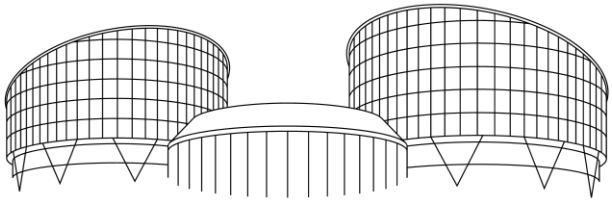

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FORMER SECTION IV

**CASE OF KOKY AND OTHERS v. SLOVAKIA**

*(Application no. 13624/03)*

JUDGMENT

STRASBOURG

12 June 2012

*This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.*

**In the case of Koky and Others v. Slovakia,**

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

Nicolas Bratza, *President*,
Lech Garlicki,
David Thór Björgvinsson,
Ján Šikuta,
Päivi Hirvelä,
Ledi Bianku,
Nebojša Vučinić, *judges*,

and Fatoş Aracı, *Deputy Section Registrar*,

Having deliberated in private on 22 May 2012,

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

# PROCEDURE

1. The case originated in an application (no. 13624/03) 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 ten Slovak nationals of Roma ethnic origin: Mr Ján Koky, Mr Martin Kočko, Ms Žaneta Kokyová, Mr Milan Baláž, Mr Rastislav Koky, Ms Renáta Kokyová, Ms Ružena Kokyová, Ms Renáta Čonková, Ms Justina Lacková and Mr Ján Koky Jr. ("the applicants"), on 17 April 2003. The applicants' particulars appear in the appendix to this judgment.

2. The applicants were represented by the League of Human Rights Advocates in Bratislava and the European Roma Rights Centre in Budapest (Hungary).

3. The Government of the Slovak Republic ("the Government") were represented by their Agent, Ms A. Poláčková, who was succeeded in that function by Ms Pirošíková.

4. The applicants alleged, in particular, that – in violation of Article 3 of the Convention and several other of their Convention rights - the State authorities had failed to ensure a prompt, effective and impartial investigation into, and to punish the perpetrators of, an allegedly racially motivated assault on them by private individuals.

5. By a decision of 22 September 2009, the Court declared the whole application admissible, joining to the merits a question of exhaustion of domestic remedies under Article 167 of the Code of Criminal Procedure (Law no. 141/1961 Coll., as in force at the relevant time,"the CCP") and sections 31 et seq. of the Public Prosecution Service Act ((Law no. 153/2001 Coll., as amended – "the PPS Act").

6. The applicants and the Government each submitted further written observations (Rule 59 § 1) on the merits, and the applicants replied in writing to the observations submitted by the Government.

# THE FACTS

## I. THE CIRCUMSTANCES OF THE CASE

### A. Incidents of 28 February 2002

7. The following incidents occurred on 28 February 2002. The detailed accounts of events by the parties and those involved are at variance at times. In this section, therefore, the incidents are described only briefly. Differing details, if any, are pointed out in the subsequent sections.

#### *1. Argument at the bar*

8. In the evening of 28 February 2002, at around 7.30 p.m., an argument started in a bar in the village of Gánovce-Filice, when a non-Romani waitress, I.S., refused to serve a drink to a person of Roma ethnic origin, M.K.

9. The argument developed with the tipping of a drink over M.K., in response to which he slapped or attempted to slap Ms I.S. in the face, accidentally knocking glasses over, which fell and broke.

10. Subsequently I.S. telephoned one of her three sons, P.S., who came to the bar soon afterwards. After he had left, another of her sons, M.S., who was the owner of the bar, came to the bar and remained there, assisting I.S. in serving customers, until closing time. Around that time, the girlfriend of P.S., E.N., also came to the bar and then accompanied I.S. home.

#### *2. Attack at Roma settlement*

##### (a) The attack

11. Later that evening, at around 9.45 p.m., a group of at least twelve people went into the Roma settlement in the village where the applicants lived. Some of them were wearing balaclavas and they were armed with baseball bats and iron bars.

12. Allegedly shouting racist language, they forcibly entered houses nos. 61, 67 and 69, damaging the interior and breaking the windows.

13. On entering house no. 67, the attackers physically assaulted applicant Mr Ján Koky. Some of the other applicants and another person, who were also present at the house during the attack, witnessed the attack but managed to avoid it by hiding (see paragraph 16 below).

14. Once the attackers understood that the police had been called, they made their escape. When they had gone approximately 200 metres from the settlement, they met applicants Mr Martin Kočko and Mr Rastislav Koky and physically assaulted them, causing them the injuries described below. Racist language is alleged to have been used during this part of the attack too.

**(b) Circumstances and consequences of the attack**

15. House 61 was inhabited by applicant Ms Renáta Čonková and her partner, Z.K. They were both at home during the attack.

16. House 67 was inhabited by applicants Mr Ján Koky, Ms Žaneta Kokyová, Mr Rastislav Koky, Ms Renáta Kokyová, Ms Ružena Kokyová and Mr Ján Koky Jr and by a certain J.K.

Apart from applicant Rastislav Koky, they were all present at the house during the incident, and so were applicants Mr Milan Baláž and a certain H.B.

17. When the attack took place in his house, applicant Mr Ján Koky sustained no physical injuries.

18. House 69 was owned and inhabited by applicant Ms Justína Lacková.

19. The overall damage to the applicants' property was estimated at the equivalent of at least 310 euros (EUR).

20. The parties are not united over the extent of the physical injuries sustained by Mr Martin Kočko and Mr Rastislav Koky (see paragraph 14 above).

21. The applicants claim that Mr Rastislav Koky suffered a skull fracture, a cut to the left side of the back of the head, a crushed left arm, a pressure injury to the left side of the back and bruises to the left knee, which required him to stay in hospital for ten to fourteen days.

22. As regards Mr Martin Kočko, the applicants claim that he had sustained a scraped elbow and a crushed arm, which required a recovery time of seven to ten days. In that respect the applicants relied on the decisions of 26 April and 22 May 2002 (see paragraphs 73 and 81 below).

23. In contrast, the Government submit that Mr Martin Kočko's injuries necessitated no stay in hospital, while those of Mr Rastislav Koky only required him to stay in hospital for four days.

*3. Attack at I.S.'s family's house*

24. After I.S. had come home from her shift, an unknown person broke the window of her house by throwing a stone at it and also broke the windows of a car parked in her yard.

25. It is not entirely clear what relation this attack bore to the argument at the bar and the attack at the settlement, both in terms of time and of cause.

26. It appears that those present during the attack at I.S.'s house included I.S., P.S., E.N., her brother: M.N., and a certain M.L.

## B. Initial response by the police

27. The police arrived at the Roma settlement about half an hour after the incident. That night and in the early hours of the following day, that is to say 1 March 2002, the police carried out inspections and interviews, as summarised below on the basis of official records.

*1. Inspections*

28. Between 10.30 and 11 p.m. house no. 67 was inspected in connection with a suspected offence, which was referred to as "damage to family house". Applicant Mr Ján Koky, who lived in the house, was present.

Broken windows were found in various parts of the house, and two biological traces were identified (bloodstains on a door and on a baseball bat) and sent for further analysis.

29. Between 0.15 and 1.00 a.m. house no. 61 was inspected in connection with a suspected offence, which was referred to as "damage to windows and door of a house". Z.K., whose house it was, was present.

Damage to the latch and casing of the front door were identified, as well as broken panes in two of the windows. Inside the house, on the floor in the kitchen and a room where the windows had been broken, two stones of 8 and 20 cm diameter were found.

30. Between 1 a.m. and 1.30 a.m. the following day house no 69 was inspected in connection with a suspected offence, which was referred to as "damage to a window pane of a house". Applicant Ms Justína Lacková, whose house it was, was present.

Broken panes in three windows were identified, and one biological trace was sampled for further analysis.

*2. Interviews*

31. Applicant Mr Ján Koky, Z.K. and applicant Ms Justína Lacková were interviewed: the interviews started at 2.25 a.m., 3.45 a.m. and 4.30 a.m. respectively.

32. Mr Ján Koky submitted, *inter alia*, that earlier that evening a group of approximately five attackers had entered his house, no. 67. They had been armed with batons and had tried to hit him. He managed to fend them off and other occupants of his house had managed to hide, so the attackers had mainly been hitting the kitchen furnishings. Four of the attackers were wearing balaclavas to conceal their faces. The remaining one, whom he did not know, had no balaclava. They had not uttered a word.

33. Z.K. described how the attackers had broken windows in his house, no. 61, had forcibly entered and had made their escape after learning that the police were on their way. According to the transcript, the interview ended at 4.20 a.m. Z.K. then added that when they entered his house the attackers were shouting: "Gypsies, we're going to strike you down today".

34. Ms Justína Lacková submitted that she had been at home with her three minor children during the attack and that her husband had not been there. She had witnessed the turmoil outside her house through a window. Two of her house windows had subsequently been broken, probably with sticks, because no stones or other foreign objects had been found inside. In her submission, the attackers had pounded at her entrance door but had not succeeded in getting in. Ms Lacková assessed the damage to her house and submitted a claim for compensation to the proceedings. The interview was concluded at 5.15 a.m. and then reopened to pose a direct question to the applicant, in response to which she retorted that, on the part of the attackers, she had only heard indistinct shouting. The interview was finally concluded at 5.30 a.m.

## C. First investigation into the incidents of 28 February 2002

### *1. Initial stage*

35. On 1 March 2002 the Poprad District Police Investigator ("the DPI") initiated a criminal investigation into the offences of causing bodily harm, violating the privacy of a home and criminal damage within the meaning of Articles 221 § 1, 238 §§ 1 and 3 and 257 § 1 of the Criminal Code (Law no. 140/1961 Coll., as applicable at that time) respectively.

36. It was suspected that a group of at least twelve individuals had unlawfully entered houses nos. 61, 67 and 69, and that they had damaged these houses, as well as house no. 69. It was also suspected that while at his house the attackers had tried to hit applicant Mr Ján Koky with baseball bats and that while making their escape from the scene of crime, they had assaulted applicants Mr Martin Kočko and Mr Rastislav Koky by hitting them with baseball bats and kicking them, thus causing them bodily injuries on account of which, according to a preliminary estimate, they would need recovery time and would be unfit for work for seven to ten days and ten to fourteen days respectively.

37. The injuries to the applicants Mr Martin Kočko and Mr Rastislav Koky were also assessed in an expert medical report procured by the DPI, in which their recovery time was assessed at four weeks and thirteen days respectively.

38. On 1 and 4 March 2002 respectively, an official note was made in the investigation file summarising the applicants' submissions and a document was included in it outlining the investigation strategy.

39. On 5 March 2002 at 10.00 and 10.50 a.m. respectively, the DPI interviewed I.S. and P.S. They described their involvement in the incident at the pub and the subsequent attack which took place at I.S.'s house and on his car. I.S. submitted, *inter alia,* that she had closed the bar and had gone home at around 9.50 p.m. P.S. submitted that the closing time of the bar was 10 p.m. and that his mother had arrived home after that time.

40. On 7 March 2002 the DPI reported to the Ministry of the Interior on the status of the investigation. It was mentioned, *inter alia,* that the applicants' legal representative had been obstructing the investigation, in that he had instructed the applicants not to accept summonses to interviews if handed to them in person, and not to take part in any interviews unless he was present. The qualification of the representative to appear on the applicants' behalf in criminal proceedings in Slovakia was also called into question.

*2. Interviews on 12 March 2002*

41. In the morning of 12 March 2002, the DPI interviewed applicant Mr Rastislav Koky, T.K. and M.K. and applicants Mr Ján Koky Jr. and Mr Martin Kočko. These interviews started at 8.20, 9.15, 9.45, 10.10 and 10.40 respectively.

