovakia, under the heading of "Excessive use of force by law enforcement officials, including violence against Roma", provide, *inter alia*, as follows:

"11. The *Committee* is concerned:

(a) At *reports* alleging cases of excessive use of force by law enforcement officials, including against minors, mostly immediately after apprehension, which may amount to ill-treatment or torture;

(b) At the low number of complaints, prosecutions and convictions in such cases;

(c) That investigations into allegations of ill-treatment by police officers are carried out by the Control and Inspection Service Department of the Ministry of the Interior, which is a department within the same structure employing the alleged perpetrators;

...

The State party should:

(a) Carry out prompt, impartial, thorough and effective investigations into all allegations of excessive use of force, including torture and ill-treatment, by law enforcement officials, and ensure that those suspected of having committed such acts are immediately suspended from their duties throughout the period of investigation, while ensuring that the principle of presumption of innocence is observed;

...

(c) Prosecute persons suspected of having committed torture or ill-treatment and, if they are found guilty, ensure that they receive sentences that are commensurate with the gravity of their acts and that the victims are afforded appropriate redress;

..."

122. The concluding observations of 22 November 2016 (CCPR/C/SVK/CO/4) of the Human Rights Committee on the fourth report

of Slovakia, under the heading of "Prohibition of torture and cruel, inhuman or degrading treatment and of excessive use of force", contain, *inter alia*, the following:

> "28. The Committee is concerned about allegations concerning the excessive use of force by law enforcement officials, including ill-treatment and torture, and about the low number of prosecutions and convictions in such cases. It is also concerned that investigations into allegations of ill-treatment by police officers are carried out by the Department of Control and Inspection Service of the Ministry of the Interior, which is not sufficiently independent (arts. 7 and 10).
>
> 29. The State party should: (a) ensure that prompt, impartial, thorough and effective investigations are carried out into all allegations of the excessive use of force, including torture and ill-treatment, by law enforcement officers; (b) take appropriate measures to strengthen the Department of Control and Inspection Service to ensure its independence to carry out investigations of alleged misconduct by police officers; ..."

123. The concluding observations of 8 December 2017 (CERD/C/SVK/CO/11-12) of the Committee on the Elimination of Racial Discrimination on the combined eleventh and twelfth periodic reports of Slovakia include, *inter alia*, the following:

> "16. Recalling its previous recommendation (CERD/C/SVK/CO/9-10, para 9), the Committee urges the State party to:
>
> (a) Take effective measures to prevent the excessive use of force, ill-treatment and abuse of authority by the police against persons belonging to minority groups, in particular Roma, ...;
>
> (b) Ensure that all allegations of excessive use of force, ill-treatment and abuse by law enforcement officials are effectively and thoroughly investigated, and where substantiated, are prosecuted and punished, taking into account the gravity of such acts;
>
> (c) Ensure that persons belonging to ethnic minorities, in particular Roma, who have been victims of excessive use of force by law enforcement officers have access to effective remedies and compensation, and do not face retaliation or reprisals for reporting such cases;
>
> (d) Take all necessary measures to accelerate the establishment of an independent monitoring mechanism to investigate crimes involving police officers."

C. Other international material

124. Other international material concerning the situation of Roma in Slovakia was summarised for example in the Court's judgments in the cases of *Mižigárová v. Slovakia* (no. 74832/01, §§ 57-63, 14 December 2010); *V.C. v. Slovakia* (no. 18968/07, §§ 78-84 and 146-49, 8 November 2011); *Koky and Others v. Slovakia* (no. 13624/03, § 239, 12 June 2012); *Adam v. Slovakia* (no. 68066/12, § 33-35, 26 July 2016) and *Lakatošová and Lakatoš v. Slovakia* (no. 655/16, §§ 59-64, 11 December 2018).

THE LAW

I. THE GOVERNMENT'S OBJECTION AS TO THE EXHAUSTION OF DOMESTIC REMEDIES

125. The Government objected that the applicants had failed to satisfy the requirement of exhaustion of domestic remedies under Article 35 § 1 of the Convention by seeking damages by way of an action for protection of personal integrity under Articles 11 *et seq*. of the Civil Code. In that connection, they relied on the Court's decisions in *Furdík v. Slovakia* (no. 42994/05, 2 December 2008) and *Baláž and Others v. Slovakia* (no. 9210/02, 28 November 2006) and the judgments in *V.C. v. Slovakia* (no. 18968/07, §§ 125-9, ECHR 2011 (extracts)) and *N.B. v. Slovakia* (no. 29518/10, §§ 84-8, 12 June 2012).

126. The applicants reiterated that in situations such as theirs the requirement of exhaustion of domestic remedies was closely connected to the one of adequacy of the investigation, which entailed the possibility of having the relevant facts established and those responsible punished. The compensatory mechanism relied on by the Government fell short of this requirement and could not be considered an effective remedy for the intentional ill-treatment they claimed to have been victims of.

127. The Court notes that the guarantees embodied in the provisions relied on by the applicants (see paragraphs 134, 190 and 218 below) partly overlap and that the Government have not attached their non-exhaustion plea to any of the applicants' specific complaints. In so far as the objection pertains to the applicants' central substantive complaint in the present application, that is that of alleged ill-treatment in violation of the substantive limb of Article 3 of the Convention, the Court reiterates its well-established case-law that in cases where an individual has an arguable claim under that provision, the notion of an effective remedy entails, on the part of the State, a thorough and effective investigation capable of leading to the identification and punishment of those responsible. Proceedings that can only result in the award of compensation to be paid by the State, but not in the punishment of those responsible for the ill-treatment, cannot be considered as satisfying the procedural requirement of Article 3 in cases of wilful ill-treatment of persons who are within the control of agents of the State (see, for example, *Kummer v. the Czech Republic*, no. 32133/11, § 47, 25 July 2013, with further references, and *Mocanu and Others v. Romania* [GC], nos. 10865/09 and 2 others, § 227, ECHR 2014 (extracts)).

