



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

THIRD SECTION

**CASE OF TRADE UNION OF THE POLICE IN THE SLOVAK
REPUBLIC AND OTHERS v. SLOVAKIA**

(Application no. 11828/08)

JUDGMENT

STRASBOURG

25 September 2012

FINAL

11/02/2013

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

In the case of Trade Union of the Police in the Slovak Republic and Others v. Slovakia,

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

Josep Casadevall, *President*,

Egbert Myjer,

Alvina Gyulumyan,

Ján Šikuta,

Luis López Guerra,

Nona Tsotsoria,

Kristina Pardalos, *judges*,

and Santiago Quesada, *Section Registrar*,

Having deliberated in private on 28 August 2012,

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

PROCEDURE

1. The case originated in an application (no. 11828/08) 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 the Trade Union of the Police in the Slovak Republic (*Odborový zväz polície v Slovenskej republike*) and three individuals who are members of it (“the applicants”), on 16 February 2008.

2. The applicants were represented by Mr I. Syrový, a lawyer practising in Bratislava. The Slovak Government (“the Government”) were represented by their Agent, Ms M. Pirošíková.

3. The applicants alleged that their rights to freedom of expression and freedom of assembly and association had been breached as a result of statements made by the Minister of the Interior.

4. On 29 March 2011 the application was communicated to the Government. It also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The Trade Union of the Police in the Slovak Republic (the first applicant) is registered as a trade union of members of the Police Corps of the Slovak Republic. It is a legal person with its registered office in

Bratislava. The application on its behalf was lodged by Mr M. Litva, the trade union's president. Mr Štefan Dvorský (the second applicant) is a Slovak national who was born in 1960 and lives in Malacky. At the relevant time he was vice-president of the first applicant association. Mr Marián Magdoško (the third applicant) is a Slovak national who was born in 1962 and lives in Prešov. He is the first applicant's vice-president. Mr Karol Michalčík (the fourth applicant) is a Slovak national who was born in 1953 and lives in Bratislava. He is a member of the first applicant association.

6. On 25 October 2005 the first applicant, of which nearly 9,000 policemen were members at that time, organised a public meeting in one of the main squares in Bratislava. Its aim was to protest against envisaged legislative amendments concerning the social security of policemen and their low remuneration. In its course the participants spontaneously shouted, *inter alia*, that the Government should step down. One of the banners displayed by the participants read "If the State doesn't pay a policeman, the mafia will do so with pleasure".

7. Subsequently the Minister of the Interior criticised the meeting and its organisers. He considered it to be an attempt to involve policemen in politics, in particular because of the slogan calling for the Government's resignation, which he considered incompatible with the ethical code of the police.

8. Apart from the public statements described below, the Minister of the Interior, on 26 October 2005, removed Mr Litva, the president of the first applicant, from the post of director in the police force and assigned him to a different post as an ordinary policeman. At an extra-ordinary general meeting of the police joint health insurance company held on 3 November 2005, the third applicant was removed, upon a proposal by the Minister of the Interior, from the company's supervisory board. The policeman who had carried the above-mentioned banner was summoned by the inspection service of the Ministry of the Interior and was asked to explain its content.

9. The applicants refer to the following public statements by the Minister of the Interior in particular.

10. In an article published on 28 October 2005 in the daily newspaper *Sme* the Minister of the Interior was quoted as saying that if anyone acted contrary to the ethical code of the police again they "would be dismissed".

11. In an interview published in the same newspaper on 29 October 2005 the Minister stated that he did not challenge the policemen's right to elect their trade union representatives. He expressed the view that, nevertheless, he was not obliged to negotiate with those representatives as they had lost credibility.

12. In a TV debate broadcast on 30 October 2005 the Minister of the Interior stated, among other things:

“Mr Litva was demoted because he misled ... the public, those policemen whom he had lured out to the square ... Mr Litva was not demoted because of his opinion, but for having lied. He lied in that he called into question [the fact] that the Government had money at their disposal for increasing policemen’s salaries ...

The Police Corps of the Slovak Republic is an armed security force. As such it must remain strictly apolitical. This means in practice, as article 3 of the ethical code of the police indicates, that when expressing his or her views in public a policeman must act in an impartial and reserved manner, so that there can be no doubt about his or her impartiality. Thus slogans calling for the Government’s resignation are in complete contradiction to that code ... I am telling you, it will not be possible for excesses like the ones at that meeting to reoccur in the future. This is what I guarantee to you. If a policeman behaves in such a way in the future, he or she will no longer be a policeman. I still proceeded in a particularly moderate manner in this case, where the sanction applied concerned Mr Litva exclusively.”

