

Subject matter of the application

All the information concerning the facts, complaints and compliance with the requirements of exhaustion of domestic remedies and the six-month time-limit laid down in Article 35 § 1 of the Convention must be set out in this part of the application form (sections E., F. and G.) (Rule 47 § 2 (a)). The applicant may supplement this information by appending further details to the application form. Such additional explanations must not exceed 20 pages (Rule 47 § 2 (b)); this page limit does not include copies of accompanying documents and decisions.

E. Statement of the facts

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A. The events of 16 June 2012

1. The account set out here is based on evidence given at the criminal trial described below at paragraph 5. The documents related to that trial are set out at Annexes 1 – 4.

2. Milan Juhász, a municipal police officer, purchased a home-made gun and two bullet chambers from an unknown person in the spring of 2011. He kept the gun and ammunition in secret at his home in the village of Svätý Peter, on the outskirts of Hurbanovo. There are about 1,000 Roma living in Hurbanovo, which represents approximately one-eighth of the total population.

3. On 16 June 2012, Mr Juhász left his house at 9.00 hours armed with the fully-loaded gun and 25 to 30 reserve bullets, in order, he said: “to deal with local Roma in Hurbanovo” and “to do something with them”. Mr Juhász was off-duty at the time. He drove in his private car to Hurbanovo and stopped in front of a house occupied by the Lakatoš family (including the applicants) at Komárňanská Street no. 3/5. He spoke briefly with his wife on the phone, but he could not remember the content of their discussion later at trial. His wife stated that she asked him where he had gone but he refused to tell her and ended the conversation quickly. She could not reach him after that. At 10.10 hours he entered the Lakatoš family property and, without saying anything, he fired eight bullets at the family members, including minors, in the yard. He stopped when he emptied the bullet-chamber of the gun and the gun got stuck. Mr Juhász shot dead Gabriel Lakatoš (44, shot multiple times in the arm, legs, chest and stomach), as well as his son Mário Lakatoš (19, shot in the head and back) and son-in-law Július Lakatoš (24) (shot in the head). Mr Juhász also seriously injured another of Gabriel Lakatoš’s sons, Kristián Lakatoš (26, shot in the liver, lower appendix, stomach, and elbow) and the latter’s wife, Žaneta Lakatošová (26, shot in the hips and thighs). The victims recognised Mr Juhász because of his job as a municipal police officer.

4. After shooting all the bullets, Mr Juhász headed to his car, intending to reload. As he approached his car, he noticed two Romani men who turned out to be family members of the applicants; he threatened to kill them, and then, without harming them, got in his car and drove towards the town of Komárno. According to his account, he realised what he had done only once he arrived in the village of Imel, from where he returned back to Hurbanovo. He drove to the house of the Hurbanovo mayor as she was, according to him, his “supervisor, the most important representative of the town and a lawyer by profession”. The mayor was not home, so Mr Juhász sat on the lawn in front of her house, where he was eventually arrested. The police seized his gun, which they noticed had been fully reloaded.

B. The Criminal Trial

5. At the public hearing which took place between 25 and 28 March 2013, Mr Juhász pleaded guilty. During the pre-trial stage of the criminal proceedings, Mr Juhász spoke about the incident. While he could not reconstruct the killings in detail, Mr Juhász admitted his intention to “discipline” local Roma and to restore public order. He described the technical details of his shooting positions in detail. He declared that he was not “anti-racist [sic] focusing on Roma”. He initially stated that he had never had any personal incident with Roma, but he later declared that he felt verbally threatened by Roma and feared for the well-being of his family as a result. He stated that if he had not been the first one to strike, Roma would have harmed him and his family. He further admitted using physical force (slapping) against Roma (including Lakatoš family members) in the past. He admitted in particular to doing so during a nighttime incident in the local scrapyard on 8 June 2012; witnesses confirmed that Mr Juhász slapped Mario Lakatoš and his cousins, Zsolt and Richard Lakatoš, who were being detained by the state police for a robbery at the local scrapyard. As for the charge of illegal gun possession, Mr Juhász initially claimed that he had found the gun during an attack on his house some 20 years ago. He later admitted that he purchased it illegally for five hundred euros in 2011. According to the minutes of the public hearing, the day before the killings, there was a Sport Day at

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Mr Juhász's workplace and Mr Juhász drank approximately one litre of wine before going home at around 23.00 hours. According to the expert witness opinion, alcohol affected Mr Juhász's behaviour. Mr Juhász did not testify at the public hearing.

