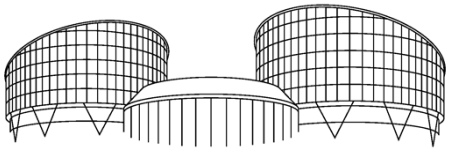

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF M.B. AND OTHERS v. SLOVAKIA

(Application no. 45322/17)

JUDGMENT

Art 3 (substantive) • Inhuman or degrading treatment • Alleged ill-treatment by the police of applicants who are of Roma ethnicity and minors at the time • Court unable to establish beyond reasonable doubt that applicants exposed to treatment contrary to Art 3 Art 3 (procedural) • Effective investigation • Procedural guarantees of Art 3 applicable: applicants' ill-treatment allegations sufficiently credible giving rise to an obligation to investigate • Inadequate investigation due to lack of promptness and authorities' failure to investigate any possible racist motive, ethnic hatred or prejudice behind the incident

STRASBOURG

1 April 2021

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of M.B. and Others v. Slovakia,

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

Ksenija Turković, *President,*
Alena Poláčková,
Péter Paczolay,
Gilberto Felici,
Erik Wennerström,
Raffaele Sabato,
Lorraine Schembri Orland, *judges,*

and Renata Degener, *Section Registrar,*

Having regard to:

the application (no. 45322/17) against the Slovak Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by three Slovak nationals, M.B., I.K. and T. Ž. ("the applicants" or, respectively, "the first applicant", "the second applicant" and "the third applicant"), on 15 June 2017;

the decision to give notice to the Government of the Slovak Republic ("the Government") of the complaints concerning alleged (i) mistreatment by the police in a police car following their arrest on the suspicion of having been implicated in an immediately preceding mugging, (ii) lack of an adequate investigation into their allegation of that mistreatment, (iii) lack of an effective remedy and (iv) discrimination and to declare the remainder of the application inadmissible;

the Section President's 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 European Roma Rights Centre ("the ERRC"), which were granted leave to intervene by the President of the Section, and the parties' observations in reply;

Having deliberated in private on 9 March 2021,

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

INTRODUCTION

1. The present application originates specifically from an incident that is alleged to have taken place in the police car after the applicants' arrest.

2. This incident was followed by another incident of ill-treatment of the applicants and other persons that is alleged to have taken place at a police station to which the applicants were brought.

3. The person who is alleged to have mistreated the applicants in the police car (Officer J.C.) is also alleged to have been involved in the mistreatment at the police station.

4. The incident at the police station was dealt with in a separate set of proceedings at the domestic level and is the subject of a separate application pending before the Court (no. 63962/19).

THE FACTS

5. The applicants were born in 1992, 1995 and 1993 respectively and live in Košice. They were represented by Ms V. Durbáková, a lawyer practising in the same town.

6. The Government were represented by their Agent, Ms M. Pirošíková, succeeded by their co-Agent, Ms M. Bálintová.

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

I. ASSAULT AND ARREST

8. On 21 March 2009 a sixty-six-year-old woman was assaulted and robbed by a group of six assailants in Košice near a housing project mainly inhabited by Roma. The first applicant and the third applicant were later found guilty of this assault while the second applicant could not be tried because he was too young to be criminally liable.

9. As soon as the incident was reported to the police a search for the escaping perpetrators commenced. This involved a chase at the end of which Officer J.C. apprehended the third applicant. The latter was then put in a police car manned by Officers M.M. and O.K., where he was kept between 11.05 and 11.40 a.m. As soon as three of the other assailants had been arrested, Officer J.C. also entered the car and sat next to the third applicant. During the subsequent drive the third applicant identified two passers-by as the remaining perpetrators. These were the first applicant and the second applicant, who were then also arrested and placed in the police car, where they were then held together with the third applicant and Officer J.C.

10. The applicants aver – and that claim is disputed by the Government – that while the third applicant was in the police car with Officer J.C., the latter hit him in the face with his gloved hand with a view to extracting from him the identity of the remaining assailants. The third applicant started bleeding from his mouth as a result. Once the remaining applicants had been identified, arrested and placed in the police car, the same officer also hit them in the face with his gloved hand.

11. The applicants were then brought to a police station, where they were allegedly mistreated by J.C. and several other police officers. A privately made video recording of that abuse was released into the public domain and received extensive media coverage. However, as mentioned above, this alleged ill-treatment and the investigation into it as such is not the subject matter of the present application.

12. At 2.10 p.m. on the same day, that is to say 21 March 2009, the police transferred the applicants to an investigator, who released them at 8.10 p.m. after having taken the necessary procedural steps.

II. INVESTIGATION AND TRIAL

13. On 14 April 2009 an investigator of the fourth unit (*inšpekčné oddelenie*) of the Inspection Service (*Odbor inšpekčnej služby* – hereinafter "the Inspection Service") of the Inspection and Audit Section of the Ministry of the Interior (*Sekcia kontroly a inšpekčnej služby Ministerstva vnútra*) charged J.C. and nine other police officers with ill-treatment of the applicants and other persons at the police station. The fourth unit is based in Košice.

14. In the course of the proceedings concerning the incident at the police station, the applicants complained that they had also been ill-treated in the police car as mentioned above. The first mention of that ill-treatment was made by the second applicant during his questioning on 27 May 2009.

