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

FIRST SECTION

DECISION

Application no. 31975/19
Veronika KOVÁČOVÁ and Others
against Slovakia

The European Court of Human Rights (First Section), sitting on 11 July 2023 as a Committee composed of:

Péter Paczolay*, President*,
Alena Poláčková,
Gilberto Felici*, judges*,

and Liv Tigerstedt, *Deputy Section Registrar,*

Having regard to:

the application (no. 31975/19) against the Slovak Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 31 May 2019 by three Slovak nationals, Ms Veronika Kováčová, Ms Nikola Miková and Mr Milan Miko, who were born in 1986, 1991 and 1959 respectively, live in Zborov, and were represented by the European Roma Rights Centre, a non-governmental organisation based in Brussels;

the decision to give notice of the application to the Government of the Slovak Republic ("the Government"), represented by their Agent, Ms M. Bálintová;

the parties' observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The application concerns coercive measures allegedly or actually taken against the first applicant (Ms Kováčová), the second applicant (Ms Miková) and the third applicant's (Mr Miko) wife by the police on 16 April 2017 in an intervention in a Roma community in Zborov.

2. That day was an Easter Sunday and, as submitted by witnesses, it was connected with festivities. Towards the evening, several calls were placed to the police emergency line reporting violent incidents in the community, originating from a conflict between two families. The police twice verified

these reports and the situation meanwhile escalated into a riot. In response, a two-officer unit present at the scene called for reinforcement. Further four officers then arrived and coercive measures including batons were used with a view to have the crowd counting some one hundred persons dispersed.

3. Against this background, the first applicant alleges having been hit with a baton twice on her arm. According to the second applicant, she was hit with a baton once on the legs.

4. As is depicted in a privately made audio-video recording that would be broadcast on television on 24 May 2017, the third applicant's wife was pushed by an officer in her back in the direction away from the ongoing disturbances, following which she fell forward to the ground.

5. On 25 May 2017 an investigation was opened into a suspicion that by the use of coercive measures in the above intervention one or more unidentified officers had abused official authority.

6. On 15 February 2018 the Inspection Service of the Ministry of the Interior terminated the investigation concluding that no offence had been established. An interlocutory appeal by the first and second applicants and the third applicant's wife was dismissed by the Prešov Regional Prosecutor's Office on 24 April 2018.

7. The applicants then filed a constitutional complaint, the third applicant submitting that he was doing so in the name of his wife who had died in the meantime. The complaint was rejected on 11 October 2018.

8. However, meanwhile, a request was filed on behalf of the first and second applicants and the third applicant's wife that the Prosecutor General review the assessment of their interlocutory appeal by the Regional Prosecutor's Office. The request was dismissed, of which they were notified on 24 May 2019.

9. The applicants complained under Articles 3, 8, 13 and 14 of the Convention that the first and second applicants and the wife of the third applicant had been ill-treated by the police, that this ill-treatment had been racially motivated, that the investigation into that ill-treatment had fallen short of the applicable requirements, and that they had been denied an effective remedy in that respect.

THE COURT'S ASSESSMENT

A. The first and second applicants (Ms Kováčová and Ms Miková)

1. Substantive aspect of Article 3, alone and in conjunction with Article 14 of the Convention

10. Relying on Articles 3 and 14 of the Convention, the first and second applicants alleged that they had been subjected to racially motivated ill-treatment by the police.

11. The Government pointed out that the last domestic decision on that matter had been given by the Prosecutor General on 24 May 2019 and that the applicants had failed to exhaust domestic remedies by challenging it

before the Constitutional Court. The Court considers that it is not necessary to examine this objection as the relevant part of the application is in any event inadmissible on the following grounds.

12. In particular, the Court accepts the Government's argumentation as to the substance of these complaints, which is borne out by the content of the file and the results of the domestic investigation. The present case is to be distinguished from those involving police operations classified as "action 100" (see *R.R. and R.D. v. Slovakia*, no. 20649/18, §§ 6-8, 12 and 152-60, 1 September 2020). In the present case, the police were called by the members of the affected community to address an escalating violent conflict within that community and thereby to protect life and limb. According to a number of witnesses including from within that community, they did exactly that. The recording available does not depict the police intervention in its entirety and shows no restrictive measures having been taken in respect of the first and second applicants. There is no objective evidence of any such measures having been taken against them. They did not report any ill-treatment and there is no medical evidence of any injuries.

13. As there is no appearance of any ill-treatment in relation to these applicants, there is no question of discrimination being the reason for it (see *M.B. and Others v. Slovakia*, no. 45322/17, § 104, 1 April 2021, and *P.H. v. Slovakia*, no. 37574/19, § 119, 8 September 2022).

14. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

2. Procedural aspect of Article 3, alone and in conjunction with Article 14 of the Convention

15. Relying on Articles 3, 13 and 14 of the Convention, the applicants alleged that the investigation into their alleged ill-treatment had been ineffective, that it had failed to look into the racial aspect of it, and that they had been denied an effective remedy. These complaints fall to be examined under Article 3, alone and in conjunction with Article 14 of the Convention (see *M.B. and Others v. Slovakia (no. 2)*, no. 63962/19, §§ 41, 77 and 94-97, 7 February 2023).

16. In so far as the Government's above non-exhaustion objection might be seen as in substance concerning these complaints too, it calls for no separate answer for the same reason as indicated above (see paragraph 11).

17. The applicants' key argument has been that in view of the institutional status of the body, the Inspection Service of the Ministry of the Interior, investigating the police intervention on 16 April 2017, the investigation had not been independent. On exactly the same matter, the Court has reiterated that the applicable requirements call for a concrete examination of the independence of the investigation in its entirety, rather than an abstract assessment. Moreover, they do not call for the persons and bodies responsible for the investigation to enjoy absolute independence, but rather that they be sufficiently independent of the persons and structures whose responsibility is

likely to be engaged. The adequacy of the degree of independence is thus to be assessed in the light of all the circumstances, which are necessarily specific to each case (see *M.B. and Others v. Slovakia*, cited above, § 91 and *R.R. and R.D. v. Slovakia*, cited above, § 178). In the present case, this part of the applicants' complaint was not supported by any elements linked to their individual case. Its remainder was likewise no more than generic to the effect that the investigation was one-sided and not thorough, without however pointing out any concrete aspect of it. The investigation commenced as soon as any controversy in respect of it appeared and was *per se* concluded in ten months. In its course, numerous witnesses were heard from among the members of the affected community as well as the officers involved. The recording and other evidence was likewise examined, with the conclusion that coercive measures had been used lawfully in respect of those actively participating in disturbances and those who had failed to follow police instructions to leave the area.

18. To the extent that the applicants sought to justify their claim of discrimination by reference to what they considered to be institutional racism by the police in Slovakia, when exercising its jurisdiction under Article 34 of the Convention the Court has to confine itself, as far as possible, to the examination of the specific case before it (see *M.B. and Others v. Slovakia*, cited above, § 106). In so far as substantiated, there is no sign that the authorities had before them information that was sufficient to bring into play their obligation to investigate on their own initiative possible racist motives on the part of the officers involved (see *A.P. v. Slovakia*, no. 10465/17, § 92, 28 January 2020; *Adam v. Slovakia*, no. 68066/12, § 94, 26 July 2016; and *Mižigárová v. Slovakia*, no. 74832/01, § 123, 14 December 2010).

19. In sum, this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

3. Article 8 of the Convention, alone and in conjunction with Articles 13 and 14 of the Convention

20. Referring to Articles 8, 13 and 14 of the Convention, the applicants advanced similar complaints as mentioned above.

21. The Court finds it unnecessary to entertain the Government's objection of non-exhaustion of domestic remedies (an action at law before the civil courts) since these complaints are in any event inadmissible on the following grounds. In fact, they are no more than a restatement of the complaints examined and dismissed above under Articles 3 and 14 of the Convention on the grounds that they lacked factual basis. In the absence of such a basis, there is no room for a different conclusion under Articles 8 and 14 of the Convention. The complaints under those provisions thus do not provide an "arguable basis" for a complaint under Article 13 of the Convention (see *Boyle and Rice v. the United Kingdom*, judgment of 27 April 1988, Series A no. 131, § 52).

22. Accordingly, this part of the application is also manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

B. The third applicant (Mr Miko)

23. The third applicant advanced essentially the same complaints, albeit in the name of his wife who had died before the introduction of this application in circumstances unrelated to the complaints.

24. In the circumstances, in response to the Government's objection on that count, the third applicant's standing depends on there being a strong moral interest in or other compelling reasons for the examination of such complaints.

25. The third applicant does not rely on any facts or circumstances concerning himself. His complaint to the Constitutional Court was rejected on other grounds, with the question of his standing not being subjected to any analysis (see paragraph 7 above). No issue of exoneration of the direct victim (*Nölkenbockhoff v. Germany*, 25 August 1987, § 33, Series A no. 123) or reputation on the part of the third applicant or his family (*Armonienė v. Lithuania*, no. 36919/02, § 29, 25 November 2008) is at stake, and there has been no allegation of any pecuniary interest being involved (*Grădinar v. Moldova*, no. 7170/02, § 97, 8 April 2008).

26. As to the question of any general interest pertaining to respect for human rights to necessitate the consideration of his complaints (see *Boacă and Others v. Romania*, no. 40355/11, §§ 47 and 49, 12 January 2016), the above examination of the complaints of the remaining applicants reveals no issue of ill-treatment, lack of an effective investigation or discrimination.

27. In sum, no exceptional grounds have been established to warrant recognising the third applicant's victim status.

28. Accordingly, his complaints are incompatible *ratione personae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) and must be rejected in accordance with Article 35 § 4.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 7 September 2023.

Liv Tigerstedt Deputy Registrar	Péter Paczolay President