



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

FOURTH SECTION

CASE OF MIKOLAJOVÁ v. SLOVAKIA

(Application no. 4479/03)

JUDGMENT

STRASBOURG

18 January 2011

FINAL

18/04/2011

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

In the case of Mikolajová v. Slovakia,

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

Nicolas Bratza, *President*,

Ljiljana Mijović,

David Thór Björgvinsson,

Ján Šikuta,

Päivi Hirvelä,

Ledi Bianku,

Mihai Poalelungi, *judges*,

and Fatoş Aracı, *Deputy Section Registrar*,

Having deliberated in private on 14 December 2010,

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

PROCEDURE

1. The case originated in an application (no. 4479/03) 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 Helena Mikolajová (“the applicant”), on 17 January 2003.

2. The applicant was represented by Mrs I. Rajtáková, a lawyer practising in Košice. The Government of the Slovak Republic (“the Government”) were represented by Mrs A. Poláčková and Mrs M. Pirošíková, their successive Agents.

3. The applicant complained that the conclusion in a police decision that she had committed a criminal offence, despite the complaint against her having been dropped, breached her right to the presumption of innocence under Article 6 § 2 of the Convention and her right to protection of her reputation under Article 8.

4. On 27 March 2006 the President of the Fourth Section of the Court to which the case had been allocated decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1969 and lives in Košice.

6. On 30 June 2000 the applicant's husband filed a complaint with the police alleging that the applicant had beaten and wounded him on 25 June 2000.

7. On 3 July 2000 the police department in Košice issued a decision by which it dropped the case on the ground that the applicant's husband did not agree to criminal proceedings being brought against her. The decision stated that although the police "investigation" had established that the applicant had committed a criminal offence, criminal prosecution was barred as the victim, the applicant's husband, had not given his consent as required under Article 163 of the Criminal Procedure Code. The applicant was not notified of this decision, nor is there any evidence in the case file that she was questioned or otherwise made aware of her husband's complaint.

8. On 28 January 2002 a health insurance company wrote to the applicant asking her to reimburse the costs of her husband's medical treatment. According to the letter, the applicant's husband had been treated in a hospital on 25 June 2000 as a result of injuries which the applicant had inflicted on him. Reference was made, *inter alia*, to the decision issued by the police department in Košice on 3 July 2000.

9. In a letter dated 3 July 2002 the insurance company explained the position to the applicant in reply to her request. A copy of the police decision of 3 July 2000 was enclosed with the letter which was delivered to the applicant's lawyer on 15 July 2002. The relevant part of the decision of 3 July 2000 read as follows:

"The investigation showed that [the applicant's] action met the constituent elements of the offence of causing injury to health pursuant to Article 221(1) of the Criminal Code in that she had deliberately inflicted an injury on another person."

10. On 16 July 2002 the applicant informed the competent police department in Košice that the text of its decision violated her right to be presumed innocent. She requested an apology and that the police inform the health insurance company of this breach. On 9 August 2002 the director of the police department replied to the applicant, stating that the above decision had been given in accordance with the relevant law.

11. In a letter of 17 July 2002 the applicant requested that the Košice II District Prosecutor's Office quash the police decision of 3 July 2000. On 26 August 2002 the applicant was informed that the decision was not contrary to constitutional principles. The letter stated, in particular, that the task of the police had been to determine whether a justified reason existed to consider that a particular person had committed the offence in issue. The relevant text of the contested decision had been drafted and was to be read in that context.

12. On 12 September 2002 the applicant filed a complaint with the Constitutional Court. She alleged, *inter alia*, that by issuing its decision of 3 July 2000, the police department in Košice had violated her constitutional rights to be presumed innocent and to respect for her honour and reputation.

13. On 27 November 2002 the Constitutional Court rejected the complaint as having been filed outside the statutory two month time-limit. The decision referred to section 53 (3) of the Constitutional Court Act of 1993, which provided that the time-limit was to be counted from the day on which the plaintiff learned or could have learned about the contested measure. In rejecting the applicant's complaint as out of time, the Constitutional Court took 3 July 2000, the date on which the police decision was issued, as the key date.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Constitution of the Slovak Republic

14. Article 50 § 2 of the Slovak Constitution provides that “Every defendant against whom criminal proceedings are pending shall be considered innocent until the court establishes his/her guilt by a final judgment.”