15. On 20 September 2010 the investigation of the applicants' alleged ill-treatment in the police car was transferred to the third unit of the Inspection Service, based in Banská Bystrica.

16. The mater of the alleged ill-treatment at the police station remained under investigation in the original set of proceedings (for more details see paragraphs 29 and 33 below).

17. On 27 September 2010 an investigator of the fourth unit instituted criminal proceedings and charged J.C. with the offence of abuse of official authority on the suspicion that between 11.05 and 11.40 on 21 March 2009 he had repeatedly punched in the face the people detained in the police car during their transport to the police station. The decision indicates that it is mainly based on the aforesaid depositions of the second applicant of 27 May 2009 and on an identity parade (*rekognícia*) of 14 August 2009.

18. On 28 October 2010 the investigator heard the first applicant and the second applicant, as well as the mothers of the former and of the third applicant, who himself was heard on 3 November 2010.

19. Between 4 November 2010 the investigator heard or re-heard parents of the applicants and, between 12 November and 15 December 2010 he heard the officers involved.

20. In a submission of 3 January 2011 the applicants' lawyer stated that one of the reasons behind their ill-treatment had been their Roma ethnicity.

21. On 22 February 2011 the public prosecution service ("the PPS") indicted Officer J.C. to stand trial before the Košice II District Court. On 23 March 2011 the latter rejected the indictment as premature, instructing that further evidence be taken. Among other things, the District Court found that there were inconsistencies in the applicants' submissions and held that it was up to the investigator to explore the reasons for those.

22. In the subsequent course of the pre-trial proceedings the investigator took steps that he was instructed to take by the District Court. However, further steps could not be taken on account of the absence of the first applicant, who was long-term staying abroad. Accordingly, on 25 May 2012 the investigation was suspended.

23. On 17 and 29 July 2013, respectively, the first applicant's lawyer informed the investigator that the first applicant was available for the purposes of the proceedings and the proceedings were resumed.

24. On 9 October 2013 the investigator held a face-to-face interview (*konfrontácia*) between the first applicant and the accused.

25. On the completion of the pre-trial phase of the proceedings, the applicants made no use of the right to ask that further evidence be taken.

26. On 31 October 2013 a new indictment against J.C. was filed. The District Court heard the case on 22 January, 16 May, 1 August, 10 October and 26 November 2014 and 9 January 2015. It took evidence from, *inter alia*, the applicants, their parents, the officers involved, and the investigator, as well as examined documentary and expert evidence.

27. The evidence from the investigator was taken in response to a letter of the applicants' lawyer of 25 August 2014, in connection with her claim that one of the reasons behind their ill treatment had been their ethnicity.

28. Following the hearing of 9 January 2015, on the same day, the District Court rendered a non-guilty verdict. It found it established that the accused had arrested the applicants in a regular fashion and had not used any coercive measures (*donucovacie prostriedky*) against them. It had not been established that he had mistreated them in any way during their transport to the police station. As regards the applicants' version, the court found that their pre-trial and trial submissions had been inconsistent and that, moreover, there had been irreconcilable inconsistencies among the applicants themselves.

29. In its judgment, the District Court also noted that pursuant to a bill of indictment of 12 May 2010 J.C. was standing trial before another Chamber of the same court on the charges of abuse of official authority and blackmail committed with a particular motive on the applicants and others in connection with the incident at the police station. The District Court admitted that there was a link between the two incidents but held that, since the other proceedings were still pending, it was prevented from taking into account any evidence being examined in them.

30. On 13 March 2015 the PPS appealed, contesting the District Court's findings of fact.

31. On 11 June 2015 the Regional Court dismissed the appeal, fully endorsing the District Court's findings and conclusions. Among other things, it noted in particular that the applicants had not sought any medical care after the alleged ill-treatment and that their parents had not noticed any visible signs of any injuries on their return home. Moreover, there was no indication of any other person having noticed any injuries on the applicants.

This was incongruent with the applicants' allegations of a sustained beating, in particular in view of the significant disproportion between their physical size and that of the accused. In connection with the last point mentioned, it was submitted by the Government before the Court and it has not been disputed by the applicants that J.C. was 2 metres tall and at the time of the alleged incident weighed 120-30 kilogrammes, and had previously boxed competitively for fifteen years.

III. CONSTITUTIONAL PROCEEDINGS

32. On 7 September 2015 the applicants, represented by a lawyer, lodged a complaint under Article 127 of the Constitution with the Constitutional Court. They directed it against the Ministry of the Interior (the respective unit of the Inspection Service), the District Court and the Regional Court, alleging, *inter alia*, a violation of their rights under Articles 3, 13 and 14 of the Convention. In particular, they argued that the treatment they had been exposed to at the hands of Officer J.C. in the police car on 21 March 2009 had amounted to torture, that the authorities had failed to conduct an adequate investigation into it, that they had been denied an effective remedy, and that they had been discriminated against on account of their ethnicity. As regards the adequacy of the investigation, the applicants mainly challenged its lack of promptness, the fact that it had not been commenced on the authorities' own initiative, the lack of its independence and thoroughness, as well as the lack of examination of the possible racist motive.

