



Slovakia failed to investigate thoroughly assault against group of Roma

In today's Chamber judgment in the case [Koky and Others v. Slovakia](#) (application no. 13624/03), which is not final¹, the European Court of Human Rights held, unanimously, that there had been:

A violation of Article 3 (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights

The case concerned an allegedly racially motivated assault by private individuals against a group of people of Roma origin in a village in Slovakia.

The Court held that the authorities had not done everything that could have been expected to investigate the incident, in particular taking into account its racial overtones.

Principal facts

The applicants are ten Slovak nationals of Roma ethnic origin: Ján Koky, Martin Kočko, Žaneta Kokyová, Milan Baláž, Rastislav Koky, Renáta Kokyová, Ružena Kokyová, Renáta Čonková, Justina Lacková and Ján Koky Jr, born in 1959, 1985, 1984, 1978, 1982, 1978, 1959, 1975 and 1968, respectively. They all live in Gánovce (Slovakia), except Ján Koky Jr, who lives in Poprad (Slovakia).

In the evening of 28 February 2002, an argument started in a bar in the village of Gánovce-Filice, when a non-Roma waitress refused to serve a drink to a Roma. Later that evening, a group of several men, some of them armed with baseball bats and iron bars and wearing masks, went to the Roma settlement in the village where the applicants lived. Allegedly shouting racist slogans, they forcibly entered three of the houses, causing damage inside and breaking the windows.

The attackers physically assaulted three of the applicants, causing two of them injuries, the nature and severity of which is in dispute between the parties. According to the applicants, one of them suffered, in particular, a skull fracture, a cut to the back of the head and a crushed arm, which required him to stay in hospital for about two weeks, and the other suffered a scraped elbow, needing recovery time of at least a week. According to the Government, the first of the injured applicants was hospitalised for no more than four days, whereas the injuries of the second did not merit a stay in the hospital.

About half an hour after the incident, the police arrived at the settlement. During the same night and the following day, they carried out inspections of the houses that had been attacked and conducted interviews with several of the applicants. On the day after

¹ Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution

the incident, the police district investigator opened a criminal investigation into the offences of causing bodily harm, violating the privacy of a home and criminal damage. During the following weeks, further interviews were conducted with all applicants, four witnesses and the waitress involved in the argument at the bar as well as her sons, two of whom had been present at the bar on the night of the incident. On 13 March 2002 the investigation was extended to look into a possible racial motive being behind the incident. According to the Government's submissions, the authorities requested records of calls to and from the mobile phone of the waitress, two of her sons, and the girlfriend of one of them. The investigator held an identity exercise, in which some of the applicants identified a number of persons who might with a varying degree of probability have participated in the attack. Subsequently, an analysis of biological material of three persons thus identified was conducted to compare it with traces from the crime scene. On 26 April 2002, the investigator suspended the investigation, stating that no evidence had been established allowing it to bring charges against a specific person.

An interlocutory appeal by two of the applicants against the decision to suspend the investigation was declared inadmissible by the district prosecutor on 22 May 2002 for want of their standing to appeal. Nevertheless, on her own initiative, the district prosecutor reviewed and quashed the decision and instructed the investigator to take further steps to establish the identity of the perpetrators, also in view of the alleged racist motive. Further interviews and analyses of biological material were conducted. On 26 June 2002, the investigation was again suspended for failure to collect evidence with which a specific person could be charged. However, the investigator considered it established that the attack at the Roma settlement had been preceded by the incident at the bar and had been followed by an attack at the house of the waitress. An interlocutory appeal by two of the applicants against that decision was declared inadmissible for the same reason as before and, upon a fresh review of the decision on her own initiative, the district prosecutor concluded that all necessary actions had been taken.

A subsequent constitutional appeal by all applicants, contending that the attacks had not been effectively investigated, was declared inadmissible by the Constitutional Court on 23 October 2002 on the ground that the applicants had failed to exhaust all remedies.

Complaints, procedure and composition of the Court

Relying in particular on Article 3 (prohibition of inhuman or degrading treatment), the applicants alleged that the violence they had been subjected to had been inhuman and degrading and that the authorities had failed to carry out a prompt, impartial and effective investigation into the attack.