6. On 27 March 2013, the Special Criminal Court in Banská Bystrica found Mr Juhász guilty of the serious crime of premeditated first-degree murder, partly attempted and partly completed, and sentenced him to nine years' imprisonment. The court simultaneously imposed three years of protective psychiatric treatment, holding that the defendant committed the offence in a state of diminished sanity. Both the prosecutor and Mr Juhász waived their right to appeal and the court produced a judgment without reasoning, as permitted under section 172 (2) of Act no.301/2005 Coll. Code of Criminal Procedure (see the judgment of the Specialised Criminal Court, Annex 4.). In relation to damages, the court did not decide on the matter and instead referred the applicants to the possibility of taking civil proceedings. The court, when summarising the facts of the case, described Mr Juhász's motives by stating that he intended to kill people he believed were "inadaptable citizens", a term commonly used in Slovakia to mean Roma.

7. The Code of Criminal Procedure does not allow the injured party to appeal the holding on guilt and penalty. It only allows for appeal (odvolanie) against the holding on damages. One of the applicants' relatives, Ildikó Lakatošová, nonetheless lodged an appeal against the judgment of the Specialised Criminal Court in relation to the holding on guilt and the penalty, as a symbolic protest, on 19 April 2014. (see Annex 6.). On the same day, the applicants, joined by the other injured parties in the criminal proceedings, filed an appeal in relation to holding on damages (See Annex 5.). Both appeals were dismissed by the Supreme Court on 18 September 2013 (see Annex 9.).

8. On 26 June 2013, the applicants (together with their relatives who participated in criminal proceedings as injured parties) lodged a motion with the Minister of Justice requesting him to file an extraordinary appeal (dovolanie) to review the criminal proceedings in relation to the holding on guilt and the penalty (see Annex 7.). The Minister of Justice indicated his refusal to act on the motion on 17 September 2013 (see Annex 8.). On 4 March 2014, the applicants (together with their relatives who participated in the criminal proceedings as injured parties) lodged a motion with the Minister of Justice requesting him to file an extraordinary appeal (dovolanie) to review the criminal proceedings in relation to the holding on damages (see Annex 10.). The motion was likewise rejected on 03 April 2014 (see Annex 11).

C. The Applicants' Constitutional Complaint

9. The applicants filed a constitutional complaint in accordance with Article 127 of the Slovak Constitution, on 24 May 2013 (Annex 12), claiming violations of the Convention.

10. In the constitutional complaint, the lawyer representing the applicants pointed out that the criminal proceedings disclosed several serious failures, which can be summarised as follows:

(1) Racial motivation was not properly investigated and nor taken into account by the trial court. Despite a number of admissions by the defendant stating his intention to "solve the Roma problem", as well as expert witnesses finding he presented paranoia about Roma, showed little tolerance for Roma with whom he had contact, and was frustrated about what he perceived as the town's ineffectiveness in relation to Roma, the court did not address the issue of racial motivation.

(2) The complaint criticised the expert opinion about the mental health of the defendant for containing inconsistent, inaccurate and contradictory arguments and conflicting opinions. The applicants' lawyers pointed out the expert opinion formed the basis of the trial court's decision to apply, exceptionally, a reduced penalty. Under Section 39 of the Slovak Criminal Code allowing exceptional reduction of a custodial Penalty, Mr Juhász was given a penalty of nine years, significantly lower than the ordinary minimal penalty of 25 years specified in the Criminal Code for first-degree murder under Section 144(2).

(3) The quality and adequacy of the expert opinion was called into question throughout the whole criminal proceedings and the legal representative for the family had submitted a request to commission an alternative auditing expert opinion. The court however failed to deal with the request.

Statement of the facts (continued)

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(4) The court did not allow various sets of questions from the applicants during the examination of witnesses, which would have helped to establish the circumstances of the case.

(5) The prosecutor waived the right to appeal. Furthermore, under the Slovak Code of Criminal Procedure, the waiver of the right to appeal meant that the court did not have to produce a reasoned judgment.

11. The Constitutional Court dismissed the complaint as manifestly ill-founded on 27 May 2015 (see the Resolution of the Constitutional Court, Annex 13.). However, the court noted that “the absence of reasoning makes it difficult to review its constitutionality.” The Constitutional Court also noted that it could not strike down the law permitting the court to dispense with a reasoned judgment in the context of proceedings on a constitutional complaint such as the one before it. The decision of the Constitutional Court was delivered to the applicants’ lawyer on 23 July 2015.