42. Mr Rastislav Koky described the pub incident between I.S. and M.K. According to him, following the altercation I.S. had called P.S., who had arrived within five minutes, and who had warned Mr Koky that another son of I.S. would come round and there would be trouble. He also submitted that, later that evening, about thirty men had caught and beaten him, that he had subsequently had to be taken to hospital by ambulance, that he had been hospitalised for three to four days and that due to his injuries he was still unfit for work. In response to a direct question, Mr Rastislav Koky submitted that "during the attack, none of the attackers uttered a word".

43. T.K. and M.K. submitted that on the evening of the incident they had seen I.S. with a group of forty to fifty men approaching the Roma settlement.

44. Mr Ján Koky Jr. described the pub incident, including the remark that P.S. had told him and others to go away because his brother would come and there would be trouble. Mr Ján Koky Jr. also submitted that, after he had seen his brother, applicant Mr Rastislav Koky, and his injuries, he had been convinced that P.S. was responsible. He had therefore gone to

I.S.'s house, where he had had a verbal exchange with E.N. and M.N. However, he had gone away after the latter had produced a handgun and threatened to shoot him.

45. Mr Martin Kočko described the pub incident, the arrival of P.S. in the pub, the departure of about forty-five men and the assault on him by four individuals wearing balaclavas to conceal their faces and two without, accompanied with a cry "Negroes, gypsies, we're going to kill you". After receiving medical care in hospital, he had gone home and had not been hospitalised.

*3. Interviews of 13 March 2002*

46. During the morning of 13 March 2002 the DPI interviewed applicants Mr Milan Baláž, Ms Žaneta Kokyová, Ružena Kokyová and Mr Ján Koky. They also interviewed H.B., the respective interviews having commenced at 8.50, 9.20, At 9.50, 10.25 and at 10.55.

47. Mr Milan Baláž submitted his account of the assault at house no. 67, where he had been present at the relevant time, visiting his girlfriend. In his submission, the assault had been accompanied by a shout of "Gypsies get out, we're going to kill you!"

48. Ms Žaneta Kokyová, who lived in house no. 67, gave an account of the assault at their house and settlement, submitting that it had been accompanied by shouts of "Get out!", "[religious expletive], gypsy whores, gypsy gang, get out, or else we are going to kill you all!" and "Gypsy whores, today you are dead, you are going to get a kicking today!".

49. Ms Ružena Kokyová gave an account of the attack at her house, no. 67, submitting that it had been accompanied by a male voice shouting "Gypsies, black muzzles, today you are going to get killed, get out!".

50. Mr Ján Koky gave an account of the attack at house no. 67, where he lived, submitting that it had been accompanied by shouts of "Gypsies, today you are going to be burned".

51. H.B., who was in house no. 67 during the attack, gave an account of it and submitted that it had been accompanied by shouts of "Gypsies, black muzzles, get out!"

*4. Extension of the investigations*

52. On 13 March 2002 the DPI initiated a criminal investigation into a further offence, namely that of violence against an individual or a group of individuals within the meaning of Article 196 §§ 1 and 2 of the Criminal Code.

53. The decision was based on the suspicion that, in the incident described above, several unidentified individuals had entered the Roma settlement shouting "Gypsies, come out or we will kill you", while some of

them had gone into houses 61 and 67 shouting "Gypsies, come out or we will kill you".

54. The decision refers to the charges of 1 March 2002 and to subsequent statements from H.B., T.K., M.K. and applicants Mr Ján Koky, Mr Martin Kočko, Ms Žaneta Kokyová, Mr Milan Baláž, Mr Rastislav Koky, Ms Ružena Kokyová and Mr Ján Koky Jr.

55. The decision also refers to the assault on applicant Mr Martin Kočko being accompanied by shouts of "Negroes, gypsies, we will kill you!".

*5. Interviews of 14 March 2002*

56. The series of interviews started at 8 a.m. with P.J., continued at 8.35 a.m. with Ms E.N., and at 9.10 a.m. with the last son of I.S.: M.S.

57. P.J. said that he could see that I.S. was distressed when he arrived at the bar. E.N. described her arrival at the bar and what happened while she was there, that she went with I.S. to her house, and the subsequent incident there. The deposition of M.S. was fully in line with those of his family members.

*6. Interviews of 20 March and 10 April 2002*

58. In the morning of 20 March 2002 the DPI interviewed applicant Ms Renáta Čonková, J.K. and applicant Ms Renáta Kokyová, whose interviews began at 9.10, 9.45 and 10 a.m. respectively.

59. Ms Renáta Čonková gave an account of the attack at the house of applicant Ján Koky, which she had observed through the window of her own house. In her submission, the attack at the house of the applicant Ján Koky was accompanied by a shout of "Black whores, today we're going to kill you!". As to Ms Čonková's own house, five windows had been broken by thrown stones which were found inside. The attackers had only got as far as a corridor in the house before they made their escape.

60. J.K. gave an account of the attack at house no. 67, in which she lived. In her submission, the attack was accompanied by a shout of "Gypsy whores, today you will kick the bucket".

61. Ms Renáta Kokyová gave an account of the attack at house no 67, where she lived. In her submission, the attack was accompanied by a shout of "Gypsy whores, today we're going to kill you".

*7. Interviews of 27 March and 10 April 2002*

62. The morning of 27 March 2002 saw a long series of short interviews, starting at 8 with applicant Mr Ján Koky, at 8.10 with applicant Ms Ružena Kokyová, at 9 with H.B., at 9.30 with J,K,, at 9.35 with applicant Mr Rastislav Koky, at 9.40 with applicant Ms Renáta Kokyová, at 9.45 with applicant Mr Milan Baláž, at 9.50 with applicant Ms Žaneta Kokyová, at 9.55 with Z.K., at 10.05 with applicant Ms Renata Čonková, at 10.10 with

applicant Ms Justína Lacková, and at 10.25 with applicant Mr Martin Kočko.

63. Mr Ján Koky, Z.K. and J.K. completed their respective depositions of 1 and 20 March 2002 in so far as the extent of the material damage they had sustained was concerned, and added a claim for compensation to the proceedings.

64. Ms Justína Lacková specified the damage she stated she had sustained and for which she was seeking compensation.

65. Ms Ružena Kokyová, HB, Ms Žaneta Kokyová, Mr Milan Baláž, Ms Renáta Kokyová and Ms Renáta Čonková completed their respective depositions of 13 and 20 March 2002 and declared that they had no compensation claim to join to the proceedings, as they themselves had not sustained any material damage. Ms Renáta Kokyová added that compensation for any damage sustained by their family would be claimed by her husband.

66. Mr Rastislav Koky and Mr Martin Kočko completed their respective depositions of 12 March 2002 in that they specified that, as a result of the injuries sustained in the attack, Mr Rastislav Koky had been incapable of work for fourteen days, from 28 February to 14 March 2002, and Mr Martin Kočko was still unable to work.

67. At 8 a.m. on 10 April 2002 the DPI started interviewing applicant Mr Ján Koky Jr, who completed his depositions of 1 March 2002 in so far as the extent of the material damage he had sustained was concerned, and added a claim for compensation to the proceedings.

*8. Further investigative actions*

68. Without providing any details the Government submitted that "[the authorities] had requested records of incoming and outgoing communication to and from mobile phones of [I.S.], [M.S.], [P.S.] and [E.N.]".

*9. Identity exercise on 10 April 2002*

69. On 10 April 2002 the DPI held an identity exercise, in the course of which the participants were to identify presumed perpetrators from photographs in albums. It produced the following results:

- applicant Mr Ján Koky identified one person, with a subjectively perceived probability of seventy to eighty percent, as one of the people who had been attacking him in his house;

- applicant Mr Martin Kočko recognised one individual, who had been present at the pub during the argument, but had not been among those who had beaten him. He also identified one individual who had been among those who had beaten him, of which he was sixty percent sure.

- applicant Ms Žaneta Kokyová identified one individual, with a subjectively perceived probability of fifteen to twenty percent, as an intruder in their house and an attacker of her father;

- applicant Mr Rastislav Koky recognised two individuals who had been present at the pub during the argument but had not been among those who had beaten him. He also identified one individual who had been present at the settlement during the attack but was not sure whether that individual had beaten him; and

- applicants Mr Milan Baláž, Ms Renáta Kokyová and Mr Ján Koky Jr. did not identify anyone.

70. In what may appear to be a follow-up to the identity exercise, on 19 April 2002, the DPI requested the Police Institute of Forensic Analysis to examine buccal mucus samples of three individuals, B.B., V.P. and E.K. and to compare biological material thus obtained with other biological evidence taken from the scene of crime.

#### *10. Conclusion of the first investigation*

71. On 26 April 2002 the DPI suspended the above-mentioned criminal investigations. The decision stated that the police had taken several investigative measures and had carried out a search with a view to establishing the identity of the perpetrators of the assault of 28 February 2002. Until then, however, no evidence could be established which would have made it possible to bring charges against a specific person.

72. The decision of 26 April 2002 also stated that it was established that the incident at the Roma settlement "had been preceded by an assault on a waitress, I.S., by a Roma, M.K., and subsequent damage to the property of the family of I.S. by a hitherto unidentified Roma and so the actions of the unidentified perpetrators [could] not be considered or qualified as a criminal offence with a racial motive, because it [had come] down only to an act of retribution".

73. As to the injuries sustained by applicants Mr Rastislav Koky and Mr Martin Kočko, the decision refers to the decision of 1 March 2002 and its contents (see paragraph 36 above).

### D. Second investigation into the incidents of 28 February 2002

#### *1. Opening of the second investigation and initial steps taken*

74. On 3 May 2002 applicants Mr Ján Koky and Mr Rastislav Koky lodged an interlocutory appeal (*sťažnosť*) against the decision to suspend the investigation. Referring to the facts of the case, they submitted that the assault had been racially motivated and that it had been organised by people

who were close to the family of the waitress concerned. Citing, *inter alia*, Articles 5 and 13 of the Convention, they sought resumption of the investigation.

75. On the same day, namely 3 May 2002, the Poprad District Prosecutor (*Okresná prokuratúra*) ("the District Prosecutor") issued a written instruction to the DPI specifying the measures to be taken and lines of inquiry to be pursued in order to establish the identity of the perpetrators and highlight the alleged racial motive.

76. Still on 3 May 2002, the DPI took a decision to resume the investigation. That decision contains a summary of the previous procedural developments, followed by a plain statement, without further elucidation, that "during further investigation it [had been] established that a racially motivated criminal offence [was] implicated and therefore it [was] necessary to take further investigative steps and resume the investigation ...".

77. On 14 May 2002 the Police Forensic Analysis Institute filed a report with the DPI concluding that, having examined the biological material of B.B., V.P. and E.K. (see paragraph 70 above) and having compared it with the material taken from the crime scene, no link could be established.

*2. Interviews of 20 and 21 May 2002*

78. In the morning of 20 May 2002, at 8.40, 8.50, 9 and 9.15 respectively, the DPI commenced interviewing M.S., P.S. and F.S., as well as M.N. They completed their respective submissions of 14 March, 19 March, 17 April and 3 May 2002 and agreed to provide buccal mucus samples for the purposes of DNA testing and comparison with the biological material taken from the crime scene.

79. On 21 May 2002 at 8 am the DPI commenced interviewing M.L., who gave an account of his arrival in the village and at the bar and also of his perception of the incident at the house of I.S. He stated that he had not been at the Roma settlement.

80. The following day the DPI again requested the Police Forensic Analysis Institute to analyse and compare biological material obtained from the three sons of I.S., M.N. and M.L. with the material taken from the scene of crime.