33. As to the point last mentioned, they submitted that their ill-treatment had been due to their ethnicity and added that in the other set of proceedings Officer J.C. had been indicted to stand trial on a charge that specifically involved a racist motive.

34. On 8 November 2016 the Constitutional Court declared the complaint inadmissible. It noted that the part of the complaint which concerned the Ministry related to the investigation phase of the proceedings. The investigation had however been completed with the filing of the indictment (31 October 2013), which had been outside the statutory two-month period for lodging a constitutional complaint (7 September 2015). Moreover, any complaint in relation to the District Court fell within the jurisdiction of the Regional Court, to the exclusion of the jurisdiction of the Constitutional Court under the principle of subsidiarity. The relevant parts of the complaint were accordingly out of time and outside the Constitutional Court's remit. As to the Regional Court, the Constitutional Court held, *inter alia*, that "due examination of a suspicion of a criminal offence, that is to say the substantive correctness of a decision on guilt and just punishment of a perpetrator, does not represent a right appertaining to a victim but an entitlement and duty on the part of the State, which is tasked with securing rights and legitimate interests of individuals and legal entities

and the interests of society and of the constitutional order of the Slovak Republic, whereby it fulfils the purpose of criminal law".

The decision was served on the applicants' lawyer on 28 December 2016 and no appeal lay against it.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. CONSTITUTIONAL COURT PRACTICE

35. In case no. I. US 72/04 the Constitutional Court entertained, *inter alia*, a complaint under Article 3 of the Convention introduced by a Roma applicant who had been assaulted by private individuals that the pre-trial investigation into the matter had been inadequate. In a constitutional judgment (*nález*) of 12 October 2005 the Constitutional Court found a violation of that provision on the grounds that the investigation had lacked promptness and timeliness. In consequence, it ordered the pre-trial authorities involved to proceed with the matter and awarded the complainant the equivalent of some 2,500 euros (EUR) in damages.

36. In another case before the Constitutional Court (no. III. US 194/06), three complainants of Roma origin alleged that the PPS had erred in dismissing their interlocutory appeal against a decision terminating investigation into the circumstances of their sterilisation. In a judgment of 13 December 2006 the Constitutional Court found a violation of their rights under Articles 3 and 8 of the Convention and their constitutional equivalents in their procedural aspect. It noted, *inter alia*, that the challenged decision contained no sufficient answer to some of the relevant factual and legal questions, that the investigating authorities had failed to take all available measures with a view to resolving inconsistencies in witness evidence as to some relevant facts, and that they had failed to show which specific rules and how had been taken into account in concluding that the sterilisations had been carried out lawfully. In consequence, the Constitutional Court quashed the challenged decision, ordered the PPS to re-examine the case in the light of the complainants' rights under Articles 3 and 8 of the Convention, and awarded each of them the equivalent of some EUR 1,430 in just satisfaction.

For more details about the case see *I.G. and Others v. Slovakia* (no. 15966/04, 13 November 2012).

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

37. 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).

38. 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).

39. 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.

40. 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.

41. 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. However, doubts about the independence of the Inspection Service in the investigation and prosecution of police officers could not be resolved by mechanically indicting every suspected officer to stand trial before a court. That would be unlawful and unfair and could result in passivity on the part of the police in the face of the need for immediate law enforcement intervention.

III. INTERNATIONAL MATERIAL

42. The pertaining international material has recently been summarised in the Court's judgment in the case of *R.R. and R.D. v. Slovakia* (no. 20649/18, §§ 119-124, 1 September 2020).

THE LAW

I. PRELIMINARY REMARKS

43. The present application has been formulated purely with reference to the incident in the police car, the incident at the police station being mentioned as a contextual fact merely at a general level.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

44. The applicants complained that they had been ill-treated by Officer J.C. in the police car on 21 March 2009 and that the State had failed to protect their right to be free from such treatment by conducting an effective investigation into it, in violation of their rights under Article 3 of the Convention. Moreover, in their view, the alleged lack of an effective investigation constituted a separate violation of Article 13 of the Convention.

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

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

A. Admissibility

1. Domestic remedies

(a) Parties arguments

46. The Government argued that the applicants had failed to fulfil the requirement under Article 35 § 1 of the Convention to exhaust domestic remedies.

In particular, as regards the alleged ill-treatment, they pointed out that the applicants could have but had not pursued their rights by an action for the protection of personal integrity against Officer J.C. In that connection, they relied on the Court's decision in *Baláž and Others v. Slovakia* (no. 9210/02, 28 November 2006).

Moreover, as to the alleged deficiencies in the investigation, the Government pointed out that its supervision had been the responsibility of the PPS and argued that the applicants could and should have raised any complaint in relation to the investigation before the PPS. However, they had raised any complaints in that respect for the first time before the Constitutional Court, and this had been an additional reason why the latter could not have entertained them. In that regard, the Government referred to the Court's conclusions adopted in the case of *Zubal' v. Slovakia* (no. 44065/06, §§ 33-34, 9 November 2010).

Furthermore, the Government pointed out that, in any event, the applicants' complaints of deficiencies in the investigation had been rejected by the Constitutional Court as out of time. They accordingly could not be considered as having properly exhausted the remedy they had had before that court, which was considered effective for the purposes of Article 35 § 1 of the Convention.