B. Criminal Procedure Code (Act No. 141/1961 Coll.)

15. The Criminal Procedure Code, as in force at the relevant time, provided as follows at Article 2 § 2:

“A defendant against whom criminal proceedings have been instituted must not be considered guilty until the court establishes his/her guilt by a final judgment.”

16. Article 163 (a) (1) required the victim's consent for a criminal prosecution to be pursued for a listed number of offences, including the offence of causing bodily injury, in cases in which the perpetrator was a relative of the victim.

17. Article 11 § 1 (h) provided that a criminal prosecution could not be initiated, and if already initiated, could not be continued and had to be discontinued, in the event that consent as required under Article 163 (a) (1) was not given or subsequently withdrawn.

C. Civil Code

18. The Civil Code in its relevant provisions reads as follows:

Article 11

“Every natural person shall have the right to protection of his or her personal integrity, in particular his or her life and health, civil and human dignity, privacy, reputation and expressions of a personal nature.”

Article 13

“1. Every natural person shall have the right in particular to request an order restraining any unjustified interference with his or her personal integrity, an order cancelling out the effects of such interference and an award of appropriate compensation.

2. If the satisfaction afforded under paragraph 1 of this Article is insufficient, in particular because the injured party's dignity or social standing has been considerably diminished, the injured party shall also be entitled to financial compensation for non-pecuniary damage.

3. When determining the amount of compensation payable under paragraph 2 of this Article, the court shall take into account the seriousness of the harm suffered by the injured party and the circumstances in which the violation of his or her rights occurred.”

Article 16

“A person who caused damage by infringement of the right to protection of personal integrity, shall be liable for such damage under provisions of this law on liability for damage.”

D. Civil Procedure Code

19. Article 134 of the Civil Procedure Code provides the following:

“Letters issued by the courts of the Slovak Republic or by other state authorities within the limits of their powers, as well as letters which were declared public upon special regulation, confirm that it is an order or declaration of an authority which issued the letter, and unless the contrary is proved, also the verity of what is to be approved or confirmed therein.”

E. Constitutional Court Act 1993

20. Section 53 (3) of the Constitutional Court Act of 1993 provides that a complaint to the Constitutional Court can be filed within two months from the final effect of a decision or from the date of a contested measure or notification of another interference with a person's rights. In the case of measures or other interferences, the time-limit is to be counted from the date

on which the plaintiff learned or could have learned about the contested measure or other interference complained of. Section 50 (2) provides that a copy of the legal decision, measure or any evidence proving another kind of interference shall accompany a complaint.

THE LAW

I. ADMISSIBILITY

A. The Government's preliminary objection

1. The parties' submissions

21. The Government maintained that the application was inadmissible as the applicant had failed to exhaust all available domestic remedies. In particular, she had not pursued an action for the protection of her personal integrity under Articles 11 et seq. of the Civil Code. They relied on the Court's inadmissibility decision in the case of *Babjak and Others v. Slovakia* (dec.), no.73693/01, 30 March 2004 in which the Court found the first applicant's complaint under Article 6 § 2 of the Convention to be inadmissible for non-exhaustion as it considered that an action under Articles 11 et seq. of the Civil Code was, in the circumstances, capable of redressing his situation.

22. The Government acknowledged that although *Babjak* concerned a police decision stating that the applicant had committed a criminal offence, though a criminal prosecution could not be pursued against him due to his young age, in that case the police had issued a later decision clarifying that his conduct had not met the constituent elements of a criminal offence. Notwithstanding, the Government maintained that in the present case an action under Articles 11 et seq. of the Civil Code was also an available and effective domestic remedy. An ordinary court dealing with such an action would examine whether the statement by the police infringed the applicant's right to be presumed innocent and her right to respect for her private life, given that no criminal prosecution had been initiated and that the courts had not pronounced either way on her guilt or innocence. In the event that the ordinary court considered that the applicant's rights had been breached, it was open to it to order the police to issue an apology and/or award the applicant financial compensation for any non-pecuniary damage caused to

her as a result. In particular, the applicant could have relied on the request for reimbursement of the costs of her husband's medical treatment as the basis for her action.

