



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

THIRD SECTION

DECISION

Application no. 45383/07
by Ludovít PUKY
against Slovakia

The European Court of Human Rights (Third Section), sitting on 14 February 2012 as a Chamber composed of:

Josep Casadevall, *President*,

Corneliu Bîrsan,

Egbert Myjer,

Ján Šikuta,

Ineta Ziemele,

Nona Tsotsoria,

Kristina Pardalos, *judges*,

and Santiago Quesada, *Section Registrar*,

Having regard to the above application lodged on 17 October 2007,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Ludovít Puky, is a Slovakian national of Romany ethnic origin. He was born in 1968 and lives in Trebišov. He was represented before the Court by Ms L. Gall, a lawyer from the European Roma Rights Centre in Budapest. The Government of the Slovak Republic (“the Government”) were represented by their Agent, Mrs M. Pirošíková.

A. The circumstances of the case

2. The facts of the case, as submitted by the parties, may be summarised as follows.

3. On 24 February 2004 large-scale police operations took place in the municipalities of Trebišov and Čaklov in reaction to protests by people of Romany ethnic origin in Eastern Slovakia. Those protests were reported to be a reaction to changes in the country's social welfare policy. In some locations they escalated into rioting and looting.

4. On that day around 250 police officers went to Trebišov in the early hours of the morning with a view to arresting people suspected of theft, destruction of property and assaulting the police during the disturbances that had taken place in the town the previous evening.

5. With reference to the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) published in February 2006 (see paragraph 54 below), the applicant submitted that the police had entered Romany homes and had physically attacked the occupants.

6. At least twenty-six people were taken into custody.

7. The applicant submitted that, at approximately 11 a.m. on 24 February 2004, his brother Radoslav Puky (born in 1974) came running towards the applicant's house in an attempt to escape the police. By that time the whole Romany settlement in Trebišov had been surrounded by the police. The applicant and his friend saw the applicant's brother limping and holding the left side of his waist, where he had sustained wounds and injuries caused by the police. He was therefore lagging behind as they were running across a field. They heard the police officers shouting orders to stop and put their hands above their heads. When the applicant looked back, he saw a group of Romany people surrounded by police.

8. On 4 March 2004 the partner of Mr Radoslav Puky reported him missing. On the same day the applicant made the following statement to the police:

"On 24 February 2004 at about 11.15 a.m. my brother Radoslav came to my home at I. Kraska street in Trebišov. We went to the street where we saw policemen wearing masks. We were frightened and started running towards the field together with the others. When we were about to reach the Trnávka river I turned back and saw my brother running behind me. I ran up to the bridge where I realised that my brother was no longer near me. I then started looking for him but I have been unable to find him up until now. It is not true that my brother was beaten or apprehended by the police, the last time I saw him was in the field behind the Roma settlement in Trebišov."

9. Subsequently a search was launched with the involvement of the police, the army and a helicopter of the Ministry of the Interior.

10. The applicant's relatives and other Roma also searched for his brother and on 7 March 2004 they found him dead in a drainage ditch of the Trnávka stream at a place called Čaplíny. The doctor who had been brought

to the scene established suffocation by drowning as the preliminary cause of his death.

11. On the same day the police started a criminal investigation into a suspected offence of bodily harm caused to the applicant's brother. A number of procedural steps were taken immediately, which included examining and documenting the scene and questioning eight witnesses – including the applicant and his brother's partner.

12. The latter stated that she had seen the applicant's brother for the last time on 24 February 2004 at approximately 10.30 a.m. When the police had approached their home, her partner had run towards the field together with other Roma.

13. In his statement of 7 March 2004 the applicant submitted that his brother had come to his home at about 11 a.m. and had told him that he had been physically attacked. He was holding his left arm in the area of his forearm and his left hip. Upon being approached by the police they had started running away, together with other Roma, to the field in the direction of a dumping site in Čaplíny. The applicant's brother was lagging behind. The applicant had heard the police officers shouting orders to stop and put their hands above their heads. When the applicant had looked back, he had seen a group of Romany people surrounded by police officers wearing face masks. The applicant had not noticed his brother among those apprehended as they were many and he was in a hurry to run away. That incident had taken place at the precise location at which the applicant had seen his brother for the last time. Apart from one person, Mr. K., the applicant could not identify the Romany people who had been present in that area at that time.

14. Two experts from the Forensic Medicine Institute in Košice examined the body of the deceased. In their report of 30 March 2004 they stated that no signs of physical violence had been found and that small scrapes on the lower parts of the deceased's legs had originated earlier. The deceased had approximately one kilogram of thick, undigested food in his stomach which he had eaten approximately two hours before his death. This could have contributed to the swelling of his diaphragm, resulting in heart congestion and difficulties in breathing. The part of the brain controlling the digestion process situated in the brainstem could have been affected by toluene, an organic solvent which had been found in the deceased's blood and which the deceased could have taken no longer than fifteen hours before his death.