47. In their reply, the applicants disagreed and argued as follows.

First of all, as a civil-law remedy, the action for protection of personal integrity did not meet the requirements for an effective remedy in relation to an alleged violation of Article 3 of the Convention as defined in the Courts' case-law.

Moreover, in contrast to the case of *Zubaľ* (cited above) their complaints had neither been limited to the pre-trial phase of the proceedings nor to an isolated measure taken by the PPS, but had rather concerned the proceedings as a whole, including their trial phase. In addition, the nature of their complaints was different from those in *Zubaľ*, which in the applicants' view had been relevant in line with the Court's reasoning in *Koky and Others v. Slovakia* (no. 13624/03, §§ 171-94, 12 June 2012).

(b) The Court's assessment

48. As regards the first part of the Government's non-exhaustion plea, that is that concerning the action for the protection of personal integrity, the Court notes that it has recently examined at length and dismissed essentially the same objection in its judgment in the case of *R.R. and R.D. v. Slovakia* (no. 20649/18, §§ 125-133, 1 September 2020). In the absence of any relevant new elements, it finds no reasons for reaching a different conclusion in the present case.

49. The remainder of the Government's objection consists of two components: that the applicants could and should have sought redress from the PPS in respect of the alleged deficiencies in the investigation (i.e. the pre-trial phase of the proceedings) and that they failed to seek redress for those deficiencies from the Constitutional Court in accordance with the applicable requirements, in particular the time limit.

50. Both components relate to the pre-trial phase of the proceedings and originate from one and the same premise, consisting of the division of the applicants' complaint into a part concerning the pre-trial phase and a part concerning the trial phase of the proceedings.

51. However, the applicants' complaint concerning the alleged deficiencies of the investigation is not limited to the pre-trial stage of the proceedings, but rather relates to the compliance of the proceedings as a whole with the procedural requirements of Article 3 of the Convention.

52. In that connection, the Court reiterates that where there is a choice of remedies, the exhaustion requirement must be applied to reflect the practical realities of the 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, *Horváth v. Slovakia*, no. 5515/09, § 69, 27 November 2012, with further references).

53. The pre-trial phase of the proceedings in the present case was followed by a trial phase, in the course of which the applicants asserted their rights. The courts dealing with the indictment were courts of full jurisdiction. This included not only the power to decide on guilt and punishment, but also to reject the indictment with an instruction for the completion of the investigation, a power that they had in fact made use when examining the first indictment of J.C. (see paragraph 21 above).

54. Moreover, the Court notes that the Constitutional Court, which is the supreme authority in Slovakia in charge of protection of fundamental rights and freedoms (see *Lawyer Partners a.s. v. Slovakia*, nos. 54252/07 and 14 others, § 45, ECHR 2009) and the jurisdiction of which is subject to the principle of subsidiarity (see *Engelhardt v. Slovakia*, no. 12085/16, §§ 24, 25 and 66, 31 August 2018), did not reproach the applicants in the present case for not having exhausted any remedies before the PPS prior to turning to the Constitutional Court. The grounds on which their constitutional complaint was inadmissible rather had to do with its timeliness.

55. In these circumstances, the applicants' not having pursued further remedies before the PPS cannot be seen as incompatible with the requirement of exhaustion of domestic remedies under Article 35 § 1 of the Convention.

56. In so far as the Government relied on the Court's findings as to the remedies before the PPS in *Zubal'* (cited above), the Court notes that there is a fundamental difference between that case and the present one in that, unlike in the present case, the investigation in *Zubal'* never passed the pre-trial stage. The assessment of the compliance by Mr Zubal' with the requirement of exhaustion of domestic remedies in that case therefore could not have taken and did not take into account any remedies available at the trial stage. The situation in the unrelated cases examined by the Constitutional Court (see paragraphs 35 and 36 above) was on this particular point essentially the same as that of Mr Zubal'.

57. As to the Government's argument that the applicant had failed to challenge the alleged deficiencies in the investigation before the PPS and did so only belatedly before the Constitutional Court (see paragraph 46 above), the Court reiterates that the procedural requirements of Article 3 go beyond the preliminary investigation stage when the investigation leads to legal action being taken before the national courts: the proceedings as a whole, including the trial stage, must meet the requirements of the prohibition enshrined in Article 3 (see *Murdalovy v. Russia*, no. 51933/08, § 88, 31 March 2020). Therefore, the applicants' having challenged the adequacy of the investigation before the Constitutional Court after the completion of the trial cannot be considered as being short of the requirement of exhaustion of domestic remedies under Article 35 § 1 of the Convention. In drawing this conclusion, the Court has also taken into consideration the applicants' personal circumstances and that the Convention is intended to guarantee rights that are not theoretical or illusory

but rights that are practical and effective (see *Koky and Others*, cited above, § 196). Moreover, the Court has taken into account that where an individual makes a credible assertion that he or she has suffered treatment infringing Article 3 at the hands of the police the authorities must act of their own motion (see, for example, *Bouyid*, cited above, § 119).