128. The Court has no difficulty in accepting that the applicants' claim of wilful ill-treatment was in the present case arguable in terms of its case law. Moreover, it notes that an action for protection of personal integrity is a civil-law remedy of a purely preventive and compensatory nature, but with no punitive potential. Already for this reason alone, it is not an effective

remedy that needs to be exhausted for the applicants' Article 3 complaints (see *Kummer*, cited above, § 47, and *Mocanu and Others*, cited above, §§ 234-5).

129. As regards the applicants' accessory complaints, and in particular those under Article 14 of the Convention, the Court reiterates that where there is a choice of remedies, the exhaustion requirement must be applied to reflect the practical realities of an applicant's position, so as to ensure the effective protection of the rights and freedoms guaranteed by the Convention. Moreover, an applicant who has used a remedy which is apparently effective and sufficient cannot be required also to have tried others that were available but probably no more likely to be successful (see, for example, *Karlin v. Slovakia*, no. 41238/05, § 85, 28 June 2011, with further references).

130. In the present case, the applicants ultimately sought protection of their Convention rights before the Constitutional Court under Article 127 of the Constitution, only to see their complaints dismissed by the Constitutional Court in its decision of 12 September 2017 essentially for being manifestly ill-founded (see paragraphs 99 *et seq*. above).

131. Even assuming that it was in principle possible for the applicants to pursue before an ordinary court in the framework of an action for protection of personal integrity similar claims as previously unsuccessfully pursued before the Constitutional Court, the Government have failed to establish that there was any realistic prospect that an ordinary court would have arrived at conclusions differing from those of the Constitutional Court (see, *mutatis mutandis*, *Yegorov v. Slovakia*, no. 27112/11, §§ 96-7, 2 June 2015).

132. In reaching this conclusion, the Court has also taken into consideration the applicants' personal circumstances, the fact that rights as fundamental as those under Article 3 of the Convention (see below) are at stake, and that the Convention is intended to guarantee rights that are not theoretical or illusory but practical and effective (see *Koky and Others v. Slovakia*, no. 13624/03, § 195, 12 June 2012).

133. The Government's non exhaustion plea as a whole must accordingly be dismissed.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

134. The applicants complained (i) that they had been mistreated by the police through beatings and psychological pressure prior to and during their detention and (ii) that the respondent State had failed to protect them from that mistreatment by conducting an effective investigation into it and into the possible racist motives behind, in violation of their rights under Article 3 of the Convention, which reads as follows:

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

A. Admissibility

135. The Court notes that the applicants' Article 3 complaints are neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. They must therefore be declared admissible.

B. Merits

1. Substantive limb of Article 3 of the Convention

(a) Parties

136. The applicants argued that they had been mistreated by the police in the course of the operation of 19 June 2013 and during their subsequent transport to and detention at the local police station. The physical abuse had been coupled by racist verbal abuse and remarks and by the denial of any food, drink and access to sanitary facilities during their detention, which had been particularly humiliating for the first applicant who had soiled himself and had then been unable to clean himself. The mistreatment had been a part of an illegitimate and disproportionate retaliation for the incident of 16 June 2013 and had, as a whole, amounted to torture.

137. The Government emphasised the extent and intensity of the investigation and referred to its conclusions, as described in the decisions of the PPS of 16 February and 19 May 2016. There had been a general increase of the crime rate in the given area and the operation of 19 June 2013 had been a pure search operation in response to that. This had been reflected in the equipment, number and structure of the intervening forces and in all other circumstances such as planning and commanding the operation. The reference to the operation as "repressive" in certain documents had been a clerical error, which had been explained and corrected prior to the operation. It had been carried out in a standard professional manner without any excesses contrary to Article 3 of the Convention.

138. The applicants' allegations of mistreatment were contradictory in themselves and were contradicted by other evidence, in particular from expert witnesses. They had accordingly either not been established or had been specifically refuted and their version, seen in its context, was purposive and unreliable. In fact, in view of their behaviour it had been necessary to detain and bring the applicants to the police station. As they had resisted, coercive measures had been applied. The use of these measures had duly been recorded and had been found justified. As to the injuries they had sustained as a result of the use of coercive measures against them, the Government relied on the Court's decision in *Brahmi v. Poland*

([Committee], no. 4972/14, 24 November 2015) and considered that, as in that case, it had been convincingly established in the domestic proceedings that the use of force against the applicants had been made necessary by their own conduct and that it had not been excessive. Accordingly, in the Government's submission, the authorities had complied with their obligation to provide a plausible explanation of how the applicants' injuries had been caused. Moreover, the Government noted that the alleged deprivation of food, drink and access to sanitary facilities during the applicants' detention had not been raised at the national level at all.

139. In reply, the applicants contended that the Government's presentation of the facts had been incomplete. The principal factual points of disagreement included the type and intensity of the coercive measures used against them. According to the forensic medical expert the most probable cause of their injuries had been blows from a baton and in the case of the first applicant also blows, grabs and holds used to subdue him. In their view, the Government had failed to offer a plausible explanation of the course of events and of how it had been established that the use of force against them had been lawful and proportionate. In particular, the use of batons had not been reported and taken note of. It had to be seen in the context of the operation as a whole. The sheer number of the intervening officers suggested that it had been a demonstration of power. It had been racially motivated and aimed at intimidating the Budulovská St community and thereby curbing criminality.

(b) Third party

140. The Ombudsman referred to the investigation and conclusions by her office (see paragraphs 48 *et seq*. above) and considered that the nature of the impugned operation had been purely repressive with the objective to show muscle and to get payback for the earlier incident involving stones being thrown at a police patrol. The operation had not been conceived of and planned as a search operation. It was highly improbable that its true purpose had been a search. In view of all the circumstances, it had fallen short of the requirement of being necessary in a democratic society.

