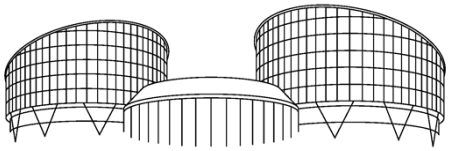

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF M.B. AND OTHERS v. SLOVAKIA (No. 2)

(Application no. 63962/19)

JUDGMENT

Art 3 (substantive and procedural) • Inhuman and degrading treatment of applicants, minors of Roma ethnicity, by officers at a police station • Ineffective investigation Art 14 (+ Art 3) • Discrimination • Insufficient evidence that applicants' ill-treatment was racially motived • Authorities' failure to investigate possible racist motives

STRASBOURG

7 February 2023

FINAL

07/05/2023

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

In the case of M.B. and Others v. Slovakia (no. 2),

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

Marko Bošnjak*, President*,
Péter Paczolay,
Krzysztof Wojtyczek,
Alena Poláčková,
Ivana Jelić,
Erik Wennerström,
Raffaele Sabato*, judges*,
and Renata Degener, *Section Registrar,*

Having regard to:

the application (no. 63962/19) 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 six Slovak nationals, M.B., O.H., I.K., O.Ž., T.Ž. and K.Z. ("the applicants"), on 6 December 2019;

the decision to give notice to the Government of the Slovak Republic ("the Government") of the complaints under Articles 3, 13 and 14 of the Convention concerning the alleged (i) ill-treatment, (ii) lack of an adequate investigation into that ill-treatment, (iii) discrimination and (iv) lack of an effective remedy, and to declare the remainder of the application inadmissible;

the decision not to have the applicants' names disclosed;

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

the comments submitted by the European Roma Rights Centre (ERRC) and Fórum pro lidská práva, z.s., who were granted leave to intervene by the President of the Section;

Having deliberated in private on 24 January 2023,

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

INTRODUCTION

1. The present application arises out of an incident that is alleged to have taken place at a police station. This incident was preceded by the arrest of three of the applicants and their being taken in a police car to that police station. Alleged ill-treatment during their transfer was the subject of a separate judgment of the Court in the case of *M.B. and Others v. Slovakia* (no. 45322/17, 1 April 2021).

THE FACTS

2. The applicants were born in 1992, 1993, 1995, 1997, 1993 and 1998 respectively and live in Košice. They were represented before the Court by Ms V. Durbáková, a lawyer practising in Košice.

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

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

I. ASSAULT AND ARREST

5. On 21 March 2009 a 66-year-old woman was assaulted and robbed by a group of six assailants in Košice near a housing estate mainly inhabited by Roma. The applicants M.B., O.H. and T.Ž. were later found guilty of that assault, while the remaining applicants could not be tried because they were too young to be criminally liable.

6. After their arrest, the applicants were taken to a police station.

II. EVENTS AT THE POLICE STATION

7. On their arrival at the police station, the applicants' identities were checked, they were searched, and their statements were recorded. They were subsequently handed over to an investigator and ultimately released later the same day (21 March 2009).

8. The applicants averred – and that claim was disputed by the Government – that while at the police station, (i) they had been thrown on the floor in front of barking dogs which were not muzzled, (ii) the applicants M.B., O.Ž. and T.Ž. had been bitten by the dogs, and (iii) the applicants had been beaten, kicked and otherwise physically and verbally abused by police officers, including comments having to do with, among other things, their Roma ethnicity.

9. The media subsequently received digital audio-video files ("the audio-video material") purporting to depict the treatment to which the applicants had been subjected at the police station on 21 March 2009. It was later established by an expert that the audio-video material had been recorded on a mobile phone with a camera. On 7 April 2009 some of this material was released into the public domain.

10. The audio-video material as such has not been made available to the Court. Nevertheless, the description of its content in the ensuing proceedings included the following:

> "- ... an officer with a cap on his head and sunglasses in his hand can be seen and heard standing in front of six Roma boys, who themselves are standing in front of a coffee machine, and ordering them to slap and then kiss each other ... In front of the boys, who are slapping each other, there is a person passing by; laughter and other voices giving orders to slap people are heard. One of the officers is recording it with a

mobile phone, another officer is making a phone call [standing] by the coffee machine ...