D. Related domestic proceedings and other subsequent events

12. On 10 October 2012, some of the applicants’ relatives who participated in criminal proceedings as injured parties lodged a civil claim seeking compensation (Žaloba o náhradu škody) from Mr Juhász (see Annex no. 14.). The applicants joined the proceedings having obtained permission in a decision of the Regional Court in Nitra (see Annex no. 18.) The proceedings are still ongoing.

13. Under the provisions of Act no.215/2006 Coll. on compensation for victims of violent crimes, the applicant Kristián Lakatoš was awarded 7,545.60 EUR on 19 December 2013 and the applicant Žaneta Lakatošová was awarded 2,358 EUR on 18 June 2013. The applicant Kristián Lakatoš was also awarded 4,090 EUR on 15 July 2013 as the descendant of deceased Gabriel Lakatoš (see Annexes no. 19.-21.).

14. On 5 October 2012, the applicants, along with the other injured parties, filed a civil claim to establish the lack of legal effect of an act (Žaloba o určenie neúčinnosti právneho úkonu, Annex no. 27.). They requested the court to declare the deeds of gift by which Milan Juhász transferred the title to his house and other immovable property to his daughter (Viktória Kajanová) as without legal effect in relation to the plaintiffs’s claims against him. The proceedings are still ongoing.

15. On 29 October 2012, the applicants’ lawyer filed a criminal complaint (trestné oznámenie) against Milan Juhász based on suspicion that he committed the criminal offence of disposing of property to defraud creditors (poškodzovanie veriteľa) by transferring the title to his house to his daughter and by giving 5,000 EUR to his wife as a present (see Annex 22.). The criminal complaint was dismissed on 31 October 2014 (See Annex no. 23.). A complaint was filed on 08 December 2014 challenging the aforementioned dismissal (see Annex 24.). However, it was also dismissed on 09 March 2015 by the District Prosecutor’s Office in Komárno (see Annex 26.).

16. Although the court ordered protective treatment for Mr Juhász and the fact that the Section 81(1) of Decree no.368/2008 Coll. (Custodial Penalty Execution Order) says the treatment shall start as soon as possible after the custodial sentence began, Mr Juhász was, according to some media reports (see Annex 30.), placed in a prison whose psychiatric institution is only suitable for people suffering from addiction.

F. Statement of alleged violation(s) of the Convention and/or Protocols and relevant arguments

37. Article invoked	Explanation
<p>Article 14 read in conjunction with the procedural limb of Article 2</p>	<p>By treating the racist murders of members of the Lakatoš family on an equal footing with murders not motivated by racist hatred, the Slovak authorities – particularly the prosecution and the trial court – breached Article 14 of the Convention taken with the procedural limb of Article 2. Šečić v Croatia (2007), § 67. Despite Mr Juhász’s admission at trial that the crimes were motivated by the victims’ Roma ethnicity, the trial obfuscated the racist motive: the trial court referred obliquely to a desire to kill “unadaptable citizens”.</p> <p>The applicants were unable to challenge the expert opinion as to Mr Juhász’s mental state, which referred to other motives and on which (in the absence of a reasoned judgment) the court appears to have relied in reaching its conclusions. This not only prevented them from taking an active part in the proceedings (McKerr v United Kingdom (2001), § 115), but also made it impossible to establish the role of racial hatred in the crime and to punish Mr Juhász accordingly (Nachova & ors v Bulgaria (2005), §§ 162-168). The fact that Mr Juhász was sentenced to far below the ordinary statutory minimum sentence for racially-motivated murder demonstrates that the racial motivation was not taken into account. The fact that the trial court took advantage of the opportunity offered by the prosecutor’s waiving the right to lodge an appeal, so as not to deliver a reasoned judgment, made it impossible in any event to demonstrate any accountability for the racist motivation behind the murders.</p> <p>Siliadin v France (2004), § 147. Failure to deliver a reasoned judgment may cause reasonable suspicions about possible arbitrariness of the decision and undermines public confidence in objective and transparent justice system, one of the foundations of a democratic society (see Suominen v Finland (2003) § 37).</p> <p>The applicants refer the Court to their constitutional complaint for the full arguments made, in the light of the Court’s case law, about the violation of Article 14 taken with the procedural limb of Article 2. Because racially-motivated violence is particularly destructive of fundamental rights (Šečić, § 67) and a particular affront to human dignity (Nachova, § 145), the trial must be conducted in such a way as to unmask any racist motivation; this is the only way to ensure "accountability in practice as well as in theory" (McKerr, § 115). See also Balázs v Hungary (2015), § 53; Nachova, § 160.</p> <p>The applicants also urge the Court to place this case within the context of widespread racist violence by police against Roma in Slovakia (see Annex 29.). Although, Mr Juhász committed these murders whilst off-duty, they appear to be a manifestation, albeit extreme, of a culture of institutional racism within the Slovak police.</p>
<p>Article 6, or Article 13, read in conjunction Article 14 and the procedural limb of Article 2</p>	<p>The fact that the trial court did not deliver a reasoned judgment deprived the applicants of the possibility to obtain a remedy for the failures set out directly above. As the Constitutional Court admitted, the lack of a reasoned judgment made its task particularly difficult; the Constitutional Court also noted that it was powerless to compel such a reasoned opinion, which could have formed the basis of a successful constitutional complaint. Only the prosecutor could appeal to demand a heavier sentence, and so compel the court to produce a reasoned judgment. His failure to do so, triggering the trial court’s decision not to deliver a reasoned opinion was a key aspect of the breach of the applicants’ rights in this case. The Court may wish to consider this complaint through the lens of Article 13 or, taking further into account the fact that the applicants were unable effectively to cross-examine or otherwise challenge the expert opinion into Mr Juhász’s mental state (see, mutatis mutandis, McKerr), through the lens of Article 6.</p>