23. The Court had not accepted the effectiveness of this particular remedy in the context of other applications against Slovakia, finding that judicial practice showed that the remedy was used predominantly in defamation actions (see *Kontrová v. Slovakia* (dec.), no. 7510/04, 13 June 2006). However, the Government argued that in cases more akin to the present, the Court had deemed the remedy to be effective and one which applicants should consequently be required to exhaust (*Babjak* (cited above) and *Lexa v. Slovakia* (dec.), no. 54334/00, 5 July 2005).

24. Lastly, as regards the applicant's contention that she only received a copy of the police decision on 15 July 2002, the Government asserted that she should have been aware of the decision in question by 28 January 2002, as the insurance company had made a direct reference to it in its request for reimbursement of that date. The applicant had therefore failed to avail herself of this available domestic remedy, the filing of a complaint with the Constitutional Court, as she had not complied with the time-limits laid down in domestic law.

25. The applicant asserted that a civil action under Articles 11 et seq. of the Civil Code would not allow her to reverse the impugned decision. The case of *Babjak* on which the Government sought to rely contained a crucial distinction, namely that the original police decision had been replaced by a later official decision unequivocally declaring that it had not been proved that the applicant had committed any crime.

26. The applicant replied that the police decision had clearly been delivered to her on 15 July 2002. Consequently, she had been within the two-month statutory time-limit required under section 53 (3) of the Constitutional Court Act of 1993 (see paragraph 20 above) when filing her complaint with the Constitutional Court on 12 September 2002. She contested the Government's assertion that the reference to the police decision by the insurance company on 28 January 2002 was enough for her to bring a complaint to the Constitutional Court. She contended that she had no knowledge of the specific content of the decision and cited in this regard the requirement under section 50 (2) of the Constitutional Court Act that a copy of the contested decision be attached to any complaint.

27. The Government, by their own admission, had recognised that the applicant did not have any procedural status as regards her husband's complaint, as criminal proceedings had never been instituted. This, she argued, would have made it all the more difficult for her to have gained knowledge or possession of a copy of the contested police decision any earlier. Moreover, the Constitutional Court, when rejecting her complaint as out of time, had taken the date of the issuance of the police decision, namely 3 July 2000, as the key date. This ran counter to the provision in

section 53 (3) of the Constitutional Court Act which stipulated that the time-limit was to be counted from the date on which the plaintiff learned or could have learned about the contested measure or other interference complained of.

2. The Court's assessment

28. The Court points out that the purpose of Article 35 of the Convention is to afford the Contracting States the opportunity of preventing or putting right the violations alleged against them before those allegations are submitted to the Convention institutions. Consequently, States are dispensed from answering for their acts before an international body before they have had an opportunity to put matters right through their own legal system. The rule of exhaustion of domestic remedies referred to in Article 35 of the Convention requires that normal recourse should be had by an applicant only to remedies that relate to the breaches alleged and which, at the same time, are available and sufficient. The existence of such remedies must be sufficiently certain not only in theory but also in practice, failing which they will lack the requisite accessibility and effectiveness; it falls to the respondent State to establish that these various conditions are satisfied (see *Selmouni v. France* [GC], no. 25803/94, §§ 74 and 75, ECHR 1999-V, among other authorities).

29. Article 35 provides for a distribution of the burden of proof. It is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one available in theory and in practice at the relevant time, that is to say, that it was accessible, was one which was capable of providing redress in respect of the complaints invoked and offered reasonable prospects of success (see *Akdivar and Others v. Turkey*, 16 September 1996, *Reports of Judgments and Decisions* 1996-IV, § 68).

30. The Court would emphasise that the application of this rule must make due allowance for the context. Accordingly, it has recognised that Article 35 must be applied with some degree of flexibility and without excessive formalism (see *Cardot v. France*, 19 March 1991, Series A no. 200, § 34). It has further recognised that the rule of exhaustion of domestic remedies is neither absolute nor capable of being applied automatically; in reviewing whether the rule has been observed, it is essential to have regard to the particular circumstances of the individual case (see *Van Oosterwijck v. Belgium*, 6 November 1980, Series A no. 40, § 35). This means, amongst other things, that the Court must take realistic account not only of the existence of formal remedies in the legal system of the Contracting Party concerned but also of the general legal and political context in which they operate as well as the personal circumstances of the applicants (see *Akdivar and Others*, cited above, § 69 and *Demopoulos and*

Others v. Turkey (dec.), nos. 46113/99, 3843/02, 13751/02, 13466/03, 10200/04, 14163/04, 19993/04 and 21819/04, §§ 69-70, ECHR 2010-...).