58. Both parts of the Government's non-exhaustion plea must therefore be dismissed.

2. Applicability of the procedural guarantees of Article 3

(a) Parties' arguments

59. The Government contested the credibility of the applicants' allegations and, consequently, the applicability of the procedural head of Article 3 of the Convention. They referred to the facts as established by the domestic authorities and pointed out that once the investigation as such had been closed, the applicants had no requests for the taking of any further evidence (see paragraph 25 above).

60. The applicants responded by contending that their allegation of ill-treatment had been credible. In order to reach that threshold, in their view, it was enough if a claim was not manifestly unsubstantiated or clearly untrustworthy. Their allegations in the present case had been solid enough for charges and an indictment to be brought against J.C. Moreover, the applicants emphasised that they had been minors at that time and contended that the incident had been emotionally and psychologically extremely stressful and traumatising for them. This accounted for a part of any inconsistencies in their submissions at the domestic level; others had been caused by the passage of time between the incident and their questionings. Accordingly, they disputed the domestic courts' factual conclusions.

(b) The Court's assessment

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

62. The applicants in the present case alleged that they had been ill-treated by Officer J.C. in the police car on 21 March 2009. That allegation has not been supported by medical or any other material evidence. Moreover, the Court notes that they did not make any official allegation to that effect until 27 May 2009 (see paragraph 14 above; see also, *a fortiori*, *Adam v. Slovakia*, no. 68066/12, § 59, 26 July 2016).

However, the Court finds the lack of medical evidence not to be decisive (see *Alpar v. Turkey*, no. 22643/07, §§ 37 and 42, 26 January 2016) and considers that the importance of the otherwise significant passage of time is relativised by the fact that the applicants were minors at that time and that the investigation was then focused on the media-sensitive alleged incident at the police station (see paragraphs 11 and 13 above). The complexity of this human, procedural and media setting as well as the applicants' age (see *Adam*, cited above, § 71) is to be taken into account in the assessment of their response at that time as a factor of the credibility of their factual claim.

63. Moreover, the Court takes into account the sensitive nature of the situation in relation to Roma in Slovakia at the relevant time (see, for example, *A.P. v. Slovakia*, no. 10465/17, § 89, 28 January 2020, with further references) and the fact that the investigating and prosecuting authorities in the present case themselves considered the applicants' allegations serious enough to justify charging and prosecuting Officer J.C. in courts at two level of jurisdiction. On the last mentioned point, the Court notes that if there had not been sufficient grounds for charging and indicting J.C., the investigating and prosecuting authorities had procedural alternatives to pressing ahead with the case against him in court (see, *inter alia*, paragraph 41 above).

64. All in all, the Court accepts that the applicants' allegations of ill-treatment contrary to the requirements of Article 3 of the Convention were sufficiently credible to give rise to an obligation on the part of the authorities to investigate them in compliance with the requirements of Article 3 of the Convention. The procedural limb of that provision was accordingly applicable.

3. Conclusion

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

A. Merits

1. Substantive limb of Article 3 of the Convention

(a) The parties' arguments

66. The applicants alleged that they had been ill-treated by Officer J.C. in a police car on 21 March 2009. This ill-treatment had consisted of physical and psychological abuse aimed at extracting the identities of the other participants in the mugging of earlier that day. They emphasised that, at the time of the alleged ill-treatment, they had been minors, that they

belonged to a marginalised vulnerable ethnic group and that they had not given any grounds for the ill treatment.

67. The Government contested the applicants' factual allegations, referring to the findings of the domestic authorities, and maintained that the applicants had been arrested and transported to the police station on 21 March 2009 by car in a fully regular fashion, without the use of any coercive measures, and without any ill-treatment.

68. The applicants replied by reiterating their factual allegations as well as their complaint and by emphasising that throughout the domestic proceedings their version had in principle been congruent, with any minor factual inconsistencies being mainly due to the fading of memory inherent in the passage of time. In that connection, they also pointed out that their perception of the events on 21 March 2009 had been influenced by the fact at that time they had still been minors and their ill-treatment had been a particularly traumatising experience.

(b) The Court's assessment

69. The Court summarised the applicable case-law principles in its judgment in the case of *Bouyid* (cited above, §§ 81-90 and 100-101).

70. The applicants' allegations of ill-treatment in the police car were examined at the domestic level with the outcome of final and binding judgment of acquittal on the grounds that no ill-treatment of the applicants at hands of J.C. had been established. This was owing mainly to lack of any direct trace of any ill-treatment and what the courts considered to be incongruities, on the one hand, between the applicants' own submissions at the pre-trial and trial stages of the proceedings and, on the other hand, among the submissions made by the applicants overall.

71. It therefore cannot be established beyond reasonable doubt (see *Bouyid*, cited above, § 82) that, in the police car, the applicants were exposed to treatment contrary to Article 3 of the Convention. This conclusion is independent of that as to the credibility of the applicants' factual claim for the purposes of triggering the procedural guarantees of Article 3 because, in the event of ill-treatment of a person deprived of liberty at the hands of his or her captors, it is precisely the lack of a proper investigation that often makes the ill-treatment impossible to prove (see *Adam*, cited above, § 72).