(c) The Court's assessment

141. The Court notes that, in their application form, the applicants stated that they had been ill-treated, *inter alia*, during their transport to the police station and while being detained there.

142. However, their factual account both at the national level and before the Court did not actually specify any ill-treatment during their transport.

143. Furthermore, as to the first applicant's detention, there is nothing in the elements submitted to the Court showing that he was exposed to any ill-treatment specifically there. In particular, other than handcuffing and

being attached to the wall, no use of coercive measures against him during his detention was recorded and the medical evidence available provides no basis for a conclusion that he was subjected to any ill-treatment while being detained.

144. Moreover, the Court observes that the applicants' contention that, while at the police station, they had been denied water, food and access to sanitary facilities in fact only concerns the first applicant. In that regard, the Government appear to be right in arguing that no such objection had been raised in the applicants' interlocutory appeals against the decisions 23 November 2015 and 22 March 2016 to terminate the proceedings. In so far as any such matters were raised before the Constitutional Court or elsewhere, those appear to have been auxiliary factual allegations rather than genuine complaints under Article 3 of the Convention (see A*dam v. Slovakia*, no. 68066/12, § 60, 26 July 2016).

145. The gist of the applicants' complaint under the substantive limb of Article 3 of the Convention is their alleged ill-treatment in the course of the police intervention on 19 June 2013 on Budulovská St.

146. In that regard, the Court reiterates that Article 3 of the Convention enshrines one of the most fundamental values of a democratic society. It prohibits in absolute terms torture and inhuman or degrading treatment or punishment, irrespective of the victim's conduct (see, among other authorities, *Labita v. Italy* [GC], no. 26772/95, § 119, ECHR 2000-IV). In respect of a person who is deprived of his or her liberty, or, more generally, is confronted with law‑enforcement officers, any recourse to physical force which has not been made strictly necessary by his or her own conduct diminishes human dignity and is an infringement of the right set forth in Article 3 (see *Bouyid v. Belgium* [GC], no. 23380/09, §§ 100-1, 28 September 2015). In respect of recourse to physical force during an arrest, Article 3 does not prohibit the use of force for effecting a lawful arrest. However, such force may be used only if indispensable and must not be excessive (see *Ivan Vasilev v. Bulgaria*, no. 48130/99, § 63, 12 April 2007). The burden to prove that this was the case rests on the Government (see *Rehbock v. Slovenia*, no. 29462/95, § 72, ECHR 2000‑XII, and *Boris Kostadinov v. Bulgaria*, no. 61701/11, § 53, 21 January 2016). One of the criteria informing the characterisation of a treatment under Article 3 is the severity of the treatment. Even in the absence of actual bodily injury or intense physical or mental suffering, where treatment humiliates or debases an individual, showing a lack of respect for or diminishing his or her human dignity, or arouses feelings of fear, anguish or inferiority capable of breaking an individual's moral and physical resistance, it may be characterised as degrading and also fall within the prohibition set forth in Article 3. It should also be pointed out that it may well suffice that the victim is humiliated in his or her own eyes, even if not in the eyes of others. Indeed, it has previously been established that, although a person does not

undergo serious physical or mental suffering, an assault on his or her dignity and physical integrity may constitute degrading treatment (see *Bouyid*, cited above, §§ 87, 90 and 112).

147. In the present case, it has not been disputed that in the course of the operation of 19 June 2013 and more specifically in the course of their arrest the police resorted to the use of coercive measures against the applicants and that the applicants suffered bodily injuries. It likewise does not appear to be open to any serious doubt that the applicants' injuries were the result of the use of force by the police against them.

148. It accordingly remains to be ascertained whether the recourse to physical force by the police against the applicants was made strictly necessary by the applicants' own conduct or, in other words, whether the force used was indispensable and not excessive, the burden of proof resting on the Government.

149. At the domestic level, the use of force by the police in the course of the operation was not directly recorded. In so far as any force was used specifically against the applicants, it was noted only retrospectively in the decisions concerning their detention and in the reports concerning the use of coercive measures against them (see paragraphs 19, 20, 32 and 33 above). In particular, it was noted that it had been necessary to use coercive measures against the applicants in order to effect their arrest since they had resisted and had been verbally aggressive.

150. As to the specific coercive measures applied against them, the decisions and reports mentioned in the preceding paragraph detailed them as holds, grabs, blows, kicks and handcuffing within the meaning of sections 51(1)(a), (b) and (c) and 52(1)(a) and (c) of the Police Force Act. Such measures in principle could apply to a situation of resistance and verbal aggression to which they purported to have responded.

151. However, as established by experts in medicine, a part of the applicants' injuries had most likely been caused by beating with batons (see paragraphs 25 and 38 above). In that regard, the Court notes that the use of batons against them was as such not recorded in the documentation mentioned above. Although a note of the legal provision governing the use of batons as "means of overcoming resistance and repulsing assault" (sections 50(1)(a) and (b) and 52(1) of the Police Force Act – see paragraphs 110 and 111 above) was made in the reports concerning the use of coercive measures against the applicants, this was specified with reference to "blows and kicks in self-defence in order to overcome resistance and repulse assault".

152. At the same time, the Court notes that there is no indication of any extraordinary circumstances, events or security incidents in relation to the realisation of the search operation of 19 June 2013 that would specifically justify the use of batons rather than the other coercive measures noted in the decisions and records motioned. In that respect, the Court notes that the

operation was planned in advance, discharged with ample police presence and means, and was subsequently referred to by the authorities in general as a routine affaire. Moreover, in view of the critical level of intoxication of the first applicant at the relevant time, bordering on poisoning, it would call for a specific explanation how he could have posed a significant threat or mount resistance justifying the use of batons rather than other type of coercive measures against him.