31. Turning to the present case, the Court notes the Government's reliance on the inadmissibility decision in the case of *Babjak* (cited above), in which it held that a civil action under Articles 11 et seq. of the Slovakian Civil Code was in principle capable of remedying the first applicant's situation. In *Babjak*, a police decision had similarly stated that the applicant had committed a criminal act, even though no criminal proceedings had been instituted against him due to his lacking criminal responsibility on account of his young age. Notwithstanding, the Court considers it to be of crucial importance that although the impugned decision in *Babjak* was never quashed, it was nevertheless supplanted by a later police decision which unequivocally clarified that it had not been established that the applicant's actions had constituted a criminal offence. In the Court's view, this is sufficient to distinguish the facts of the present case from those of the *Babjak* decision on which the respondent Government seek to rely. In this respect, it is clear that an action under Articles 11 et seq. of the Civil Code, allows for non-pecuniary compensation in the event that an "injured party's dignity or social standing has been considerably diminished" (see paragraph 18 above). It has not been shown however that any action under the Civil Code would have allowed the present applicant an opportunity to seek a subsequent official retraction and clarification from the police that it had never been proved that she had committed a criminal act, as had been afforded to the applicant in *Babjak*.

32. Moreover, the Court considers it highly unlikely that the civil courts, when exercising their jurisdiction in the context of proceedings for compensation under the Civil Code, would review the substance of police decisions which were issued in the course of criminal complaints or proceedings, regardless of whether they were ultimately dropped or discontinued. In this connection, the Court recalls its judgment in the case of *Borovský v. Slovakia*, no. 24528/02, 2 June 2009 which concerned the right to be presumed innocent under Article 6 § 2 of the Convention. The Court dismissed the Government's objection in *Borovský* that the applicant had failed to exhaust domestic remedies by omitting to pursue an action under Articles 11 et seq. of the Civil Code for protection of his personal integrity. In declaring the application admissible, the Court noted at paragraph 39 of its judgment that the Constitutional Court had addressed the merits of that applicant's complaint even though he had not first pursued an action under the Civil Code against the police officers whom he alleged had violated his right to be presumed innocent. Given the domestic legal obligation to use all other available remedies prior to lodging a complaint with the Constitutional Court, the Court found that the Government's objection in *Borovský* as to non-exhaustion could not be upheld.

33. In light of the aforementioned considerations, the Court takes the view that its finding in *Babjak* does not bind it in its consideration of the effectiveness of a civil action under Articles 11 et seq. of the Civil Code in the particular context and circumstances of the instant case. In this connection, the Court recalls that an applicant who has exhausted a remedy that is apparently effective and sufficient cannot be required also to have tried others that were available but probably no more likely to be successful (see *T.W. v. Malta* [GC], no. 25644/94, § 34, 29 April 1999, *Okkalı v. Turkey*, no. 52067/99, § 60, ECHR 2006-XII (extracts) and *Lazoroski v. "the former Yugoslav Republic of Macedonia"*, no. 4922/04, § 37, 8 October 2009, among other authorities). The Court considers that in the particular circumstances of the present case the applicant cannot be reproached for having lodged a complaint with the Constitutional Court alleging a violation of her constitutional rights to be presumed innocent and to respect for her honour and reputation. It notes, in this respect, that this was the course of action pursued by the applicant in the *Borovský* case, which ultimately led to the Court rejecting the Government's preliminary objection as to non-exhaustion of domestic remedies. The Court further observes that in the present case, the Constitutional Court made no reference to any failure on the applicant's part to exhaust all other available remedies first, but rather dismissed her complaints on the sole ground that they were out of time.

34. The Court accordingly finds that the Government have failed to show, with reference to demonstrably established consistent case-law in cases similar to the applicant's, that their interpretation of the scope of the action for protection of personal integrity was, at the material time, sufficiently certain not only in theory but also in practice and offered at least some prospects of success.