*3. Decision on the first interlocutory appeal*

81. On 22 May 2002 the District Prosecutor declared the interlocutory appeal of applicants Mr Ján Koky and Mr Rastislav Koky of 3 May 2002 (see paragraph 74 above) inadmissible, replying on Articles 43, 124 § 1, 148 § 1 (b) and 173 § 4 of the CCP, and holding that as victims of the alleged offences the appellants had no standing to challenge the decision in question.

82. In its concluding part, which under the applicable procedural rules (see paragraph 125 below) contains information concerning available remedies, the decision provided that: "An interlocutory appeal against this decision is not permissible."

83. However, in a letter of the same date, namely 22 May 2002, the District Prosecutor informed the applicants that she had reviewed the matter on her own authority, that on 3 May 2002 (see paragraph 75 above) she had quashed the decision, and that she had instructed the DPI to carry on the investigation so as to clarify the events without leaving any doubt as to the identity and motive of the alleged perpetrators.

*4. Investigative actions taken between 23 May and 18 June 2002*

84. At 8 a.m. on 23 May 2002 the DPI commenced interviewing E.K. During the morning of 4 June 2002 they interviewed R.S. (at 8.30), I.K. (8.45), J.H. (9.00) and M.K. (9.10). On 6, 7 and 18 June 2002 respectively the DPI interviewed J.K. (at 10 a.m.), P.P. (at 10 a.m.) and B.P. (before 9 a.m.).

85. They all had either already provided or agreed to provide buccal mucus samples for the purposes of DNA testing and comparison with the biological material taken from the scene of crime.

86. In addition, E.K. submitted that he had not been at the Roma settlement and that he had no explanation of how he could have been identified as someone involved in the attack.

87. R.S. acknowledged having been at the bar with B.P. and J.K. (see paragraphs 91 and 93 below) during the incident, which however he had not seen, and he had no information concerning the event investigated.

88. I.K. stated that he had no knowledge of the incident, of which he had learned from the media, and that he had not been at the Roma settlement.

89. J.H. had been away on a skiing trip from 28 February until 1 March 2002.

90. M.K. had been away on business in the week in question and had only returned on 1 March 2002.

91. J.K. had been at the bar during the incident, but had not witnessed it directly. He had not been at the Roma settlement and had no knowledge of who had been there.

92. P.P. acknowledged knowing M.S. However, he had not been at the Roma settlement, remembered nothing useful and had no explanation of why one of the victims had identified him as someone involved in the attack which took place in their house.

93. B.P. acknowledged having been at the bar with R.S. and J.K. (see paragraphs 87 above and 91 above), but he had not directly witnessed the incident. He had not been at the Roma settlement, nor did he have any knowledge of anyone who had been there.

94. On 18 June 2002 the Police Forensic Analysis Institute reported to the DPI that, having examined the biological samples taken from F.S., P.S., M.S., M.N. and M.L. (see paragraph 80 above) and having compared it with the material taken from the scene of crime, no link could be established.

*5. Conclusion of the second investigation*

95. On 26 June 2002 the DPI again suspended the investigation, relying on Article 173 § 1 (e) of the CCP, and referring to similar considerations to those in the decision of 26 April 2002. It summarised previous procedural developments and observed that, despite additional information taken from H.B., T.K., M.K. and applicants Mr Ján Koky, Mr Martin Kočko, Ms Žaneta Kokyová, Mr Milan Baláž, Mr Rastislav Koky, Ms Ružena Koky and Mr Ján Koky Jr., it had not been possible to establish any evidence allowing charges to be brought against any specific person. However, it was considered established that the attack at the Roma settlement had been preceded by the incident at the bar and had been followed by the attack at the house of the family of Ms I.S.

*6. Interlocutory appeal and submission to the Prosecutor General*

96. On 3 July 2002 applicants Mr Ján Koky and Mr Rastislav Koky lodged an interlocutory appeal against the decision of 26 June 2002, requesting that the criminal proceedings be resumed with a view to establishing the relevant facts of the case.

97. The appellants relied on Articles 5, 6, 8, 13 and 14 of the Convention, 1 of Protocol No. 1 and 15 and 21 of the Constitution and referred to the results of the identity exercise on 10 April 2002. In particular, they emphasised that, on that occasion, applicant Mr Martin Kočko had recognised one person; applicant Mr Rastislav Koky had recognised F.S. and submitted that the organisation of the attack had had a connection with the family of I.S.; and applicants Mr Ján Koky and Ms Žaneta Kokyová had recognised one person each.

98. On 11 July 2002 the applicants' representative wrote to the Prosecutor General to inform him that they had lodged an interlocutory appeal against the decision of 26 June 2002 with the District Prosecutor and that they suspected that the investigation had been tampered with in order to downplay the racial motive for the assault. He requested that the applicants be informed of the Prosecutor General's office's actions in the matter.

99. The applicants have not received any answer to their letter of 11 July 2002, and it appears that it has not given rise to any specific action or decision. According to an official statement of the Office of the Prosecutor General the letter is not a part of their case file.

100. On 17 July 2002 the District Prosecutor declared the interlocutory appeal inadmissible on similar grounds to those in the decision of 22 May 2002, relying on Articles 43, 142 § 1 a 173 of the CCP.

101. The decision contains information as to the available remedies, to the effect that: "An interlocutory appeal against this decision is not permissible."

102. Nevertheless, the District Prosecutor reviewed the decision on her own initiative and, by a letter of the same day, namely 17 July 2002, informed the appellants that the DPI had taken all the actions necessary to carry out a successful prosecution.

103. According to the letter, it was true that applicant Mr Rastislav Koky had recognised P.S., F.S. and M.N., but he had submitted either that they had not beaten him or that he was not sure whether they had beaten him. Applicant Mr Ján Koky had recognised F.S. and had submitted that it was the latter who had beaten him in his house. This submission however contradicted a previous submission by applicant Mr Ján Koky (see paragraph 32 above) to the effect that, of the five attackers in his house, four were wearing balaclavas and one, whom he did not know, was not. It was also observed that Ms Žaneta Kokyová had not recognised any of the attackers.

104. The letter further states that additional action had been taken with a view to identifying those responsible, such as a comparison of the traces found at the scene of the incident with buccal mucus samples from the suspects, but the available evidence did not permit the bringing of charges against any particular person.

*7. Further investigative steps*

105. Meanwhile, on 11 July 2002 and again on 19 August and 8 November 2002, the DPI interviewed seven other individuals. These interviews however produced no useful new information.

106. On an unspecified date, in response to a request of 20 August 2002, the Police Institute of Forensic Analysis reported to the DPI that, having examined buccal mucus samples from P.G., M.S. and M.A. and compared it with the biological material taken from the scene of crime, no link could be established.

107. On 13 January 2003, in response to a request, the DPI reported to the District Prosecutor that hitherto "no perpetrator had been identified and that tasks were continuously being carried out under an integrated investigation plan".

108. No information has been made available in respect of any further investigative actions and their outcome.

### E. Constitutional complaint

109. On 17 September 2002 all ten applicants lodged a complaint with the Constitutional Court under Article 127 of the Constitution. Represented by a lawyer, they contended that the events of 28 February 2002 had not been sufficiently thoroughly and efficiently investigated to ensure that those responsible were identified and punished. In particular, they submitted that the authorities had failed to draw adequate conclusions from the oral evidence and from the information concerning the identity of the alleged perpetrators, as obtained from the identity exercise of 10 April 2002. In addition, the authorities should have taken and assessed further evidence, such as records of mobile telephone communications between those involved, but had not done so. The applicants also contended that the assault had not been motivated by revenge but was racially motivated, to which the authorities had failed to pay adequate attention.

110. In the text of their complaint the applicants made reference to Article 1 § 2 of the Constitution (Constitutional Law no. 460/1992 Coll., as amended), in conjunction with a principle of "general acceptance and observance of human rights and basic freedoms for everybody", Articles 5 § 1 and 13 of the Convention and the Court's judgment in the case of *Aksoy v. Turkey* (18 December 1996, Reports of Judgments and Decisions 1996-VI).

111. In the standardised prescribed form containing a summary of their claim, the applicants applied for a ruling declaring a violation of their right to an effective remedy under Article 13 of the Convention and to judicial and other legal protection under Article 46 § 1 of the Constitution by actions of the DPI in the investigation referred to above.

112. On 23 October 2002 the Constitutional Court declared the complaint inadmissible on the ground that the applicants had failed to exhaust all remedies as required by section 53(1) of the Constitutional Court Act (Law no. 38/1993 Coll., as amended).

113. In particular, the Constitutional Court held that it had been open to the applicants to ask the Public Prosecution Service ("the PPS"), under Articles 167 and 174 § 2 (a) and (c) of the CCP, to instruct the DPI to proceed with the case. Had such a request been dismissed, the applicants could have used further remedies available to them under sections 31 et seq. of the PPS Act.

No appeal against the decision of the Constitutional Court was available.

# II. RELEVANT DOMESTIC LAW AND PRACTICE

## A. The Constitution

114. Article 1 § 2 provides that:

"The Slovak Republic acknowledges and adheres to general rules of international law, international treaties by which it is bound, and its other international obligations."

115. In so far as relevant, Article 15 stipulates that:

"1. Everyone has the right to life. [...]

2. No one shall be deprived of life.

...

3. No infringement of rights according to this Article shall occur if a person has been deprived of life in connection with an action not defined as unlawful under the law."

116. Article 21 § 1 provides that:

"The home shall be inviolable. Entry without the consent of the person living there is not permitted."

117. Article 46 § 1 of the Constitution reads as follows:

"Everyone may claim his or her right by procedures laid down by an act of parliament before an independent and impartial court of law or, in cases provided for by an act of parliament, before another organ of the Slovak Republic."

118. Pursuant to Article 127:

"1. The Constitutional Court shall decide complaints by natural or legal persons alleging a violation of their fundamental rights or freedoms ... unless the protection of such rights and freedoms falls within the jurisdiction of a different court.

2. If the Constitutional Court finds a complaint justified, it shall deliver a decision stating that a person's rights or freedoms as set out in paragraph 1 have been violated by a final decision, specific measure or other act, and shall quash such a decision, measure or act. If the violation that has been found is the result of a failure to act, the Constitutional Court may order [the authority] which has violated the rights or freedoms to take the necessary action. At the same time it may remit the case to the authority concerned for further proceedings, order that authority to refrain from violating the fundamental rights and freedoms ... or, where appropriate, order those who have violated the rights or freedoms set out in paragraph 1 to restore the situation to that existing prior to the violation.

3. In its decision on a complaint the Constitutional Court may grant appropriate financial compensation to a person whose rights under paragraph 1 have been violated."

## B. The Constitutional Court Act

119. Article 31a reads as follows:

"Unless this Act provides otherwise or it is excluded by the nature of the matter, the proceedings before the Constitutional Court shall be subject to application *mutatis mutandis* of the provisions of the Code of Civil Procedure and the Code of Criminal Procedure."

120. Under the relevant part of section 53(1) and (2):

"1. A[n] [individual] complaint is not admissible if the complainant has not exhausted legal remedies or other legal means, which a statute effectively provides to [the complainant] with a view to protecting [the complainant's] fundamental rights or freedoms, and which the complainant is entitled to use under special statute [such as the Civil Procedure Code and the Administrative Procedure Code].

2. The Constitutional Court shall not declare a[n] [individual] complaint inadmissible even if the condition under paragraph 1 has not been fulfilled, if the complainant establishes that [the complainant] has not fulfilled this condition due to reasons worthy of particular consideration."