- ... four Roma boys are seen ... one boy is hiding behind a table and one boy is sitting on the floor by a table, holding his leg underneath the knee and weeping. Two dogs without muzzles are seen, one of which is held on a leash by an officer without a cap but wearing sunglasses; ... a black dog, which is seen and heard barking, is held by another officer. An officer is recording the scene with a mobile phone. Weeping, laughter and a female voice are heard. Male voices and expressions are also heard: 'Shut up, stop crying, you see', '[expletive] Gypsy gang'

- ... in the basement of a building, six Roma boys are seen, naked, shaking out their clothes, ... while an officer ... is directing them orally and by gestures and counting 10, 9, 8, 7 ... 3. After the number eight a phrase is heard: '[name,] go and get a dog'.

- ... an officer is seen and heard standing in front of six Roma boys giving them orders to slap each other and he is heard saying 'The boy who hits the hardest... will not get bitten by a dog', 'One, two, three', 'You hit him back', 'Go [name] and get a dog'."

III. INVESTIGATIVE AND OTHER MEASURES AND THE TRIAL

11. On 7 April 2009 seven officers associated with the above-mentioned events were dismissed on grounds of serious misconduct. That decision would later be quashed by the administrative courts because no unlawful action on the part of those specific officers had been established.

12. On the same day, that is, on 7 April 2009, criminal proceedings were commenced in connection with those events against one or more officers unknown on suspicion of abuse of official authority and blackmail committed with a "specific motive" consisting of ethnic hatred.

13. Between 14 April and 17 August 2009 ten officers were charged with the offences in question. On 13 May 2010 they were indicted to stand trial in the Košice II District Court.

14. In the ensuing proceedings, the applicants took part as injured parties claiming damages.

15. On 8 October 2010 the District Court held a meeting with a view to making an initial assessment of the indictment (*predbežné prejednanie obžaloby*) and the case was heard between 5 November 2010 and 20 September 2013.

16. Between 29 January 2014 and 27 February 2015 the case had to be reheard because a lay member of the bench hearing it had become unavailable for health reasons.

17. On 27 February 2015 the District Court acquitted the accused, having refused to admit the audio-video material in evidence. In doing so, it noted a lack of clarity about its provenance and found that it was probable that it had been tampered with and that, accordingly, it could not be used to establish facts. On the basis of the evidence taken, the District Court concluded that it had not been established that the actions imputed to the officers in question

had taken place. The applicants were also referred to the civil courts to pursue their claims for damages.

18. On 18 April 2016, following an appeal by the prosecution, the Košice Regional Court quashed the acquittal and remitted the case to the District Court, finding multiple errors in its admission and assessment of evidence. These included, first and foremost, its handling of the audio-video material. Had the first-instance court had doubts about its integrity, it should have had that question examined by an expert.

19. Between 25 January and 17 May 2017, the District Court reheard the case. On the date last mentioned, it again acquitted the accused. It did so without having examined the audio-video material, essentially on the same grounds as had been relied on in the judgment of 27 February 2015. In view of all the circumstances, that material could not be considered to have been obtained in a lawful manner. It was accordingly not appropriate to have its veracity examined by an expert. As before, the applicants were referred to the civil courts to pursue their claims for damages.

20. On 4 May 2018, following an appeal by the prosecution, the Regional Court again quashed the acquittal, noting that in disregard of its earlier instructions the first-instance court had failed to admit the audio-video material in evidence.

21. In a third round of proceedings, on 4 December 2019 the District Court again acquitted the accused and referred the applicants' claim for damages to the civil courts. The prosecution's subsequent appeal was dismissed on 11 December 2020 and the outcome of the proceedings thereby became final and binding. The courts' reasoning may be summarised as follows.

22. On the day of the police station incident, the accused officers had been on duty and present at the police station. The police station had been undergoing renovation, as a result of which the applicants had been kept there in various common areas within the station. All of the applicants had been minors at the time.

23. All evidence that was available and necessary for the assessment of the case had been taken and examined. The core of the incriminating evidence came from the applicants. That evidence was, however, contradictory in that their submissions were inconsistent among themselves and also in that the statements made before the court were inconsistent with those made at the pre-trial stage.

24. While at the police station, the applicants had come into contact with thirty-two persons, including the accused officers. In their testimony, however, none of those persons had noticed any signs of injuries or anything unusual about the applicants. Even the applicants' parents had in fact not noticed any injuries.

25. As to the audio-video material depicting the events of 21 March 2009, its analysis by an expert revealed that the footage had been recorded on a

mobile phone with a camera and that still pictures had been extracted from that footage. The material had been edited and converted to a different format, but it was most likely that there had been no interference with the original sequence of the recorded events.

