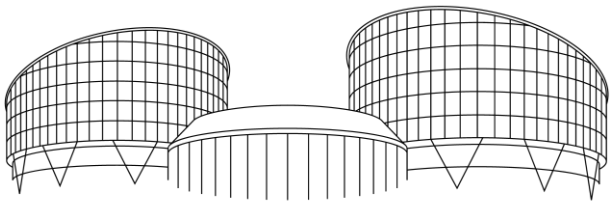

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF MIŽIGÁROVÁ v. SLOVAKIA

(Application no. 74832/01)

JUDGMENT

STRASBOURG

14 December 2010

FINAL

14/03/2011

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

In the case of Mižigárová v. Slovakia,

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

Nicolas Bratza, *President,*
Lech Garlicki,
Ljiljana Mijović,
David Thór Björgvinsson,
Ján Šikuta,
Päivi Hirvelä,
Mihai Poalelungi, *judges,*
and Lawrence Early, *Section Registrar,*

Having deliberated in private on 23 November 2010,

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

PROCEDURE

1. The case originated in an application (no. 74832/01) against the Slovak Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Slovak national, Mrs Miluša Mižigárová ("the applicant"), on 13 April 2001.

2. The applicant was represented by Mr A. Dobrushi of the European Roma Rights Centre, a lawyer practising in Budapest. The Slovak Government ("the Government") were represented by their Agent, Ms A. Poláčková.

3. By a decision of 3 November 2009 the Court declared the application admissible.

4. The applicant and the Government each filed observations on the merits (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant, Mrs Miluša Mižigárová, is a Slovak national who was born in 1979 and lives in Poprad. She is represented before the Court by Ms L. Gall of the European Roma Rights Centre, a lawyer practising in Budapest. The Slovak Government ("the Government") were represented by their Agent, Ms M. Pirošíková.

A. The circumstances of the case

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

7. At approximately 8.00 to 8:30 p.m. on 12 August 1999 police officers G. and J. apprehended the applicant's husband, Mr Ľubomír Šarišský, and another person ("R.K.") on suspicion of having stolen bicycles. At the time of his arrest, Mr Šarišský was twenty-one years old and in good health.

8. Following their arrest Mr Šarišský and R.K. were driven to the District Police Department in Poprad. After four policemen questioned him, Mr Šarišský was taken to another room for further interrogation by Lieutenant F., an off-duty officer with whom he had had previous encounters. At some point during the interrogation, Mr Šarišský was shot in the abdomen. He died after four days in hospital as a result of the bullet wound sustained in the police station during his interrogation.

9. The following is a more detailed description of the relevant facts as alleged by the applicant.

1. Facts relating to the lethal injury of Mr Šarišský

10. After being taken to the District Police Department, Mr Šarišský and R.K. were questioned by police officers H. and K., who were on duty at the time. Officers G. and J. were present during the interrogation. When later testifying before the investigator, Sgt. H. stated that "Šarišský was aggressive during the interrogation, he kept getting up from the chair, banged his head against the wall saying he would jump from the window". Sgt. H. stated that Mr Šarišský had not been handcuffed during interrogation. According to police officer G., however, Mr Šarišský remained handcuffed, at least for the time he was present.

11. According to officer H., Lt. F. joined the interrogation when Mr Šarišský was signing the record of the interrogation. Mr Šarišský and Lt. F. started arguing, shouting at each other using their first names. Lt. F. was off duty at the time. His shift was to start at 11 p.m.

12. Lt. F. subsequently phoned his superior, the Director of the Criminal Police Department in Poprad, and informed him that Mr Šarišský and another person had been apprehended. The Director told Lt. F. that he had been informed about the arrest by the operations officer, that he would come to the task assignment meeting at 10.30 p.m. to decide who would question the suspects, and that "it might as well be him".

13. Lt. F. considered that he had been authorised to question Mr Šarišský. He volunteered to take over the questioning. He took Mr Šarišský to his office in the District Police Directorate, which was located in a different part of the same building. Lt. F. handcuffed Mr Šarišský to a radiator and left his office for a while.

14. Upon his return Lt. F. removed the handcuffs from Mr Šarišský and resumed the questioning. Mr Šarišský was subsequently shot in the abdomen with Lt. F.'s service pistol. Lt. F. telephoned the operations officer and asked him to call the emergency services. He then ran to the operations centre to repeat his request. Lt. F. returned to his office and carried Mr Šarišský down to the vestibule. From there he was transported to a hospital.

15. At midday on 13 August 1999 Capt. T., a police officer of the Department of Supervision and Inspection Service of the Ministry of the Interior, questioned Mr Šarišský in his hospital bed. The questioning took place in the presence of the head physician.

16. Mr Šarišský was able only to move his head in response to questions asked. When asked whether he was shot by the policeman, he answered "no"; whether he shot himself, he answered "yes"; did he steal the gun from the police - "no"; did he ask for the weapon from the policeman and it was handed to him, he answered "yes"; did the policeman hit him - "yes"; and when asked if there was any one else in the room besides the policeman, he answered "no". When asked by Capt. T., the head physician allegedly stated that Mr Šarišský had no injury to the jaw or any hematomas on the body apart from the bullet wound.

17. The applicant only learned about the incident on 13 August 1999 when she met R.K., who had been released. She went to the hospital with another person and saw that her husband was connected to different tubes. He was conscious but could not speak. She asked him whether he had shot himself. Mr Šarišský responded "no" by moving his head. She repeated the question and received the same answer from him. Her husband could not hear at all in one ear, although he had never had any problem with his hearing. He had bruises all over his body, "below the neck, ... on the right shoulder, ... on his face and below, underneath his right eye".

18. The applicant visited her husband again on 14 August 1999, accompanied by two other persons. When asked whether a policeman had shot him, Mr Šarišský nodded. Mr Šarišský had bumps on the head and his face was swollen. They wanted to take pictures of those bruises but the head physician did not allow them to.

19. Mr Šarišský died on 17 August 1999 as a result of complications caused by the wound. On the same day an investigator from the Police Regional Investigation Office in Prešov ordered the examination and autopsy of the body. He instructed two forensic medical experts to perform an external and internal examination of the corpse and describe the individual wounds and how they arose. He ordered them to submit the report within fourteen days.

20. The forensic experts carried out the autopsy on 18 August 1999 but the autopsy report was not submitted to the investigator until 26 October 1999.

21. The report stated that there was a small, visible bruise of 3x2cm on the mucous membrane of the upper and lower lips in the left corner of the mouth. The autopsy report also described a torn drum in the left auditory canal with clear liquid. According to the report, such a condition could arise as the result of illness or inflammation of the inner ear, but it could also be caused by a blow with a blunt object.

22. The report concluded that Mr Šarišský had died a violent death, caused by post-traumatic and hemorrhagic shock induced by a perforating gunshot wound to the abdomen inflicted by a projectile fired from a police service pistol. The gunshot ruptured the large intestine, the mesentery of the small intestine, the inferior vena cava, the lumbar spine and spinal cord. There was shock after injury resulting from bleeding which, together with the subsequent complications (including acute inflammation of the soft tissues of the spinal cord and the brain and a serious defect of blood coagulation) led to the death of Mr Šarišský.

23. According to the testimonies of his close relatives, Mr Šarišský did not know how to handle weapons, he had never owned or handled a gun, and he did not have any record of mental instability.

2. Ensuing investigation and criminal proceedings against Lieutenant F.

24. Throughout the course of the subsequent investigation, Lt. F. offered differing accounts of the circumstances which preceded Mr Šarišský's death.

25. According to the statements by Lt. F., he sat down on a chair at the table next to the window in his office, whereas Mr Šarišský sat down on a chair by the wall. When the questioning resumed, Mr Šarišský denied the thefts. Allegedly, they raised their voices. According to Lt. F., he told Mr Šarišský to write the names of those responsible for the theft on a piece of paper and left him alone in the office without handcuffing him. Lt. F. alleged that when he returned to the office, he had to walk around Mr Šarišský, who was sitting on a chair with his back to the door. As Lt. F. passed him, he felt a sudden blow to his right shoulder and fell to his knees. He heard a click and realised that Mr Šarišský had cocked the pistol. According to Lt. F., when he stood up and turned to face Mr Šarišský, he saw the latter holding his service pistol in his hands, which he aimed at Lt. F. When Lt. F. asked Mr Šarišský not to do anything stupid and to give back the weapon, the latter allegedly pointed the pistol towards himself in the area of the abdomen and, sitting on the chair, pulled the trigger.