## C. Code of Criminal Procedure (as in force at the relevant time)

121. The purpose of the CCP is defined in its Article 1 § 1 as follows:

"The purpose of the [CCP] is to regulate actions of the agencies involved in criminal proceedings with a view to establishing properly whether criminal offences have been committed and to punishing perpetrators lawfully and justly. The proceedings must work for reinforcement of compliance with the law, for prevention and obstruction of crime, [and] for the education of citizens in the spirit of consistent compliance with the law and rules of civic coexistence, as well as honest fulfilment of duties towards the State and the society."

122. The fundamental principles of criminal proceedings are laid down in Article 2, the relevant parts of paragraphs 3 and 5 of which provide:

"3. The prosecutor is duty bound to prosecute all criminal offences of which [he or she] has been apprised; any exception is permissible only under statue or a promulgated international treaty.

5. The agencies involved in criminal proceedings shall proceed so that the facts of the matter are duly established, to the extent which is absolutely necessary for their decision. With equal care, they shall elucidate circumstances both against and in favour of the charged person and, in both respects, they shall take and examine evidence without awaiting the parties' proposals...."

123. The role of victims of crimes in criminal proceedings is defined in section (*Oddiel*) five of chapter (*Hlava*) two in part (*Časť*) one. The relevant part of its Article 43 § 1 provides as follows:

"1. A victim is a person upon whom a criminal offence has inflicted health damage, property damage, non-pecuniary damage or other damage or it has violated or jeopardised [his or her] rights or freedoms protected by law. A victim has... the right

to lodge [in the proceedings] [his or her] claim for damages; to propose that evidence be taken, examined and completed; to take part in the hearing,...; to comment on the evidence taken and examined...; and to make use of legal remedies to the extent defined by the CCP...

2. A victim who has a lawful claim against a person facing charges for compensation in respect of damage inflicted [on the victim] by a criminal offence, shall be entitled to propose that, in a judgment leading to conviction, the court should impose a duty on the accused to compensate for that damage. The proposal shall be made at the latest during the main court hearing before the presentation of evidence. The proposal has to be clear as to the ground and the amount of damages claimed."

124. Section 3 of Chapter 3 in Part 1 contains rules concerning the making of and dealing with applications, the relevant part of its Article 59 § 1 providing that:

"An application shall be assessed according to its content, irrespective of whether it is incorrectly named."

125. Section 2 of Chapter 6 in Part 1 lays down rules concerning decisions (*uznesenie*), paragraph 134, the relevant part of which is cited below, defining the attributes, structure and content of a decision:

"1. A decision must contain...

e) information about available remedies."

126. Chapter 7 in Part 1 regulates interlocutory appeals against decisions, their admissibility being defined in Article 141, the relevant part of which provides:

"1. A remedy in respect of decisions consists of an interlocutory appeal.

2. An interlocutory appeal shall be available against any decision of an investigator or a police authority except for a decision on the opening of a criminal prosecution (Article 160). A decision by a court or by a prosecutor may be challenged by an interlocutory appeal only in those instances where the statute expressly so provides and if [a matter] is being decided on at first instance."

127. Article 142 contains *locus standi* for such appeals, as follows:

"1. Unless provided for otherwise by a statute, an interlocutory appeal may be lodged by a person who is directly affected by the [impugned] decision or who has prompted the decision by a request which [the appellant] was entitled to make by law...."

128. Section 2 of Chapter 10 in Part 2 regulates investigations, Article 167 providing for the possibility of having an investigator's actions reviewed, in the following terms:

"The person facing charges and the victim shall have the right at any time in the course of the investigation to demand that a prosecutor [ensure] that delays in the investigation or shortcomings on the part of the investigator be eliminated. The right to make such a demand shall not be restricted by any time-limit. This demand, which must be submitted to the prosecutor at once, must be dealt with by the prosecutor

without delay. The outcome of the review must be notified to the person making the demand."

129. Section 4 of Chapter 10 in Part 2 deals with decisions at the preliminary stage of the proceedings, the relevant part of Article 173 providing that:

"1. An investigator shall suspend criminal proceedings...

(e) if it has been impossible to identify evidence allowing for the prosecution of a particular person...

3. Prior to suspending criminal proceedings everything needs to be done which is necessary for securing a successful completion of a criminal prosecution. Should there no longer be any reason for the suspension, the criminal proceedings shall be resumed."

130. Section 5 of Chapter 10 in Part 2 regulates the prosecutor's supervision of adherence to lawfulness in pre-trial proceedings, the relevant part of Article 174 providing that:

"1. Supervision of lawfulness in pre-trial proceedings shall be carried out by the prosecutor.

2. While carrying out this supervision, the prosecutor shall have the power:

(a) to give binding instructions for the investigation of criminal offences...

(c) to take part in activities carried out by an investigator or a police authority or directly to take a particular action, to carry out the entire investigation and to take a decision on any matter whereby the provisions of [the CCP] normally applicable to an investigator shall apply to the prosecutor *mutatis mutandis* and, as a decision of an investigator, the decision by the prosecutor shall be challengeable by an interlocutory appeal."

## D. Public Prosecution Service Act (as in force at the relevant time)

131. The Act entered into force on 1 May 2001, replacing previous legislation (Law no. 314/1996 Coll., as amended). The object of the Act is defined in its section 1, which reads as follows:

"1. This Act determines the status and jurisdiction of the Public Prosecution Service, the status and jurisdiction of the Prosecutor General, the status of other prosecutors, organisation and administration of the Public Prosecution Service.

2. The status of prosecutors; their rights and obligations; the establishment, modification and termination of [their] service relationship and the claims ensuing from it; the relationships of responsibility; disciplinary proceedings and self-governance of prosecutors shall be subject to a special statute."

132. Petitions to the PPS are regulated by Part (*Časť*) four of the Act. Pursuant to the relevant part of its section 31:

"1. A prosecutor may examine the lawfulness of actions and decisions of bodies of public administration, prosecutors, investigators, police authorities and courts in so far as a statute so provides, including upon a petition, and is entitled to take measures to rectify established violations, provided [such measures] do not fall under a special statute within the exclusive jurisdiction of other bodies.

2. A petition is understood as a written or oral demand, proposal or other submission by an individual or a legal entity, which is aimed at a prosecutor taking a measure within [the prosecutor's] jurisdiction, in particular lodging an application for proceedings to commence before a court, or submitting a remedy, joining existing proceedings, or taking other measures for rectification of a violation of the law, which fall within [the prosecutor's] jurisdiction."

133. The relevant part of section 33 provides that:

"1. A prosecutor is duty bound to process a petition within two months of its introduction...

2. A prosecutor shall notify a petitioner within the period specified in subsection 1 of the manner in which the petition has been resolved. [...]"

134. Section 34 deals with repeated petitions and further repeated petitions. Its relevant part reads as follows:

"1. A petitioner may demand a review of the lawfulness of how the petition has been resolved by means of a repeated petition, which shall be dealt with by a prosecutor at a higher level.

2. A further repeated petition shall be dealt with by a prosecutor at a higher level only if it contains new information. A further repeated petition is understood to be a third and any further consecutive petition, in which the petitioner expresses discontent with the manner in which [his or her] petitions in the same matter have been resolved."

135. Under the relevant part of section 35:

"1. In dealing with a petition, a prosecutor is duty bound to examine all circumstances decisive for the assessment of whether there has been a violation of the law; whether the conditions are fulfilled for lodging an application for proceedings before a court to commence or for submitting a remedy; or whether [the prosecutor] may join existing proceedings before a court or take other measures which [the prosecutor] is entitled to take under [the Public Prosecution Service Act]."

2. The prosecutor assesses the petition according to its content...

3. If the prosecutor establishes that a petition is well founded, [he or she] shall take measures for rectification of the violation of law pursuant to [the Public Prosecution Service Act] or a special statute."

## E. Constitutional Court practice

136. In a decision of 13 December 2001 (in case no. III. ÚS 123/01) the Constitutional Court declared inadmissible a submission, in which

an individual had complained that criminal proceedings against him had been too lengthy and that they, as well as a warrant for his arrest, had been unjustified.

In rejecting the claim, the Constitutional Court held that, in respect of the criminal proceedings as such, it was for the applicant first to seek redress from the investigator or the supervising prosecutor by the means available under the CCP and, as the case might be, also from a higher level of the PPS by means available under the PPS Act. As to the arrest warrant, it was for the applicant to assert his rights before the ordinary courts.

137. In a decision of 20 November 2002 (in case no. I. ÚS 143/02) the Constitutional Court declared inadmissible a complaint under Article 127 of the Constitution, in which an individual had contested the way the PPS had handled his complaint concerning interference with his correspondence by prison authorities.

In rejecting the complaint, the Constitutional Court held that, by virtue of the rule of exhaustion of remedies, it was for the complainant, prior to claiming protection from the Constitutional Court, first to seek it from a higher level of the PPS by means of a repeated petition under section 34(1) of the Public Prosecution Service Act.

138. In a decision of 2 July 2003 (in case no. III. ÚS 155/03) the Constitutional Court declared inadmissible a complaint under Article 127 of the Constitution in which an individual had contested a decision of the PPS quashing a previous decision of an investigator to restore to the applicant cash and objects retained in the context of criminal proceedings against him.

In rejecting the complaint, the Constitutional Court held that, by virtue of the rule of exhaustion of remedies, it was for the complainant, prior to claiming protection from the Constitutional Court, first to seek it from a higher level of the PPS by means of a petition under section 31 of the PPS Act, irrespective of the fact that the decision was not subject to appeal under the CCP.

139. In a decision of 28 April 2004 (in case no. III. ÚS 127/04) the Constitutional Court declared inadmissible a complaint under Article 127 of the Constitution, in which an individual had contested a decision by the PPS to reject an interlocutory appeal by the complainant against a decision of a lower level of the PPS to discontinue proceedings in the complainant's criminal complaint concerning an alleged violation of the privacy of a home. In that case, the interlocutory appeal had been rejected because, being in the procedural position of a victim, the complainant had no standing to appeal.

In rejecting the complaint, the Constitutional Court held that, by virtue of the rule of exhaustion of remedies, it was for the complainant, prior to claiming protection from the Constitutional Court, first to seek a review of the decision at the highest level of the PPS, that is to say the Prosecutor General, under sections 31 to 36 of the PPS Act.

At the same time, the Constitutional Court observed that no grounds had been established for exempting the complainant from the obligation to use that remedy.

140. The principles stemming from the Constitutional Court's decisions mentioned above were applied *mutatis mutandis* in the Constitutional Court's subsequent decisions of 26 May 2004 (in case no. IV. ÚS 179/04) and 24 May 2007 (in case no. IV. ÚS 126/07).

141. Meanwhile, on 7 July 2006 (in case no. II. ÚS 223/06), the Constitutional Court declared inadmissible a complaint under Article 127 of the Constitution of 14 June 2006, in which a group of individuals had contested the outcome of the proceedings concerning their criminal complaint of an alleged abuse of official authority in connection with the termination of their service in the police.

The Constitutional Court observed that the complainants' criminal complaint had been rejected on 21 July 2005 and that their interlocutory appeal to the PPS had been dismissed on 29 September 2005.

The Constitutional Court found that, as the constitutional complaint had been lodged on 14 July 2006, it had clearly been lodged outside the statutory two-month time-limit for lodging such a complaint.

The Constitutional Court held that the position had not been altered by the subsequent decisions at a higher level of the PPS to dismiss the complainants' petition and repeated petition for re-examination of the lawfulness of the decision of 29 September 2005.

In reaching that conclusion, the Constitutional Court observed that the complainants' petition and repeated petition had been aimed at having a complaint in the interest of law (*sťažnosť pre porušenie zákona*) lodged by the Prosecutor General on their behalf, which was however an extraordinary remedy, and a negative decision: accordingly it did not restart the running of the two-month time-limit.