72. In sum, there has been no violation of Article 3 of the Convention in its the substantive aspect.

2. Procedural limb of Article 3 of the Convention

(a) Parties' arguments

73. The applicants contended that the investigation into their allegation of ill-treatment in the police car on 21 March 2009 had been incompatible

with the requirements of Article 3 because it was not thorough, prompt and independent. In particular, they argued that the investigation had failed to enquire into a possible racist motive behind their ill-treatment, that its overall duration had been excessive, and that it had been carried out by the Inspection Service, which was subordinate to the Minister of the Interior, and the Minister had been at the same time ultimately superior to the officer under investigation.

74. In the alternative that the Court should conclude that the applicants' allegations had been credible so as to trigger the procedural protection of Article 3 of the Convention, the Government argued that the investigation had complied with all applicable Convention requirements. The authorities had obtained and examined complex evidence, including expert evidence, and the question of the criminal liability of J.C. had been thoroughly examined at two levels of ordinary jurisdiction, with a further review carried out by the Constitutional Court. The Government emphasised that under Article 19 of the Convention the Court's mandate was linked to ensuring the observance of the engagements undertaken by the Contracting Parties to the Convention and that the Convention did not guarantee a right to ensure criminal prosecution and secure conviction of a third party as such. Moreover, the Court's role in the achievement of the above goal was subsidiary, and the true question of this case under the Convention was not the conviction or acquittal of J.C. but the adequacy of the investigation, which in their view had been ensured. In that connection, the Government relied on the Constitutional Court's findings (see paragraph 34 above) and argued that the applicants had not had the standing of a party to the criminal proceedings and had not had the entitlement to initiate and pursue any private prosecution. Article 3 did contain positive obligations in relation to investigation, but these were obligations of means to be employed and not of a result to be achieved. In the Government's view, therefore, the complaint was unfounded.

75. In reply, the applicants reiterated their complaints, emphasising that the complaint essentially was about the compatibility of the investigation, taken as a whole, with the applicable Convention standards. As to the promptness of the investigation, they pointed out specifically that the incident had taken place on 31 March 2009 and that it had taken the investigating authorities until as late as 28 October 2010 to interview them and that their hearing before a court had taken place only five years after the incident. In addition, they reiterated their claim that the authorities had failed to enquire into any possible racist motive behind their alleged ill-treatment.

(b) Comments of the third-party intervener

76. The third-party intervener, the ERRC, pointed out that the problem with the independence of the Inspection Service had been taken up and

addressed by various international bodies as referred to in the "International Material" part of this judgment above. They argued that police services in Slovakia were contaminated by institutional "anti-Gypsyism" and that this attitude was endorsed by high-ranking Government officials.

77. In reply to the third-party intervention, the Government submitted that preventing discrimination against Roma in any form and eliminating anti-Roma practices had long been one of the objectives and priorities of the Government's policy and they listed a number of measures taken at the legislative, policy as well as practical level with a view to fulfilling that objective.

(c) The Court's assessment

78. The Court has summarised the general principles concerning the effectiveness of an investigation called for under Article 3 of the Convention in its *Bouyid* judgment (cited above, §§ 114-23).

79. More specifically, the Court reiterates that compliance with the procedural requirements of Article 3 is assessed on the basis of several essential parameters: the adequacy of the investigative measures, the promptness of the investigation, the involvement of the family of the deceased person (if any) 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. These criteria which, taken jointly, enable the degree of effectiveness of the investigation to be assessed. It is in relation to the purpose of an effective investigation that any partial issues must be assessed (see *R.R. and R.D.*, cited above, § 78, with further references).

80. As to the investigation in question in the present case, the Court notes that it was prompted by the deposition of the second applicant in his questioning of 27 May 2009, which were followed by an identity parade of 14 August 2009. While no copy of these depositions and no information in relation to the identity parade have been made available to the Court, it is unclear whether anything else was done in the case until its transfer to a different investigator on 20 September 2009. Nevertheless, it was not before another more than a year until the applicants were eventually heard by the investigator on 28 October and 3 November 2010, respectively, with no explanation having been offered for this delay.

81. It is true that the subsequent investigative steps were taken rather promptly and were coupled by the filing of an indictment on 22 February 2011. However, it was rejected as premature, one of the reasons being that there were unexplained inconsistencies in the applicants' statements.

82. In that regard, the Court reiterates that in cases such as the present one the potential of an investigation is to a significant extent determined by the initial investigative response, *inter alia* in so far as oral evidence from the actors is concerned. In other words, the time laps between the alleged ill-treatment and the investigative measures involving the applicants and its

inherent effect on human memory by definition limits 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 (see *R.R. and R.D.*, cited above, §§ 183-4). The Court finds that the above is particularly relevant where, as in the present case, the applicants were minor at the relevant time.

83. Moreover, the Court has found no indication that the lack of promptness at the initial stage of the proceeding was rectified in any particular way in their subsequent course (ibid, § 185).

84. In addition, the Court reiterates that when investigating violent incidents triggered by suspected racist attitudes, the State authorities are required to take all reasonable action to ascertain whether there were racist motives and to establish whether feelings of hatred or prejudices based on a person's ethnic origin played a role in the events. Treating racially motivated violence and brutality on an equal footing with cases lacking any racist overtones would be tantamount to turning a blind eye to the specific nature of acts which are particularly destructive of fundamental human rights. A failure to make a distinction in the way in which situations which are essentially different are handled may constitute unjustified treatment irreconcilable with Article 14 of the Convention (see, for example, *Abdu v. Bulgaria*, no. 26827/08, § 44, 11 March 2014, with further references).