26. According to Lt. F., Mr Šarišský remained in a sitting position on the chair, holding the pistol in his hand. Lt. F. took it from him and put it on the table. He then claimed he phoned the operations officer and asked for medical help. After that, he unloaded the weapon, looked on the floor for the magazine or ammunition and re-assembled it. He looked at Mr Šarišský's wound and saw that on the paper which he had left him was

the text "say hello to Kristína". He then ran to the operations centre to repeat the call for the emergency service. Mr Šarišský remained seated on the chair and when Lt. F. returned to his office, he carried him down to the vestibule.

27. The applicant points out that both in the report where he provided explanations to his superior on the night of the incident and in a report drawn up on 13 August 1999 Lt. F. briefly described how the suspect had pulled his service pistol out of the holster, cocked it and shot himself in the abdomen. It was only in his later statements that he mentioned any violent or forceful action by the victim. The applicant also points out that Lt. F. was approximately 1.90 metres tall and weighed about 100 kilograms. Mr Šarišský was considerably smaller.

28. Moreover, Lt. F. offered an inconsistent account of how he had walked by Mr Šarišský in the moment preceding the alleged attack. Lt. F. claimed that Mr. Šarišský had been sitting with his back to the door but according to the statement of another police officer, who entered Lt. F.'s office after hearing the shot, Mr Šarišský was sitting on a chair facing the door. The Government have contested the English translation of this police officer's statement, and contend that in the Slovak version he in fact stated that Mr Šarišský was sitting with his *right side* facing the door. During the first reconstruction of the incident on 8 September 1999, Lt. F. told the investigator that he had passed on the right side of Mr Šarišský, but he later said that he had passed between the table and Mr Šarišský.

29. Lt. F. claimed that Mr Šarišský had attacked him from behind, surprising him and simultaneously pulling his pistol from the holster and cocking it. He could not remember how Mr Šarišský had held the pistol, or in which hand, and he gave several accounts of what he did with the pistol after removing it from the victim's hand.

30. After the incident had occurred, a police officer took the pistol of Lt. F. and placed it in the information officer's room. The investigator then seized the pistol. A task-force was formed which consisted of a forensic technician from the Criminal Police Department of the Police Force District Directorate in Poprad, a Senior Inspector at the Police Force Circuit Department in Poprad and an Investigator from the Police Force District Office of Investigation in Poprad. The task force carried out an on-site inspection on the night of 12 August 1999. Two police officers were present for the inspection.

31. Starting at 11.50 p.m., they inspected Lt. F's room. They did not take samples of gunpowder residue from the hands of Lt. F. The reason given was that they did not have the proper and necessary materials. The samples were taken at approximately 2.00 p.m. the next day by an expert technician from Kosice and no residue was found. Lt. F. claimed that he had not washed his hands before the samples were taken. As for Mr Šarišský, the

nurse at the hospital had washed his hands after he underwent the first surgery, thus rendering the test useless.

32. On 20 August 1999 an investigator from the Regional Office of Investigation in Prešov ordered the Criminology and Expert Opinions Institute of the Police in Bratislava to undertake dactyloscopy, biology and chemistry test on objects, traces and samples found during the site inspection. The results of this examination were all negative. According to the expert opinion of the Criminology and Expert Opinions Institute in Bratislava which examined and evaluated the disks from the hands of Mr Šarišský and Lt. F., no particles coming from firing residue were found. The dactyloscopy expert did not find any fingerprints on the weapon which could be evaluated, due to the insufficient number of papillary lines.

33. On 6 October 1999 the same institute examined the piece of paper with the text "say hello to Kristína" and compared the writing with the writing of Lt. F. and of Mr Šarišský. The experts concluded that the text had most probably not been written by Lt. F., whereas that part of the text which read "say hello to" had most probably been written by Mr Šarišský. They could not adequately evaluate the word "Kristína" because it was written in capital letters and they did not have sufficient samples of capital letters from the deceased Mr Šarišský. The applicant submits that the investigation file which her representative examined at the Poprad's courthouse did not contain this document. An independent handwriting test was therefore impossible.

34. On 8 September 1999, between 7.10 p.m. and 9.15 p.m., the Police Regional Investigation Office in Prešov conducted a reconstitution of the events in the office of Lt. F. The experts were informed of the location of the entry and exit wounds and the location where the bullet hit the chair. The reconstruction documented possible alternatives for the shooting of Mr Šarišský, with Lt. F. and Mr Šarišský in different positions, and with each one firing the fatal shot. The ballistic expert present at the reconstruction concluded that the injury to Mr Šarišský was "most probably" self-inflicted as the direction of the shot was from below upwards and from the right to the left.

35. On the same night, from 9.20 p.m until 9.40 p.m, an experiment was performed with the aim of clarifying how the weapon was pulled and respective time intervals. During the reconstruction Lt. F. stated that his shirt had been tucked in under the belt on which he had the holster containing the weapon. According to the report, the investigation experiment measured the time intervals for three different ways of pushing and simultaneously drawing the weapon from Lt. F.'s holster, pushing with the hand, pushing with the forearm and with the left part of the body and the hand. These three alternatives were repeated twice.

36. On 12 November 1999 a police investigator from the Regional Investigation Office in Prešov accused Lt. F. of the offence of injury to health. He was questioned immediately afterwards and pleaded not guilty.

37. On 18 November 1999 Lt. F., through his counsel, submitted the grounds and his reasons for pleading not guilty. In particular, he stated that there had been nothing to lead him to the conclusion that Mr Šarišský would injure himself. He also stated his weapon had been properly secured in the holster which he had had on his belt under his shirt. He alleged that the deceased unexpectedly, suddenly, and with the use of force had pulled his weapon out of the case.

38. The applicant points out that in this testimony Lt. F. altered his previous statements regarding the non-violent behaviour of Mr Šarišský and the way he was carrying the gun. According to this testimony, the pistol had been covered by the shirt so it could not be seen, whereas during the September reconstruction of the events he had stated that his shirt had been tucked in under the belt on which he had the case with the weapon.

39. At 9.00 p.m. on 4 May 2000, in view of the new testimony given by Lt. F., the Regional Investigation Office in Prešov and technicians from the Criminal Police Department in Poprad conducted another experiment with the aim of clarifying the manner of drawing the weapon. During the experiment, when the accused was carrying the pistol covered by his shirt in accordance with Lt. F.'s testimony of 22 November 1999, the assistant did not succeed in any one of three attempts to pull the weapon.

40. On 11 May 2000, following the completion of the investigation, the applicant and her counsel perused the entire investigation file. In the record they confirmed that they had been given sufficient time for the perusal, that they proposed no further investigation be carried out, and that they had no comments on the documents included in the file.

41. On 29 May 2000 a public prosecutor indicted Lt. F. with the offence of causing injury to health under Section 224(1) and (2) of the Criminal Code as a result of his negligence in the course of duty. In the indictment the public prosecutor stated, *inter alia*, that Lt. F.'s testimony that the pistol was on his belt covered by the shirt was not true, because if that had been the case, Mr Šarišský could not have pulled it away from him.

42. On 18 October 2000 a judge of the District Court in Poprad issued a penal order under Section 314e of the Code of Criminal Procedure. In it he convicted Lt. F. of injury to health caused by negligence in the course of duty within the meaning of Section 224(1) and (2) of the Criminal Code. The penal order stated that Lt. F. had failed to secure his service weapon contrary to the relevant regulations and that, as a result, Mr Šarišský had managed to draw the weapon from the case and to inflict with it a lethal injury on himself.

43. Lt. F. was sentenced to one year's imprisonment, suspended for a two-and-a-half-year probationary period. The penal order of

18 October 2000 was based solely on the evidence submitted by the prosecutor and it gave no account of the criminal investigation. The judge referred the injured parties, including the applicant, to civil proceedings for damages.

44. Neither the public prosecutor nor Lt. F. challenged the penal order which thus became final.

45. Lt. F. committed suicide on 23 January 2001.

46. The applicant had participated in the criminal proceedings as a victim and sought an award of damages. As she did not indicate the quantum of damages sought, as required by Article 43 (2) of the Code of Criminal Procedure, the judge advised her of the possibility of recovering damages through a civil action.

47. On 27 September 2000 the applicant's counsel lodged a claim for damages with the Ministry of Justice. On 22 January 2001 the claim was rejected on the ground that the Ministry of Justice lacked jurisdiction to hold a preliminary hearing. Pursuant to section 9 of the Act No. 58/1969, only claims for damages resulting from wrongful decisions had to be lodged with the Ministry of Justice. In the present case, the victim suffered damage as a result of the incorrect procedure by a police officer and her action therefore had to be filed directly with a court of law.