26. Nevertheless, the material did not allow for a reliable identification of any of the accused officers since the resolution of the image was low and it was focused on the applicants and not on the other persons present at the scene. In reaching that conclusion, the courts noted the earlier conclusions of the administrative courts, which had already quashed the decisions to dismiss six of the accused officers (see paragraph 11 above).

27. Moreover, the facts of some of the actions and omissions of which the officers were accused were not sufficiently clear for those actions and omissions to be attributed to any of the individual accused officers.

28. In sum, by force of the *in dubio pro reo* principle, none of the accused officers could have been found guilty of the events depicted in the audio-video material. As to the remaining actions and omissions of which they were accused, it had not been established that they had taken place.

IV. CONSTITUTIONAL PROCEEDINGS

29. On 8 January 2019 the applicants lodged a constitutional complaint directed against the District Court, describing the facts and history of their case and alleging a violation of their rights under provisions including Articles 3, 13 and 14 of the Convention. In particular, they contended that they had been ill-treated and discriminated against and that the ensuing investigation into that ill-treatment had lacked promptness and thoroughness and had failed to meet other applicable requirements.

30. On 23 May 2019 the Constitutional Court declared the complaint inadmissible, noting that at that time the case was pending before the District Court and that this excluded the Constitutional Court's jurisdiction under the principle of subsidiarity. As an aside (*nad rámec uvedeného*), the Constitutional Court observed that, even though the applicants had been represented in the constitutional proceedings by a lawyer, there had been errors in the formulation of the relief sought. This applied in particular to the reference the applicants had made in their complaint to their right under Article 6 of the Convention to a fair hearing within a reasonable time. Accordingly, there was no complaint to be decided upon under that provision.

31. On 25 March 2021 the applicants turned again to the Constitutional Court. Directing their complaint against the District Court and the Regional Court and setting it against the development and outcome of the proceedings before the ordinary courts, they raised similar complaints to those they had raised in 2019 and sought, among other things, the quashing of the Regional Court's judgment of 11 December 2020 and remittal of the case to that court for further examination.

32. On 23 June 2021 the Constitutional Court declared the complaint admissible. The proceedings on the merits are pending.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. CONSTITUTION

33. Article 12 stipulates that:

> "1. All human beings are ... equal in dignity and in rights...
>
> 2. Fundamental rights shall be guaranteed in the Slovak Republic to everyone regardless of sex, race, colour, language, belief and religion, political affiliation or other conviction, national or social origin, nationality or ethnic origin, property, descent or any other status. No one shall be aggrieved, discriminated against or favoured on any of these grounds.
>
> ..."

34. Article 16 provides that:

> "1. Inviolability of the person ... is guaranteed. It may be restricted only in cases provided for by an act of parliament.
>
> 2. No one shall be subjected to cruel, inhuman or degrading treatment or punishment."

35. Article 127 reads as follows:

> "1. The Constitutional Court shall decide on complaints by natural or legal persons alleging a violation of their fundamental rights or freedoms ... unless the protection of such rights and freedoms falls within the jurisdiction of a different court.
>
> 2. If the Constitutional Court finds a complaint [to be] justified, it shall deliver a decision stating that a person's rights or freedoms, as set out in paragraph 1, have been breached by a final decision, specific measure or other act and shall quash that decision, measure or act. If the breach that has been found is the result of a failure to act, the Constitutional Court may order [the authority] that has breached the rights or freedoms to take the necessary action. At the same time it may remit the case to the authority concerned for further proceedings, order that authority to refrain from breaching the fundamental rights and freedoms ... or, where appropriate, order those who have breached the rights or freedoms set out in paragraph 1 to restore the situation to that existing prior to the breach.
>
> 3. In its decision on a complaint the Constitutional Court may award appropriate financial compensation to the person whose rights under paragraph 1 have been breached."

II. CRIMINAL CODE

36. Under Article 140 (f) an offence is understood to have been committed with a "specific motive" if it was committed out of hatred against a group of persons or an individual due to their actual or presumed affiliation to a particular race, nation, nationality or ethnic group, their actual or presumed

origin, skin colour, sex, sexual orientation, political conviction or religious belief.

III. INTERNATIONAL MATERIAL

37. The relevant international material is 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. THE GOVERNMENT'S OBJECTIONS AS TO ADMISSIBILITY

38. The Government raised a twofold objection of non-exhaustion of domestic remedies, without making any specific links to any of the applicants' complaints. Nevertheless, as to the complaints under Article 14, they submitted what may be understood as suggesting that only one facet of that objection referred to those complaints (see paragraph 78 below).