35. As regards the Government's contention that the applicant should be taken to have been aware of the police decision as of 28 January 2002, when the health insurance company referred to it in its request for reimbursement, the Court observes that under the applicable domestic law the applicant was required to enclose a copy of the contested decision together with any complaint she wished to make to the Constitutional Court (see paragraph 20 above, as relied on by the applicant). In the Court's view, the applicant could not reasonably have been expected to lodge a complaint with the Constitutional Court before having in her possession the full text of the police decision in question, which was eventually delivered to her on 15 July 2002. It also takes into account in this connection the acknowledgment by the Government that the applicant did not have any procedural status as regards her husband's complaint, as criminal proceedings against her had never been instituted. The Court is willing to accept the applicant's contention that this made it even more difficult in the

circumstances for her to have lodged a complaint with the Constitutional Court any earlier.

36. The Government's objection as to the exhaustion of domestic remedies therefore cannot be sustained.

B. Compliance with other admissibility criteria

1. The complaint under Article 6 § 2 of the Convention

37. The applicant complained that the conclusion in the police decision of 3 July 2000 violated her right to be presumed innocent under Article 6 § 2 of the Convention which reads as follows:

“Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.”

(a) The parties' submissions

38. The applicant maintained that the police decision in question was an official decision emanating from a State authority which purported to confirm that she had committed a crime, whereas criminal proceedings had never been brought against her. This constituted a breach of her rights under Article 6 & 2 of the Convention, as well as the provisions of the Constitution of the Slovak Republic and the domestic Code of Criminal Procedure (see paragraphs 14 and 15 above).

39. The Government did not explicitly contest the applicability of Article 6 of the Convention. They rather argued that the text of the police decision reflected a state of suspicion that the applicant had committed a criminal offence and could not in the circumstances be considered to be a statement of fact or opinion, since it was issued prior to the initiation of any criminal prosecution. Moreover, a criminal prosecution had not been possible under the applicable domestic law as the applicant's husband had not given his consent as required under Article 163 (a) (1) of the Criminal Procedure Code (see paragraph 16 above).

(b) The Court's assessment

40. The Court must consider whether Article 6 of the Convention applies in the instant case. It must examine whether the applicant was the subject of a “charge” for the purposes of Article 6 § 2 of the Convention. That concept is “autonomous”; it has to be understood within the meaning of the

Convention and not solely within its meaning in domestic law. It may thus be defined as “the official notification given to an individual by the competent authority of an allegation that he has committed a criminal offence”, a definition that also corresponds to the test whether “the situation of the [suspect] has been substantially affected” (see, for example, the *Deweere v. Belgium* judgment of 27 February 1980, Series A no. 35, p. 22, § 42, and p. 24, § 46; and the *Eckle v. Germany* judgment of 15 July 1982, Series A no. 51, p. 33, § 73, cited in *Serves v. France*, 20 October 1997, § 42, *Reports of Judgments and Decisions* 1997-VI). A “charge” may in some instances take the form of other measures which carry the implication of such an allegation and which likewise substantially affect the situation of the suspect (see *Foti and Others v. Italy*, 10 December 1982, § 52, Series A no. 56).

41. The legislation of the State concerned is certainly relevant, but it provides no more than a starting point in ascertaining whether at any time there was a “criminal charge” against the applicant (see, *mutatis mutandis*, the *Engel and Others v. the Netherlands* judgment of 8 June 1976, Series A no. 22, p. 35, § 82, and the *König v. Germany* judgment of 28 June 1978, Series A no. 27, p. 30, § 89). The prominent place held in a democratic society by the right to a fair trial favours a “substantive”, rather than a “formal”, conception of the “charge” referred to by Article 6; it impels the Court to look behind the appearances and examine the realities of the procedure in question in order to determine whether there has been a “charge” within the meaning of Article 6 (see the above-mentioned *Deweere judgment*, p. 23, § 44). In particular, the applicant’s situation under the domestic legal rules in force has to be examined in the light of the object and purpose of Article 6, namely the protection of the rights of the defence (see the Court’s judgment in the case of *Adolf v. Austria*, 26 March 1982, § 30, Series A no. 49).