153. The order of 17 June 2013 generally referred to the impugned operation as a "repressive" one, which the Government explained by arguing that that term had been a typographical error taken over from documentation concerning previous operations and that it had been manually corrected before the operation of 19 June 2013. The Court notes however that this factual claim has not been substantiated by anything such as, for example, a decision or a file note indicating who effected the correction, when and on what grounds. Should that term have been considered as erroneous and should it have been used repeatedly prior to the operation, as now claimed by the Government, it would have been no more than natural and consistent with principles of good administration to have such a systemic error corrected formally.

154. At the same time, the notion of repression originally used in the order of 17 June 2013 appears to correspond exactly to the alleged increase in the crime rate by means of a causal link.

155. However, as concluded by the national investigation, the legal framework applicable to that operation did not allow for any repressive intervention. Any repressive aim in the operation accordingly could not have had a legal basis. Regrettably, the Court is unable to examine this aspect of the case in detail because the instruments providing for the said framework (Regulation of the Ministry of the Interior no. 53/07 and Order of the director of the police force no. 36/1999, as amended by Order of the director of the police force no. 18/2003) are of an internal nature and as such not in the public domain and they have not been made available to it.

156. While it is by no means the Court's task to make any general conclusions about the operation of 19 June 2013 as such, it considers that the operational context of the police intervention in relation to the applicants is relevant to the assessment of their individual situation.

157. Turning again to the applicants' specific case, the Court notes that the use of coercive measures against them was recorded and later examined and found justified by the local district directorate of the police and its deputy director. While the written note of such assessment on the file contain no details whatsoever of any elements taken into account, the Court also notes that the record was taken and the assessment was made by officers belonging to the same structure as those having resorted to the measures at stake. Furthermore, the Court notes that the subsequent decisions in the applicants' case rely on those initial findings and likewise

do not contain any individual and verifiable assessment of the adequacy of the use of coercive measures against the applicants.

158. Being sensitive to the subsidiary nature of its role and recognising that it must be cautious in taking on the role of a first-instance tribunal of fact (see, for example, *Ciorcan and Others v. Romania*, nos. 29414/09 and 44841/09, § 140, 27 January 2015, with further references), the Court nevertheless finds that the use of batons against the applicants is indicative of the presence of a repressive element in the intervention against them. The Court notes that such an element with regard to the operation as a whole was established by the Ombudsman of Slovakia.

159. Moreover, and irrespective of the repressive or other character of the operation of 19 June 2013 as such, the Court notes that the behaviour which could have made the use of the coercive measures against the applicants necessary was not found to constitute an offence in relation to the first applicant. Even though it was found to constitute an offence in respect of the second applicant, the nature and intensity of his resistance or opposition to the police – directly relevant to the necessity of any coercive measures – were reflected in the rather moderate sanction imposed (see paragraph 107 above).

160. The foregoing considerations are sufficient to enable the Court to conclude that the Government have failed to show that the use of force against the applicants to affect their arrest in the course of the operation of 19 June 2013 on Budulovská St was indispensable and not excessive. Consequently, the State is responsible, under Article 3 of the Convention, for the injuries sustained by them on that date.

161. While the ill-treatment that produced them cannot be qualified as torture (contrast *Cestaro v. Italy*, no. 6884/11, 7 April 2015, with further references), it was serious enough to be considered inhuman (see, for example, *Egmez v. Cyprus*, no. 30873/96, §§ 77-9, ECHR 2000 XII, and *Rehbock*, cited above §§ 71-8).

162. In arriving at that conclusion, it has not escaped the Court's attention that the medical report of 20 June 2013 indicated a doctor's assessment that the first applicant's injuries would take up to forty-two days to heal (see paragraph 18 above). The Court however does not attach any decisive importance to this indication because it appears not to have been reflected in any other decision or other documentation and to be incongruous with the overall available information as to the first applicant's injuries.

163. Moreover, the Court notes that the applicants' account of the police intervention against them, in particular their allegation of a sustained brutal beating, does not correspond to the extent of their injuries as found by the doctors who examined the applicants (see *Tanrıkulu and Others v. Turkey* (dec.), nos. 29918/96, 29919/96 and 30169/96, 24 February 2005) and that the second applicant's claim that in the course of his arrest he had sustained

an injury to his forearm has been found to be incongruent with facts (see paragraphs 31 and 38 above).

164. Lastly, on the specific facts of the present case, the Court also finds that the allegation of remarks of a racist character on the part of the intervening officers falls to be examined under Article 14, in conjunction with Article 3 of the Convention. The Court will examine that below.

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

2. Procedural limb of Article 3 of the Convention

(a) Parties

166. The applicants complained that the investigation into their alleged ill-treatment had been short of the requirements of independence, impartiality, thoroughness, promptness and being conducted of the authorities' own motion. Moreover, the authorities had failed to investigate the possible racist motive behind their ill-treatment.

167. In their reply, the Government did not contest the applicability of the procedural limb of Article 3 of the Convention to the applicants' procedural complaint. They pointed out that immediately after the operation there had been several criminal complaints lodged in that connection and that those complaints had been promptly examined by the eastern unit of the Inspection Service under the supervision of the PPS within Košice Region. The investigation had been completed and the matter had been debated in Parliament. In so far as the Ombudsman had established what she had considered to be violations of fundamental rights, the Government pointed out that her investigation had been outside the framework of formalised procedures such as criminal proceedings under the CCP and that she had taken no steps to verify the submissions of the alleged victims of police abuse. As a massive media campaign portraying the operation as a scandal had been ongoing, the Cabinet had proposed to the Prosecutor General to take measures with a view to ensuring a thorough independent review of the operation. The ensuing new investigation had been carried out by the central-Slovakia unit of the Inspection Service and had been supervised by the Prešov regional prosecutor's office in order to ensure complete independence from any local ties. As such territorial displacement had presented logistical challenges, special arrangements had been put in place to ensure efficiency. As a result, the second investigation had been particularly thorough and diligently carried out, with exemplary attention paid to the rights and interests of the alleged victims and any other involved party.