G. For each complaint, please confirm that you have used the available effective remedies in the country concerned, including appeals, and also indicate the date when the final decision at domestic level was delivered and received, to show that you have complied with the six-month time-limit.

<p>38. Complaint</p> <p>Article 14 read in conjunction with the procedural limb of Article 2</p> <p>Article 6, or Article 13, read in conjunction Article 14 and the procedural limb of Article 2</p>	<p>Information about remedies used and the date of the final decision</p> <p>Criminal proceedings on the matter ended on 27 March 2013 when the Specialised Criminal Court in Banská Bystrica issued its judgment. On 24 May 2013, the applicants filed a constitutional complaint raising in substance all the complaints under relevant Articles of the Convention. The Constitutional Court dismissed the complaint as manifestly ill-founded on 27 May 2015. The decision was delivered to the applicants' representative on 23 July 2015. The applicants submit that this ruling amounted to exhaustion of domestic remedies, with the latter date marking the start of the six-month deadline for lodging an application with the Court. The applicants note that the Constitutional Court did not refuse their complaint for failure to exhaust other remedies in the domestic system, a pre-condition for submission of such complaints under Section 53 (1) of the Act no. 38/1993 Coll. on organisation of the Constitutional Court of the Slovak Republic and proceedings before it.</p> <p>For the sake of completeness, the applicants note that the Slovak Code of Criminal Procedure does not allow the injured party to appeal such a ruling as to a finding of guilt and the penalty. It only allows for an appeal against the holding on damages. One of the applicants' relatives, Ildikó Lakatošová, nonetheless lodged an appeal against the judgment of the Specialised Criminal Court in relation to the finding of guilt and the penalty, as a symbolic protest, on 19 April 2014. On the same day, the applicants, joined by the other injured parties in the criminal proceedings, filed an appeal in relation to the holding on damages. Both appeals were, predictably, dismissed by the Supreme Court on 18 September 2013.</p> <p>On 10 October 2012, some of the applicants' relatives who participated in criminal proceedings as injured parties lodged a civil claim seeking compensation from Mr Juhász. The applicants joined the proceedings having obtained permission in a decision of the Regional Court in Nitra. The proceedings are still ongoing. In this regard, the applicants would like to note that where an applicant has a choice of domestic remedies, it is sufficient for the purposes of the rule of exhaustion of domestic remedies that he or she make use of a remedy which is not unreasonable and which is capable of providing redress for the substance of his or her Convention complaints (see, inter alia, <i>Hilal v. the United Kingdom</i> (dec.), no. 45276/99, 8 February 2000, and <i>Krumpel and Krumpelová v. Slovakia</i>, no. 56195/00, § 43, 5 July 2005). In any event, the civil proceedings against Mr Juhász himself are incapable of dealing with the complaints set out in this application, concerning failures by the police, prosecutors, and criminal courts in how they handled the criminal proceedings.</p>
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