## F. Criminal Code (as in force at the relevant time)

142. The offence of violence against a group of citizens and against an individual is defined in Article 196, the relevant part of which reads as follows:

> "1. He who threatens a group of citizens with killing, causing bodily harm or causing damage on a large scale (*škoda veľkého rozsahu*) shall be punished by imprisonment for up to one year.
>
> 2. He who perpetrates violence against a group of citizens or an individual or threatens them with death, causing bodily harm or causing damage on a large scale on account of political belief, nationality, race, affiliation to an ethnic group, religion or because they are without religion, shall be punished by imprisonment for up to two years."

143. The offence of causing bodily harm is defined in Article 221, the relevant part of which provides that:

> "1. He who intentionally causes bodily harm to another's health shall be punished by imprisonment for up to two years or by a financial penalty."

144. Article 238 defines the offence of violating the privacy of a home, its relevant part reading as follows:

> "1. He who enters a house or a flat of another without authority to do so or remains there unauthorised shall be punished by imprisonment for up to two years or by a financial penalty...
>
> 3. The perpetrator who, in committing the act referred to in section 1, applies violence or a threat of immediate violence and commits such an act with a weapon or with at least two others shall be punished by imprisonment for between one year and five years.

145. The offence of criminal damage is defined in Article 257, the relevant part of which provides that:

> "1. He who destroys, damages or makes unusable something belonging to someone else and thereby causes a non-negligible damage (*škoda nie nepatrná*) to someone else's property shall be punished by imprisonment for up to one year or interdiction of an activity or a financial penalty or forfeiture of an item of property."

## III. RELEVANT INTERNATIONAL PRACTICE

### A. The Committee on the Elimination of Racial Discrimination

#### *1. Anna Koptova v. Slovak Republic, Communication No. 13/1998, U.N. Doc. CERD/C/57/D/13/1998 (2000).*

146. The communication was considered by the Committee in an Opinion adopted at its meeting on 8 August 2000.

147. The case concerned difficulties that the petitioner and several other families, being of Roma ethnic origin, had been experiencing with settling down and establishing a home and, in particular, two municipal resolutions forbidding the families in question from settling in the villages concerned and threatening them with expulsion.

The petitioner unsuccessfully complained about the municipal resolutions before the Constitutional Court and a criminal investigation into the matter was suspended, by a decision of the PPS.

148. In defending the case, the State party concerned argued, *inter alia*, that the petitioner had the opportunity to contest the decision to suspend the investigation under the PPS Act of 1996 (see paragraph 131 above) and to assert her rights by way of an action for protection of her personal

integrity under Articles 11 et seq. of the Civil Code (see paragraphs 4.4 and 4.6 of the Opinion).

149. The Committee, however, "did not share the State party's view that domestic remedies had not been exhausted and considered that neither a new petition to the Constitutional Court nor a civil action would be effective remedies in the circumstances of the case" (see paragraph 6.4 of the Opinion).

*2. Miroslav Lacko v. Slovak Republic, Communication No. 11/1998, U.N. Doc. CERD/C/59/D/11/1998 (2001)*

150. The communication was considered by the Committee in an Opinion adopted at its meeting on 9 August 2001.

151. The case concerned a Slovak national, who had been refused service in a restaurant and was told to leave on account of his Roma ethnic origin, and an alleged failure by the State party to sanction or remedy this treatment. Following investigation upon the petitioner's criminal complaint in that respect, the police found that there was no evidence that any criminal offence had been committed. Upon the petitioner's appeal to the PPS, the decision was upheld.

152. In defending the case, the State party concerned argued, *inter alia*, that the petitioner had the opportunity to seek a review of the lawfulness of the position taken by the public prosecution service at a higher level in that body under the PPS Act of 1996 (see paragraph 131 above) and of asserting his rights by way of an action for protection of his personal integrity under Articles 11 et seq. of the Civil Code (see paragraphs 4.1 and 4.2 of the Opinion).

153. In response, the Committee observed that Article 14 § 7 (a) of the International Convention on the Elimination of All Forms of Racial Discrimination provides that the Committee is not to consider any communication unless it has ascertained that all available domestic remedies have been exhausted and that it has held in its previous jurisprudence that a petitioner is only required to exhaust remedies that are effective in the circumstances of the particular case (see paragraph 6.2 of the Opinion).

154. Furthermore, the Committee noted that "the decision of the [PPS] was a final decision as far as the criminal procedure was concerned. The State party [had] failed to demonstrate that a petition for review, which would be a remedy against the legality of the decision, could in the present case [have] [led] to a new examination of the complaint". Furthermore, the Committee found that "the facts of the claim were of such a nature that only criminal remedies could constitute an adequate avenue of redress. The objectives pursued through a criminal investigation could not be achieved by means of civil or administrative remedies of the kind proposed by the State party". Therefore, the Committee found that "no other effective

remedies were available to the petitioner" (see paragraph 6.3 of the Opinion).

### B. The Committee against torture

*Henri Unai Parot v. Spain, Communication No. 6/1990, U.N. Doc. A/50/44 at 62 (1995)*

155. The communication was considered by the Committee at its meeting on 2 May 1995. Among the views it adopted, in the relevant part of their paragraph 6.1, dealing with the requirement of exhaustion of domestic remedies, the Committee:

> "considered that, even if these attempts to engage available domestic remedies may not have complied with procedural formalities prescribed by law, they left no doubt as to [the alleged victim's] wish to have the allegations investigated. The Committee concluded that, in the circumstances, it was not barred from considering the communication."

## THE LAW

### I. THE GOVERNMENT'S PRELIMINARY OBJECTION

156. The Government objected that the applicants had failed to comply with the requirement of exhaustion of domestic remedies under Article 35 § 1 of the Convention in that they should have, but had not, asserted their Convention rights by way of threefold remedies, which are dealt with below in turn.

### A. CCP and PPS Act

#### *1. The Government*

157. In their observations on the admissibility and merits of the application, the Government contended that the applicants, Mr Martin Kočko, Ms Žaneta Kokyová, Mr Milan Baláž, Ms Renáta Kokyová, Ms Ružena Kokyová, Ms Renáta Čonková, Ms Justina Lacková and Mr Ján Koky Jr. had not sought review of the actions of the DPI by the PPS under Article 167 of the CCP. Should they have been unsuccessful with asserting their rights by means of such a review, it was open to them further to seek review of the lawfulness of the actions of the DPI and even of the PPS by

way of a petition and, as the case may be, a renewed petition to higher levels of the PPS under sections 31 et seq. of the PPS Act.

158. As regards applicants Mr Ján Koky and Mr Rastislav Koky, the Government submitted that, although the District Prosecutor had declared their interlocutory appeals against the DPI's decisions to suspend the investigation inadmissible, the District Prosecutor had actually examined the decisions, quashing the former and remedying the situation.

159. As in their original observations, in their further observations on the merits the Government relied on the decision of the Constitutional Court of 23 October 2002.

160. In the latter observations, the Government submitted that none of the applicants had availed themselves of the remedy available to them under Article 167, in conjunction with Article 174 § 2 (a) and (c) of the CCP, namely a request to the PPS for review of actions of the DPI.

161. As regards applicants Mr Ján Koky and Mr Rastislav Koky, the Government pointed out that the District Prosecutor had never made any pronouncement to the effect that they were not entitled to the remedies under section 31 et seq. of the PPS Act and that, quite to the contrary, the District Prosecutor had dealt with their interlocutory appeals as provided for under section 31 of the PPS Act. It was nevertheless open to them to pursue their rights further by means of a renewed petition under section 34 of the PPS Act.

162. In support of the above contentions, the Government relied on the case-law of the Constitutional Court, as summarised above, and submitted that none of these remedies had been subject to a time-limit and that, as the investigation had not been terminated but only suspended, the remedies were all still at the applicants' disposal

*2. The applicants*

163. The applicants considered that, in view of the gravity of the case, rather than dwelling on the procedural intricacies of various remedial mechanisms, the respondent State should have addressed the situation proactively and on its own initiative.

164. The applicants further submitted that if there were several avenues of redress at their disposal they should not be required to try more than one of them.

165. The applicants also submitted that, in so far as applicants Mr Ján Koky and Mr Rastislav Koky were concerned, their interlocutory appeals under the CCP had been rejected on account of their lack of standing to appeal, the respective decisions informing them that no further appeal was available as, indeed, was the case under the CCP, to disprove which the Government had submitted nothing in terms of jurisprudence or otherwise.

166. As regards the remaining applicants, it was submitted that they were in an identical position to applicants Mr Ján Koky and Mr Rastislav

Koky and that, accordingly, any remedies on their part would be bound to meet with the same result as those of Mr Ján Koky and Mr Rastislav Koky.

167. In the applicants' submission, the Government had failed to substantiate that, in the circumstances, any further submission to the PPS had had better prospects of success than those already made.

In that context, the applicants pointed out that, at the relevant time, the PPS Act had been a relatively new piece of legislation with no existing case-law, to the effect that the remedies referred to by the Government were to be exhausted prior to the lodging of a complaint with the Constitutional Court.

The Constitutional Court's decision of 20 November 2002 (see paragraph 137 above) and any of its subsequent decisions in similar matters, as relied on by the Government, post-dated the applicants' constitutional complaint and were accordingly not of relevance.

*3. The Court's assessment*

168. The Court observes that, in its admissibility decision in the present case, it decided to join to the merits the question of the exhaustion of domestic remedies under Article 167 of the CCP and section 31 et seq. of the PPS Act. It will accordingly proceed to examination of this question, relying on the general principles and applying them as laid out below under separate headings.

**(a) General principles**

169. The Court reiterates the following general principles, which are of relevance in this case, as formulated and summarised, for example, in its judgment in the case of *Akdivar and Others v. Turkey* ([GC], 16 September 1996, §§ 65 - 69, *Reports of Judgments and Decisions* 1996-IV):

- The rule of exhaustion of domestic remedies obliges those seeking to bring their case against the State before an international judicial or arbitral organ to use first the remedies provided by the national legal system. Consequently, States are dispensed from answering before an international body for their acts before they have had an opportunity to put matters right through their own legal system. The rule is based on the assumption, reflected in Article 13 of the Convention, with which it has close affinity, that there is an effective remedy available in respect of the alleged breach in the domestic system whether or not the provisions of the Convention are incorporated in national law. In this way, it is an important aspect of the principle that the machinery of protection established by the Convention is subsidiary to the national systems safeguarding human rights.

- Under this rule, normal recourse should be had by an applicant to remedies which are available and sufficient to afford redress in respect of

the breaches alleged. The existence of the remedies in question must be sufficiently certain not only in theory but in practice, failing which they will lack the requisite accessibility and effectiveness.

- The rule also requires that the complaints intended to be made subsequently at Strasbourg should have been made to the appropriate domestic body, at least in substance and in compliance with the formal requirements and time-limits laid down in domestic law and, further, that any procedural means that might prevent a breach of the Convention should have been used.

- However, as indicated above, there is no obligation to have recourse to remedies which are inadequate or ineffective. In addition, according to the "generally recognised rules of international law" there may be special circumstances which absolve the applicant from the obligation to exhaust the domestic remedies at his disposal. The rule is also inapplicable where an administrative practice consisting of a repetition of acts incompatible with the Convention and official tolerance by the State authorities has been shown to exist, and is of such a nature as to make proceedings futile or ineffective.

- In the area of the exhaustion of domestic remedies there is a distribution of the burden of proof. It is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one available in theory and in practice at the relevant time, that is to say, that it was accessible, was one which was capable of providing redress in respect of the applicant's complaints, and offered reasonable prospects of success. However, once this burden of proof has been satisfied it falls to the applicant to establish that the remedy advanced by the Government was in fact exhausted or was for some reason inadequate and ineffective in the particular circumstances of the case or that there existed special circumstances absolving him or her from the requirement.