168. Both the investigator and the prosecutor had minutely examined all allegations and relevant facts and had based their decisions on detailed and convincing reasoning that had ultimately been reviewed and endorsed by the

Constitutional Court. As for the length of the investigation, the Government considered it to have been adequate to the factual and procedural complexity of the case.

169. In relation to the independence of the investigation, the Government pointed out that similar questions had obtained in the previous cases of *Mižigárová v. Slovakia* (no. 74832/01, § 98, 14 December 2010) and *Adam* (cited above, §§ 64 and 83). In the former case a violation of the independence requirement had been found on account of the mere involvement in the investigation under review of officers serving in the same geographic area as the suspected police officer, while in the latter case a violation of the procedural limb of Article 3 of the Convention had been found on other grounds. In any event, the Government pointed out that the execution of both of these judgments had been closed (they referred to Resolutions adopted by the Committee of Ministers on 24 February 2016 (CM/ResDH(2016)17) and 7 June 2018 (CM/ResDH(2018)212), respectively). The Government also relied on the unifying decision of the Criminal Law Bench of the Supreme Court of 29 September 2015 (see paragraphs 77 and 113 *et seq*. above) and argued that the investigation in the present case had been in full compliance with the applicable rules, as interpreted in that decision. In particular, the Government pointed out that the PPS had been aware of the Court's case-law such as *Eremiášová and Pechová v. the Czech Republic* (no. 23944/04, 16 February 2012) and *Kummer* (cited above) and that they had taken it into account in the discharge of their supervisory function in relation to the investigation in the present case. More specifically, the supervising prosecutor had directly and extensively taken part in interviews and other investigative steps and he had reported to the Office of the Prosecutor General on the progress of the investigation on nine occasions. Lastly, the Government argued that the effectiveness of the investigation had ultimately been reviewed and endorsed by the Constitutional Court, which had complemented its practical independence.

170. The applicants responded by reiterating their complaint. They emphasised that the second investigation had commenced and they had been interviewed by an investigator and examined by a forensic medical expert only, respectively, seven, eight and fourteen months after the operation. This response could accordingly not be considered as having been prompt, which in turn had impacted on its effectiveness.

171. Moreover, the applicants emphasised that the investigation had not been institutionally independent in view of, *inter alia*, the public pronouncements of the Prime Minister and the Minister of the Interior and the latter's role in the hierarchy surrounding the Inspection Service.

172. Furthermore, the applicants submitted that while the assertions made in the course of the investigation by the police officers had been routinely accepted, those from the alleged victims had been systematically

downplayed, revealing a pattern of bias. In so far as there had been any incongruities in their own depositions, these might well have been the consequence of the significant delays in the investigation.

173. In addition, the applicants claimed that the violence used against them had had a clear racist motivation, that this had been pointed out, *inter alia*, in the first applicant's criminal complaint, but that this aspect of the case had nevertheless not been properly investigated.

(b) Third parties

174. The Ombudsman pointed out that it was the Minister of the Interior who appointed the regional heads of the police while, at the same time, he was the direct superior with regard to the Inspection Service, which was responsible for internal inspections as well as criminal prosecutions of police officers.

175. The non-governmental organisation Equity submitted that if there were any doubts about the justification, course and adequacy of a police intervention, the burden of proof rested with the State and that this included a duty to carry out an effective investigation into the matter. They endorsed the submissions by the Ombudsman and pointed out that in so far as there had been any criminal investigation in the present case, this had only concerned individual officers and offences that presupposed criminal intent to cause injury to another person or to ensure unjustified profit to oneself or to another person. The ordering and carrying out of the operation as such had however not been looked into. Moreover, the Inspection Service was an entity within the structure of the Ministry of the Interior, yet the Minister of the Interior and other public officials had made public pronouncements supportive of the operation under investigation. Furthermore, the third-party intervener pointed out what they considered to be various procedural flaws in the investigation as well as in the criminal proceedings concerning the charges of making false accusations.

(c) The Court's assessment

176. The Court reiterates that where an individual raises an arguable claim that she or he has suffered treatment infringing Article 3 at the hands of the police or other similar agents of the State, that provision, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within their jurisdiction the rights and freedoms defined in ... [the] Convention", requires by implication that there should be an effective official investigation (see, for example, *El-Masri v. the former Yugoslav Republic of Macedonia* [GC], no. 39630/09, § 182, ECHR 2012, with further references).

177. In the present case it has not been disputed and the Court accepts that the applicants' allegations of ill-treatment were arguable for the

purposes of engaging the respondent State's positive obligation to ensure an effective official investigation into them.

178. The Court has summarised the general principles concerning the effectiveness of such an investigation in, for example, its *Bouyid* judgment (cited above, §§ 116-23). It notes that a substantial part of the argumentation of the parties and third parties concentrated on the question of the institutional and practical independence of the investigation carried out in this case. In that respect, however, the Court considers it appropriate to reiterate that according to its case-law that follows that relied on by the applicants the parameters for the assessment of compliance with the procedural requirement of Article 2, which converge with those under Article 3 (see *Mocanu and Others*, cited above, § 314), is assessed on the basis of several essential parameters: the adequacy of the investigative measures, the promptness of the investigation, the involvement of the deceased person's family and the independence of the investigation. These elements are inter-related and each of them, taken separately, does not amount to an end in itself, as is the case in respect of the independence requirement of Article 6. They are criteria which, taken jointly, enable the degree of effectiveness of the investigation to be assessed. It is in relation to this purpose of an effective investigation that any issues, including that of independence, must be assessed (see *Mustafa Tunç and Fecire Tunç v. Turkey* [GC], no. 24014/05, § 225, 14 April 2015).