13. On 1 December 2005 the applicants lodged a complaint with the Constitutional Court. They alleged a breach of Articles 10 and 11 of the Convention and their constitutional equivalents. The applicants specifically referred to the above-mentioned statements of the Minister of the Interior which had been published in *Sme* on 28 and 29 October 2005 and to the statements he had made in context of the TV broadcast of 30 October 2005.

14. In particular, the applicants maintained that the Minister’s statements, when considered in the light of his powers in respect of the police, gave rise to a fear that members of the police force would be sanctioned for availing themselves of their freedoms of expression, assembly and association. There had been no breach of the Ethical Code of the police in the context of the public meeting organised by the first applicant. The Minister’s statements had been repressive, as he had indicated that he was not obliged to negotiate with the representatives of the first applicant. Those statements, accompanied by the transfer of the president of the first applicant to a different position, deterred the police from defending their rights through their trade union.

15. On 18 October 2007 the Constitutional Court found that the statements in question had not breached the applicants’ rights.

16. The judgment stated that the freedom of assembly and association under Article 11 of the Convention and the ILO Convention No. 98 extended exclusively to natural persons. The Minister’s statements complained of could not, therefore, amount to a breach of that freedom in respect of the first applicant.

17. The Constitutional Court considered that, in the context of the meeting held on 25 October 2005, the applicants had exercised their right to freedom of expression. At the same time the second, third and fourth applicants had exercised their right to freedom of association with others. They had done so freely and independently of the will of the Minister of the Interior. The Minister’s statements published in the media were to be

understood as part of a dialogue between both parties, who had thus been given the opportunity to express their opinions and standpoints.

18. Admittedly, the Minister's statements could be characterised as "bold and, from a certain point of view, capable of creating an atmosphere of fear". However, their nature and intensity were not such as to amount to a breach of the freedoms in issue.

19. The Constitutional Court further held that the Minister of the Interior had been entitled to express his opinion on the situation within the ministry for which he was politically responsible. His statements represented an immediate reaction to ideas and views expressed at the meeting. Those statements had not interfered with the applicants' rights in issue. They merely described a situation which might occur under specific circumstances. However, the Constitutional Court was exclusively entitled to examine complaints of breaches of rights which were based on facts that had actually occurred.

20. In a separate opinion to the decision on admissibility one of the constitutional judges expressed the view that the applicants' complaint should have been rejected for their failure to use the other remedies available, namely, to seek redress by means of an action under the State Liability Act 2003.

II. RELEVANT DOMESTIC LAW

A. Constitutional provisions

21. Article 26 § 1 guarantees to everyone freedom of expression and the right to information. They can be restricted by law where it is necessary in a democratic society for the protection of rights and freedoms of others, the security of the State, public order or protection of health and morals (paragraph 3 of Article 26).

22. Article 37 § 1 provides that everybody has the right to free association with others for the protection of his or her economic and social interests. Paragraph 3 of Article 37 allows for restriction by law of the activities of trade unions and other associations where such measure is indispensable in a democratic society for the protection of State security, public order or the rights and freedoms of other persons.

23. Article 108 provides that the Government is the supreme body of the executive branch of power. Under Article 116 § 1, a member of the Government is responsible for the exercise of his or her function to the National Council of the Slovak Republic.

**B. The Government and Central State Administration Organisation
Act 2001 (Law no. 575/2001, as amended)**

24. Section 11 provides that the Ministry of the Interior is the central State administration authority in charge of, *inter alia*, protection of the constitutional institutions, public order, security of persons and property and of the Police Corps.

C. The Police Corps Act 1993

25. Pursuant to section 1(1), the Police Corps fulfils duties in matters related to internal order, security and the fight against crime as well as duties resulting from the international obligations of the Slovak Republic. Its activity is controlled by the National Council of the Slovak Republic and the Government (section 1(2)).