39. In these circumstances, the Government's non-exhaustion objection will be examined below in connection with the applicants' complaints in so far as it pertains to them.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

40. Relying on Articles 3 and 13 of the Convention, the applicants complained that they had been ill-treated by the police, that the State had failed to protect them from such ill-treatment by conducting an effective investigation into it, and that they had had no effective remedy at their disposal.

41. The Court finds that on the facts of this case these complaints fall to be examined under Article 3 of the Convention (see *Bouyid v. Belgium* [GC], no. 23380/09, § 55, ECHR 2015), which reads as follows:

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

A. Admissibility

1. The parties' submissions

42. The Government alleged non-exhaustion of domestic remedies as follows.

43. First, they argued that it would have been possible for the applicants to obtain redress in the Constitutional Court. In that regard, the Government noted the Constitutional Court's finding in its decision of 23 May 2019 to the effect that the applicants' constitutional complaint of earlier that year had not

been formulated in accordance with the applicable requirements. The remedy available from the Constitutional Court had accordingly not been exhausted on that occasion. Moreover, the applicants' constitutional complaint of 2021 was ongoing. Their Article 3 complaints before the Court were accordingly premature.

44. Second, the Government argued that if the applicants were not satisfied with the outcome of the criminal proceedings, it was open to them to seek redress in relation to the allegedly inappropriate treatment they had been subjected to by the police before the ordinary courts, in particular under the Police Corps Act, the State Liability Act and the general rules on the protection of personal integrity.

45. The applicants disagreed and asserted that they had raised their complaints before the Constitutional Court in accordance with all the applicable requirements. Even though they had turned to the Constitutional Court for a second time, in view of all the circumstances they submitted that this was not an effective remedy for Convention purposes. As the civil-law remedies referred to by the Government had no punitive potential, they also fell short of the requirements of an effective remedy on the facts of their case.

2. The Court's assessment

46. The Court will first address the question of the remedies in the civil courts, noting that in substance the Government's objection pertained to the applicants' complaint under the substantive limb of Article 3 of the Convention. It reiterates its well-established case-law that in cases where an individual has an arguable claim under Article 3, 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 and not in the punishment of those responsible for the ill-treatment cannot be regarded 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, *R.R. and R.D. v. Slovakia*, no. 20649/18, § 127, 1 September 2020, with further references).

47. Noting that a criminal prosecution in relation to the applicants' treatment at the police station was pursued and that there is no suggestion that the treatment depicted in the audio-video material did not take place, the Court has no difficulty in accepting that the applicants' claim of wilful ill-treatment is arguable in the present case in terms of the Court's case law (in that regard, see also *M.B. and Others v. Slovakia*, no. 45322/17, §§ 62-64, 1 April 2021). Moreover, it notes that the remedies referred to by the Government are civil-law remedies of a compensatory nature, with no punitive potential (see *P.H. v. Slovakia*, no. 37574/19, §§ 84 and 108, 8 September 2022, and *Balogh and Others v. Slovakia*, no. 35142/15, §§ 24-6, 31 August 2018). For this reason alone, it is not an effective remedy

that needs to be pursued in respect of the applicants' substantive complaints under Article 3 (see *R.R. and R.D.*, cited above, § 127, with further references).

48. In so far as the Government argued that the applicants had failed to formulate their constitutional complaint of 2019 in accordance with the applicable requirements, the Court notes that the remark to that effect made by the Constitutional Court in its decision of 23 May 2019 in relation to the complaints now to be examined under Article 3 of the Convention was an aside which did not prevent the Constitutional Court from examining the admissibility of those complaints. The question of whether the applicants properly raised their complaint before the Constitutional Court under Article 6 § 1 of the Convention in relation to the "reasonable time" requirement is a different matter, beyond the scope of the present complaints. The relevant part of the Government's non-exhaustion objection must accordingly be dismissed.

49. The Court finds that the remainder of the Government's non-exhaustion objection, which concerns the applicants' ongoing complaint before the Constitutional Court, raises issues which are closely related to the merits of the complaint under the procedural limb of Article 3. Accordingly, the Court finds that it is to be joined to the merits of that complaint.

50. 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. Procedural aspect of Article 3

(a) The parties' submissions

51. The applicants complained that the investigation into their allegation of ill-treatment had been ineffective on account of its length and the District Court's failure to take into account essential evidence, namely the audio-video material.