85. The police-car incident at stake in the present case was examined at the domestic level mainly with reference to the credibility of and incongruities in the evidence from the applicants. There is no indication that any particular attention was paid to the presence of a racial element in it.

86. In that respect, the Court notes that the applicants in the present case were Roma and the mugging with which they were associated took place near a housing project mainly inhabited by Roma. It is true that their claims at the domestic level that one of the reasons behind their alleged ill-treatment had been their ethnicity (see paragraphs 20, 27 and 33 above) had been vague and general in nature (see, *mutatis mutandis*, *Adam,* cited above, § 94; *A.P.*, cited above, § 91; and *R.R. and R.D.*, cited above, § 211).

87. However, it is an objective fact, well known to the authorities, that the alleged incident investigated into in the present case fell into a bigger picture involving the incident at the police station that allegedly followed immediately afterwards. In particular, as specifically noted by the District Court in its judgment of 9 January 2015 (see paragraph 29 above), it was aware that J.C. stood accused in relation to both incidents of violent offences against the applicants and that the accusation in relation to the incident at the police station involved a particular motive which, seen against the background, was obviously racial (see also paragraph 33 above).

88. Nevertheless, rather than assessing the alleged police-car incident in its context, the District Court's Chamber seized of it found that it was prevented from taking into account any evidence from the proceedings before another Chamber of that same court dealing with the alleged

police-station incident. Similarly, the Constitutional Court has given no response at all to the applicants' argument that the acknowledged racial motive in one of the incidents was to be taken in the account in the assessment of the other.

89. Thus, in addition to the lack of promptness already established above, the authorities plainly cannot be said to have taken all reasonable steps to unmask any possible racist motive, to establish whether or not ethnic hatred or prejudice may have played a role in the events, and thereby thoroughly to investigate all aspects of relevance.

90. In so far as the present case raises any issue of independence of the investigation, the Court observes that the applicant's argumentation has been purely abstract, addressing no more than the institutional aspect of the investigative arrangement in place.

91. In that regard, however, the Court reiterates that the applicable requirements call for a concrete examination of the independence of the investigation in its entirety, rather than an abstract assessment. Moreover, they do not call for the persons and bodies responsible for the investigation to enjoy absolute independence, but rather that they be sufficiently independent of the persons and structures whose responsibility is likely to be engaged. The adequacy of the degree of independence is thus to be assessed in the light of all the circumstances, which are necessarily specific to each case (see, *mutatis mutandis*, *Mustafa Tunç and Fecire Tunç v. Turkey* [GC], no. 24014/05, §§ 222-5, 14 April 2015, with further references).

92. Noting that independence as well as any 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 (see, for example, *A.P.*, cited above, § 83, with further references; and *R.R. and R.D.*, cited above, § 189).

(d) Conclusion

93. In view of the foregoing (see paragraphs 80-89 above), the Court concludes that there has been a violation of Article 3 of the Convention in its procedural aspect.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

94. The applicants complained that their Roma ethnicity had been a decisive factor in their alleged ill-treatment as well as in the subsequent alleged failure of the authorities to conduct an adequate investigation into that ill-treatment. They relied on Article 14 in conjunction with Articles 3 and 13 of the Convention.

95. The Court finds it appropriate to examine this complaint under Article 14 in conjunction with Article 3 of the Convention. The former provision reads as follows:

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

A. The parties' arguments

96. The Government objected first of all that, for the same reasons as in relation to the complaint under Article 3 of the Convention, the applicants had failed to exhaust domestic remedies (see paragraph 46 above).

97. The Government further submitted that although in her letter of 3 January 2011 the applicants' lawyer had claimed that one of the reasons for their ill-treatment had been their ethnicity (see paragraph 18 above), her contention had been totally devoid of any specifics or reference to any factual circumstance of the case.

In addition, the applicants personally had at no stage advanced any discrimination claims and no such indication had transpired from any of the evidence taken. In the latter connection, the Government pointed out that, in response to the request of the applicants' lawyer of 25 August 2014, the District Court had examined the investigator (see paragraph 27 above), that not even his evidence had revealed any indication of any discrimination, and that the applicants had had no other proposals for the taking of any further evidence (see paragraph 25 above).

Lastly, the Government claimed that the applicants' contention that the alleged shortcomings of the investigation had been due to their ethnicity had likewise been general, vague and unsubstantiated.

98. In their response, the applicants disagreed and submitted that they were members of a disadvantaged community, that their ethnicity had been a decisive factor in their ill-treatment and in the lack of an adequate investigation into it, that there was generally a deplorable situation with investigations into police violence against Roma in Slovakia, that the authorities should therefore have treated the allegation of their ill-treatment in this case particularly carefully, and that they had been duty bound to look into the possible racist motive behind the applicants' ill-treatment of their own initiative, irrespective of any procedural activity on the applicants' part.

99. Moreover, the applicants argued that the possible racist motive in the present case had stemmed also from the connection between their ill-treatment in the police car and their subsequent ill-treatment at the police station, while the racist connotation of the latter was undeniable.