26. Section 6(1) provides that the Police Corps is subordinated to the Minister of the Interior.

D. Law no. 73/1998 Coll.

27. Law no. 73/1998 governs, *inter alia*, service in the Police Corps of the Slovak Republic. Section 35(2) entitles the Minister of the Interior to transfer a policeman from the position of a superior to a different position where it is in the significant interest of the service. The reasons for such a transfer need not be indicated.

28. Pursuant to section 225(1), trade unions ensure the protection of the rights and justified interests of policemen in accordance with the law.

29. Section 227(1) prohibits the dismissal of a policeman on account of his or her acting as an elected trade union representative.

30. Section 228 provides for co-operation between high-ranking police officers and trade unions. It includes providing information on the use of salary mass, respect for just remuneration, information on staff-related measures and provision of material and technical equipment free of charge to trade unions.

31. Section 229 provides for collective bargaining and collective agreements between the trade union bodies and police authorities concerned with a view to protecting the justified interests and needs of the members of the police corps.

E. Ethical Code of the Police

32. Article 3 of the Ethical Code of Members of the Police Corps states that, when expressing their views in public, policemen should act in an

A. International Labour Organisation (ILO)

33. The relevant provisions of the ILO Convention No. 87 on Freedom of Association and Protection of the Right to Organise (adopted in 1948 and in force in respect of Slovakia since 1 January 1993) provide as follows:

3.(2) The public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof.

34. The ILO Convention No. 98 Concerning the Application of the Principles of the Right to Organise and to Bargain Collectively has been in force in respect of Slovakia since 1 January 1993. The relevant provisions read as follows:

2. Such protection shall apply more particularly in respect of acts calculated to- (...)

(b) cause the dismissal of or otherwise prejudice a worker by reason of union membership or because of participation in union activities outside working hours or, with the consent of the employer, within working hours. (...)

Article 5

1. The extent to which the guarantees provided for in this Convention shall apply to the armed forces and the police shall be determined by national laws or regulations.” (...)

B. Council of Europe

35. Resolution 690 (1979) of the Parliamentary Assembly of the Council of Europe includes the Declaration on the Police. Point 8 of part B of that declaration provides that membership of a police professional organisation and playing an active part therein shall not be detrimental to any police officer.

36. Recommendation of the Committee of Ministers to member States on the European Code of Police Ethics (Rec (2001) 10) was adopted on 19 September 2001. Part D concerns the rights of police personnel. Its relevant parts read as follows:

“5. Police personnel shall be subject to the same legislation as ordinary citizens, and exceptions may only be justified for reasons of the proper performance of police work in a democratic society. (...)

12. The police shall be organised with a view to earning public respect as professional upholders of the law and providers of services to the public. (...)

31. Police staff shall as a rule enjoy the same civil and political rights as other citizens. Restrictions to these rights may only be made when they are necessary for the exercise of the functions of the police in a democratic society, in accordance with the law, and in conformity with the European Convention on Human Rights.

32. Police staff shall enjoy social and economic rights, as public servants, to the fullest extent possible. In particular, staff shall have the right to organise or to participate in representative organisations, to receive an appropriate remuneration and social security, ...”

THE LAW

ALLEGED VIOLATION OF ARTICLES 10 AND 11 OF THE CONVENTION

37. The applicants complained that by his above-mentioned statements and actions the Minister of the Interior had breached their rights to freedom of expression and freedom of assembly and association. They relied on Articles 10 and 11 of the Convention, which, in their relevant parts, read as follows:

Article 10

“1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority ...

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.”

Article 11

“1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, 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. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the state.”

38. The Government contested the applicants’ arguments.

A. Admissibility

39. The Government argued that the first, second and fourth applicants lacked the standing of victims within the meaning of Article 34 of the Convention. In particular, no sanction or any other measure had been taken

in their respect in the context of the public meeting organised on 25 October 2005.

40. The Government further argued that it had been open to the applicants to seek redress by means of an action under the State Liability Act 2003 and also by means of an action for protection of their personal rights under Articles 11 et seq. of the Civil Code. Accordingly, the application should be rejected for the applicants' failure to exhaust domestic remedies.

41. The applicants disagreed with the Government's objections. They argued that the Constitutional Court had addressed their complaint under Articles 10 and 11 of the Convention and that the impugned statements had affected their rights. In particular, measures had been taken in respect of the elected representatives of the first applicant, who represented the interests of its members. Its president had been transferred to a lower position in the police force. The third applicant, the vice-president of the first applicant, had been removed from the supervisory board of the joint health insurance company of the police force. The second and the fourth applicants, as vice-president and a member of the first applicant respectively, had been intimidated by the Minister's statements. They considered that their positions within the police force would be under threat if they continued their activities as members of the first applicant.