52. The Government disagreed. In their view, the investigation in the present case had been extensive and thorough. It was an objective fact that it had not been possible to confirm with certainty that the accused officers had appeared in the audio-video material. The Government submitted that the initial identification of those officers in 2009 had involved an element of collective guesswork and that, as the courts had established later in proceedings the fairness of which was beyond reproach, it had been impossible to identify those officers in that material with certainty. This finding needed to be seen in the light of the fact that an obligation to investigate was not an obligation of results, but of means.

53. As to the promptness of the contested investigation, the Government pointed out that criminal proceedings had been commenced immediately after the audio-video material had become available and that the pre-trial phase of those proceedings had lasted less than fourteen months. The proceedings before the District Court had been somewhat protracted on account of the objective fact that it had been necessary to repeat some of the hearings since a lay member of the bench had become unavailable for health reasons. It was true that the District Court had twice refused to admit the audio-video material in evidence and that its judgment had twice been quashed. However, the evidence in issue had eventually been admitted and examined, with this having no impact on the ultimate conclusion on the merits.

(b) The Court's assessment

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

55. 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 interrelated and each of them, taken separately, does not amount to an end in itself. They are criteria which, taken jointly, enable the degree of effectiveness of an investigation to be assessed. It is in relation to the purpose of an effective investigation that any specific issues must be assessed (see *R.R. and R.D.*, cited above, § 178, with further references).

56. The gist of the applicants' complaint lies in the length of the investigation and the trial court's repeated refusal to admit the audio-video material in evidence. From that perspective, the Court notes that those events became widely known about only on 7 April 2009 and that, on the same day, following an initial identification, seven officers associated with those events were dismissed on grounds of serious misconduct. Furthermore, on the same day, criminal proceedings were commenced against one or more officers whose identity was unknown, which eventually resulted in charges of abuse of official authority and blackmail being brought between 14 April and 17 August 2009 against the seven officers who had been dismissed and three other officers. The indictment was filed on 13 May 2010 and the preliminary examination took place on 8 October 2010. The authorities' initial response to the events in question was therefore relatively prompt.

57. As to the subsequent course of the proceedings, hearings before the District Court were held between 5 November 2010 and 20 September 2013, but had to be repeated, between 29 January 2014 and 27 February 2015, on account of the unavailability of a member of the bench on health grounds. Even though such grounds are in themselves of an objective character, in view

of the Contracting Parties' responsibility for the organisation of their judicial systems (see, *mutatis mutandis*, *Frydlender v. France* [GC], no. 30979/96, § 45, ECHR 2000-VII) the Court finds that the delays caused on those grounds in the present case are attributable to the respondent State.

58. The District Court's examination of the case then resulted in two judgments, of 27 February 2015 and 17 May 2017, which both had to be quashed on account of procedural irregularities. These primarily had to do with the trial court's repeated refusal to admit the audio-video material in evidence, despite the appellate court's instructions to do so. As that evidence was eventually admitted and examined, the District Court's original refusal to do so was not only in direct breach of the Regional Court's instructions but also of the applicable rules. In addition, noting that this evidence directly depicted part of the events complained about by the applicants, the Court considers it crucial in the assessment of the case as a whole.

59. In view of the timeline of the proceedings, the need for rehearing and re-examination of the case at first instance because of the change in the composition of the bench and procedural errors on the part of the District Court led to considerable delays in the proceedings, which significantly reduced their effectiveness in terms of the Convention standards. In that regard, the Court notes that among the key grounds for the acquittal were the inconsistencies among the respective applicants' submissions and between the submissions they made at the pre-trial and trial stages. However, by the nature of things, any such inconsistencies would only be exacerbated the passage of time between the alleged ill-treatment and the investigative measures involving the applicants, with its inevitable effect on human memory (see *R.R. and R.D.*, cited above, §§ 183-84). In the present case, in which the first-instance acquittal was ultimately upheld by the court of appeal on 11 December 2020, more than eleven years and eight months after the events of 21 March 2009 (see also *Y. v. Slovenia*, no. 41107/10, § 99, ECHR 2015 (extracts)), the above observation applies all the more so since the applicants were minors at the time of the alleged ill-treatment (see *M.B. and Others*, cited above, § 82), the youngest applicant having been ten years and nine months of age and the oldest having been sixteen years and eight months of age.

60. Equally, the Court has found no indication that the manifest lack of promptness in the proceedings was compensated for or rectified in any way. In particular, while it has not been denied that the events portrayed in the audio-video footage took place, and assuming that it was not the accused who were responsible for them, there has been no sign of any attempt to look into responsibility for those events on the part of anyone else.