- The application of the rule must make due allowance for the fact that it is being applied in the context of machinery for the protection of human rights that the Contracting Parties have agreed to set up. Accordingly, it has recognised that it must be applied with some degree of flexibility and without excessive formalism. It has further recognised that the rule of exhaustion is neither absolute nor capable of being applied automatically; in reviewing whether it has been observed it is essential to have regard to the particular circumstances of each individual case. This means amongst other things that it must take realistic account not only of the existence of formal remedies in the legal system of the Contracting Party concerned but also of the general legal and political context in which they operate, as well as the personal circumstances of the applicants.

170. Moreover, as further formulated and summarised by the Court, for example, in the case of *Mađer v. Croatia* (no. 56185/07, § 87, 21 June 2011):

- 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.
- Indeed, where an applicant has a choice of remedies and their comparative effectiveness is not obvious, the Court interprets the requirement of exhaustion of domestic remedies in the applicant's favour.
- Once the applicant has used such a remedy, he or she cannot also be required to have tried others that were available but probably no more likely to be successful.

**(b) Application of the general principles in the present case**

171. As to the circumstances of the present case, the Court reiterates first of all that it has been recognised that the Constitutional Court is the supreme authority for the protection of human rights and fundamental freedoms in Slovakia, and that it has jurisdiction to examine individual complaints and to afford complainants redress if appropriate (see, *mutatis mutandis*, *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, ECHR 2009-..., with further references).

172. The applicants in the present case resorted to the Constitutional Court by way of an individual complaint under Article 127 of the Constitution.

173. As regards the scope of their constitutional complaint, the Court observes that the applicants mainly contended that the events of 28 February 2002 had not been thoroughly and efficiently investigated so as to ensure that those responsible were identified and punished (see paragraph 109 above), making reference to Article 1 § 2 of the Constitution, the principle of "general acceptance and observance of human rights and basic freedoms for everybody", Articles 5 § 1 and 13 of the Convention and the Court's judgment in the case of *Aksoy v. Turkey* (cited above) (see paragraph 110 above), and in the summary of their claim seeking a finding of a violation of Article 13 of the Convention and Article 46 § 1 of the Constitution (see paragraph 111 above).

174. The Court is of the view that the scope of the applicants' constitutional complaint has to be viewed in the context of the proceedings, in which Articles 5, 6, 8, 13 and 14 of the Convention, 1 of Protocol No. 1 and 15 and 21 of the Constitution were cited (see paragraph 97 above).

175. Bearing in mind that the Convention is intended to guarantee rights that are not theoretical or illusory, but rights that are practical and effective (see, for example, *Matthews v. the United Kingdom* [GC], no. 24833/94, § 34, ECHR 1999-I), the Court is of the view that, on the particular facts of the present case, the scope of the applicants' constitutional complaint was

such as to allow the Constitutional Court to examine the matters now arising before the Court.

176. At the same time, the Court points out that the circumstances of the present case differ from those where a particularly strict interpretation and application by the Constitutional Court of the formal rules on the scope of the constitutional complaint were held acceptable in Convention terms in the context of the length of proceedings (see, for example, *Obluk v. Slovakia*, no. 69484/01, §§ 48, 51 and 61, 20 June 2006; *Šidlová v. Slovakia*, no. 50224/99, § 53, 26 September 2006; *Mazurek v. Slovakia* (dec.), no. 16970/05, 3 March 2009; and *STARVYS, s.r.o. v. Slovakia* (dec.), no. 38966/03, 30 November 2010).

177. The Court however observes that the applicants' constitutional complaint was declared inadmissible on 23 October 2002 under section 53(1) of the Constitutional Court Act, on the ground that the applicants had failed to exhaust ordinary remedies (see paragraph 112 above) under Articles 167 and 174 § 2 (a) and (c) of the CCP and sections 31 et seq. of PPS Act (see paragraphs 113 above).

178. To that end, the Court acknowledges that it is first of all for the national authorities to devise means and methods of examining individual complaints so as to render the protection of the individual rights effective (see *Gál v. Slovakia*, no. 45426/06, § 65, 30 November 2010, and *Michalák v. Slovakia*, no. 30157/03, § 176, 8 February 2011). More specifically, the Court acknowledges that, in line with the subsidiary role of its jurisdiction, it is first of all for the Constitutional Court to interpret and apply the rules on admissibility of individual complaints before it.

179. Nevertheless, it remains the Court's task to satisfy itself in each individual case whether the protection of the applicant's rights granted by the national authorities is comparable with that which the Court can provide under the Convention (see, *mutatis mutandis*, *Bako*, cited above; *Gál*, cited above, § 66; and *Michalák*, cited above, § 177). More specifically, the Court considers that, in the circumstances of the present case, it remains to be ascertained whether there is anything more for the applicants to do in order to satisfy the requirement of exhaustion of domestic remedies under Article 35 § 1 of the Convention.

180. In that respect, the Court considers that it is reasonable to assume that the applicants were victims of criminal offences. In that capacity, they became involved in criminal proceedings against one or more persons unknown which, at the given stage, were aimed at investigating the relevant facts and establishing the identity of the perpetrators.

181. The Court also observes that the procedural framework for those proceedings and the applicants' role and legal position as victims in them were defined by the provisions of the CCP. It was among other things the purpose of those proceedings to establish the facts and to identify and punish the perpetrators (see paragraph 21 above). Being considered victims

of the alleged offences, the applicants had an array of procedural rights (see paragraph 123 above) which included, *inter alia*, that their submissions be assessed as to content irrespective of their name or form (see paragraph 124 above) and that the applicants be informed on available remedies (see paragraph 125 above).

182. The Court notes that the orders to suspend the proceedings were taken in the procedural form of a decision (*uznesenie*), that they were then challenged by applicants Mr Ján Koky and Mr Rastislav Koky by way of an interlocutory appeal to the PPS, and that these appeals were rejected for the appellants' lack of standing to appeal.

183. At the same time, the Court notes that the decisions rejecting these appeals expressly stated that, as indeed appears to be the case under the relevant provisions of the CCP, no further interlocutory appeal was permissible and that they contained no instructions about any other remedy. None the less, the PPS on its own initiative reviewed the contested situation in the light of the appellants' arguments, in which ultimately it found no merit.

184. The Court also observes that nothing has been proposed by the Government or established by the Court otherwise to suggest that the position of the remaining applicants in respect of the remedies used by applicants Mr Ján Koky and Mr Rastislav Koky was such as to support a conclusion that the use of these remedies by them had better chances of success than those of applicants Mr Ján Koky and Mr Rastislav Koky. The Court accordingly finds no reason for considering the remaining applicants in relation to the exhaustion requirement under Article 35 § 1 of the Convention differently from applicants Mr Ján Koky and Mr Rastislav Koky.

185. As to the specific remedies referred to by the Government, that is to say those under Article 167 of the CCP and sections 31 et seq. of the PPS Act, the Court observes that there appears to be a degree of uncertainty as to the functioning of the system in respect of the various remedies available in the applicants' situation and their mutual causal and functional relationship.

186. The Court notes that this uncertainty has been enhanced by what may appear to be a certain incongruity in the relevant part of the Government's argumentation in their observations on the admissibility and merits of the case and in their further observations on its merits.

In particular, in the former observations, the Government appear not to have intended to reproach Mr Ján Koky and Mr Rastislav Koky for not having resorted to the remedy under Article 167 of the CCP, whereas in their latter observations they may be understood as arguing that none of the applicants, that is to say including Mr Ján Koky and Mr Rastislav Koky, have.

187. The lack of clarity as to the procedural regime in which the PPS examined the arguments of applicants Mr Ján Koky and Mr Rastislav Koky,

presented in their inadmissible interlocutory appeals, and any relationship of causality between their arguments and the continuation of the investigation under the order of the District Prosecutor of 3 May 2002, is further enhanced by the fact that the District Prosecutor's decision on a written reply to the interlocutory appeal, which had been lodged on the same day as the order, was not made until 22 May 2002, which was after the order in question, and that neither the order nor the decision to resume the investigation appear to make any reference to the interlocutory appeal.

188. However, judging the submissions of applicants Mr Ján Koky and Mr Rastislav Koky of 3 May and 3 July 2002 by their content, which the District Prosecutor appears also to have been duty bound to do, and having regard to the District Prosecutor's response to these submissions as well as the Government's original observations on the admissibility and merits of this case, the Court finds that the applicants cannot be considered as having failed to make use of the remedy available to them under Article 167 of the CCP.

189. Turning to the remedies under sections 31 et seq. of the PPS Act, the Court considers it of relevance at the outset to evaluate the purpose of this piece of legislation, which is to determine the status and jurisdiction of the PPS, the status and jurisdiction of the Prosecutor General, the status of other prosecutors and organisation and administration of the PPS (see paragraph 132 above). In other words, it appears to be primarily a tool of internal organisation of the PPS, rather of granting and regulating individual rights of substance or procedure, which in turn appears to be a matter to be addressed by the relevant procedural codes.

190. As to the case-law of the Constitutional Court concerning the interpretation and application of the exhaustion of ordinary remedies in respect of the remedies under sections 31 et seq. of the PPS Act, the Court observes that, except for the Constitutional Court's decision of 13 December 2001, all the other decisions relied on by the Government post-date the applicants' constitutional complaint.

191. As regards the decision of 13 December 2001, which does make reference to the remedies under sections 31 et seq. of the PPS Act, the Court considers it noteworthy that this decision was taken in respect of a legally undefined "motion" in a legal regime which preceded the current one, in which a complaint under Article 127 of the Constitution is considered to be an effective remedy for the purposes of Article 35 § 1 of the Convention, and which has existed under a constitutional amendment of 2001 with effect from 1 January 2002 (see *Andrášik and Others v. Slovakia* (dec.), nos. 57984/00, 60237/00, 60242/00, 60679/00, 60680/00, 68563/01 and 60226/00, ECHR 2002-IX). In addition, in the situation complained of by that "motion", before bringing an action with the Constitutional Court the complainant had exhausted no remedies at all. The Court considers that

these differences distinguish the present case from that examined by the Constitutional Court on 13 December 2001.

192. The Court therefore concludes that there was not sufficient support in the domestic law and practice at the relevant time for the conclusion that, for the purposes of Article 35 § 1 of the Convention, the applicants were required to resort to the remedies under sections 31 et seq. of the PPS Act.

193. Moreover, and in any event, noting that the applicants in fact did address the Prosecutor General with a submission clearly aimed at ensuring that their case was handled with the necessary care and attention, that it is not disputed that the PPS has received this submission (see paragraph 99 above), and that nevertheless no attention at all appears to have been given to it, the Court finally concludes that there is no scope for rejecting the application under Article 35 § 1 of the Convention in connection with the remedies under sections 31 et seq. of the PPS Act.

194. As regards the remedies under sections 31 et seq. of the PPS Act, and whether the present case bears any apparent resemblance to that of *Zubaľ v. Slovakia* (no. 44065/06, § 13 and 33, 9 November 2010), the Court points out that they differ in a number of aspects, including that the proceedings in the present case were aimed at investigating allegedly unlawful actions by private individuals and not by agents of the State; that the unlawful actions investigated in the present case were of a significantly greater gravity compared to the case of *Zubaľ*, the substantive complaint in which concerned solely Article 8 of the Convention. Further, as observed in the previous paragraph, the applicants in the present case in fact arguably did raise their arguments with the PPS prior to the introduction of their constitutional complaint.

