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

FIRST SECTION

DECISION

Application no. 29554/17
Kálmán BÓDI and Others
against Hungary

The European Court of Human Rights (First Section), sitting on 20 June 2023 as a Committee composed of:

Gilberto Felici*, President*,
Péter Paczolay,
Raffaele Sabato*, judges*,
and Liv Tigerstedt, *Deputy Section Registrar,*

Having regard to:

the application (no. 29554/17) against Hungary lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 7 April 2017 by the applicants listed in the appended table ("the applicants") who were represented by Mr T. Hüttl, a lawyer practising in Budapest;

the decision to give notice of the application to the Hungarian Government ("the Government"), represented by their Agent, Mr Z. Tallódi, of the Ministry of Justice;

the parties' observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The application concerns the alleged inadequacy of the investigation into an assault on the applicants and its potentially racist motives. It raises issues under Articles 3 and 14 of the Convention.

2. The second applicant is the first applicant's son. The third applicant is the first applicant's brother. The fourth applicant is the first applicant's nephew. The applicants are of Roma origin.

3. On 22 August 2014 the applicants, as well as two other unrelated persons also of Roma origin, were – as "community workers" – busy cleansing a creek bed outside the village of Balaton.

4. Without any direct antecedents, at around 11 am, the applicants – but not the other two workers – were attacked by 8-10 men armed with baseball bats, blackjacks, crow bars, pepper sprays, alarm pistols and knives. They wore a sort of uniform consisting of fatigue trousers, tactical boots, balaclava and black t-shirt, some with a pin similar to the insignia the "Outlaws' Army" (*Betyársereg*), a right-wing paramilitary group.

5. The first applicant was sprayed on and hit with a crowbar; his left arm broke and he sustained a contusion of the right knee. The second applicant suffered several hits on the arms and legs; his ankle broke, and he suffered several bruises over his body as well as a knife wound on the left hand when he averted a cut directed at his ear. The third applicant was also beaten on his legs and his head, and he suffered minor head injuries. The fourth applicant was beaten with a baseball bat on the trunk, then one of the perpetrators sat on him and started hitting his face with a fist; he suffered bruises on his abdominal wall and his temple. During the attack, the perpetrators were allegedly uttering anti-Roma insults.

6. Based on his voice, build and tattoo, the applicants made out L., a local resident, as the leader of the attackers. Two applicants vaguely recognised two other individuals as attackers; however, none of them could later be positively identified by the police.

7. On the same day, the first applicant lodged a criminal complaint against "unknown perpetrators" with the Eger Police Department, on charges of aggravated bodily assault. The police opened an investigation under section 164 (3) of the Criminal Code which relates to this offence. L. was immediately arrested, his house searched, items of clothing and mobile phones were seized.

8. Meanwhile, on 31 October 2014, the Outlaws' Army posted an article on their website boasting about the events in Balaton as their having "assisted" their friend and fellow member, D. Apparently, D., the owner of a nearby farmstead, had had a conflict with the applicants some time prior to the incident.

9. On 11 February 2015 the Eger Police Department discontinued the investigation.

10. The applicants' lawyer repeatedly asked the investigation to be transferred to the County Police that had competence to prosecute the crime of "violence against members of a community". These requests were initially denied, in essence on the ground that, despite a general clamour of anti-Roma insults, the beating had not been directed against all Roma persons present but only the applicant family, who had a feud with the families of both D. and L. Ultimately, after a reopening of the investigation, on 7 April 2015 the case was upgraded to county police level.

11. The prosecution, to the extent that it concerned L., the only perpetrator positively identified, reached the Eger District Court that tried L. He was convicted of attempted bodily assault and being instigator to the same; and

sentenced to two years imprisonment with a suspension for four years. The court was not convinced of any racist motive and attributed L.'s actions to the long-existing feud with the applicants rather than their Roma origin. On 24 March 2017 the Eger High Court upheld the essence of the judgment, adding the offence of "hooliganism" because of the motive of revenge.

12. Meanwhile, on 3 March 2015, the applicants' lawyer submitted a complaint to the Attorney General and successfully requested a new investigation to identify the perpetrators of the offence of violence against members of a community.

13. During the investigation, data were retrieved from the seized mobile phones of L. and his wife. They contained a conversation of chat messages between L.'s wife and B. (a police officer at Eger Police Department and a friend of L.), which had taken place on a social media platform five days prior the attack. In the conversation, L.'s wife complained about the issues with first applicant's family, and asked B. about the possibility of purchasing a pepper spray. B. proposed a solution of "smashing them up" in a manner (by a group dressed in black, wearing boots and using baseball bats) that was similar to how the attack was later carried out. B. also offered help in the purchase of the pepper spray and made comments about looking into the criminal records of the applicants' family and having his colleagues harass them.

14. After several transfers of the case, B. was cleared of the suspicion of the offence of abuse of office, as he had not followed up on his words, had not accessed and had not had others access any police database inquiring about the applicants.