B. Comments of the third-party intervener

100. The third-party intervener, the ERRC, referred to the international material as summarised above and to their own submissions in other cases before the Court. They argued that there was institutional racism and "anti Gypsyism" in policing in Slovakia, that this was a structural problem, that the Court had to recognise its existence and that, in view of its existence, it should depart from the otherwise requisite standard of proof of "beyond reasonable doubt".

101. In reply to the submission of the third-party intervener, the Government disagreed and referred to the standard of proof as applied by the Court in the cases of *Mižigárová v. Slovakia* (no. 74832/01, 14 December 2010) and *Adam* (cited above).

C. The Court's assessment

102. As to the Government's non-exhaustion objection, the Court notes that in its above cited judgment in the case of *R.R. and R.D.* (§§ 129-132), it specifically dealt with that matter. In the absence of any relevant new elements, it finds no reasons for reaching a different conclusion in this case. The objection must accordingly be dismissed.

103. It reiterates that discrimination within the meaning of Article 14 of the Convention means treating differently, without an objective and reasonable justification, people in relevantly similar situations. Racist violence is a particular affront to human dignity and, in view of its perilous consequences, requires from the authorities special vigilance and a vigorous reaction. It is for this reason that the authorities must use all available means to combat racism and racist violence, thereby reinforcing democracy's vision of a society in which diversity is not perceived as a threat but as a source of its enrichment (see *Stoica v. Romania*, no. 42722/02, § 117, 4 March 2008, with further references).

104. As has been found above, it has not been established in the present case that the applicants were exposed to treatment contrary to Article 3 of the Convention. There is accordingly no question of discrimination being the reason for that treatment. The present case is therefore different from those where the respondent Government is required to disprove an arguable allegation of discrimination, failing which it is liable to be found in violation of Article 14 of the Convention (see *Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, § 157, ECHR 2005 VII).

105. As to the claim that the authorities' failure to conduct an adequate investigation into their alleged ill-treatment was due to their ethnicity, the Court notes that it has not been supported by any tangible elements. In fact, the applicants did not raise any such claim before the Constitutional Court, their arguments before it being limited to a claim that their ill-treatment had been due to their origin. Although the Government have raised no objection

of non-exhaustion of domestic remedies in that connection, this does not prevent the Court from taking the scope of their constitutional complaint into account in the assessment of the nature and quality of their allegation of discrimination in the context of this application. 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 (see, *R.R. and R.D.*, cited above, § 214).

106. To the extent that the applicants, supported on that point by the third-party intervener, sought to justify their claim of discrimination by reference to the generally sensitive nature of the situation related to Roma at the relevant time, of which the Court is well aware (see paragraph 63 above), it 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 specific 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, *R.R. and R.D.*, cited above, § 215, with a further reference and *Adam*, cited above, § 93, with further references). Its sole concern is accordingly to ascertain whether in the case at hand the applicant's ill-treatment and the authorities' failure to ensure an effective investigation into it was the result of racism and, failing further information or explanations, must conclude that it has not been established that racist attitudes played a role in the violation of the applicants' rights under Article 3 as found above (in that respect, see *Ognyanova and Choban v. Bulgaria*, no. 46317/99, § 147, 23 February 2006, with a further reference).

107. In these circumstances, the Court finds that there is no showing that the applicants' ethnicity played any role in the investigation's being ineffective (see *Abu*, cited above, § 54-8).

108. Moreover, the Court notes that the authorities' failure to take all reasonable steps to unmask any possible racist motive behind their alleged ill-treatment has been examined as a component of the effectiveness of the investigation. It finds that, on the particular facts, and to the extent that of this aspect of the case has been substantiated, it raises no separate issue under Article 14 (see, *Nachova and Others*, cited above, § 161).

109. In sum, the remainder of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

110. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only

partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

111. The applicants claimed 8,000 euros (EUR) each in respect of non-pecuniary damage.

112. The Government opposed the claim as being exaggerated.

113. The Court awards the applicants EUR 4,500 each, plus any tax that may be chargeable, in respect of non-pecuniary damage.

B. Costs and expenses

114. The applicants also claimed EUR 7,546.97 together in respect of costs and expenses, this amount consisting of EUR 1,554.97, EUR 5,600 and EUR 392 for, respectively, (i) legal costs incurred at the national level (criminal proceedings and constitutional proceedings), (ii) legal costs incurred before the Court, and (iii) administrative expenses. They supported these claims by copies of a conditional-fee agreement and *pro forma* invoices containing an itemised specification of the claimed amounts.

115. The Government referred to the Court's case-law and proposed that the applicants be awarded compensation that was adequate.

116. 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 (see *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, §§ 54 and 55, ECHR 2000 XI, with further references).

117. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the applicants jointly the sum of EUR 4,000, plus any tax that may be chargeable to them, covering costs under all heads.

C. Default interest

118. 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 complaints under Article 3 of the Convention concerning the alleged ill-treatment in the police car and the alleged lack of an effective investigation into it admissible and the remainder of the application inadmissible;

2. *Holds* that there has been no violation of Article 3 of the Convention in its substantive aspect;

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

4. *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 4,500 (four thousand five hundred euros) to each of the applicants, plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 4,000 (four thousand 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;

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

Done in English, and notified in writing on 1 April 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Renata Degener
Registrar

Ksenija Turković
President