15. The experts established suffocation by drowning as the direct cause of death. They expressed the view that the deceased could have drowned on 24 February 2004. On the basis of the autopsy findings alone it could not be exactly determined when he had fallen into water. The experts did not exclude that the deceased had entered the water or had fallen into it following a loss of control of his movement due to inhalation of toluene.

16. On 26 April 2004 the District Prosecutor in Trebišov discontinued the proceedings, as nothing indicated that an offence had been committed.

17. The General Prosecutor's Office reviewed the case on its own initiative, also in view of the public attention which it had attracted. It then ordered the District Prosecutor to ensure further investigation with a view to establishing all the relevant facts.

18. On 14 June 2004 the District Prosecutor's Office in Trebišov returned the case to the police in Trebišov for further investigation. The letter contained detailed instructions as to what action should be taken and specified further evidence to be obtained with a view to establishing the relevant circumstances of the case. This included the alleged beating of the applicant's brother and other Roma by the police, the position in which the body had been found and how it had arrived in the ditch, the period during which the body had been in water, the traces of injuries and the date of their origin, the quantity of toluene in the deceased's urine and the date on which the deceased had eaten the food found in his stomach.

19. On 25 June 2004 the police resumed the criminal investigation. The investigator questioned witnesses and carried out a reconstruction of the events at the place where the body had been found, doing so in the presence of two lawyers from the League of Human Rights in Bratislava.

20. On 7 October 2004 two physicians from the Jessenius Faculty of Medicine in Martin produced a second forensic expert opinion which comprised sixteen pages. In that opinion, they noted that there were visible signs of maceration on the hands and feet of the deceased. However, the skin on those parts had not yet become loose and had not become detached from the body. Experiments had shown that such a process usually starts ten to fourteen days after immersion in water. As to the skin on the remaining parts of the body, there were no signs of a significantly advanced maceration. The analysis of the tissues had indicated that the overall post-mortem putrefaction of the body of the deceased had occurred at an early stage at the time of its discovery.

21. On that basis the experts expressed the view that the body had been immersed in water for approximately three to six days before it had been found on 7 March 2004. As the autopsy had incontestably shown that the deceased had died of suffocation resulting from drowning, the death must have occurred during those approximately three to six days before the body had been found. There was no doubt that traces of superficial injuries which were identified on the body of the deceased had occurred several months or even years earlier. The position in which the body had been found corresponded to that of a person who had drowned. The deceased had inhaled toluene at an unspecified time before his death. No particular conclusion could be made as to the impact of that substance on his death. The experts further indicated that the deceased had eaten a large quantity of pastries, beans, meat and vegetables two to four hours before he had died.

No traces of external violence on the body had been established. There was no indication that other persons had been involved in his death.

22. The investigator also examined the files concerning the people who had been brought to or detained at the District Police Directorate in Trebišov on 24 February 2004 in connection with the riot in the Roma settlement and a robbery committed in Trebišov. No information had been found indicating that the applicant's brother had been involved in any of those unlawful activities or that he had been arrested by the police.

23. On the basis of the above, the police investigator again concluded that no criminal offence had been committed and that the death of the applicant's brother had probably not been related to the riots in Trebišov. The criminal investigation was discontinued on that basis on 22 October 2004.

24. On the same day the applicant's representative lodged a complaint against that decision. He pointed to several discrepancies and errors, such as the alleged time of his brother's death and his body's location throughout the period between 24 February and 7 March 2004.

25. On 11 November 2004 the District Prosecutor's Office in Trebišov dismissed the complaint as being unsubstantiated. The decision stated that it could not be challenged by means of a further complaint.

26. On 11 January 2005 the applicant complained to the Constitutional Court of a breach of Articles 2, 3 and 14 of the Convention in the above-mentioned proceedings.

27. The Constitutional Court notified the General Prosecutor's Office as it considered that the applicant, in substance, had challenged the lawfulness of the investigation. In reaction the General Prosecutor's Office ordered a further investigation and specified which actions needed to be taken.

28. On 11 March 2005 the District Prosecutor's Office in Trebišov instructed the police investigator to re-start the criminal investigation into the case.

29. On 23 March 2005 the Constitutional Court dismissed the applicant's complaint after it had established that a new criminal investigation into the case had been opened on 11 March 2005 and that the proceedings were pending.