3. The applicant and her daughter's claims for damages

48. On 28 May 2001 the applicant, through her lawyer, filed an action for damages to the Bratislava III District Court. She claimed 45,000 Slovakian korunas (SKK) in compensation for damage of pecuniary nature and SKK 5 million for damage of non-pecuniary nature. As her submissions did not meet the formal requirements set out in Article 79 § 1 of the Code of Civil Procedure, in its ruling of 23 October 2001 the court gave the applicant 15 days to complement her action failing which the proceedings would be discontinued. The applicant did not comply with the request. The District Court therefore discontinued the proceedings on 17 April 2002.

49. On 9 August 2002 the applicant filed an action against the Slovak Republic under Articles 11 *et seq.* of the Civil Code. She claimed compensation from the State (represented by the Prešov Regional Directorate of the Police Corps) for non-pecuniary damage in the amount of SKK 900,000 alleging that, as a result of the wrongful conduct of Lt. F., there had been an interference with her husband's physical integrity which had resulted in his death. She relied on the Poprad District Court's penal order of 18 October 2000.

50. On 7 August 2003 the Poprad District Court dismissed the action. On 10 January 2005 the court of appeal quashed the first-instance decision.

51. On 6 February 2006 the Poprad District Court admitted the applicant's daughter, Ms Kristína Šarišská, as plaintiff.

52. On 6 March 2006 the applicant withdrew her claim.

53. On 31 May 2006 the District Court discontinued the proceedings in respect of the applicant. It dismissed the claim of the applicant's daughter. It had not been shown that the daughter, who had been ten months old when her father had died and had lived with her grandmother, had suffered any interference with her personal rights warranting protection under Articles 11 *et seq.* of the Civil Code. In addition, the court established that the defendant, as indicated by the applicant, lacked standing in the case. The applicant and her daughter should have directly sued the Prešov Regional Directorate of the Police Corps. Finally, the claim of the applicant's daughter had been filed outside the statutory time-limit. The right claimed by her had therefore lapsed.

54. On 20 September 2007 the Prešov Regional Court upheld the first-instance judgment. It held that any non-pecuniary damage which the plaintiff had suffered resulted from the fatal injury which, as it had been established in the course of the criminal proceedings, her father had inflicted on himself. There had therefore been no interference with the plaintiff's personal rights as guaranteed by Articles 11 *et seq.* of the Civil Code. The Regional Court did not accept the first-instance finding according to which (i) the defendant lacked standing in the case and (ii) the right claimed had become statute-barred.

4. Constitutional proceedings

55. On 18 January 2008 the applicant's daughter, represented by the applicant, lodged a complaint with the Constitutional Court. The plaintiff relied, *inter alia*, on Articles 2, 3, 8 and 13 of the Convention and referred to the above proceedings leading to the Prešov Regional Court's judgment of 20 September 2007.

56. On 5 November 2008 the Constitutional Court dismissed the complaint as being manifestly ill-founded. It found no arbitrariness or unlawfulness in the proceedings complained of. With reference to its case-law the Constitutional Court further held that, in the absence of any shortcomings in the proceedings under examination, the ordinary courts involved could not be held liable for any breach of the plaintiff's material rights under Articles 2, 3 and 8 of the Convention. The Regional Court had examined the plaintiff's appeal; the latter had therefore had an effective remedy at her disposal as required by Article 13 of the Convention.

B. Reports of alleged police brutality in Slovakia in respect of persons of Roma origin

1. United Nations Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance (Annual Report, E/CN.4/1999)

57. The report indicates, *inter alia*, that human rights monitoring bodies observed that the police exerted pressure on the victims of police brutality to withdraw their complaints.

2. Conclusions and Recommendations of the Committee Against Torture (11 May 2001)

58. The report refers to allegations of instances of police participation in attacks against Roma, to the failure on the part of the authorities to carry out prompt, impartial and thorough investigations into allegations of such actions or to prosecute and punish those responsible as well as to allegations that the law enforcement officials ill-treated detainees during detention and in police custody, particularly in lock-ups and police cells.

3. The European Commission against Racism and Intolerance (ECRI): Second Report on Slovakia adopted on 10 December 1999

59. The report noted that:

> "...the problem of police mistreatment of members of minority groups, particularly Roma, is of particular concern to ECRI...Victims are reportedly very unwilling to come forward through fear of reprisals and for lack of confidence in the possibilities for redress. ECRI stresses that any incidence of police brutality against minority groups should not be tolerated by the authorities, and that this should be made clear by a firm and public condemnation from politicians and police leaders. Steps should be taken to investigate all alleged mispractices and punish offenders: an independent investigatory body should carry out all such investigations...
>
> At the level of prosecuting authorities and judges, it is noted that very few cases of racially motivated crime reach the courts at all, or, if they do, they are generally prosecuted as ordinary crimes."

4. US Department of State 1999 Country Reports on Human Rights Practices – Slovak Republic

60. The report noted that:

> "In January police officers reportedly raided a Roma settlement in Kosice, injuring 16 Roma...In October, during a raid on a Romani community in Žehra, police allegedly used excessive force as they detained 9 Roma on charges of hooliganism. During the incident, the police shot a 13 year old Romani boy with a plastic bullet, and he was hospitalised as a result of his injury. Police reportedly use pressure and threats to discourage Roma from pressing charges of police brutality. Human rights

monitors continued to charge that police...used their device of countercharges to pressure Roma victims of police brutality to drop their complaints...”

5. US Department of State 2000 Country Reports on Human Rights Practices – Slovak Republic

61. The report observed that:

“Police reportedly use pressure and threats to discourage Roma from pressing charges of police brutality. In 1998 and 1999, Roma in the town of Vráble lodged complaints against a local law enforcement officer ... for allegedly attacking teenage Romani boys. The Ministry of the Interior investigated the case and found [the officer] not guilty ... In March two Roma from the eastern town of Michalovce voluntarily came to the police station for questioning. They were allegedly beaten by some police officers. The victims suffered several injuries including broken legs, hands and ribs. When questioned about the incident, the police first claimed that the action was justified but later admitted that it was unwarranted.”

6. International Helsinki Federation for Human Rights: Human Rights in the OSCE Region: The Balkans, the Caucasus, Europe, Central Asia and North America, Report 2001

62. The report indicated that:

“The most common human rights violation committed by the police was the disproportionate use of coercive methods, which often resulted in injuries to the arrestee and the need for medical care. Such abuse, however, was almost impossible to prove since there was no independent control commission for complaints of ill-treatment and misconduct by law enforcement officials.”

7. International Helsinki Federation Annual Report 1999

63. This report observed that:

“In recent years, although racist violence against Roma in Slovakia has increased, effective prosecution and punishment have been rare. Also the police have resorted to abuse. On 27 October police officers assaulted Roma inhabitants of the village of Hermanovce, eastern Slovakia. Police entered the homes of two Roma families and beat two Roma youths, handcuffed them, forced them into the trunk of a car, and drove them to the police station ... The police offered no explanation to the detainees or their families; nor did they show arrest or search warrants to justify their actions. At the police station the two youths were allegedly beaten with truncheons and kicked. They were interrogated and shown diverse items, and pressed to falsely admit to stealing some of them. They were later released the same day, apparently without having been charged with any crime. Doctors who examined them documented bruises consistent with a beating. At no point were the two detainees advised on their rights.”

II. RELEVANT DOMESTIC LAW

64. Pursuant to Article 166 (1) of the Code of Criminal Procedure, where the investigator considers the investigation into a case to be completed and where the results of such investigation justify the filing of an indictment, the investigator shall give the accused, the victim, as well as their counsels and/or authorised representatives sufficient time for perusing the case file and, if necessary, for proposing any additional investigation be carried out.

65. Article 224(1) and (2) of the Criminal Code provides that a person who by negligence and in violation of his or her duties causes a serious injury to health or the death of another person shall be punished with a prison sentence of between six months and five years or with a fine.

66. Under Article 314e (1) of the Code of Criminal Procedure, a single judge may issue a criminal order, without a public hearing, where the facts are reliably proved by the evidence submitted.

67. Pursuant to Article 314g (1) and (3) of the Code of Criminal Procedure, a penal order may only be challenged by the public prosecutor, the accused person or those who can file an appeal in the latter's favour. Where such an objection is filed, the judge shall hold a hearing in the case.