42. In the present case, the applicant was not and could not have been formally charged with a criminal offence under the domestic legal rules in place at the time, as her husband clearly did not consent to the pursuit of criminal proceedings against her. Notwithstanding, the Court must still consider whether the applicant could be said to have been officially notified or otherwise “substantially affected” following her husband’s filing of a criminal complaint against her on 30 June 2000. The Court observes in this connection that the applicant was not aware of the impugned police decision until 28 January 2002, when a health insurance company made reference to it in its claim for reimbursement of medical expenses. This was approximately one year and a half after the case against the applicant had been dropped by the Košice police department on the basis of her husband’s refusal to consent to the pursuit of criminal proceedings against her. In other words, it appears that the applicant’s husband in effect withdrew his complaint concerning the applicant’s alleged behaviour on 25 June 2000,

thereby barring the initiation of a criminal prosecution. Nor does it emerge from any of the documents in the case file that the applicant was questioned, summoned or in any other way notified by the police or any other domestic authority of her husband's complaint of 30 June 2000. Rather, the applicant submits that she first became aware of this complaint through the health insurance company's request in 2002, by which time the case against her had been dropped and closed.

43. In light of the foregoing, the Court considers that the applicant was not “substantially affected” so as to render Article 6 of the Convention applicable. In the Court's view, Article 6 § 2 was inapplicable to the matters complained of. Accordingly, this part of the application must be declared inadmissible as being incompatible *ratione materiae* under Article 35 §§ 3 and 4 with the provisions of the Convention.

44. However, the conclusion above does not prevent the Court from taking into account the interests sought to be protected by Article 6 § 2 in the balancing exercise carried out below (see *Bladet Tromsø and Stensaas v. Norway* [GC], no. 21980/93, § 65 and *A. v. Norway*, no. 28070/06, § 47, 9 April 2009).

2. The complaint under Article 8 of the Convention

45. The applicant complained that her right to respect for her private life and to the protection of her reputation under Article 8 of the Convention had been breached as a result of the police decision of 3 July 2000.

46. The Government disputed the applicant's complaint and requested the Court to declare it inadmissible as being manifestly ill-founded under Article 35 §§ 3 and 4 of the Convention.

47. The Court finds that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further considers that it is not inadmissible on any other grounds. It must therefore be declared admissible.

II. THE ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

48. With reference to the same facts as her complaint under Article 6 § 2 of the Convention, the applicant complained of a violation of her right to protection of reputation under Article 8 of the Convention. This article reads:

“1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

A. The parties' submissions

1. The applicant

49. The applicant asserted that the police decision of 3 July 2000 clearly stated and not merely expressed a suspicion that she had committed a criminal offence. She referred in this regard to Article 134 of the Civil Procedure Code (see paragraph 19 above) which provided that letters issued by State authorities were to be taken as proof of the “verity of what is...confirmed therein.”

50. The applicant further stressed that the impugned police decision was a valid official decision which was neither subsequently quashed nor replaced by any other statement. By contrast, in the case of *Babjak*, on which the Government sought to rely in its preliminary objection, the original police decision stating that the applicant had committed a crime had been followed by an official statement unequivocally clarifying that it had not been proved that the applicant had been guilty of any crime. This distinction was essential, as the Court had emphasised in its decision in *Babjak*, in which it held that:

“The Court has also taken account of the above decision ... in which the Police expressly stated that it had not been established that the actions of the first applicant had constituted a criminal offence. Although this second decision did not expressly quash the first one, the Court observes that it was given by the same police authority ... under the same file number. The contested decision ... thus lost its legal effect. It can no longer be invoked by anyone.”

51. The applicant maintained that she had been branded a criminal and had no guarantee that the police decision would not be used against her again in the future.

2. The Government

52. The Government submitted that the applicant had failed to substantiate her complaint under Article 8 of the Convention by specifying any particular consequences that the police decision had had on her private life. Moreover, the police decision predominantly consisted of allegations made by the applicant's husband. The applicant had not shown that she had

attempted to contest these allegations domestically, for example, by filing an action under Articles 11 et. seq. of the Civil Code, or by a criminal complaint against her husband on the grounds of false accusation. Nor had the applicant claimed before the Court that her husband's allegations were false.