42. The Court reiterates that the rule of exhaustion of domestic remedies referred to in Article 35 § 1 of the Convention obliges those seeking to bring their case against the State before an international judicial organ to use first the remedies provided by the national legal system. Normal recourse should be had by an applicant to remedies which are available and sufficient to afford redress in respect of the breaches alleged. Article 35 § 1 also requires that the complaints intended to be made subsequently to the Court should have been made to the appropriate domestic body at least in substance and in compliance with the formal requirements (see *Akdivar and Others v. Turkey*, 16 September 1996, §§ 65-67, *Reports of Judgments and Decisions* 1996-IV).

43. Before the Constitutional Court the applicants specifically sought a finding of a breach of Articles 10 and 11 of the Convention on account of the above-quoted statements of the Minister of the Interior which had been published in the newspaper *Sme* on 28 and 29 October 2005 and the statements he made during the TV broadcast of 30 October 2005 (see paragraphs 13 and 14 above). While the Constitutional Court Act 1993 requires prior use of other available remedies (see *Borovský v. Slovakia*, no. 24528/02, § 27, 2 June 2009), the Constitutional Court did not require that the applicants should have first filed an action under the State Liability Act 2003 or any other remedy.

44. The Constitutional Court, which is the supreme authority charged with the protection of human rights and fundamental freedoms in Slovakia,

addressed the applicants' complaints and concluded that there had been no breach of Articles 10 and 11 of the Convention on account of the impugned statements. To the extent that their application concerns those statements, the applicants were therefore not required, for the purpose of Article 35 § 1 of the Convention, to have recourse to the remedies available before the ordinary courts as argued by the Government (see also *Lawyer Partners a.s. v. Slovakia*, nos. 54252/07, 3274/08, 3377/08, 3505/08, 3526/08, 3741/08, 3786/08, 3807/08, 3824/08, 15055/08, 29548/08, 29551/08, 29552/08, 29555/08 and 29557/08, §§ 45-46, ECHR 2009, with further reference; or *Štetiar and Šutek v. Slovakia*, nos. 20271/06 and 17517/07, §§ 71-75, 23 November 2010). The objection concerning the applicants' failure to exhaust domestic remedies must therefore be dismissed to the extent that it relates to the complaints which the applicants raised before the Constitutional Court.

45. The Court takes the view that, in respect of those complaints, the Government's objection concerning the applicants' status as victims is closely linked and should be joined to the merits of the case.

46. The Court considers that the application, as far as it concerns the issues which the applicants raised before the Constitutional Court, raises serious questions of fact and law which are of such complexity that their determination should depend on an examination on the merits. It cannot, therefore, be considered manifestly ill-founded within the meaning of Article 35 § 3 of the Convention, and no other ground for declaring it inadmissible has been established. It must therefore be declared admissible.

47. To the extent that the applicants may be understood to be complaining about facts other than those on which they sought a Constitutional Court finding, such as the transfer of the president of the first applicant association to a different position within the police force or the removal of the third applicant from the supervisory board of the police health insurance company, it does not appear from the documents submitted that they sought redress for those grievances, in accordance with the formal requirements, either before the civil courts or the Constitutional Court. In that respect the Government's objection must therefore be granted. Accordingly, the Court declares inadmissible the remainder of the application.

B. Merits

1. The arguments of the parties

(a) The applicants

48. The applicants maintained that there had been an unjustified interference with their rights under Articles 10 and 11 of the Convention. They pointed to the fact that the public meeting in issue had been organised by the first applicant as a trade union of members of the police force. Its aim had been apolitical, namely, to defend the economic and social rights and interests of the police in the context of envisaged legislative amendments. While not denying the Minister's right to react to the statements made at the meeting, the applicants considered that his reaction had been excessive as it had involved threats, including possible dismissal from the police force, and a refusal to communicate with the representatives of the first applicant.

49. Measures had been taken in respect of the elected representatives of the first applicant in that, in particular, its president had been transferred to a lower position in the police force. The other applicants had been intimidated by the Minister's statements. They considered that their positions within the police force would be under threat if they continued their activities as representatives or members of the first applicant association.