179. Accordingly, with a view to assessing the overall effectiveness of the investigation in question, on the facts of the present case the Court considers as crucial the following.

180. The applicants' ill-treatment took place in the context of the operation conducted on 19 June 2013. Following media attention, criminal complaints and another submission, an initial investigation by the eastern unit of the Inspection Service was conducted and concluded with decision of 23 August 2013. While the first applicant's subsequent appeals were dismissed, on 15 January 2014 a new investigation was opened.

181. As to the initial phase of the investigation, the Court notes specifically that in the letter of 9 May 2014 the PPS acknowledged that there had been deficiencies in the procedure and errors in the decisions taken by the Inspection Service and the PPS itself. While the PPS provided no details with regard to that finding, the Court observes that, in that phase of the proceedings, the applicants were not even interviewed and no expert evidence was taken.

182. The subsequent investigation by the central-Slovakia unit of the Inspection Service, under close supervision by and with the intense involvement of the PPS, was extensive, complex and particularly thorough.

183. Nevertheless, the Court is of the view that in a case such as the present one the potential of an investigation is to a significant extent determined by the initial investigative response, in particular in so far as

direct medical evidence, oral evidence from the actors and any *in situ* inspections are concerned.

184. In the applicants' case, they were interviewed in February 2014, they were involved in an identity parade and face-to-face interviews, and expert evidence in respect of their injuries was obtained in August 2014. As for the evidence last mentioned, the respective reports themselves specify that the experts' medical input data were limited to photographs of the applicants' injuries and general practitioners' notes, the latter having been taken by on-call doctors after the ill-treatment and being rather general. In other words, in view of the time factor the expert witnesses had no opportunity to examine the applicants in person at the relevant time and the factual basis for their assessment was rather limited. By a similar token, the time laps between the ill-treatment and the other investigative measures involving the applicants and its inherent effect on human memory by definition limited the potential of such measures to contribute to the fulfilment of the purpose of an effective investigation within the meaning of Article 3 or the Convention.

185. It is true that the Constitutional Court concluded that the delayed opening of the second investigation in the case had had no negative impact on its effectiveness. However, there is no indication how this finding took account of the limitations mentioned in the previous paragraph and what counterbalancing factors (if any) there had been.

186. Moreover, as already noted above, in so far as substantiated, the investigation did not involve any individual and verifiable assessment of the adequacy and necessity of the use of coercive measures against the applicants. The need for such an assessment was particularly urgent since the large-scale operation surrounding it was not directly recorded, and was accordingly deprived of an essential inherent safeguard against abuse.

187. These considerations are sufficient for the Court to conclude that, despite the significant efforts in particular on the part of the central-Slovakia unit of the Inspection Service and the PPS, the investigation as a whole was not adequate. Therefore, it was not effective for the purposes of Article 3.

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

188. Moreover, on the specific facts of the present case, the Court also finds that the claim that the investigation failed to look into its possible racist aspects falls to be examined under Article 14, in conjunction with Article 3 of the Convention. The Court will examine that below.

189. Lastly, noting that independence and the other parameters of the investigation are components for the assessment of its overall effectiveness, in view of the finding that the investigation was not effective for the reasons mentioned above the Court considers that it is not necessary to examine on the merits the remaining aspects of the applicants' complaints under the procedural limb of Article 3.

III. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION

190. The applicants also complained that their Roma ethnicity and what they considered to be institutional racism in Slovakia had been the decisive factors (i) in the ill-treatment they alleged to have suffered (in connection with the planning and execution of the police operation of 19 June 2013) and (ii) in the alleged failure to conduct a proper investigation into that ill-treatment (in that the alleged racist motive behind their ill-treatment had not been adequately investigated into and in that the investigation itself had been conducted in a discriminatory fashion). In that connection, they alleged a violation of their rights under Article 14, in conjunction with Articles 3 and 13 of the Convention.

191. The Court considers that these complaints fall to be examined under Article 14, in conjunction with Article 3 of the Convention.

192. Article 14 of the Convention 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. Admissibility

193. The Court notes that this part of 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.

A. Merits

1. Parties' submissions

194. In support of their complaints, the applicants argued that the police operation of 19 June 2013 was an act of revenge for the attack on the police patrol in the night from 15 to 16 June 2013, that operations of that type had predominantly been carried out in Roma settlements and that the decisions terminating the investigation had included unacceptable racially biased language. This was a part of a general pattern of abuse on the part of the police with regard to Roma in Slovakia, as demonstrated in the present case by, *inter alia*, the biased assessment of the evidence from the Roma victims, as opposed to the positive treatment of evidence from the suspected police officers and from other sources which had been consonant with the official version of events. The applicants requested that the Court accordingly make a general finding of a violation of Article 14, recognising what they considered to be institutional racism against Roma in Slovakia.

195. The Government for their part argued that during the entire investigation neither the applicants nor anyone else had complained of any

racist motive behind the operation. The complaints made as regards the motive had focused on the alleged punitive nature of the operation. Such complaints had been amply examined and convincingly answered, without any racist undertone, to the effect that the operation had in fact been a search devoid of any repressive elements. Those conclusions had ultimately been endorsed by the Constitutional Court.

196. Moreover, in so far as it had been argued that there had been oral remarks with racist connotations made by the intervening police officers, these allegations have been disproved and, even if they had been established, these would have been isolated incidents with no indication of any institutional dimension.

197. In any event, as regards the main suspects in the domestic investigation, they had been examined by an expert in psychology who had established no signs of any prejudice, bias or intolerance with regard to minorities.

198. In a further reply, the applicants submitted that it was already in the first applicant's criminal complaint and in their depositions of February 2014 that they had referred to the possible racist aspect of the case.