B. The Court's Assessment

1. General principles

53. The Court recalls its judgment in the case of *Chauvy and Others v. France*, no. 64915/01, § 70, ECHR 2004-VI, where in the context of a complaint under Article 10, it explicitly recognised for the first time “the right of the persons ... to protect their reputation, a right which is protected by Article 8 of the Convention as part of the right to respect for private life.” This was confirmed in *Pfeifer v. Austria*, no. 12556/03, § 38, ECHR 2007-XII where the Court held that States were under a positive obligation to protect individuals' right to reputation, as an element of their “private life” under Article 8 of the Convention.

54. In *Sanchez Cardenas v. Norway*, no. 12148/03, § § 33 and 38, 4 October 2007 the Court found that a passage in a domestic judgment which “conveyed information to the effect that the High Court, having regard to the state of the evidence, held a suspicion that the applicant had sexually abused” his son, was in the context of an authoritative judicial ruling “likely to carry great significance by the way it stigmatised him and was capable of having a major impact on his personal situation as well as his honour and reputation.” Consequently, the Court took the view that the facts underlying the applicant's complaint fell within the scope of Article 8 of the Convention.

55. The Court explained its approach to such cases in its judgment in *A. v. Norway*, no. 28070/06, § 64, 9 April 2009, holding that in order for Article 8 to come into play, the attack on personal honour and reputation must attain a certain level of gravity and in a manner causing prejudice to personal enjoyment of the right to respect for private life (see *Sidabras and Džiautas v. Lithuania*, nos. 55480/00 and 59330/00, § 49, ECHR 2004-VIII). Similarly, in *Karakó v. Hungary*, no. 39311/05, § 23, 28 April 2009 the Court considered that reputation had been deemed to be an independent right mostly when the factual allegations were of such a seriously offensive nature that their publication had an inevitable direct effect on the applicant's private life. This has been more recently confirmed by the Court in its judgment in the case of *Polanco Torres and Movilla Polanco v. Spain*, no. 34147/06, § 40, 21 September 2010 (not yet final).

2. *Application of these principles*

56. The Court notes that the present application is distinguishable from the cases to which it has referred above concerning the right to the protection of one's reputation under Article 8 of the Convention. It is clear that the impugned police decision was not published or made readily accessible to the public through the media or in the context of a public decision or judgment (as was the case in *A. v. Norway* and *Sanchez Cardenas v. Norway*, cited above, respectively). Notwithstanding, the police decision was ostensibly disclosed to a third party, namely the health insurance company. They in turn used the decision to the applicant's detriment, by relying on it when pursuing her for the reimbursement of medical expenses.

57. Given the gravity of the conclusion contained in the police decision, namely that the applicant was guilty of a violent criminal offence, coupled with the uncontested disclosure of the impugned decision to a third party, the Court finds that there has been an "interference" with her rights under Article 8 of the Convention. In this connection, the Court recalls, *mutatis mutandis*, its judgment in the case of *Sidabras and Džiautas* (cited above) where it held at paragraph 49 that Article 8 could not be relied on in order to complain of a loss of reputation which was the foreseeable consequence of one's own actions such as, for example, the commission of a criminal offence. Applying this principle to the instant case, the Court lays emphasis on the fact that the applicant was never charged with or proved to have committed any criminal offence. It follows that the text of the police decision cannot be considered to be the foreseeable consequence of the applicant's own doing, precisely because she has never been charged with, let alone proved, to have committed any crime.

58. Such interference will give rise to a breach of Article 8 of the Convention unless it can be shown that it was "in accordance with the law", pursued a legitimate aim or aims and was "necessary" for the attainment of the latter.

59. For the purposes of the instant case the Court is prepared to accept that the disclosure of the police decision of 3 July 2000 to the insurance company had a legal basis and was therefore in accordance with the law, as asserted by the director of the police department in reply to the applicant's complaint (see paragraph 10 above). On the other hand, the Court considers that it is not required to decide whether the disclosure of the police decision pursued a legitimate aim. In its view, this matter is closely related to compliance with the "necessity" test. According to that test, a breach of Article 8 will be found if, in the particular circumstances of a case, an impugned measure fails to strike a fair balance between the competing public and private interests at issue. The requirement of proportionality demands that a respondent Government show relevant and sufficient

reasons for the interference. While it is for the national authorities to make the initial assessment in all these respects, and a margin of appreciation must be left to the competent national authorities in this assessment, the final evaluation of whether the interference is necessary remains subject to review by the Court for conformity with the requirements of the Convention (see *Coster v. the United Kingdom* [GC], no. 24876/94, § 104, 18 January 2001; *S and Marper v. the United Kingdom*, [GC], applications nos. 30562/04 and 30566/04, 4 December 2008, §§ 101-102).