(b) The Government

50. The Government maintained, with reference to the reasoning of the Constitutional Court, that the Minister's statements had not been contrary to the applicants' rights under Articles 10 and 11 of the Convention. The impugned statements had been part of a political debate about the remuneration of the police and their right to criticise the policy of the Government. They had been made in reaction to excessive and inappropriate views expressed at the public meeting, such as calls for the Government to step down and indication that police officers might be paid by the mafia. No specific action had been taken in respect of the first, second or fourth applicants.

2. The Court's assessment

(a) Provision applicable to the present case

51. The Court notes that the facts of the present case are such that the question of freedom of expression is closely related to that of freedom of association in a trade-union context. It reiterates that the protection of opinions and the freedom to express them, as secured by Article 10, is one

of the objectives of freedom of association as enshrined in Article 11 (see *Ezelin v. France*, 26 April 1991, § 37, Series A no. 202; *Gorzelik and Others v. Poland* [GC], no. 44158/98, § 91, ECHR 2004-I; or *Barraco v. France*, no. 31684/05, § 27, ECHR 2009).

52. The thrust of the applicants' complaints relates to the effect which the Minister's statements had on the position and activities of the first applicant as the trade union of the police force, and the other applicants as its representatives or members. In these circumstances, the Court considers that Article 11 takes precedence as the *lex specialis* for the freedom of association and it will deal with the case principally under this provision, whilst interpreting it in the light of Article 10 (see also *Zhechev v. Bulgaria*, no. 57045/00, § 33, 21 June 2007; *Sergey Kuznetsov v. Russia*, no. 10877/04, § 23, 23 October 2008; and, to the contrary, *Palomo Sánchez and Others v. Spain* [GC], nos. 28955/06, 28957/06, 28959/06 and 28964/06, § 52, ECHR 2011).

(b) The relevant principles

53. The relevant principles in the Court's case-law on freedom of association and the freedom of expression are set out, *inter alia*, in *National Union of Belgian Police v. Belgium*, 27 October 1975, § 38-40, Series A no. 19; *Swedish Engine Drivers' Union v. Sweden*, 6 February 1976, §§ 37-39, Series A no. 20; *Wilson, National Union of Journalists and Others v. the United Kingdom*, nos. 30668/96, 30671/96 and 30678/96, § 42, ECHR 2002-V; *Tüm Haber Sen and Çınar v. Turkey*, no. 28602/95, §§ 28-29, ECHR 2006-II; *Demir and Baykara v. Turkey* [GC], no. 34503/97, § 109, ECHR 2008; *Palomo Sánchez and Others*, cited above, §§ 56 and 76; *Rekvényi v. Hungary* [GC], no. 25390/94, § 43, ECHR 1999-III; or *Guja v. Moldova* [GC], no. 14277/04, §§ 70 and 71, ECHR 2008. They can be summed up as follows.

54. Article 11 § 1 presents trade union freedom as one form or a special aspect of freedom of association. It safeguards freedom to protect the occupational interests of trade union members by trade union action, the conduct and development of which the Contracting States must both permit and make possible. A trade union must thus be free to strive for the protection of its members' interests and the individual members have the right that the trade union be heard in order to protect those interests. Article 11 does not, however, require any particular treatment of trade unions or their members and leaves each State a free choice of the means to be used to secure their right to be heard.

55. For the purpose of guaranteeing the meaningful and effective nature of trade union rights, the national authorities must ensure that disproportionate penalties do not dissuade trade union representatives from seeking to express and defend their members' interests. In order to be fruitful, labour relations must be based on mutual trust.

56. Paragraph 2 *in fine* of Article 11 of the Convention clearly indicates that the State is bound to respect the freedom of assembly and association of its employees, subject to the possible imposition of “lawful restrictions” in the case of members of its armed forces, police or administration.

57. Employees owe to their employer a duty of loyalty, reserve and discretion. Since the role of civil servants in a democratic society is to assist the government in discharging its functions, the duty of loyalty and reserve assumes special significance for them. Such considerations apply equally to military personnel and police officers.

(c) Application of the relevant principles to the present case

(i) Existence of any interference with the applicants’ rights

58. The Court reiterates that a “victim” of a breach of rights or freedoms is the person directly affected by the act or omission which is in issue (see *Bączkowski and Others v. Poland*, no. 1543/06, § 65, 3 May 2007).