68. Article 314g (2) provides that a third party who joins the criminal proceedings with a claim for damages can file an objection to a penal order only in case and to the extent that compensation is thereby granted. When a third party files such an objection, the judge shall quash the relevant part of the penal order and refer the person concerned to proceedings before a civil court.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

69. The applicant complained that the death of her husband in police custody and the subsequent failure of the Slovakian authorities to undertake a thorough and effective investigation into the circumstances surrounding his death amounted to a violation of Article 2 of the Convention, which provides as follows:

> "1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:

(a) in defence of any person from unlawful violence;

(b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

(c) in action lawfully taken for the purpose of quelling a riot or insurrection."

A. The parties' submissions

70. The applicant submitted first, that her husband was deprived of his right to life as a result of his intentional shooting in police custody, and secondly, that the State authorities failed adequately to protect his right to life by undertaking a through and effective investigation into the circumstances surrounding his death.

71. In relation to the first submission, she relied on the principle, established by the Court, that where an individual is taken into police custody in good health but is later found dead, it is incumbent on the State to provide a plausible explanation of the events leading to his death, failing which the authorities must be held responsible under Article 2 of the Convention (*Velikova v. Bulgaria*, no. 41488/98, § 70, ECHR 2000-VI). Moreover, where the events in issue lie wholly or in large part within the exclusive knowledge of the authorities, the burden of proof may be regarded as resting with the authorities to provide a satisfactory and convincing explanation (*Hugh Jordan v. the United Kingdom*, no. 24746/94, § 103, ECHR 2001-III (extracts)).

72. In the present case, Mr Šarišský was taken into custody in good health. It was not disputed that he received his injuries, including the fatal wound, in police custody. While in hospital he repeatedly told the applicant and other relatives that he did not shoot himself, and their testimonies unequivocally stated that he had never owned or used a gun. In the circumstances, the applicant submitted that the investigating authorities did not fulfil their obligation to provide a plausible explanation for his death. Rather, they continued to rely on a highly implausible theory which did not withstand scrutiny: namely, that Mr Šarišský had forcibly taken the gun from Lt. F. and shot himself.

73. The applicant further contended that the investigation conducted by the authorities was plagued by omissions and inconsistencies and, consequently, the State had failed to undertake a thorough and effective investigation into her husband's death. In particular, she argued that it was unacceptable that the forensic technician was not equipped with lifting pads for conducting a gun residue test when tasked with securing a crime scene

involving bodily injury caused by a firearm. However, she contended that pivotal evidence could still have been secured had Lt. F.'s hands been bagged until the appropriate gunpowder residue tests were taken.

74. She submitted that the investigators failed properly to secure fingerprint tests; that police officers were never asked to explain how and when her husband received the serious injuries on his face and left ear; that the prosecution gave full credit to the testimony by the police officers involved in the incident, flatly denying the use of force against the victim; that the investigation failed to resolve the differences in the testimony of police officers regarding the position the victim was found in after the shooting; and finally, that there was a failure to resolve the apparent contradictions in the testimonies given by Lt. F.

75. The Government submitted that the theory that Mr Šarišský committed suicide was not highly implausible. In particular, they submitted that on 17 August 1999 an autopsy was ordered to determine the manner of death, the angle and range of the handgun with which the victim was shot, and any other facts or circumstances relevant to the finding of an objective explanation for the death. On 20 August 1999 a forensic analysis of fingerprints, biological and chemical samples and a handwritten note was commissioned. This was followed by a reconstruction on 8 September 1999 to clarify the circumstances leading to the death of Mr Šarišský. Although the testimony of Lt. F. was considered during the reconstruction, it relied primarily on the objective evidence such as the position of the entry and exit wounds and the gunshot damage to the chair. Following the reconstruction the investigators concluded that in all probability Mr Šarišský had shot himself. The investigations conducted, and the evidence that Mr Šarišský previously had been aggressive and attempted to self-harm while in police custody, refuted the applicant's allegation that suicide was a highly implausible theory and that the investigators had relied uncritically on the testimony of Lt. F.

76. With regard to the adequacy of the investigation, the Government submitted that a task-force from the District Criminal Police Department in Poprad was dispatched to the scene immediately after the shooting of the applicant's husband. They inspected the scene and a forensic technician secured the evidence. The forensic technician did not take samples of gunpowder residue from the hands of Lt. F. because he did not have lifting pads to secure such evidence. The Government contended that at that time lifting pads were not standard issue for criminal investigators. In any case, the applicant's husband was not at the crime scene when the forensic technician arrived as he had already been transported to hospital. The Government could not be held responsible for the fact that hospital staff washed his hands on admission. Moreover, although Lt. F.'s hands were not bagged, the Government submitted that he remained under the constant supervision of a police guard until samples of gunpowder residue were

taken the following day by an expert technician from the Košice Institute of Forensic Science.

77. The Government further submitted that the firearm was confiscated immediately for the purpose of conducting forensic tests but no classifiable or identifiable fingerprints could be lifted from it. In addition, following the death and autopsy of the applicant's husband, additional experts were appointed to inspect biological, chemical, graphological, mechanical, fingerprint and ballistic traces. Reconstructions and experiments were carried out to clarify the incident and potential witnesses were interrogated.

78. The Government denied that there had been any contradictions in the testimonies of the police officers. Indeed, any discrepancy in the police officers' statements could be accounted for by the exclusion of the words "right side" from the English translation.

79. The Government also denied that the investigators had relied exclusively and uncritically on the testimony of Lt. F. and had never sought to explore an alternative explanation for the fatal injuries sustained by the applicant's husband. The investigators collected all accessible evidence in order to verify the testimonies of Lt. F. and the other witnesses; reconstructions were carried out to investigate various possible alternatives and the authorities concluded, on the basis of the available evidence, that Mr Šarišský's injuries were self-inflicted. The injuries to Mr Šarišský's face and left ear were considered irrelevant as they had no relation to the cause of death.

80. Finally, the Government submitted that the applicant had access to the investigation. Under domestic law, it was open to her to make motions concerning evidence-taking or submission of supplementary evidence, comment on all evidence taken and consult and review the case file. Her representative participated in parts of the criminal proceedings and raised no objection to their conduct. Furthermore, the applicant was entitled to make motions for further investigation.

81. The Government therefore argued that there was an effective, impartial, thorough and careful investigation into the death of Mr Šarišský which led to the person responsible, Lt. F., being identified and punished.

B. The Court's assessment

I. The death of Mr Šarišský

(a) General principles

82. The Court reiterates that Article 2, which safeguards the right to life and sets out the circumstances when deprivation of life may be justified, ranks as one of the most fundamental provisions in the Convention, to

which no derogation is permitted. The circumstances in which the deprivation of life may be justified must therefore be strictly construed. Moreover, the object and purpose of the Convention as an instrument for the protection of individuals also requires that Article 2 be interpreted and applied so as to make its safeguards practical and effective (*McCann and Others v. the United Kingdom*, 27 September 1995, §§ 146 – 147, Series A no. 324).

83. In light of the importance of the protection afforded by Article 2, the Court must subject deprivations of life to the most careful scrutiny, taking into consideration not only the actions of State agents but also the surrounding circumstances.

84. In assessing evidence, the Court has generally applied the standard of proof "beyond reasonable doubt" (*Avsar v Turkey*, no. 25657/94, § 282, ECHR 2001). Such proof may, however, follow from the co-existence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (*Ireland v. the United Kingdom*, 18 January 1978, § 161, Series A no. 25). Where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of persons within their control in custody, strong presumptions of fact will arise in respect of injuries and death occurring during detention. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation (*Salman v. Turkey* [GC], no. 21986/93, § 99, ECHR 2000-VII).

85. Consequently, where an individual is taken into police custody in good health and is found to be injured on release, it is incumbent on the State to provide a plausible explanation of how those injuries were caused (see, for example, *Selmouni v. France* [GC], no. 25803/94, § 87, ECHR 1999-V) and to produce evidence casting doubt on the veracity of the victim's allegations, particularly if those allegations are backed up by medical reports (*Abdülsamet Yaman v. Turkey*, no. 32446/96, § 43, 2 November 2004). The authorities' obligation to account for an individual in custody is particularly stringent where that individual dies (Salman *v. Turkey*, cited above, at § 99; Keenan v. the United Kingdom, no. 27229/95, § 91, ECHR 2001-III).