30. In the context of the new criminal proceedings, the police investigator heard seven witnesses, including Romany people and police officers, with a view to establishing the whereabouts and details of the search for the applicant's brother after his partner had reported him missing. The police further obtained documentary evidence relating to water temperature and air humidity in the area during the period between 24 February and 7 March 2004.

31. Subsequently, the two forensic experts who had prepared the second expert opinion stated that such data could in no way affect their conclusion according to which the body of the applicant's brother had been in water for

three to six days before it had been found. Had the deceased been in water from 24 February to 7 March 2007, advanced skin maceration would have occurred on the whole body notwithstanding the low water temperature at that time.

32. In a written statement a police investigator indicated that twenty-seven persons of Romany ethnic origin had been accused in the context of the events which had taken place on 24 February 2004. Several other persons had been brought to the police station on that day. There was no indication in the file that the applicant's brother was among those persons or that his liberty had been restricted. The file contained no reference to his person.

33. On 2 May 2005 the officer in charge of the police unit which had intervened on 24 February 2004 indicated that no police action was documented in the field behind the Roma settlement or in the vicinity of the nearby river.

34. In a report of 15 May 2005 a police officer stated that no relevant information could be obtained among the dwellers of the settlement who knew the applicant's brother as to the latter's whereabouts on or after 24 February 2004. They did not remember the applicant or Mr K. running towards the fields.

35. In view of the above the police investigator concluded that no offence had been committed. In a decision of 16 June 2005 the proceedings were discontinued.

36. The applicant lodged a complaint. He challenged the conclusions of the investigator in relation to the time of death of his brother and highlighted the fact that it had not been established where the body had been from the presumed day of death, 24 February 2004, to the moment when it had been immersed in the water. The applicant also complained that the investigator had questioned neither all of the people who had been arrested in the field during the police intervention nor the members of the police force who had been involved. Finally, the applicant contested the conclusion that there had probably been no interconnection between the death of his brother and the Romany riot on 24 February 2004.

37. On 7 July 2005 the District Prosecutor's Office in Trebišov dismissed the applicant's complaint. The decision stated that it was undeniable that the applicant's brother had drowned and noted that the experts had concluded that his body had stayed in water for a maximum of six days. The prosecutor concluded that the death must have occurred within that period. The applicant's brother had therefore stayed at an unknown place after 24 February 2004 for several days. However, it was no longer possible to establish his whereabouts during that period.

38. The public prosecutor found the applicant's statement made on 27 August 2004 and which indicated in detail the food which his brother had eaten at his home on 24 February 2004 at approximately 10 a.m. to be

unreliable. It entirely corresponded to the food which the experts had found in the deceased's digestive organs. However, in his first statement made on 7 March 2004, when the results of the forensic examination had not yet been known, the applicant had indicated that his brother had come to his home at around 11 a.m., that soon thereafter they had heard the shouts of Roma people and the police, and that they had run into the field.

39. The decision stated that no complaint was available against it.

40. On 9 September 2005 the applicant lodged a second complaint with the Constitutional Court. With reference to the above police decision of 16 June 2005 and that of the District Prosecutor's Office of 7 July 2005, he alleged a breach of Articles 2, 3, 13 and 14 of the Convention.

41. On 17 April 2007 the Constitutional Court rejected the complaint on the grounds that the applicant had not used other available remedies. Reference was made to information from the police, according to which it did not appear from the case file that the applicant had sought redress by means of a petition under the Prosecution Service Act 2001.

B. Relevant domestic law and practice

1. The Code of Criminal Procedure

42. Pursuant to Article 141, a complaint is an available remedy against a decision, and any decision of an investigator and police authority, except a decision to commence a criminal prosecution, can be challenged.

43. Pursuant to Article 167, the accused and the injured person have the right, at any moment during an investigation, to ask a public prosecutor to eliminate delays in an investigation or any shortcomings in the conduct of the investigator or a police authority. No time-limit applies to the filing of such a request, which a public prosecutor is obliged to deal with speedily. The petitioner is to be informed of the conclusion reached.

44. Under Article 174 paragraph 1, public prosecutors are responsible for legal compliance during the preliminary stage of criminal proceedings. Pursuant to paragraph 2(a) and (c), public prosecutors are entitled, in particular, to give binding instructions concerning investigations into criminal offences, as well as to carry out an investigation and issue a decision in relation to any matter within their competence.

2. The Prosecution Service Act 2001 (Law no. 153/2001 Coll.)

45. The Prosecution Service Act governs public prosecutions, including the role and powers of public prosecutors.

46. Under section 31(1) and (2), public prosecutors review the lawfulness of actions and decisions of public authorities, including the police and investigators. They do so on the basis, *inter alia*, of oral or written petitions filed by individuals or legal persons requesting them to

take an action within their competence. In exercising this power public prosecutors may take measures necessary for the elimination of the violations found.