The application was lodged with the European Court of Human Rights on 17 April 2003.

Judgment was given by a Chamber of seven, composed as follows:

Nicolas **Bratza** (the United Kingdom), *President*,
 Lech **Garlicki** (Poland),
 David Thór **Björgvinsson** (Iceland),
 Ján **Šikuta** (Slovakia),
 Päivi **Hirvelä** (Finland),
 Ledi **Bianku** (Albania),
 Nebojša **Vučinić** (Montenegro), *Judges*,

and also Fatoş **Aracı**, *Deputy Section Registrar*.

Decision of the Court

The Court dismissed the Slovak Government's preliminary objection that the applicants had failed to exhaust the remedies at national level. In particular, it found that the applicants could not be considered to have failed to seek review of the district police investigator's actions by the public prosecution service under the code of criminal procedure, given the limited level of clarity of the applicable rules and the fact that the applicants had lodged two interlocutory appeals against the investigator's decisions. Furthermore, law and practice at national level at the relevant time did not support the argument that the applicants would have been required to make a petition to higher levels of the public prosecution service.

Article 3

As regards the question of whether the case involved ill-treatment within the meaning of Article 3, the Court noted that there was a disagreement between the parties as to the number of attackers and the nature and extent of the injuries sustained by two of the applicants. However, it was clear that they had had to be taken to the hospital for treatment.

Furthermore, the Court considered that in the assessment of the gravity of the injuries regard had to be had to the overall context of the attack. The incident had taken place at night time in a Roma settlement and it had involved a group of partly armed and masked men who had forcibly invaded the applicants' home and privacy, causing damage to their property, and assaulted one of the applicants inside his house and two others in the open. Moreover, the applicants had submitted, and the authorities had not rebutted this, that the incident had been marked by verbal threats and imprecations affronting the applicants' ethnic dignity. In that light, the Court concluded that there could be no doubt that the treatment to which the applicants had been exposed at the hands of private individuals fell within the remit of Article 3.

The Court observed that the incident at the applicants' settlement had been subject to a structured and substantive investigation which included an inspection of the crime scene, numerous interviews of the applicants and of witnesses and an analysis of biological material of potential perpetrators.

However, as regards the question of whether everything necessary had been done to establish the identity of the perpetrators, the Court noted the following: while the biological traces secured at the crime scene had been a crucial piece of evidence and had been analysed and compared with biological material of the suspects, the results of those analyses, as submitted to the Court, had pertained only to three people. The results in respect of eight others were missing. Furthermore, in suspending the investigation for the second time, the authorities had emphasised an incongruity between the initial statement by one of the applicants to the effect that he did not know the identity of the men who had assaulted him at his home because they wore balaclavas and his later submission, during the identity exercise, to the effect that he had recognised one of the assailants. However, there did not appear to have been any action taken with a view to clarifying the controversy. The Court moreover noted that, although, according to the Government, records of the mobile communications of some of the people involved in the incidents had been requested, no follow-up had been made.

As regards the Government's argument that the investigation had not been terminated but had merely been suspended and that there was no formal obstacle to its continuation, the Court pointed out that no action had been taken since January 2003.

The Court considered that those elements, coupled with the sensitive nature of the situation related to Roma in Slovakia at the time, were sufficient for it to conclude that

the authorities had not done all that could have been reasonably expected of them to investigate the incident, to establish the identity of those responsible and to draw the necessary consequences. In reaching that conclusion, the Court took into account the particular importance for an investigation into an attack with racial overtones to be pursued with vigour and impartiality, having regard to the need to reassert continuously society's condemnation of racism and to maintain the confidence of minorities in the ability of the authorities to protect them from the threat of racist violence.

Accordingly, the investigation into the incident at the applicants' settlement could not be considered as having been effective, in violation of Article 3.

Article 41

Under Article 41 (just satisfaction) of the Convention, the Court held that Slovakia was to pay, in respect of non-pecuniary damage, each of the two applicants who had been physically injured 10,000 euros (EUR), and EUR 5,000 to each of seven other applicants.

The judgment is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.