86. Moreover, in addition to the obligation on States to account for injuries or deaths in police custody, the Court recalls that the State is also under a positive obligation to take all reasonable measures to ensure that the health and well-being of persons in detention are adequately secured by, among other things, providing them with the requisite medical assistance (see, mutatis mutandis, *Aerts v. Belgium*, judgment of 30 July 1998, Reports 1998-V, p. 1966, §§ 64 et seq., and *Kudła v. Poland* [GC], no. 30210/96, § 94, ECHR 2000-XI) and taking reasonable measures to minimise a known suicide risk (*Keenan v. the United Kingdom*, no. 27229/95, § 97, ECHR 2001-III).

(b) Application to the present case

87. Mr Šarišský was twenty-one years old and in good health when he was taken into custody at approximately 8 p.m. on 12 August 1999. Several hours later he was rushed to hospital with a gunshot wound to his abdomen and injuries to his neck, right shoulder, face and ear. The fatal shot was fired from Lt. F.'s police service pistol while Mr Šarišský was alone with Lt. F. in his office. Mr Šarišský and Lt. F. clearly had previous dealings with each other (see, for example, paragraph 11), and the evidence would suggest that Lt. F. volunteered to interrogate Mr Šarišský while he was off duty, without first obtaining the permission of his commanding officer.

88. In the course of the investigation into his death, at least three accounts were given of how Mr Šarišský was shot. Lt. F. indicated that Mr Šarišský had taken his gun and shot himself. Mr Šarišský allegedly told the investigator that Lt. F. had given him the gun and he had shot himself. The applicant, on the other hand, submitted that her husband told her that Lt. F. had shot him. In carrying out the reconstruction on 8 September 1999, the ballistics experts concluded that Mr Šarišský "most probably" shot himself. Further reconstructions were carried out to determine how Mr Šarišský was able to forcibly remove Lt. F.'s service pistol. No attempt appears to have been made, however, to investigate the allegation made by Mr Šarišský himself, namely that Lt. F. gave him the firearm. Moreover, the Court also observes that no explanation was given for the inconsistencies in the different statements provided by Lt. F. in the course of the domestic proceedings.

89. Consequently, the Court has grave concerns both about the circumstances surrounding Mr Šarišský's death and the extent to which the authorities have provided "a satisfactory and convincing explanation" (see *Salman v. Turkey*, cited above, § 99). The inherent improbability of the theory that, while in police custody and while temporarily left alone during his interrogation by Lt. F, Mr. Šarišský would compose a suicide note and on Lt.F's return seize his pistol from his belt and use it to shoot himself in the abdomen gives serious cause to doubt that the authorities have discharged the burden imposed on them under the Convention. However, the Court does not consider that it is necessary to reach any final determination of this issue. Even if the Court were to accept that Mr Šarišský committed suicide as alleged, it notes that the obligation to protect the health and well-being of persons in detention clearly encompasses an obligation to take reasonable measures to protect them from harming themselves (*Keenan v. the United Kingdom*, cited above, § 97). Although there is insufficient evidence to enable the Court to find that the authorities either knew or ought to have known that Mr Šarišský was a suicide risk on the night of his death, the Court notes that there are certain basic precautions which police officers and prison officers should be expected to take in all cases in order to minimise any potential risk. First,

the Court would observe that compelling reasons must be given as to why the interrogation of a suspect is entrusted to an armed police officer. For the Court, the facts of the present case disclose no justification whatsoever for allowing Lt. F. to remain in possession of his firearm during the interrogation of Mr Šarišský, a young man who had been arrested on suspicion of bicycle theft. Secondly, at the time of Mr Šarišský's death there were regulations in force which required police officers to secure their service weapons in order to avoid any "undesired consequences". The domestic courts held that Lt. F's failure properly to secure his service weapon amounted to negligence which resulted in the death of Mr Šarišský. Consequently, the Court finds that even if Mr Šarišský committed suicide in the manner described by the Government and the investigative authorities, the authorities were in violation of their obligation to take reasonable measures to protect his health and well-being while he was in police custody.

90. There has accordingly been a violation of Article 2 of the Convention under its substantive limb.

2. The adequacy of the investigation

(a) General principles

91. The obligation to protect the right to life under Article 2 of the Convention, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within [its] jurisdiction the rights and freedoms defined in [the] Convention", also requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force (see, *mutatis mutandis*, *McCann and Others v. the United Kingdom*, judgment of 27 September 1995, Series A no. 324, p. 49, § 161, and *Kaya v. Turkey*, judgment of 19 February 1998, *Reports* 1998-I, p. 324, § 86). The essential purpose of such investigation is to secure the effective implementation of the domestic laws which protect the right to life and, in those cases involving State agents or bodies, to ensure their accountability for deaths occurring under their responsibility. What form of investigation will achieve those purposes may vary in different circumstances. Whatever mode is employed, however, the authorities must act of their own motion, once the matter has come to their attention. They cannot leave it to the initiative of the next-of-kin either to lodge a formal complaint or to take responsibility for the conduct of any investigative procedures (see, for example, *mutatis mutandis*, *İlhan v. Turkey* [GC], no. 22277/93, § 63, ECHR 2000-VII).

92. For an investigation into an alleged unlawful killing by State agents to be effective, it may generally be regarded as necessary for the persons responsible for and carrying out the investigation to be independent from

those implicated in the events (see, for example, *Ramsahai and Others v. the Netherlands* [GC], no. 52391/99, § 325, ECHR 2007-..., *Güleç v. Turkey*, judgment of 27 July 1998, *Reports* 1998-IV, p. 1733, §§ 81-82, and *Oğur v. Turkey* [GC], no. 21954/93, §§ 91-92, ECHR 1999-III). This means not only a lack of hierarchical or institutional connection but also a practical independence (see, for example, *Ergi v. Turkey*, judgment of 28 July 1998, *Reports* 1998-IV, pp. 1778-79, §§ 83-84, and the Northern Irish judgments, for example, *Hugh Jordan v. the United Kingdom*, no. 24746/94, § 120, and *Kelly and Others v. the United Kingdom*, no. 30054/96, § 114, both of 4 May 2001).

93. The investigation must also be effective in the sense that it is capable of leading to the identification and punishment of those responsible (see *Oğur*, cited above, § 88). This is not an obligation of result, but of means. The authorities must have taken the reasonable steps available to them to secure the evidence concerning the incident, including, *inter alia*, eyewitness testimony, forensic evidence and, where appropriate, an autopsy providing a complete and accurate record of injury and an objective analysis of clinical findings, including the cause of death (see, for example, *Salman*, cited above, § 106; *Tanrıkulu v. Turkey* [GC], no. 23763/94, § 109, ECHR 1999-IV; and *Gül v. Turkey*, no. 22676/93, § 89, 14 December 2000). Any deficiency in the investigation which undermines its ability to establish the cause of death or the person or persons responsible will risk falling foul of this standard (see the Northern Irish judgments concerning the inability of inquests to compel the security-force witnesses directly involved in the use of lethal force, for example, *Hugh Jordan*, cited above, § 127).

94. A requirement of promptness and reasonable expedition is implicit in this context (see *Yaşa v. Turkey*, judgment of 2 September 1998, *Reports* 1998-VI, pp. 2439-40, §§ 102-04; *Çakıcı v. Turkey* [GC], no. 23657/94, §§ 80, 87 and 106, ECHR 1999-IV; *Tanrıkulu*, cited above, § 109; and *Mahmut Kaya v. Turkey*, no. 22535/93, §§ 106-07, ECHR 2000-III). While there may be obstacles or difficulties which prevent progress in an investigation in a particular situation, a prompt response by the authorities in investigating a use of lethal force may generally be regarded as essential in maintaining public confidence in their adherence to the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts (see, for example, *Hugh Jordan*, cited above, §§ 108 and 136-40).

95. For the same reasons, there must be a sufficient element of public scrutiny of the investigation or its results to secure accountability in practice as well as in theory. The degree of public scrutiny required may well vary from case to case. In all cases, however, the next-of-kin of the victim must be involved in the procedure to the extent necessary to safeguard his or her legitimate interests (see *Güleç*, cited above, p. 1733, § 82; *Oğur*, cited

above, § 92; *Gül*, cited above, § 93; and the Northern Irish judgments, for example, *McKerr v. the United Kingdom*, no. 28883/95, § 148, ECHR 2001-III).

(b) Application to the present case

96. The Court observes that following the shooting of Mr Šarišský, Lt. F. immediately called for the emergency services. An investigation task-force was formed and called promptly to the police station to inspect the scene of the shooting. The inspection began at 11.50 p.m., very shortly after the incident.

97. Nevertheless, the Court finds that there were a number of deficiencies in the criminal investigation which undermined its ability to establish who was responsible for Mr Šarišský's death.