195. In reaching the conclusions in paragraphs 192 and 193 above, the Court has also taken into consideration the applicants' personal circumstances, the fact that rights as fundamental as those under Article 3 of the Convention (see below) are at stake, and that the Convention is intended to guarantee rights that are not theoretical or illusory but rights that are practical and effective.

196. Lastly, the Court observes that its conclusions in this respect are in consonance *mutatis mutandis* with relevant international jurisprudence as cited above.

197. The first limb of the Government's preliminary objection therefore cannot be sustained.

### B. Protection of personal integrity

198. In their observations on the admissibility and merits of the application, as regards the complaint under Article 14 of the Convention, the Government contended, in reliance on Article 35 § 1 of the Convention, that the applicants should have asserted their rights by means of an action

for protection of personal integrity under Articles 11 et seq. of the Civil Code, but had not done so.

199. The Court will deal with this matter below together with the merits of the Article 14 complaint.

### C. Other objections

200. In their observations on the merits of the case, the Government added further objections of non-exhaustion of domestic remedies. In particular, they submitted that the scope of the applicants' complaints to the Court was not identical to those asserted before the Constitutional Court; that the action for protection of personal integrity was a remedy to be exhausted in respect of all of the applicants' complaints, and that an action against the State for damages under section 78 of the Police Act (Law no. 171/1993 Coll., as amended) was an effective further remedy at the applicants' disposal. In that respect, the Government relied on the Court's decision in (see *Baláž and Others v. Slovakia* (dec.), no. 9210/02, 28 November 2006).

201. The Court reiterates that, pursuant to Rule 55 of the Rules of Court, "any plea of inadmissibility must, in so far as its character and the circumstances permit, be raised by the respondent Contracting Party in its written or oral observations on the admissibility of the application submitted as provided in Rule 51 and 54, as the case may be".

202. It has neither been argued by the Government, nor otherwise established by the Court that it was not possible for the Government to raise these new objections at the admissibility stage. They are accordingly estopped from raising them now (for recapitulation of the applicable principles see, for example, *Mooren v. Germany* [GC], no. 11364/03, §§ 57-59, ECHR 2009-...).

## II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

203. Alleging that there had been systematic discrimination and racist attacks against Roma in Slovakia, combined with a general failure of the State authorities properly to investigate and prosecute such crimes, the applicants complained that they had been subjected to violence amounting to torture and inhuman and degrading treatment and that the Slovakian authorities had failed to carry out a prompt, impartial and effective official investigation into the case. On that account, the applicants alleged a violation of Article 3 of the Convention, which provides that:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

### A. Arguments of the parties

204. The applicants objected that the DPI had only questioned three of some thirty suspected perpetrators and that they had only questioned them once, at the beginning of the investigation. The applicants also contended that none of the suspects had been re-interviewed after the identity exercise and despite the information it had established. Furthermore, the applicants suggested that the DPI had failed to take any new oral depositions after the second investigation had been opened pursuant to the District Prosecutor's instructions.

205. The Government responded by pointing out that except for Mr Ján Koky, Mr Martin Kočko and Mr Rastislav Koky the applicants had not been exposed to direct physical attack and that it had only been applicants Mr Martin Kočko and Mr Rastislav Koky who had sustained any bodily injuries, the actual extent of which was, however, debatable. They submitted that any mental distress caused to the remaining applicants and, in particular Ms Renáta Čonková (see paragraph 34 above) and Ms Justína Lacková (see paragraph 59 above) had not reached the Article 3 threshold.

206. Moreover, and in any event, referring to the facts of the case, the Government opposed the applicants' factual assertions, emphasised that the investigation had been supervised by the PPS and also by the Ministry of the Interior, and considered that it had been carried out in full compliance with Convention principles.

207. As to the applicants' specific objections, the Government submitted that P.S. and M.S. had been repeatedly questioned as suspects and that a number of investigative actions had been taken between 3 May and 26 June 2002. Furthermore, the investigation had not been terminated, but merely stayed, and further investigative actions had been and still could be taken with a view to further establishing the relevant facts, even after the second suspension.

208. In so far as any racial motive might have been at the heart of the incident, the Government considered that the investigation had been adequately refocused as soon as allegations to that effect surfaced in the interviews of 20 March 2002. In that context, however, the Government pointed out that in the applicants' submissions immediately after the incident there had been no sign of any racial slurs on the part of the attackers, in view of which the Government considered remarkable the applicants' later detailed accounts of rather expressive alleged racial affronts.

209. In reply, the applicants emphasised the physical injuries sustained by Mr Martin Kočko and Mr Rastislav Koky and the humiliation, fear, stress and trauma sustained by all of them. These repercussions had been aggravated by the presence of women and children at the scene of the incident and by its blatantly racial and derogatory nature. Accordingly, in

the applicants' submission, the seriousness of the treatment to which they had been exposed had reached the threshold of Article 3 of the Convention.

210. As to the investigation itself, the applicants asserted that, although they had been in a particularity vulnerable position and it had accordingly been the responsibility of the State authorities to proceed proactively and on their own initiative, the authorities had made it necessary for the applicants to press for the investigation to proceed and that all the authorities had done was make an inquiry of a purely formal nature.

## B. The Court's assessment

### *1. General principles*

211. The Court reiterates that Article 3 of the Convention must be regarded as one of the most fundamental provisions of the Convention and as enshrining the core values of the democratic societies making up the Council of Europe (see *Pretty v. the United Kingdom*, no. 2346/02, § 49, ECHR 2002-III). In contrast to the other provisions in the Convention, it is cast in absolute terms, without exception or proviso, or the possibility of derogation under Article 15 of the Convention (see, *inter alia*, *Chahal v. the United Kingdom*, judgment of 15 November 1996, § 79, *Reports of Judgments and Decisions* 1996-V).

212. The Court also reiterates that the ill-treatment suffered must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is relative: it depends on all the circumstances of the case, such as the nature and context of the treatment, its duration, its physical and mental effects and, in some instances, the sex, age and state of health of the victim (see *Price v. the United Kingdom*, no. 33394/96, § 24, ECHR 2001 VII).

213. It is further to be reiterated that, in general, actions incompatible with Article 3 of the Convention primarily incur the liability of a Contracting State if they were inflicted by persons holding an official position. However, the absence of any direct State responsibility for acts of violence that meet the condition of severity such as to engage Article 3 of the Convention does not absolve the State from all obligations under this provision. The obligation on the High Contracting Parties under Article 1 of the Convention to secure to everyone within their jurisdiction the rights and freedoms defined in the Convention, taken in conjunction with Article 3, also requires States to take measures designed to ensure that individuals within their jurisdiction are not subjected to ill-treatment administered by other private persons (see, for example, *Milanović v. Serbia*, no. 44614/07, § 83, 14 December 2010, and *Denis Vasilyev v. Russia*, no. 32704/04, § 98, 17 December 2009, with further references).

214. The Court further reiterates that where an individual raises an arguable claim that he has been seriously ill-treated in breach of Article 3, that provision, read in conjunction with Article 1 of the Convention, requires by implication that there should also be an effective official investigation capable of leading to the identification and punishment of those responsible (see *Assenov and Others v. Bulgaria*, 28 October 1998, § 102, *Reports of Judgments and Decisions* 1998-VIII). A positive obligation of this sort cannot, in principle, be considered to be limited solely to cases of ill-treatment by State agents (see *M.C. v. Bulgaria*, no. 39272/98, § 151, ECHR 2003-XII, and *Šečić v. Croatia*, no. 40116/02, § 53, 31 May 2007).

215. Even though the scope of the State's procedural obligations might differ between cases where treatment contrary to Article 3 has been inflicted through the involvement of State agents and cases where violence is inflicted by private individuals, the requirements as to an official investigation are similar. For the investigation to be regarded as "effective", it should in principle be capable of leading to the establishment of the facts of the case and to the identification and punishment of those responsible. This is not an obligation of result, but one of means. The investigation must be independent, impartial and subject to public scrutiny and that the competent authorities must act with diligence. Among other things, they must have taken the reasonable steps available to them to secure the evidence concerning the incident, including, *inter alia*, a detailed statement concerning the allegations from the alleged victim, eyewitness testimony, forensic evidence and, where appropriate, additional medical reports. Any deficiency in the investigation which undermines its ability to establish the cause of injuries or the identity of the persons responsible will risk falling foul of this standard, and a requirement of promptness and reasonable expedition is implicit in this context (see, for example, *Beganović v. Croatia*, no. 46423/06, § 75, 25 June 2009, and *Denis Vasilyev*, cited above, § 100 with further references).

### *2. Application of the general principles to the present case*

#### (a) Was there ill-treatment within the meaning of Article 3 of the Convention?

216. The Court observes that, in the present case, it has not been disputed between the parties that a group of persons, some of whom were wearing balaclavas and armed with baseball bats and iron bars, entered the settlement where the applicants lived and engaged there in a disturbance involving direct physical assault on applicants Mr Ján Koky, Mr Martin Kočko and Mr Rastislav Koky, and causing bodily harm to the latter two. And neither has it been disputed that the attackers caused damage to the exterior of houses nos. 61, 67 and 69, forcibly entered houses nos. 61 and

67, and inflicted further damage to the furniture and equipment inside the latter.

217. Where however there appears to be a degree of disagreement between the parties is the number of attackers, the extent and nature of the injuries to applicants Mr Martin Kočko and Mr Rastislav Koky, the extent of the damage inflicted upon the applicants' property, and the racial slurs uttered by the attackers.

218. The number of the attackers varies between twelve, as in the official documentation (see paragraph 11 above), and fifty, as submitted by one of the witnesses (see paragraph 43 above).

219. As regards the injuries suffered by applicant Mr Rastislav Koky, the applicants' submission points to a skull fracture, a cut to the left side of the back of the head, a crushed left arm, pressure injury to the left side of the back and bruises on the left knee, which necessitated hospitalisation of ten to fourteen days while the Government assert that he was hospitalised for no more than three to four days.

220. In the case of applicant Mr Martin Kočko, the applicants' submission has been that he suffered a scraped elbow with a pressure injury on the right side, needing recovery time of seven to ten days, the Government submitting that his injuries did not merit a stay in hospital.

221. In any event, there has not been any dispute that the injuries sustained by applicants Mr Rastislav Koky and Mr Martin Kočko required treatment in hospital, where they had to be taken by ambulance.

222. The Court considers however that, in the assessment of the gravity of these injuries and any damage to property from the perspective of the threshold of Article 3 of the Convention, apart from the damage itself, regard has to be had to the overall context of the attack.

223. From that perspective, the Court observes that the incident took place at night time and in a Roma settlement, and that it involved a group of partly armed and masked men who forcibly invaded the applicants' home and privacy; moreover, damage was caused to the applicants' property and there was a physical confrontation inside the applicants' home as well as outside.

224. Furthermore, it has been submitted by the applicants and not rebutted by the authorities that the incident was marked by verbal threats and imprecations affronting the applicants' ethnic dignity.

225. In view of the above-mentioned considerations, the Court concludes that there can be no doubt that the treatment the applicants were exposed to at the hands of private individuals fell within the purview of Article 3 of the Convention (see, for example, *Beganović,* cited above, § 68).

**(b) Was the investigation compatible with Article 3 of the Convention?**

226. The Court observes that the investigation under review was twice suspended, the former suspension being lifted and the latter being upheld. Investigative actions were thus taken in periods before its first suspension, between the two suspensions and after the second suspension. For the sake of clarity, the Court will review these periods and the investigative actions taken in them below, in turn.

227. In the first segment, the police inspected the crime scene and, in particular, the three houses which had been damaged, the inspection having produced, *inter alia*, two biological traces. Applicant Mr Ján Koky was interviewed three times, applicant Mr Ján Koky Jr. once and the remaining applicants twice.