59. The impugned statements of the Minister of the Interior were made in response to statements pronounced or displayed in the course of a public meeting organised by the first applicant as the trade union of the police force, of which the other applicants are representatives and/or members. The Minister’s statements indicated that he might no longer communicate with the representatives of the first applicant, that he had sanctioned its president by transferring him to a different position and that he might sanction other policemen more severely (see paragraphs 10-12 above).

60. In these circumstances, the Court accepts that the applicants were intimidated by the Minister’s statements, a situation which could have thus had a chilling effect and discouraged them from pursuing activities within the first applicant trade union, including organising or taking part in similar meetings (see also, *mutatis mutandis*, *Nurettin Aldemir and Others v. Turkey*, nos. 32124/02, 32126/02, 32129/02, 32132/02, 32133/02, 32137/02 and 32138/02, § 34, 18 December 2007).

61. The Court therefore considers that the applicants were affected by the Minister’s statements and that there has therefore been an interference with the exercise of their right to freedom of association. Accordingly, the Government’s objection concerning the alleged lack of the applicants’ victim status must be dismissed.

(ii) Compliance with Article 11 read in the light of Article 10 of the Convention

62. Such interference will constitute a breach of Article 11 unless it was “prescribed by law”, pursued one or more legitimate aims and was “necessary in a democratic society” for the achievement of those aims.

63. The Court notes that the Police Corps is subordinated to the Minister of the Interior, who bears political responsibility for its appropriate functioning in accordance with the Constitution and the Police Corps Act

1993 (see paragraphs 23 and 26 above). The Minister of the Interior indicated that his statements pursued the aim of ensuring compliance with article 3 of the Ethical Code of Members of the Police Corps. According to that provision, when expressing their views in public, police officers must act in an impartial and reserved manner, so that there can be no doubt about their impartiality.

64. In these circumstances, the Court considers that the interference complained of can be regarded as having been in accordance with the law.

65. Its aim was to ensure appropriate behaviour on the part of the police and maintain public trust in them. Those are indispensable conditions for the discharge of the duties of the police, which include ensuring public safety, prevention of disorder or crime and the protection of the rights and freedoms of citizens. The interference in issue therefore had a legitimate aim as required by the second paragraph of both Articles 11 and 10 of the Convention.

66. For the purpose of determining whether an interference is necessary in a democratic society, the adjective “necessary”, within the meaning of Article 11 § 2, implies the existence of a “pressing social need”. In that context, the Court must look at the interference complained of in the light of the case as a whole in order to determine whether it was “proportionate to the legitimate aims pursued” and whether the reasons adduced by the national authorities to justify it are “relevant and sufficient”. In so doing, the Court has to satisfy itself that the national authorities applied standards which were in conformity with the principles embodied in Article 11 and, moreover, that they based their decisions or actions on an acceptable assessment of the relevant facts (see, for example, *Yazar and Others v. Turkey*, nos. 22723/93, 22724/93 and 22725/93, § 51, ECHR 2002-II).

67. The present case concerns interference with the exercise of the trade union rights of members of the police force and their trade union. It has been generally acknowledged that the duties and responsibilities inherent in the position and role of the police justify particular arrangements as regards the exercise of their trade union rights. This follows from paragraph 2 of Article 11 of the Convention, the ILO Conventions No. 87 and No. 98, and the European Code of Police Ethics (see paragraphs 33-34 and 36-37 above).

68. The documents submitted indicate that the impugned statements of the Minister of the Interior were in reaction to calls for the Government’s resignation and a slogan implying that there was a risk that the police might get involved with the mafia if their social rights were disregarded.

69. The police play a primordial role in ensuring internal order and security and fighting crime. The duty of loyalty and reserve assumes special significance for them, similarly as in the case of civil servants (see paragraph 57 above). The call for the Government’s resignation expressed

at the meeting held on 25 October 2005 should be assessed in the light of the above.

70. In these circumstances, the Court accepts that the interference in issue, which aimed at ensuring respect for the requirement that police officers should act in an impartial manner when expressing their views so that their reliability and trustworthiness in the eyes of the public be maintained, corresponded to a “pressing social need”. It further considers the reasons for that interference “relevant and sufficient”.