(i) Independence of the police investigation

98. The criminal investigation was supervised by police officers from the Department of Supervision and Inspection at the Ministry of the Interior. The Court observes that these police officers were under the command of the Ministry of the Interior. Even if the Court were to assume that these officers were sufficiently independent for the purposes of Article 2 of the Convention, it is concerned that they did not commence their investigation until 13 August 1999, when an officer interviewed the wounded Mr Šarišský in hospital. The task-force that was formed immediately after the shooting was comprised of police officers from Poprad, which was the district in which Lt. F. was based. It was these officers who conducted the initial forensic examination of the scene. Moreover, after the Department of Supervision and Inspection took over, officers from Poprad continued to be involved in the investigation. In particular, it is clear from the record of the reconstruction conducted on 4 May 2000 that the technicians carrying out the experiments were from the Criminal Police Department in Poprad, which was Lt. F.'s department. Further investigations were also carried out by the Regional Investigation Office in Prešov.

99. The Court recalls the extremely high standard established by the Grand Chamber in *Ramsahai v the Netherlands* (cited above, §§ 333 -341). Whilst the Court acknowledges that the local police cannot remain passive until independent investigators arrive, in *Ramsahai v the Netherlands* the Grand Chamber indicated that in the absence of any special circumstances, immediate action by local police should not go beyond securing the area in question. In the present case, the task-force examined the crime scene, photo-documented it and recovered fingerprints and ballistic, biological and material evidence. They did not, however, have the necessary technical equipment to test Lt. F.'s hands for gunshot residue, and instead permitted him to return home, although they submitted that he remained under the constant supervision of a police guard. No further details have been

provided concerning the identity of this guard or the extent of the supervision. However, as police officers from the Department of Supervision and Inspection at the Ministry of the Interior did not arrive until the following day, it must be assumed that the guard was also from Lt. F.'s department in Poprad.

100. The Court is also concerned about the continued involvement of technicians from Lt. F.'s department in Poprad in the investigation, most notably during the reconstruction carried out on 4 May 2000. Their involvement diminished the investigation's appearance of independence and this could not be remedied by the subsequent involvement of the Department of Supervision and Inspection. The Court therefore finds that the investigation was not sufficiently independent.

(iii) Adequacy of the investigation

101. Moreover, the Court finds that the failure of the investigators to give serious consideration to Mr Šarišský's claim that he shot himself after Lt. F. handed him the gun amounted to a serious deficiency in the Šarišský's death. The allegation that Lt. F. voluntarily gave Mr Šarišský his gun amounts to a much more serious allegation against Lt. F than that of causing injury to health by negligence, and yet the investigators do not appear to have considered it, preferring instead to rely on Lt. F.'s claim that Mr Šarišský forcibly took the weapon from him.

102. The Court further observes that in a case such as the present, where there were no independent eyewitnesses to the incident, the taking of forensic samples was of critical importance in establishing who was responsible for Mr Šarišský's death (*Ramsahai v the Netherlands*, cited above, § 331). If the investigators had brought the necessary equipment to the police station, samples of gunpowder residue could have been taken from Lt. F.'s hands in the immediate aftermath of the shooting. If such samples had been taken, it might have been possible either to exclude or confirm that he pulled the trigger. Instead, samples were not taken until the following day. Although the Government submitted that Lt. F. remained under the supervision of a police guard until the samples were taken, the Court has concerns about the independence of the guard, who was most likely a police officer from Lt. F.'s department (see paragraph 98). Consequently, the result of the gunpowder residue test cannot be relied on. Although a ballistics test later confirmed that Mr Šarišský "most probably" shot himself, if conducted properly the gunpowder residue test could have been conclusive. Thus, there was a failure by the investigators to take reasonable steps to secure evidence concerning the incident which in turn undermined the ability of the investigation to determine beyond any doubt who was responsible for Mr Šarišský's death.

103. Finally, the Court observes that very little attention appears to have been paid to the applicant's claim that her husband had injuries to his face,

shoulder and ear, even after the autopsy confirmed the presence of these injuries. The Government have subsequently indicated that these injuries were ignored because they were not relevant to determining the cause of death. They were, however, relevant to determining whether Mr Šarišský was ill-treated by police officers either during his arrest or in police custody, which in turn is relevant both to an investigation into a potential violation of Article 2 of the Convention and to a separate allegation under Article 3. The Court therefore finds that the failure to investigate the applicant's claim that her husband was ill-treated by police officers prior to the shooting amounted to a serious shortcoming in the criminal investigation and prevented the authorities from obtaining a clear and accurate picture of the events leading to Mr Šarišský's death.

104. In light of the above, the Court concludes that no meaningful investigation was conducted at the domestic level capable of establishing the true facts surrounding the death of Mr Šarišský. It follows that there has also been a violation of the procedural limb of Article 2 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

105. The applicant complained under Article 3 of the Convention that her husband was ill-treated in police custody and that the authorities failed to carry out an adequate investigation into that ill-treatment. Article 3 of the Convention provides as follows:

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

106. Having considered the applicant's complaints under Article 2 of the Convention, the Court finds that it is not necessary to make a separate finding under Article 3.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

107. The applicant complained that she had not had an effective remedy for her complaints under Articles 2 and 3 within the meaning of Article 13 of the Convention, which provides as follows:

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

108. First, the applicant submitted that the authorities failed to carry out a competent and thorough investigation of the violation of Article 2, which constituted a separate and independent violation of her right to an effective remedy.

109. Secondly, the applicant submitted that under Slovak law no effective remedy existed in the event that the prosecution and investigation

authorities did not fulfil their responsibility to carry out a thorough and effective investigation of alleged violations of rights protected by the Convention. She further submitted that civil damages did not amount to an effective remedy where there had been a death at the hands of State agents (see, for example, *Aksoy v. Turkey*, 18 December 1996, *Reports of Judgments and Decisions* 1996-VI).

110. The Court notes that, despite her claim that civil damages could not be regarded as an effective remedy where a death had occurred at the hands of State agents, the applicant instituted civil proceedings which were discounted on the grounds of the procedural shortcomings in her pleadings. The Court finds that the essence of the applicant's complaints under Article 13 relates to the alleged inadequacy of the investigation which took place and the absence of any remedy to ensure there was an effective investigation into her husband's death such as to enable her effectively to pursue a civil action for damages arising out of the death. As such, the Court considers that the complaints under Article 13 are a restatement of the applicant's complaints under Article 2. It does not, therefore, consider it necessary to make a separate finding under Article 13 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION

111. The applicant complained that her rights, and the rights of her deceased husband, under Articles 2, 3 and 13 of the Convention were violated in conjunction with Article 14 on grounds of ethnic origin. Article 14 of the Convention provides 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' submissions

112. The applicant submitted that her husband's death was caused by an agent of the State and the investigation which followed was plagued by severe deficiencies and discrepancies and, as a result, it failed to establish the cause of his death. She submitted that the fact that her husband was a Romani man, coupled with the legacy of widespread and systematic abuse of Roma in police custody, created an obligation on the State to investigate a possible racist motive behind his death. The State failed to do so in violation of their procedural obligations under Article 14 of the Convention.

113. The Government contested that argument. They submitted that there was no evidence to suggest that in the present case Mr Šarišský was

subjected to significantly harsher treatment by the police on account of his Roma ethnicity.

B. The Court's assessment

1. Substantive aspect

114. Discrimination is treating differently, without an objective and reasonable justification, persons in relevantly similar situations (see *Willis v. the United Kingdom*, no. 36042/97, § 48, ECHR 2002-IV). Discrimination on account of, *inter alia*, a person's ethnic origin is a form of racial discrimination. Racial discrimination is a particularly invidious kind of discrimination 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, thereby reinforcing democracy's vision of a society in which diversity is not perceived as a threat but as a source of enrichment (*Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, § 145, ECHR 2005-...; and *Timishev v. Russia*, nos. 55762/00 and 55974/00, § 56, ECHR 2005-...). The Court has also held that no difference in treatment which is based exclusively or to a decisive extent on a person's ethnic origin is capable of being objectively justified in a contemporary democratic society built on the principles of pluralism and respect for different cultures (*Timishev*, cited above, § 58).

115. As to the burden of proof in this sphere, the Court has established that once the applicant has shown a difference in treatment, it is for the Government to show that it was justified (see, among other authorities, *Chassagnou and Others v. France* [GC], nos. 25088/94, 28331/95 and 28443/95, §§ 91-92, ECHR 1999-III; and *Timishev*, cited above, § 57).