228. The DPI also interviewed the waitress I.S., her two sons P.S. and M.S. and the former's girlfriend, E.N.

229. Furthermore, three witnesses (Z.K., H.B. and J.K.) were interviewed twice and three others (T.K., M.K. and P.J.) once.

230. In addition, an identity exercise took place and the Government submitted that transcripts of the incoming and outcoming mobile phone communications of I.S., M.S., P.S. and E.N. had been requested.

231. Lastly, at this stage of the investigation, the DPI procured and obtained analysis of biological material from three people (B.B., V.P. and E.K.) with reference to biological traces from the crime scene.

232. In the period between the two suspensions, the DPI re-interviewed P.S. and M.S. and interviewed the third son of I.S., F.S., and M.N., as well as nine other individuals (M.L., E.K., R.S., I.K., J.H., M.K., J.K., P.P. and B.P.), all of whom consented to provide biological material for the purposes of forensic analysis, the case file containing the results of the analysis in respect of M.S., P.S., F.S., M.N. and M.L. only.

233. Finally, in the period after the second suspension, the DPI interviewed seven other individuals and had biological material analysed and compared with that from the crime scene in respect of three individuals (P.G., M.S. and M.A.).

234. In view of the above, the Court observes that, in quantitative terms, the incident at the applicants' settlement was subject to structured and substantive investigation. However, it remains to be seen whether this investigation was indeed conducted in a determined manner and whether all was done that could reasonably have been expected to be done with a view to establishing the identity of the perpetrators and their motives and, as the case may be, to provide an adequate basis for their prosecution and punishment.

235. In that regard, the Court observes that a crucial piece of evidentiary material secured at the crime scene appears to be the biological traces, which were later analysed and compared with biological material from the suspects. In particular, the Court observes that in the period between the two

suspensions of the investigation biological material appears to have been taken for the purposes of such an analysis from the three sons of I.S. and ten other individuals. However, the results of these analyses, as submitted to the Court, pertain to the sons of I.S. and two others only, the results in respect of eight others being missing.

236. Furthermore, the Court observes that in suspending the investigation for the second time the authorities appear to have placed emphasis on the incongruity between the initial deposition of applicant Mr Ján Koky that he did not know the identity of one of the five assailants who was not wearing a balaclava, and his later submission during the identity parade of 10 April 2002 to the effect that he had recognised and known that assailant. However, there does not appear to have been any action taken with a view to clarifying this controversy, such as, for example, a face-to-face interview (*konfrontácia*).

237. Moreover, it has not escaped the Court's attention that, although the Government submitted that records of the mobile communications of some of the involved had been requested with a view to further enlightenment of the facts, nothing has been submitted in terms of substantiation of this claim and there does not appear to have been any action taken by way of follow-up.

238. In addition, in so far as the Government may be understood as arguing that the investigation had not been terminated, but had merely been suspended, and that, accordingly, there has not been any formal obstacle to its continuation and completion, it has to be pointed out that there is no appearance that since 13 January 2003 (see paragraph 107 above) any action has been taken to support such a submission.

239. The Court considers that these elements, coupled with the sensitive nature of the situation related to Roma in Slovakia at the relevant time (see, for example, *Mižigárová v. Slovakia*, no. 74832/01, §§ 57-63, 14 December 2010 and *V.C. v. Slovakia*, no. 18968/07, §§ 78-84 and 146-9, 8 November 2011), are sufficient for it to conclude that the authorities have not done all that could have been reasonably expected of them to investigate the incident, to establish the identity of those responsible and, as the case may be, to draw consequences. In reaching this conclusion, the Court has taken 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 (see, *mutatis mutandis*, *Menson v. the United Kingdom* (dec.), no. 47916/99, ECHR 2003-V).

240. In conclusion, the Court finds that the investigation into the incident at the applicants' settlement cannot be considered as having been effective.

Accordingly, there has been a violation of the procedural limb of Article 3 of the Convention.

## III. OTHER ALLEGED VIOLATIONS

241. The applicants also alleged that the perpetrators' intrusion into their homes and destruction of their property, coupled with the authorities' failure to prevent and suppress racist violence and to carry out an effective investigation, amounted to a violation of their rights under Article 8 of the Convention and 1 of Protocol No. 1.

242. On the basis of the same arguments, and in connection with their Roma ethnicity, the applicants further alleged a violation of Article 13, in conjunction with Articles 3 and 8 of the Convention, and of Article 14, in conjunction with Articles 3, 8 and 13 of the Convention.

243. The Court observes first of all that, as for the substance, to a significant extent the essence of these complaints overlaps with that of the complaints presented and examined above under Article 3 of the Convention. The Court finds that there is no justification for a separate examination of the same matters under any of the other Convention provisions cited.

244. Furthermore, in view of its findings in respect of the complaint under Article 3 of the Convention, the Court considers that it is unnecessary to examine the remaining complaints. This conclusion applies accordingly to the Government's preliminary objection concerning the action for protection of personal integrity as a remedy to be used under Article 35 § 1 of the Convention in respect of the applicants' complaint under Article 14 of the Convention.

## IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

245. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

## A. Damage

### *1. Pecuniary damage*

246. The applicants claimed 85,300 euros (EUR) by way of compensation in respect of pecuniary damage. This amount consisted of:

- EUR 7,000 in respect of damage caused to the house of applicant Mr Ján Koky;
- EUR 833 in respect of earning opportunities lost by applicant Mr Ján Koky due to the time he had to dedicate to repairing his house;
- EUR 667 in respect of damage caused to the house of applicant Ms Renáta Čonková; and
- EUR 76,700 in respect of present and future earnings lost by applicant Mr Martin Kočko on account of his injuries.

247. The Government considered the claims overstated and unsubstantiated and pointed out that the investigation had not been terminated but merely suspended, which is why the applicants' claim could still be pursued at the domestic level.

248. The Court observes first of all that the claim in respect of pecuniary damage has not been supported by any evidence. In addition, the Court finds no causal link between the damage alleged, which was essentially caused by non-State actors, and the violation found of the respondent State's obligations under the Convention. The claim therefore has to be dismissed.

### *2. Non-pecuniary damage*

249. Applicants Mr Martin Kočko and Mr Rastislav Koky claimed EUR 10,000 each in respect of non-pecuniary damage, consisting of pain, frustration, helplessness and humiliation they had suffered as a result of the beatings they had been subjected to and the deficiencies of the investigation they complained of.

250. Applicants Ms Žaneta Kokyová, Mr Milan Baláž, Ms Ružena Kokyová, Ms Renáta Čonková, Ms Justínka Lacková and Mr Ján Koky Jr. claimed EUR 5,000 each in respect of non-pecuniary damage consisting of pain, frustration, helplessness, stress and humiliation and lasting harm and emotional and mental trauma due to the attack.

251. Applicant Ms Renáta Kokyová claimed EUR 10,000 in compensation for non-pecuniary damage on account of the circumstances involving her minor children being present at and witnessing the attack.

252. The Government opposed these claims as overstated and submitted that, should the Court find a violation of the applicants' Convention rights, a more appropriate amount of damages should be paid.

253. The Court observes that the violation found above is of a procedural nature and that it does not concern the underlying treatment

suffered by the applicants at the hands of non-State actors. It considers that, as a result of the violation found, the applicants must have sustained damage of a non-pecuniary nature. Having regard to the amount of their claims and ruling on an equitable basis, it awards EUR 10,000 to each of the applicants Mr Martin Kočko and Mr Rastislav Koky and EUR 5,000 to each of the applicants Ms Žaneta Kokyová, Mr Milan Baláž, Ms Renáta Kokyová, Ms Ružena Kokyová, Ms Renáta Čonková, Ms Justína Lacková, and Mr Ján Koky Jr., plus any tax that may be chargeable under that head.

254. Noting that applicant Mr Ján Koky does not appear to have made any claim in respect of non-pecuniary damage, no ruling is made in that respect.

### B. Costs and expenses

255. Lastly, the applicants claimed EUR 7,116 in respect of legal costs and EUR 62 in respect of administrative expenses incurred at the national level and before the Court.

256. Relying on the Court's judgment in the case of *Young, James and Webster v. the United Kingdom* ((former Article 50), 18 October 1982, § 15, Series A no. 55), the Government submitted that effective protection of human rights required human rights lawyers to be moderate in the fees that they charged to applicants; that only reasonably incurred legal costs should be compensated, and that the remainder of the claim should be dismissed.

257. In accordance with the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum (see, for example, *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 54, ECHR 2000-XI). Furthermore, Rule 60 § 2 of the Rules of Court provides that itemised particulars of any claim made under Article 41 of the Convention must be submitted, together with the relevant supporting documents or vouchers, failing which the Court may reject the claim in whole or in part.

258. In the instant case, the Court observes that the applicants have not substantiated their claim with any relevant supporting documents establishing that they were under an obligation to pay for the costs of legal services and administrative expenses or that they have actually paid for them. Accordingly, the Court does not award any sum under this head (see C*umpănă and Mazăre v. Romania* [GC], no. 33348/96, §§ 133-134, ECHR 2004-XI).

### C. Default interest

259. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

## FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Dismisses* the Government's preliminary objection in respect of the remedies under Article 167 of the Code of Criminal Procedure and sections 31 et seq. of the Public Prosecution Act;

2. *Holds* that, except for the remedy under Articles 11 et seq. of the Civil Code in respect of the complaint under Article 14 of the Convention, the Government are estopped from raising their remaining preliminary objections;

3. *Holds* that there has been a violation of Article 3 of the Convention under its procedural head;

4. *Holds* that it is not necessary to decide on the Government's preliminary objection in respect of the remedy under Articles 11 et seq. in respect of the complaint under Article 14 of the Convention;

5. *Holds* that it is not necessary to decide on the merits of the remaining complaints under Article 8 of the Convention and Article 1 of Protocol No. 1; Article 13 of the Convention, in conjunction with Articles 3 and 8 of the Convention; and Article 14 of the Convention, in conjunction with Articles 3, 8 and 13 of the Convention;

6. *Holds*
   (a) that the respondent State is to pay the applicants, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
      (i) EUR 10,000 (ten thousand euros), plus any tax that may be chargeable, to each of the applicants, Mr Martin Kočko and Mr Rastislav Koky, in respect of non-pecuniary damage;
      (ii) EUR 5,000 (five thousand euros), plus any tax that may be chargeable, to each of the applicants, Ms Žaneta Kokyová, Mr Milan Baláž, Ms Renáta Kokyová, Ms Ružena Kokyová, Ms Renáta Čonková, Ms Justína Lacková, and Mr Ján Koky Jr., in respect of non-pecuniary damage;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

7. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 12 June 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

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|---|---|
| Fatoş Aracı | Nicolas Bratza |
| Deputy Registrar | President |

# APPENDIX

## LIST OF THE APPLICANTS

1. Mr Ján KOKY, born in 1959, residing in Gánovce.
2. Mr Martin KOČKO, born in 1985, residing in Gánovce.
3. Ms Žaneta KOKYOVÁ, born in 1984, residing in Gánovce.
4. Mr Milan BALÁŽ, born in 1978, residing in Gánovce.
5. Mr Rastislav KOKY, born in 1982, residing in Gánovce.
6. Ms Renáta KOKYOVÁ, born in 1978, residing in Gánovce.
7. Ms Ružena KOKYOVÁ, born in 1959, residing in Gánovce.
8. Ms Renáta ČONKOVÁ, born in 1975, residing in Gánovce.
9. Ms Justína LACKOVÁ, born in 1968, residing in Gánovce.
10. Mr Ján KOKY, born in 1976, residing in Poprad.