61. The above considerations are sufficient for the Court to conclude that the investigation into the events at the police station on 21 March 2009 lacked promptness to such an extent that its overall effectiveness was compromised.

62. As to the part of the Government's non-exhaustion objection which has been joined to the merits of this complaint (see paragraph 49 above), the Court notes that the applicants turned to the Constitutional Court by means of a complaint under Article 127 of the Constitution for the first time on 8 January 2019. As noted above (see paragraph 48), in that complaint they raised the arguments now being pursued before the Court under Article 3 of the Convention. However, instead of providing them with a remedy, the Constitutional Court declared their complaint inadmissible, since proceedings were still ongoing before the District Court. In this context, the Court notes specifically that the applicants' complaints included one relating to the ineffectiveness of the investigation because of the length of the proceedings before the District Court, and there has been no suggestion of how the District Court itself could have provided the applicants with redress in relation to that complaint.

63. The Court is of the opinion that the outcome of the applicants' first constitutional complaint is consonant with the pattern of inefficiency of the underlying proceedings described above and appearing also from the authorities' response to the preceding events (see *M.B. and Others v. Slovakia*, cited above, §§ 81-83). That raises doubts about the effectiveness of a complaint under Article 127 of the Constitution as a remedy for the purposes of Article 35 § 1 of the Convention on the facts of the present case.

64. Nevertheless, the applicants went back to the Constitutional Court with a complaint lodged on 25 March 2021, which was declared admissible on 23 June 2021 and remains pending.

65. In assessing the effectiveness of that remedy in relation to the facts of the present case, the Court takes into account the pattern of inefficiency referred to above, as well as the fact that more than thirteen and a half years have passed since the police station incident of 21 March 2009; that part of this period is attributable to the Constitutional Court itself, in respect of which it has no means of providing the applicants with any redress; and that in view of the passage of time, the potential for any further investigation to be effective is inherently limited.

66. In sum, having regard to all the circumstances, including the Convention's aim of guaranteeing rights that are not theoretical or illusory but practical and effective, the Court finds that the overall inefficiency of the investigation in practice deprived the applicants' constitutional complaint of 25 March 2021 of effectiveness for the purposes of Article 35 § 1 of the Convention (see, *mutatis mutandis*, *El-Masri v. the former Yugoslav Republic of Macedonia* [GC], no. 39630/09, § 261, ECHR 2012). The remainder of the Government's non-exhaustion plea must therefore be dismissed.

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

2. Substantive aspect of Article 3

(a) The parties' submissions

68. The applicants argued that they had been subjected to verbal and physical violence as described above at the police station on 21 March 2009, amounting to torture. They emphasised their age at the given time, their ethnicity, their vulnerability and the atmosphere of fear, helplessness and betrayal in which their ill-treatment had taken place, giving rise to a combination of physical and mental suffering.

69. The Government argued that the applicants' complaints were mainly based on their own allegations, which were contradictory. For example, they had identified officers as having been present at the scene of the incident at the police station when those officers had been conclusively shown to have been elsewhere, and they had failed to identify officers who had definitely been at the police station at that time. There was no medical or any other objective evidence of any injuries and no witnesses had provided any support for the applicants' allegations. Moreover, no complaint had been made of ill-treatment at the time of the incident and the applicants' subsequent recollections as expressed before the courts were unclear. Despite extensive efforts, the identity of the person instructing the applicants to slap each other had not been established and it had been impossible to determine that it was one of the accused officers. In the Government's view, the matter fell rather within the ambit of Article 8 of the Convention, which had, however, not been relied on by the applicants.

70. In its third-party comments, Fórum pro lidská práva, z.s. referred to the Court's and other international case-law, asserting that the treatment to which the applicants had been subjected had amounted to torture.

(b) The Court's assessment

71. The Court for its part notes that there has been no suggestion by the Government that the treatment depicted in the audio-video material as having been inflicted on the applicants on 21 March 2009 did not take place, that the events depicted in it were staged or that the recording of those events had in any way been interfered with. Their argument was limited to the assertion that it had not been proven that it was the accused officers who were responsible for that treatment.

72. In these circumstances, the Court has established no grounds for doubting that the events depicted in the audio-video recording actually took place. Nevertheless, it notes that the audio-video material as such has not been made available to it. Accordingly, in establishing the nature of the treatment to which the applicants were subjected, the Court is left with having to rely on the uncontested description of that treatment by the national authorities (see paragraph 10 above). The treatment in question took place in the common areas of a police station where the applicants, between ten and

sixteen years old at the time, were kept under the authorities' control. It consisted of them being forced to slap and then kiss each other in turn. Some of this treatment took place in the presence of barking dogs without muzzles. Moreover, while standing naked, the applicants were forced to shake their clothes out. While it is not clear who was giving the instructions, these scenes took place in the presence of officers in uniforms.