71. In assessing whether the interference was proportionate to the legitimate aim pursued, the Court notes, on the one hand, that the Constitutional Court had admitted that the Minister’s statements could be characterised as “bold and, from a certain point of view, capable of creating an atmosphere of fear” (see paragraph 18 above). In particular, the Minister indicated that he would dismiss anyone “who acted contrary to the ethical code of the police again”, that the first applicant’s representatives had “lost credibility”, that he was “not obliged to negotiate with those representatives”, and that he had sanctioned the first applicant’s president for making what he considered to be false statements in the course of the meeting of 25 October 2005.

72. On the other hand, the Court finds it relevant that the Minister’s statements implying the possibility of the imposition of further sanctions were exclusively directed against the above-mentioned calls for the Government’s resignation, which he considered to be in breach of the requirement that police officers should express their views in public in an impartial and reserved manner. The Minister expressly acknowledged the right of the police to elect their trade union representatives.

73. While it is true that he had stated that he was not obliged to negotiate with those representatives who, in his view, had lost credibility, it does not appear from the documents submitted that the first applicant’s right to be heard was subsequently impaired. In particular, it has not been shown that the first applicant was prevented from pursuing trade union activities, organising other public meetings or from defending the rights of its members through a variety of means for which the domestic law expressly provides (see paragraphs 28 and 30-31 above). Similarly, there is no indication that the other applicants were prevented, as a result of the impugned statements or any consecutive action, from availing themselves of their freedom of association as representatives or members of the first applicant association.

74. Furthermore, the Constitutional Court established that the Minister’s statements represented an immediate reaction to ideas and views expressed at the meeting, and that he had been entitled to express his opinion on the situation concerning the Ministry for which he was responsible (see paragraph 19 above). There is no indication that the Minister’s statements or

the Constitutional Court's view on them, detailed above, were based on an inappropriate assessment of the relevant facts.

75. The Court therefore concludes that the means employed in order to achieve the legitimate aim pursued were not disproportionate.

76. There has accordingly been no violation of Article 11 of the Convention read in the light of Article 10.

FOR THESE REASONS, THE COURT

1. *Joins* unanimously to the merits the Government's objection concerning the alleged lack of the applicants' victim status, in so far as it relates to the complaints which the applicants raised before the Constitutional Court, and dismisses it;
2. *Declares* unanimously the complaints under Articles 10 and 11 of the Convention admissible to the extent that they coincide with the complaints which the applicants raised before the Constitutional Court, and the remainder of the application inadmissible;
3. *Holds* by five votes to two that there has been no violation of Article 11 of the Convention, read in the light of Article 10.

Done in English, and notified in writing on 25 September 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judges Myjer and Gyulumyan is annexed to this judgment.

J.C.M.
S.Q.

DISSENTING OPINION OF JUDGE MYJER JOINED BY JUDGE GYULUMYAN

1. It is not uncommon for members of a trade union and representatives of an employer's organisation – when expressing their views regarding their respective opponents – to use expressions lacking in subtlety and finesse.

That seems to have been what happened in the present case. In a reaction to what had been shouted and otherwise expressed at a public meeting organised by the Trade Union of the Police, the Slovak Minister of the Interior – the Minister responsible for the policemen concerned – made several public statements in which he made it clear that any policeman acting contrary to the ethical code of the police would be dismissed. And he also took action accordingly.

The applicants complain that the Minister, in expressing himself as he did, went too far and violated Article 11 of the Convention.

The statements were “bold and, from a certain point of view, capable of creating an atmosphere of fear”, in the measured language of the Slovak Constitutional Court. But, in the Constitutional Court's view, their nature and intensity were not such as to amount to a breach of the trade union's rights (see paragraph 18). The majority of the Chamber “accept that the applicants were intimidated by the Minister's statements, a situation which could have thus had a chilling effect and discouraged them from pursuing activities” within the trade union (paragraph 60). But they go on to conclude that the means used were not disproportionate (paragraph 75).

2. I do not agree with either conclusion. I am convinced that the Minister went beyond acceptable limits in expressing himself thus. He went so far as to threaten the (members of the) Trade Union of the Police to make them keep silent or risk being dismissed. In my view this is an infringement of Article 11 of the Convention

3. The facts in relation to the trade union public meeting are described in paragraph 6. Three aspects seem to have caused the anger of the Minister:

- the president of the Union, Mr Litva, had, as the Minister put it, lied during the meeting by calling into question the official position “that the Government had money at their disposal for increasing policemen's salaries” (see paragraph 12);

- the participants had spontaneously shouted – *inter alia* – that the Government should step down;

- one of the banners displayed by the participants had read: “If the State doesn't pay a policeman, the mafia will do so with pleasure.”