116. As regards the question of what constitutes *prima facie* evidence capable of shifting the burden of proof on to the respondent State, the Court stated in *Nachova and Others v. Bulgaria* that in proceedings before it there are no procedural barriers to the admissibility of evidence or pre-determined formulae for its assessment. The Court adopts the conclusions that are, in its view, supported by the free evaluation of all evidence, including such inferences as may flow from the facts and the parties' submissions. According to its established case-law, proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. Moreover, the level of persuasion necessary for reaching a particular conclusion and, in this connection, the distribution of the burden of proof are intrinsically linked to the specificity of the facts, the nature of the allegation made and the Convention right at stake.

117. Turning to the facts of the present case, the Court considers that whilst Lt. F.'s conduct during the applicant's detention calls for serious criticism, that behaviour is of itself an insufficient basis for concluding that his conduct was racially motivated. Further, in so far as the applicant has relied on general information about police abuse of Roma in Slovakia, the Court cannot lose sight of the fact that its sole concern is to ascertain whether in the case at hand the treatment inflicted on the applicants was motivated by racism (see *Nachova and Others v. Bulgaria*, cited above, § 155). Lastly, the Court does not consider that the failure of the authorities to carry out an effective investigation into the alleged racist motive for the incident should shift the burden of proof to the respondent Government with regard to the alleged violation of Article 14 in conjunction with the substantive aspect of Article 2 of the Convention. The question of the authorities' compliance with their procedural obligation under Article 14 is a separate issue, to which the Court will revert below (see *Nachova and Others v. Bulgaria*, cited above, § 157).

118. Consequently, the Court finds that there has been no violation of Article 14 of the Convention taken in conjunction with Article 2 in its substantive aspect.

2. Procedural aspect

119. The Court has held that when investigating violent incidents and, in particular, deaths at the hands of State agents, 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. Failing to do so and 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 that 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 (see, *mutatis mutandis*, *Thlimmenos v. Greece* [GC], no. 34369/97, § 44, ECHR 2000-IV). In order to maintain public confidence in their law enforcement machinery, Contracting States must ensure that in the investigation of incidents involving the use of force a distinction is made both in their legal systems and in practice between cases of excessive use of force and of racist killing (*Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, § 146, ECHR 2005-VII).

120. 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 (see, *mutatis mutandis*, *Shanaghan v. the United Kingdom*, no. 37715/97, § 90, ECHR 2001-III, setting out the same standard with regard to the general obligation to investigate). The authorities must do what is

reasonable in the circumstances to collect and secure the evidence, explore all practical means of discovering the truth and deliver fully reasoned, impartial and objective decisions, without omitting suspicious facts that may be indicative of a racially induced violence.

121. In the present case, the Court has already found that the Slovakian authorities violated Article 2 of the Convention in that they failed to conduct a meaningful investigation into the death of Mr Šarišský (see paragraphs 94 –103 above). It therefore considers that it must examine separately the complaint that there was also a failure to investigate a possible causal link between alleged racist attitudes and his death.

122. The Court notes with concern the contemporaneous reports documented at paragraphs 57 *et seq*. above which relate to allegations of police brutality towards Roma in Slovakia. In respect of persons of Roma origin, it would not exclude the possibility that in a particular case the existence of independent evidence of a systemic problem could, in the absence of any other evidence, be sufficient to alert the authorities to the possible existence of a racist motive. However, in the present case the Court is not persuaded that the objective evidence is sufficiently strong in itself to suggest the existence of such a motive. It also notes that, unlike the situation obtaining in *Nachova and Others v. Bulgaria*, the authorities did not have before them any concrete information capable of suggesting that there had been any racial motive behind the applicant's arrest, detention, or, ultimately, his death (*Vasil Sashov Petrov v. Bulgaria*, no. 63106/00, § 72, 10 June 2010). Moreover, there is no indication that the applicant made allegations of racial bias at any point during the investigation (compare with *Karagiannopoulos v. Greece*, no. 27850/03, § 78, 21 June 2007; *Turan Cakir v. Belgium*, no. 44256/06, § 80, 10 March 2009; *Beganović v. Croatia*, no. 46423/06, § 97, ECHR 2009-... (extracts); and *Sashov and Others v. Bulgaria*, no. 14383/03, § 84, 7 January 2010).

123. For these reasons, the Court does not consider that the authorities had before them information that was sufficient to bring into play their obligation to investigate possible racist motives on the part of the officers. It follows that there has been no violation of Article 14 of the Convention taken in conjunction with Article 2 in that respect.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

124. 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

125. The applicant claimed 45,000 euros (EUR) in respect of non-pecuniary damages: EUR 30,000 in respect of the victim's suffering and EUR 15,000 in her personal capacity. The applicant contended that her claims were in line with the standards set by the Court in the cases of *Akkoç v. Turkey*, nos. 22947/93 and 22948/93, ECHR 2000-X and *Nachova and Others v. Bulgaria* (cited above).

126. The applicant also claimed EUR 289,225 in respect of pecuniary damages. She submitted that although her husband was unemployed at the time of his death, he was young and in good health and therefore could have secured employment. She submitted that his death had impacted her financial situation and would continue to do so for the forty-one remaining years during which her husband would have been able to secure wages from employment. The claim for EUR 289,225 therefore represented past, present and future wage loss based on the age of death of the victim until the official retirement age in Slovakia (62 years).

127. The Government contended that the applicant's claim for non-pecuniary damage was manifestly overstated.

128. The Government submitted that the applicant's claim for lost earnings was unfounded as her husband was unemployed at the date of his death. Moreover, they submitted that the applicant had the opportunity to claim for pecuniary loss during the criminal proceedings against Lt. F. and/or in civil proceedings but her claims were struck out due to procedural irregularities.

129. In respect of the applicant's claim for non-pecuniary damage, the Court recalls that it has found a violation of Article 2 of the Convention. It has also found that the authorities failed to provide the applicant with an effective remedy, contrary to Article 13. In the circumstances, having regard to awards made in comparable cases, the Court awards the applicant the full amount claimed.

130. In respect of the applicant's claim for pecuniary loss, the Court observes that she has not submitted any details of her late husband's previous employment record or, as she has since remarried, of her current husband's employment situation. It is therefore impossible for the Court properly to assess the financial impact of her husband's death.

Consequently, the Court finds that the applicant has not substantiated her claim for pecuniary loss.

B. Costs and expenses

131. The applicant claims EUR 10,962 in respect of legal costs and expenses.

132. The Government submit that this claim is unreasonably high.

133. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the applicants the sum of EUR 8,000 for the proceedings before the Court.

C. Default interest

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

FOR THESE REASONS, THE COURT

1. *Holds* unanimously that there has been a violation of Article 2 of the Convention on account of the authorities' failure to safeguard the right to life of Mr Šarišský;

2. *Holds* unanimously that there has been a violation of Article 2 of the Convention on account of the authorities' failure to conduct an effective investigation into the circumstances surrounding Mr Šarišský's death;

3. *Holds* unanimously that it is not necessary to make a separate finding in respect of the complaints under Article 3 of the Convention;

4. *Holds* unanimously that it is not necessary to make a separate finding in respect of the complaints under Article 13 of the Convention;

5. *Holds* by six votes to one that there has been no violation of Article 14 of the Convention taken in conjunction with Article 2 in respect of its substantive or procedural head;

6. *Holds* unanimously
(a) that the respondent State is to pay the applicant, within three months [from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention], EUR 45,000 (forty-five thousand euros) in respect of non-pecuniary damage and EUR 8,000 (eight thousand euros) in respect of costs and expenses, plus any tax that may be chargeable to the applicant;
(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 14 December 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early Registrar	Nicolas Bratza President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following separate opinions are annexed to this judgment:
(a) concurring opinion of Judge Bratza, joined by Judge David Thór Björgvinsson;
(b) partly dissenting opinion of Judge David Thór Björgvinsson.

N.B.
T.L.E.

CONCURRING OPINION OF JUDGE BRATZA, JOINED BY JUDGE DAVÍD THÓR BJÖRGVINSSON

I can share the view of the Chamber that, on the assumption that Mr Šarišský committed suicide while in police custody, Article 2 of the Convention was violated on account of the authorities' failure to take adequate steps to safeguard his right to life. I would, however, have gone further and found that the substantive aspect of Article 2 was violated on the grounds that Mr Šarišský was wrongfully deprived of his life while in police custody, the authorities having provided no satisfactory and convincing explanation as to how he came by his death.