2. Third party's submission

199. The non-governmental organisation Equity referred to the statements of the Ombudsman to the effect that operations such as that contested in the present case had predominantly been carried out in Roma communities (see paragraph 9 above).

3. Court's assessment

200. The Court reiterates that discrimination is treating differently, without an objective and reasonable justification, individuals in relevantly similar situations. Racial violence is a particular affront to human dignity and, in view of its perilous consequences, requires from the authorities special vigilance and a vigorous reaction. It is for this reason that the authorities must use all available means to combat racism and racist violence, thereby reinforcing democracy's vision of a society in which diversity is not perceived as a threat but as a source of enrichment (see *Stoica v. Romania*, no. 42722/02, § 117, 4 March 2008, with further references).

201. Moreover, the Court reiterates that the State authorities have the additional duty to take all reasonable steps to unmask any racist motive and to establish whether or not ethnic hatred or prejudice may have played a role in the events. Treating racially induced violence and brutality on an equal footing with cases that have no racist overtones would be to turn a blind eye to the specific nature of acts which are particularly destructive of fundamental rights. A failure to make a distinction in the way in which

situations that are essentially different are handled may constitute unjustified treatment irreconcilable with Article 14 of the Convention. Admittedly, proving racial motivation will often be extremely difficult in practice. The respondent State's obligation to investigate possible racist overtones to a violent act is an obligation to use best endeavours and not absolute. However the authorities must do what is reasonable, given the circumstances of the case, in particular to collect and secure the evidence, explore all practical means of discovering the truth and deliver fully reasoned, impartial and objective decisions, without omitting suspicious facts that may be indicative of racially induced violence (see, for example, *Lakatošová and Lakatoš v. Slovakia*, no. 655/16, §§ 75-6, 11 December 2018, with further references).

(a) Planning of the operation of 19 June 2013

202. The Court considers it opportune to examine first whether or not, in so far as the applicants are concerned, (i) any racism was a causal factor in the planning of the operation of 19 June 2019 and (ii) there was any lack of a proper examination of that aspect of the case.

203. To the extent the applicants may be understood as wishing to argue that the planning of the operation was marked by racism in that it was an act of revenge for the incident of the night from 15 to 16 June 2013, leaving aside whether such was in fact the case, the Court fails to discern any racial element in the alleged punitive character of the police response to the assault on them.

204. The complaint in fact rather rests on the applicants' contention that operations of the given type had predominantly been planned in Roma communities and they as a part of their local community had accordingly been targeted on account of their ethnicity. The Court notes the systemic character of the applicants' claim and in view of its nature and context considers it as being particularly serious.

205. The Court also notes that although this aspect of the case was specifically raised at the domestic level, in particular before the Constitutional Court (see paragraph 97 above), it was not examined on the grounds that in the framework for the examination of their individual complaint the authorities allegedly liable for a violation of their fundamental rights could not be called to answer for other operations (see paragraph 104 above). By way of substantiation, the applicants supported that claim by reference to a press release of the Ombudsman suggesting that operations of a similar type had predominantly been conducted in areas with segregated Roma communities (see paragraph 9 above). However, this matter has not been inquired into by the investigators or any other authority and there are accordingly no official findings in this respect.

206. In these circumstances, and taking into account the material in its possession as well as the applicable standard of proof (see, *mutatis*

mutandis, *Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, § 147, ECHR 2005-VII, with further references), the Court is unable to take a position on whether racist attitudes played a role in the planning of the operation of 19 June 2013.

207. On the other hand, the Court finds the lack of a proper examination of that aspect of the case incompatible with the respondent State's positive obligation under Article 14 of the Convention to take all reasonable steps to unmask any racist motive and to establish whether or not ethnic prejudice may have played a role in the applicants' treatment.

(b) Remainder of the discrimination complaint

208. The remainder of the applicants' discrimination complaint consists of a claim that racism was a causal factor in the execution of the operation of 19 June 2013, that this aspect of the case was not properly examined, and that the investigation itself was conducted in an arbitrary fashion.

209. As to the execution of the operation, the complaints mainly rest on the contention that some of the intervening officers made racist remarks prior to it or in its course. In particular, an officer escorting a member of the Budulovská St community to a remand hearing connected to the incident of the night from 15 to 16 June 2013 was alleged to have uttered prior to the operation that "today the settlement burns down", a comment by one of the intervening officers "get out, today Gypsies you will perish" was alleged to have been heard by the second applicant in the course of the operation and some of the officers involved in it should have had a long-term tense relationship with the local community (see paragraphs 31, 72 and 73 above).

210. In dealing with these allegations, the investigator examined in detail the statements of those involved, held a face-to-face interview among them and took into account evidence from an expert in psychology both in relation to those making such allegations and the officers in question. For reasons which do not appear arbitrary or manifestly unreasonable, he concluded that the allegations were not established (contrast, *mutatis mutandis*, *Nachova and Others*, cited above, §§ 167-8).

211. In assessing the respondent State's response, the Court also takes into account that the applicants' argumentation in appealing at the domestic level itself provided no specifics at all and was limited to a general claim that "a racist motive could not be excluded", a reference to the "potential racist aspect of the case, including the potentially racist motive in the actions of the suspects" and observations that "all the alleged victims were Roma" and that "the officers' motivation might have had to do with the victims' ethnicity" (see paragraphs 56, 76 and 91 above) (see, *mutatis mutandis*, *Adam*, cited above, § 94 and *A.P. v Slovakia*, no. 10465/17, § 91, 28 January 2020). It would appear that, as noted by the PPS, rather than any issue of a racist motive, the essence of the applicants' argument was that the

impugned operation had been motivated by revenge (see paragraph 85 above).

212. In view of the investigative response on the part of the authorities as specified in the preceding paragraphs, the Court concludes that they did not fail to examine the alleged discrimination in the execution of the operation of 19 June 2013. Moreover, in the light of all the material in its possession, the Court is unable to conclude that any racist attitudes played a role in the execution of that operation. There has accordingly been no issue of discrimination contrary to Article 14, in conjunction with Article 3 of the Convention in that connection.