73. In that regard, the Court reiterates that where an individual 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 the person's conduct diminishes human dignity and is in principle an infringement of the right set forth in Article 3 of the Convention (see *Bouyid*, cited above, § 100). There has not been and there can hardly be any suggestion that the treatment to which the applicants were exposed while entirely under the authorities' control was made necessary by their conduct.

74. The Court has accordingly no difficulty accepting that, in view of all the circumstances, including the applicants' vulnerability inherent in their young age (ibid., § 110), the treatment in question was inhuman and degrading. However, it does not find it established that its level of severity and other relevant aspects were such as to amount to torture within the meaning of the Court's case-law (see, for example, *Selmouni v. France* [GC], no. 25803/94, § 97, ECHR 1999-V; *Salman v. Turkey* [GC], no. 21986/93, § 114, ECHR 2000-VII; *Al Nashiri v. Poland*, no. 28761/11, § 508, 24 July 2014; and *Petrosyan v. Azerbaijan*, no. 32427/16, § 68, 4 November 2021). In particular, as to the scope and severity of the treatment, the Court notes that no independent evidence has been offered to support the allegation of any treatment other than that depicted in the audio-video material; that there have been no documented physical injuries; and that even the applicants themselves initially made no official complaint about that treatment. In addition, in the absence of a direct review of the audio-video material, the Court is unable to establish any contextual evidence that might reveal the purpose of the treatment in question.

75. In sum, while in the hands of the police, the applicants were subjected to inhuman and degrading treatment. There has accordingly been a violation of Article 3 in its substantive aspect.

III. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION

76. The applicants complained that their Roma ethnicity had been a decisive factor in their ill-treatment and that in the ensuing investigation the authorities had failed to take all reasonable steps to unmask the racist motive behind it. They relied on Article 14 in conjunction with Articles 3 and 13 of the Convention.

77. 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. Admissibility

78. Referring to their non-exhaustion objection mentioned above (see paragraph 43), in particular concerning a complaint to the Constitutional Court, the Government argued that that objection also extended to the applicants' complaint under Article 14 of the Convention.

79. The applicants replied with the same arguments as in relation to their complaint under Article 3 of the Convention (see paragraph 45 above).

80. The Court notes that the Government's non-exhaustion objection in relation to the complaint under Article 14 is the same as the one it has dismissed in relation to the complaint under Article 3, concerning both the applicants' constitutional complaint of 2019 (see paragraph 48) and that of 2021 (see paragraph 66). The Court dismisses the objection in relation to Article 14 for the same reasons as in relation to the complaint under Article 3.

81. The applicants' Article 14 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. The parties' submissions

82. The applicants argued that their ill-treatment had been racially motivated both in relation to their individual case and on account of what they considered to be institutional racism in the police in Slovakia, and that the authorities had failed to look into this aspect of the case.

83. The Government pointed out that the officers in question had been tried on charges involving a particular motive – ethnic hatred. In the course of the trial their stance on the issue of race had been duly examined. However, as the results of the proceedings showed, no unlawful behaviour could be attributed to them, and this included any unacceptable verbal expressions having to do with race. In addition, the Government argued that the mere fact that the applicants were Roma and general references to the treatment of Roma in Slovakia were insufficient to establish a violation of their individual rights.

84. Intervening as a third party, the ERRC 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, adapted criteria should be used in the assessment of cases involving this phenomenon.

85. 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 and policy levels as well as at a practical level with a view to fulfilling that objective.

2. The Court's assessment

(a) Article 14, taken together with Article 3 in its substantive aspect

86. The Court reiterates that discrimination is treating individuals in relevantly similar situations differently, without an objective and reasonable justification. Racial violence is a particular affront to human dignity and, in view of its perilous consequences, requires special vigilance and a vigorous reaction from the authorities. 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 perceived not as a threat but as a source of enrichment (see *Stoica v. Romania*, no. 42722/02, § 117, 4 March 2008, with further references).

87. The Court also reiterates that, in certain cases of alleged discrimination, it may require the respondent Government to disprove an arguable allegation of discrimination and, if they fail to do so, it may find a violation of Article 14 of the Convention on that basis (see *Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, § 157, ECHR 2005-VII).