The applicable principles, when an individual is taken into police custody in good health and dies while he is detained or is found to be injured on his release, are well established by the Court's case-law. The burden of proof lies on the authorities to provide a plausible explanation as to how the death occurred or the injuries were sustained. A particularly stringent obligation lies on the authorities to account for deaths in custody and strong presumptions of fact will arise in respect of fatalities occurring during detention (*Salman v. Turkey* [GC], no. 21986/93, ECHR 2000-VII).

In the judgment, the Court has expressed its grave concerns about the circumstances surrounding Mr Šarišský's death: the judgment correctly notes the inherent improbability of the theory that, while in police custody and temporarily left alone during interrogation by Lt. F., Mr Šarišský would compose a suicide note and, on Lt. F.'s return, seize his pistol from his belt and use it to shoot himself in the abdomen. However, while finding that the implausibility of the story gives serious cause to doubt whether the authorities have discharged the burden imposed on them under the Convention, the majority of the Chamber have not found it necessary to make any final determination of this question.

In view of the obvious gravity of the case, I have, on the contrary, found it necessary to decide not merely whether the authorities failed adequately to safeguard Mr Šarišský's life but whether they were responsible for taking his life. In my view, the authorities have patently failed to discharge the burden imposed on them.

The theory that the applicant committed suicide in custody, which was accepted by the prosecuting authorities, is not only inherently improbable but is rendered the more implausible by a number of elements of the case.

(i) Mr Šarišský allegedly acted in a very aggressive manner when arrested and taken to the police station and when questioned by the two police officers (H. and K.), who were on duty at the time of his arrest, in the presence of two other officers (G. and J.). According to Officer G., Mr Šarišský remained handcuffed during his interrogation. However, according to Sgt. H., Mr Šarišský was not handcuffed and kept getting up

from his chair, banging his head against the wall and threatening to jump from the window.

Lt. F., who was not on duty at the time, joined the other officers when Mr Šarišský was already signing the record of interrogation and, according to Sgt. H., Mr Šarišský and Lt. F., who knew each other, began to argue and shout at each other. Although not yet on duty, Lt. F. apparently sought and obtained permission from his superior to take over the interrogation of Mr Šarišský. According to Lt. F.'s own evidence, Mr Šarišský continued to be aggressive and to make threats on his way to Lt. F.'s office. It appears that Mr Šarišský was there initially handcuffed to a radiator. However, at some stage during the interrogation, it is claimed that the handcuffs were removed and that Lt. F. told him to write down on a piece of paper the names of those responsible for the suspected theft which was the subject of the investigation. Despite the alleged aggressive behaviour of Mr Šarišský and his threats of self-harm, Lt. F. claimed that he left him alone in the office, without handcuffs and unguarded.

(ii) According to Lt. F.'s evidence, when he returned to the office and walked round Mr Šarišský, who was sitting on a chair with his back to the door, he felt a sudden blow to his right shoulder and fell to his knees. He then realised that Mr Šarišský had succeeded in seizing his service pistol and was pointing it at him. When Lt. F. told him not to be stupid and to hand the weapon over, Mr Šarišský instead turned the weapon on himself and shot himself in the stomach.

Lt. F.'s various accounts of these events are not only improbable, they are also contradictory. During the first reconstruction of the incident on 8 September 2001, Lt. F. told the investigator that he had passed on the right side of Mr Šarišský but later claimed that he had passed between the table and the chair on which Mr Šarišský was seated. In the initial reconstruction Lt. F. further claimed that his shirt had been tucked in under the belt on which he had the holster containing the weapon; subsequently he claimed that his weapon had been properly secured in the holster which he had on his belt under his shirt and that Mr Šarišský had probably pulled the weapon from its holster – a story which was not only shown to be impossible in a further experiment carried out but which was found to be untrue in the criminal proceedings against Lt. F.

(iii) The suicide note allegedly left by Mr Šarišský, which does not appear to have been in the investigation file when examined by the applicant's representative, poses more questions than it answers. The evidence of the handwriting experts went no further than to say that the words “say hello to” in the note had “most probably” not been written by Lt. F. and had “most probably” been written by Mr Šarišský. They were unable to evaluate the word “Kristína” since it was written in capital letters and they did not have sufficient samples of capital letters for Mr Šarišský. Apart from the inconclusive nature of this evidence, there is no explanation

as to why, if written by Mr. Šarišský, the word "Kristína", in contrast to the other words in the note, should have been written in capital letters.

(iv) The suicide theory is not, in my view, enhanced by the various accounts allegedly given by Mr Šarišský himself when taken to hospital. Witness U. (the admission's nurse at the hospital) claimed that Mr Šarišský was fully conscious when admitted and said that he had shot himself in the abdomen and that he had told Lt. F. that, if he were to give him his gun, he would shoot himself. The evidence of Capt. T., who interviewed Mr Šarišský at noon on 13 August 2001, was that he could only respond to her questions by nodding his head. Mr Šarišský is said to have nodded his disagreement when asked whether the police officer had shot him and his agreement when asked whether he had shot himself. However, he also apparently nodded his disagreement when asked whether he had seized the weapon from Lt. F. and his agreement when asked whether the officer had handed him the weapon after he had asked for it. The latter responses are not only implausible but are diametrically contrary to Lt. F.'s own account as to how the suicide occurred. They are also inconsistent with the evidence of the applicant herself, when she visited Mr Šarišský in hospital on the same day. According to her, Mr Šarišský responded "no" by moving his head when asked whether he had shot himself.

The reliability of Mr Šarišský's own alleged account that he had shot himself is further undermined by the apparently conflicting evidence as to his ability to communicate. Capt. T. claimed that Mr Šarišský was fully conscious and that his answers were clear; however, in disputing the accuracy of the applicant's own evidence, reliance is placed by the Government on the evidence of the Chief of Staff of the Anaesthetic and Resuscitation Department of the hospital to the effect that Mr Šarišský was kept at all times under the influence of medication, which was likely to impair his ability properly to communicate.

I have borne in mind the fact that, in addition to the accounts given by Lt. F. and allegedly given by Mr Šarišský himself as to what had occurred, there was other material relied on by the prosecutor in concluding that Mr Šarišský had committed suicide, notably the evidence of the ballistics expert present at the reconstruction to the effect that the injury to Mr Šarišský was "most probably" self-inflicted, as the trajectory of the bullet was from below the abdomen upwards and from the right to the left. However, although important, this evidence was inconclusive. Moreover, the investigation as a whole suffered from the several deficiencies identified in the judgment and was not such as to dispel the serious doubts surrounding the circumstances leading to the death of Mr Šarišský. In my view those doubts have not been satisfactorily answered and the Government have not discharged the burden laid on them of showing that Mr Šarišský took his own life or of providing another plausible explanation for his death. For these reasons, I would find that Mr Šarišský was

wrongfully deprived of his life while in police custody in breach of the substantive requirements of Article 2 of the Convention.

PARTLY DISSENTING OPINION OF JUDGE DAVID THÓR BJÖRGVINSSON

I agree with the findings in relation to violations of Articles 2 and 13 of the Convention. However, I prefer to find violation of the substantive head of Article 2 on the basis of the reasoning advanced in Judge Bratza's concurring opinion, which I have joined. I also agree that it is not necessary to make a separate finding in respect of the complaints under Article 3. Furthermore, I can agree that there are no sufficient grounds for establishing a breach of the substantive aspect of Article 14 of the Convention.

However, I do not agree that there has been no violation of the procedural head of Article 14 taken in conjunction with Article 2 of the Convention.

These are my reasons:

Mr. L'ubomír Šarišský was of Roma origin. He was 21 years old when he was shot dead in police custody. This tragic event took place on 12 August 1999.

I note that paragraphs 57–63 of the judgment refer to numerous international reports of alleged police brutality in respect of persons of Roma origin in Slovakia. The reports referred to, which are all from the years 1999 – 2001, clearly show that police brutality in respect of persons of Roma origin was, at the relevant time, systemic, widespread and a serious problem in Slovakia. Still, the majority, in paragraph 123, albeit concerned about these reports, comes to the conclusion that it is not persuaded that the objective evidence is sufficiently strong in itself to suggest the existence of a racist motive.

I disagree. There is, in my view, enough objective evidence to suggest the existence of a hostile racist motive. Furthermore, the persistent criticism from international bodies manifested in these reports should have alerted the authorities to the possible existence of such a motive. Thus, the authorities were, in my view, under the obligation to conduct an investigation as to whether racist motives played a part in Mr. L'ubomír Šarišský's death. Since no such investigation was carried out I conclude that there has been a violation of the procedural head of Article 14 in conjunction with Article 2 of the Convention.