4. The Minister's reaction is described in paragraphs 7-12. In the days following the trade union meeting he made various forceful statements and took some measures. And although the complaint is only admissible as far as the Minister's statements are concerned, the fact remains that it is clear that those statements were more than just a first political reaction phrased

in admittedly strong terms. The very fact that he took immediate action of a punitive nature shows at the very least that the Minister's threats deserved to be taken seriously.

In this respect it is not without importance that even after the Minister had had some more time, and even some days, to rethink his first reaction, he repeated what he had said earlier.

5. I leave open the answer to the question whether a trade union or its leaders can be held responsible if participants in a meeting *spontaneously* start shouting certain slogans, or whether they can only be held responsible if they did not do their best to stop the participants from expressing themselves in an improper way.

I am, however, prepared to accept that the participants who publicly started to shout that the Government should step down transgressed the limits of what can be considered acceptable for police personnel.

I shall not comment on the Minister's rather remarkable statement that the president of the trade union *lied* when suggesting that the Government did not have money at its disposal for increasing policemen's salaries.

As far as the statement on the banner is concerned I have only this to say: I am not in a position to express an opinion on the adequacy or otherwise of the salaries paid to Slovak police personnel. I would, however, stress that it is generally acknowledged that policemen should receive an adequate salary, if only to prevent them from succumbing to the temptation – in order to meet their and their families' minimum daily basic needs – to supplement their salary with other – illegal – forms of income. Indeed, this Court has handled many cases in which the underlying facts reflected corruption on the part of underpaid Government authorities. I can accept that the Trade Union of the Police wished to convey the following message: if the Government fails to provide police personnel with an adequate living standard, and if the police continue to perceive themselves as underpaid, then there is a real danger that ultimately some policemen may be susceptible to offers of additional or alternative income. I cite as a recent authority the booklet by the former Council of Europe Commissioner on Human Rights, Thomas Hammerberg, *Human Rights in Europe: no grounds for complacency* (Council of Europe 2011) and his comments under the heading *Corruption undermines justice* (pp. 228-33).

Trade union banners will seldom win prizes for the diplomatic and balanced expression of the message they intend to convey. The message has to be short and catchy. A banner tries to explain as briefly and expressively as possible the perceived problem and preferred solution thereto, in the hope of influencing people's views. Exaggeration or even the use of phrases that may shock, offend and disturb outsiders are not uncommon in that context.

6. I agree with the relevant principles as set out in paragraphs 53-57 of the judgment.

The duty of loyalty to one's employer takes on a special significance for civil servants, including the police. It is not without significance that Article 11 § 2 expressly states: "This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members ... of the police...". However, this trade union was not subject to any unlawful restrictions relevant to the present case.

Equally, I am prepared to accept that the Slovak Ethical Code of the Police states that, when expressing their views in public, policemen should act in an impartial and reserved manner so that they do not give rise to doubts about their impartiality (see paragraph 32).

7. I have no difficulty agreeing that the Minister of the Interior was entitled to react with force and determination to the publicly shouted calls for the resignation of the Government. Even so, the fact that he, as the Minister responsible for the police, repeatedly indicated – even when the crisis was no longer at its height – that he would dismiss anyone who "acted contrary to the ethical code of the police again", that the trade union's representatives had "lost credibility", that he was "not obliged to negotiate with those representatives", and that he had actually imposed a sanction on the president of the trade union for having "misled ... the public, those policemen whom he had lured out to the square" in that he had "called into question [the fact] that the Government had money at their disposal for increasing policemen's salaries", was indeed capable of creating an atmosphere of fear, was indeed intimidating, and did indeed create a situation which could have had a chilling effect and discouraged trade union members from pursuing activities within the trade union. That is reinforced by the fact that the Minister – by imposing a sanction on the president of the trade union – demonstrated that his reaction was no empty threat.

By acting to muzzle the trade union's leadership he undermined the very essence of the trade union's rights – a trade union that, let us remember, was itself entirely lawful. That cannot be right.