213. Lastly, as to the way how the investigation was conducted, the applicants complained of allegedly biased assessment of the evidence from the Roma victims and of allegedly unacceptable racially biased language in the decisions concluding the investigation.

214. The Court notes the general character of the applicants' claim as well as that it was not advanced before the Constitutional Court at all. Although the Government have raised no objection of non-exhaustion of domestic remedies in its respect, this does not prevent the Court from taking the scope of the applicants' constitutional complaint into account in the assessment of the nature and quality of their allegation of discrimination in connection with the way the investigation was conducted. In that assessment, the Court also takes into account that the applicants have at all stages domestically as well as before the Court been represented by a lawyer.

215. Moreover, while being aware of the sensitive nature of the situation related to Roma in Slovakia at the relevant time, the Court reiterates that, 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 *A.P. v. Slovakia*, cited above, §§ 36-9, 89 and 90, with further references).

216. To the extent that the complaint has been substantiated, the Court finds that the material submitted reveals no issue of discrimination contrary to Article 14, in conjunction with Article 3 of the Convention, in relation to how the investigation itself was conducted.

4. Overall conclusion

217. In view of the above, (i) there has been a violation of the applicants' rights under Article 14, in conjunction with Article 3 of the Convention, on account of the lack of investigation into the alleged discrimination in the planning of the operation of 19 June 2013, in so far as it concerned them, (ii) there has been no violation of their rights under these provisions in connection with the remainder of the applicants' complaint.

IV. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

218. Lastly, the applicants complained that they had had no effective remedy at their disposal in relation to their complaints under Article 3 of the Convention, contrary to Article 13 of the Convention, which provides as follows:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

A. Admissibility

219. The Government argued that the applicants' complaint under Article 13 of the Convention lacked any arguable basis in their complaints under Article 3 of the Convention and that, accordingly, the former provision was inapplicable to their complaint.

220. The applicants disagreed.

221. The Court notes the violations found above in relation to the complaints under Article 3 of the Convention. There can be no doubt that the complaints under those provisions were arguable for the purposes of Article 13 of the Convention (see *Boyle and Rice v. the United Kingdom*, 27 April 1988, § 52, Series A no. 131). The latter provision accordingly applies.

222. The Court notes that the complaint 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

223. The applicants argued that the absence of an effective remedy in their case had been of a systemic nature. They submitted specifically that this had in no way been affected by the involvement of the PPS and the Constitutional Court in their case, which had been partly due to the latter's position as regards the subsidiary nature of its review in relation to the matters submitted to it by way of a complaint under Article 127 of the Constitution. In particular, in so far as such matters primarily fell within the jurisdiction of any other authority, the Constitutional Court limited its jurisdiction to reviewing how that authority had handled those matters. That review had therefore been practically confined to checking compliance with the requirements of due process before the authority of final instance last-involved in the matter. Conversely, by virtue of the principle of subsidiarity the Constitutional Court had not considered itself competent to review compliance with fundamental rights of a substantive nature.

224. The Government considered that, even assuming that Article 13 was applicable, it had been complied with in view of the aggregate of remedies available to the applicants: an interlocutory appeal against the investigator's decision, an application and a repeat application for a review of the decision on that appeal, a constitutional complaint, and an action for the protection of personal integrity.

225. Having regard to its findings of a violation of the applicants' rights under Article 3 (procedural aspect) (see paragraph 187 above) and under Article 14, in conjunction with Article 3 (see paragraph 217 above), the Court considers that no issue arises calling for a separate examination on the merits of the complaint under Article 13 taken in conjunction with Article 3 of the Convention (see, among other authorities, *Jeronovičs v. Latvia* [GC], no. 44898/10, § 125, 5 July 2016, with further references).

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

226. 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

227. The applicants claimed EUR 20,000 each in respect of non-pecuniary damage.

228. The Government contested the claim as being overstated and requested that, should the Court find any violation of the applicants' Convention rights, any just satisfaction be awarded in an adequate amount.

229. The Court accepts that in consequence of the violations found above, the applicants have suffered a loss of a non-pecuniary nature. Ruling on an equitable basis, it awards them EUR 20,000 each, plus any tax that may be chargeable, in respect of non-pecuniary damage.

B. Costs and expenses

230. The applicants also claimed EUR 9,229.36 for the costs and expenses incurred before the domestic courts (EUR 775.04 for the criminal proceedings and EUR 1,178.32 for the proceedings before the Constitutional Court) and before the Court (EUR 7,276).

231. The Government proposed that any award be only made in respect of costs that had been incurred reasonably and their incurrence was supported by documentation.

232. 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, including the fact that the applicants' complaints have been successful only in part, the Court considers it reasonable to award them jointly the sum of EUR 6,500[1], plus any tax that may be chargeable to them, covering costs under all heads.

C. Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

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

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

4. *Holds* that there has been a violation of Article 14, in conjunction with Article 3 of the Convention, on account of the lack of investigation into the alleged discrimination in the planning of the operation of 19 June 2013, in so far as it concerned the applicants;

5. *Holds* that there has been no violation of Article 14, in conjunction with Article 3 of the Convention, in connection with the remainder of the applicants' complaint;

6. *Holds* that there is no call to examine separately on the merits the complaint under Article 13, taken in conjunction with Article 3 of the Convention;

7. *Holds*
   (a) that the respondent State is to pay the applicants, 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 20,000 (twenty thousand euros) to each of the applicants, plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 6,500 (six thousand five hundred euros) to the applicants jointly, plus any tax that may be chargeable to them, 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;

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

Done in English, and notified in writing on 1 September 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Olga Chernishova
Deputy Registrar

Paul Lemmens
President