60. In this connection, the Court considers that the police decision was couched in terms which pointed to an expression of fact and not mere suspicion and amounted to an obvious indication that the police department considered the applicant to be guilty. This, it finds, is evident in the actual words employed in the impugned decision (see paragraph 9 above), namely that:

“The investigation showed that [the applicant's] action met the constituent elements of the offence of causing injury to health pursuant to Article 221 § 1 of the Criminal Code in that she had deliberately inflicted an injury on another person.”

61. Of particular concern to the Court is the fact that the applicant had not been charged with a criminal offence but was nevertheless placed on record as a criminal offender. The Court has already had occasion to point to the risk of stigmatisation of individuals stemming from such practices and the threat which they represent to the principle of the presumption of innocence (see *S and Marper*, cited above, § 122). For the Court, the damage which may be caused to the reputation of the individual concerned through the communication of inaccurate or misleading information cannot be ignored either. The Court would also observe with concern that the authorities have not indicated whether the police decision remains valid indefinitely, such as to constitute, with each communication to a third party, assuming such to be in pursuit of a legitimate aim, a continuing threat to the applicant's right to reputation.

62. In examining whether the domestic authorities have complied with the above-mentioned fair balance requirement, the Court must have regard to the safeguards in place in order to avoid arbitrariness in decision-making and to secure the rights of the individual against abuse. In the instant case, the Court cannot but note the lack of any available recourse through which the applicant could obtain a subsequent retraction or clarification of the terms of the police decision. The Court further notes that in the above-mentioned *Babjak* case the original police decision which stated that that applicant had committed a crime had been superseded by a subsequent official statement from the competent police department unequivocally clarifying that it had not been proved that he had committed any criminal offence.

63. Having regard to the above considerations, the Court finds that the domestic authorities failed to strike a fair balance between the applicant's

Article 8 rights and any interests relied on by the Government to justify the terms of the police decision and its disclosure to a third party. There has accordingly been a breach of Article 8 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

64. 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

65. The applicant claimed SVK 300,000 (approximately EUR 9,958) in respect of non-pecuniary damage.

66. The Government argued that the applicant's claim was exaggerated and unsubstantiated. They maintained that the applicant had not shown any causal link between the claimed non-pecuniary damage and the alleged breach of her Convention rights. In the event that the Court found a violation, the Government considered that the finding of a violation would constitute in itself sufficient just satisfaction.

67. The Court accepts that the applicant must have suffered some non-pecuniary damage. Ruling on an equitable basis, it awards the applicant 1,500 euros (EUR) under that head.

B. Costs and expenses

68. The applicant also claimed SVK 14,875 (approximately EUR 494) for the costs and expenses incurred before the domestic courts and SVK 35,700 (approximately EUR 1,185) for those incurred before the Court. This broke down into 5 hours of legal fees at a rate of SVK 2,975 (approximately EUR 99) for domestic proceedings and 12 hours for proceedings before this Court, which included VAT (value added tax).

69. The Government considered that the applicant had overstated her claim for costs and expenses and that the claim was unsubstantiated by any documentary evidence, such as the contract with her lawyer. Moreover, the Government found the applicant's lawyer's hourly rate to be inflated, citing the Court's judgment in *Young, James and Webster v. the United Kingdom* (Article 50), 18 October 1982, § 15, Series A no. 55, where the Court held that the effective protection of human rights required human rights lawyers to be moderate in the fees that they charged to applicants.

70. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, the applicant has failed to provide sufficient supporting documents substantiating her claims under this head, such as a copy of the contract with her legal representative for example (Rule 60 §§ 1 and 2 of the Rules of Court). The Court accordingly rejects the applicant's claims for costs and expenses.

C. Default interest

71. 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 UNANIMOUSLY

1. *Declares* the complaint concerning Article 8 of the Convention admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 8 of the Convention;
3. *Holds*
 - (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 1,500 (one thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (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;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 18 January 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

Nicolas Bratza
President