15. The rest of the case (concerning violence against members of a community) was transferred to the Salgótarján Prosecutor's Office. On 11 August 2016 the latter ruled that there was no reasonable suspicion of a crime. It noted that the incriminated exchanges of chat messages between B. and L.'s wife regarding the would-be attack contained numerous smiley face emojis, indicating that no actual instigation had taken place. B. said that he had not meant to incite a crime, he had only wanted to ease the tension in the conversation. Also, there had been no further communication between B. and either L. or L.'s wife prior to the attack. B. had not procured a pepper spray for L.'s wife and had not been present in Balaton on 22 August 2014.

16. As to any other unidentified suspects, the case was forwarded to the Heves County Police Department.

17. On 12 December 2016 the investigation was suspended as the police was unable to identify the further perpetrators. On 21 August 2017 the authorities resumed the investigation against B., but the case was ultimately discontinued on 25 April 2018.

18. The applicants complained under Articles 3 and 14 of the Convention that the attack was not adequately investigated, also with regard to its potentially racist motives.

THE COURT'S ASSESSMENT

19. The Government argued, as preliminary objections, that the application was incompatible *ratione personae* with the provisions of the Convention and reproached to the applicants that they had not pursued a substitute private prosecution. Moreover, they argued that the authorities had performed a sound investigation which corresponded to their obligations under the Convention.

20. The applicants disagreed with the Government's contentions as regards victim status and exhaustion of remedies. They moreover argued that the authorities had failed properly to investigate the case, and in particular into B.'s role, in breach of their obligations flowing from Articles 3 and 14 of the Convention.

21. The Court considers that it is not necessary to address the Government's preliminary objections because the application is in any event inadmissible for the following reasons.

22. The principles relevant to incidents which entail violence attaining the minimum level of severity for Article 3 to come into play and which may have racist overtones are outlined in *Balázs v. Hungary* (no. 15529/12, §§ 47-54, 20 October 2015).

23. When investigating violent incidents, State authorities have an additional duty under Article 3 of the Convention to take all reasonable steps to unmask any racist motive and to establish whether or not ethnic hatred or prejudice may have also played a role in the events (see *Balázs*, cited above, § 52; *R.B. v. Hungary*, no. 64602/12, § 83, 12 April 2016; *Abdu v. Bulgaria*, no. 26827/08, § 44, 11 March 2014; and *Šečić v. Croatia*, no. 40116/02, § 66, 31 May 2007).

24. In practice, it is often difficult to prove racist motivation. The obligation on the respondent State to investigate possible racist overtones to an act of violence is an obligation of means rather than an obligation to achieve a specific result; the authorities must take all reasonable measures having regard to the circumstances of the case (see *Balázs*, § 51; *Abdu,* § 45; and *Šečić,* § 66, all cited above).

25. In the present case, the Court notes that the applicants were assaulted by a group of men and sustained injuries which – compounded by the alleged racist insults – certainly bring the case within the scope of Article 3 of the Convention (see *Balázs*, § 57, and *Abdu*, § 39, both cited above). It remains to be ascertained whether the authorities adequately discharged their procedural obligations flowing from Articles 3 and 14 of the Convention.

26. In this connection, the Court notes that various police departments and prosecution authorities dealt with the case. Investigation was carried out into several offences, namely bodily assault, violence against members of a community and abuse of office. In the course of these procedures, the premises of the attack were inspected, testimonies were obtained from the

victims, direct and indirect witnesses and two suspects. Medical, forensic and material evidence was collected, DNA tests were carried out, and house searches were conducted. Moreover, a substantial amount of information was harvested from seized mobile phones and mobile phone operators; in this respect a technical expert was also appointed.

27. The investigation lasted about 3.5 years with several rounds of discontinuation and resumption. Despite the efforts of the authorities, however, it did not lead to the successful prosecution of the "unknown perpetrators" who could not be identified. The only attacker who could positively be identified, L., was ultimately convicted of bodily assault and hooliganism. Furthermore, the authorities launched another limb of investigation into the offence of violence against members of a community. However, they did not consider it proven that the attack was racially motivated, rather than ensuing from a family feud, especially in view of the fact that, of the several Roma persons present, only members of the applicants' family were attacked.

28. In the light of the above, the Court considers that the investigative actions undertaken by the domestic authorities constituted appropriate, albeit partly unsuccessful, steps towards identifying and punishing the perpetrators responsible for the alleged crimes as well as their potentially racist motives. The Court therefore accepts that the respondent State authorities discharged their positive obligations flowing from Articles 3 and 14 of the Convention.

29. It follows that the application is manifestly ill-founded within the meaning of Article 35 § 3 (a) and must be rejected, pursuant to Article 35 § 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 13 July 2023.

Liv Tigerstedt Deputy Registrar	Gilberto Felici President

Appendix

No.	Applicant's Name	Year of birth	Place of residence
1.	Kálmán BÓDI	1969	Balaton
2.	Kálmán BÓDI	1993	Kömlő
3.	Norbert BÓDI	1972	Balaton
4.	Sándor SERES	1978	Balaton