88. The applicants in the present case were Roma and the mugging with which they were associated took place near a housing estate mainly inhabited by Roma (in that regard, see also *M.B. and Others*, cited above, § 86). Even though the suspicions of their ill-treatment were investigated as concerning offences committed with a racial motive, no such offences have been established at the national level. In this connection, the Court notes that the question of the authorities' compliance with their procedural obligations to look into a possible racist motive behind the applicants' ill-treatment is a separate issue, to which it will revert below.

89. Although the Court has found the applicants' ill-treatment as depicted in the audio-video material to have been established, it has also noted that there was not enough contextual evidence available to be able to establish its purpose (see paragraph 74 above). Even though the applicants' ill-treatment as depicted in the audio-video material was accompanied by a comment referring to them as a "Gypsy gang", in the absence of further contextual evidence this is insufficient for a conclusion that racism was a causal factor

in the applicants' ill-treatment (see, *mutatis mutandis*, *Nachova and Others*, cited above, § 153).

90. To the extent that the applicants, supported on that point by the ERRC as a third-party intervener, sought to justify their claim of discrimination by reference to what they considered to be institutional racism and "anti-Gypsyism" in policing in Slovakia, the Court notes that its sole concern in the exercise of its jurisdiction under Article 34 of the Convention is to ascertain whether in the case at hand the applicant's ill-treatment was the result of racism. Failing further information or explanations, the Court 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).

91. Accordingly, the present case must be distinguished from those in which the burden of proof as regards the presence or absence of a racist motive on the part of the authorities in an Article 3 context has been shifted to the respondent Government (contrast *Makhashevy v. Russia*, no. 20546/07, §§ 176-79, 31 July 2012; *Stoica*, cited above, §§ 128-32; and *Nachova and Others*, cited above, § 157).

92. In sum, having assessed all the relevant elements, the Court does not consider that it has been established that racist attitudes played a role in the applicants' ill-treatment.

93. There has accordingly been no violation of Article 14, taken together with Article 3 of the Convention in its substantive aspect.

(b) Article 14, taken together with Article 3 in its procedural aspect

94. 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 complained about. 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 everything reasonable, given the circumstances of the case, and in particular must collect and secure 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, §§ 75-76, 11 December 2018, with further references).

95. As already noted above, in the domestic authorities' description of the applicant' ill-treatment (see paragraph 10 above), that treatment was accompanied by verbal commentary referring to them as a "Gypsy gang". In the absence of any suggestion that this part of the applicants' ill-treatment did not take place as described (see paragraph 71 above), the authorities clearly had before them plausible information which was sufficient to alert them to the need to carry out an investigation into possible racist overtones in the applicants' ill-treatment. Rather than seeking to establish who was responsible for such possibly racially motivated ill-treatment, the domestic authorities contented themselves with the conclusion that it was not the officers accused of the ill-treatment.

96. In these circumstances, the authorities' 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 applicants' ill-treatment cannot be seen as having been complied with (see also *M.B. and Others*, cited above, §§ 85-89).

97. There has accordingly been a violation of Article 14, taken together with Article 3 of the Convention in its procedural aspect.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

98. 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

99. The applicants claimed 30,000 euros (EUR) each in respect of non-pecuniary damage.

100. The Government opposed the claim as being exaggerated.

101. The Court awards the applicants EUR 20,000 each in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

102. The applicants also claimed EUR 15,605.34 jointly in respect of costs and expenses, this amount consisting of EUR 10,148.34, EUR 5,100 and EUR 357 for, respectively, (i) legal costs incurred at the national level, (ii) legal costs incurred before the Court, and (iii) administrative expenses. They supported those claims by copies of conditional-fee agreements and an itemised specification of the claimed amounts.

103. The Government referred to the Court's case-law and proposed that the applicants be awarded reimbursement of their costs and expenses that was adequate.

104. 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, §§ 54-55, ECHR 2000-XI, with further references).

105. 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 11,000, plus any tax that may be chargeable to them, covering costs and expenses under all heads.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join to the merits of the complaint under Article 3 of the Convention in its procedural aspect the Government's objection of non-exhaustion concerning the applicants' ongoing complaint before the Constitutional Court, and *dismisses* it;

2. *Declares* the application admissible;

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

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

5. *Holds* that there has been no violation of Article 14, taken together with the Article 3 of the Convention in its substantive aspect;

6. *Holds* that there has been a violation of Article 14, taken together with Article 3 of the Convention in its procedural aspect;

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 11,000 (eleven 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;

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

Done in English, and notified in writing on 7 February 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Renata Degener Registrar	Marko Bošnjak President