47. Under section 32(1) and (2), a petition can be lodged with every level of the prosecution service.

48. Section 34(1) provides that a person who has filed a petition may re-file it with a view to having it determined whether or not his or her original petition was dealt with in a lawful manner. Such a re-filed petition is to be dealt with by the superior of the public prosecutor who examined the petitioner's original petition.

49. When dealing with a petition, public prosecutors are obliged by section 35(1) and (2) to examine all circumstances decisive for the assessment of whether there was a violation of the law and whether the matter fell within their competence. Public prosecutors are obliged to examine a petition according to its content and to take into account all facts emerging during the examination.

50. Pursuant to section 35(3), if a petition proves to be justified, public prosecutors are obliged to take the measures necessary for the elimination of a violation in accordance with the Prosecution Service Act or other relevant laws.

3. The Constitutional Court Act 1993 and practice of the Constitutional Court

51. Under section 53(1) of the Constitutional Court Act 1993, a complaint to the Constitutional Court is admissible only where the plaintiff has used all available effective remedies provided for by the law to protect his or her fundamental rights.

52. In proceedings III. ÚS 123/01 the plaintiff complained, *inter alia*, about shortcomings in criminal proceedings against him conducted by a police investigator and supervised by the Bratislava Regional Prosecutor's Office. On 13 December 2001 the Constitutional Court rejected the complaint. It held that the plaintiff, apart from availing himself of his rights under the Code of Criminal Procedure, could have sought redress before the General Prosecutor's Office (which was hierarchically superior to the Regional Prosecutor's Office) pursuant to the Prosecution Service Act 2001.

53. In several subsequent decisions the Constitutional Court held that a petition under the Prosecution Service Act 2001 should be used prior to the lodging of a constitutional complaint where a prosecuting authority has decided to discontinue criminal proceedings (decisions III. ÚS 127/04 of 28 April 2004, IV. ÚS 149/04 of 26 May 2004 and IV. ÚS 126/07 of 24 May 2007).

C. The CPT report of 2006 and the Government's response

54. The Report to the Government of the Slovak Republic on the visit to Slovakia carried out by the CPT from 22 February to 3 March 2005 contains the following information¹:

“21. The CPT’s delegation pursued the issue of accountability during the February-March 2005 visit, by examining information related to alleged ill-treatment in the context of large-scale police operations in Trebišov and Čaklov (eastern Slovakia) in February 2004, involving officers from special operations units. According to information received by the CPT, a number of persons were alleged to have been subjected to ill-treatment by police officers in the context of those raids and/or during subsequent detention by the police. Further, it was indicated that the body of Mr Radoslav PUKY, who was allegedly being pursued by the police in the context of the operation in Trebišov, was found in a canal several days later.

The Slovak authorities confirmed that the police had launched an operation in Trebišov on 23 February 2004, in the context of which 69 persons were apprehended, including some 25 minors. On the following day, a police operation commenced in Čaklov, as a result of which 23 people were criminally charged, and a motion was filed with the relevant prosecutor requesting that 12 of them be taken into custody...

The Slovak authorities also provided information related to the case of Mr PUKY, indicating that the autopsy had determined that “the direct cause of death [...] was classical suffocation by drowning” and that “no injuries caused by mechanical violence that would indicate involvement of another person were found”; the authorities concluded that “it is obvious that this act does not constitute a crime”.

During the visit, the delegation sought to assess whether an effective investigation had been carried out into the death of Mr PUKY... In order to make its assessment, the delegation interviewed the Trebišov Public Prosecutor and officers from the Trebišov District Police Directorate and Sub-District Police Department; it also examined relevant files.

22. A first investigation into the “bodily harm” (Section 224(1) of the Criminal Code) of the deceased Radoslav PUKY was initiated by the Trebišov Public Prosecutor on 7 March 2004, the date his body was found in a canal near the settlement where the police operation had been carried out some ten days earlier. A report on the autopsy - which was performed on 8 March 2004 by the Institute of Forensic Medicine in Košice - was delivered on 30 March 2004; as already indicated, it determined that the cause of death was suffocation by drowning, and that the probable date of death was 24 February 2004. On 7 March 2004, several witnesses - all of whom had last seen Mr PUKY alive when he was fleeing the settlement on 24 February 2004 - were interviewed, including his brother; the latter stated that the victim had told him on that occasion that “he received a considerable beating” by the police, and was “pressing his left forearm and his left side”. The investigation was terminated on 26 April 2004 because the “acts do not constitute a criminal offence, and no signs of injuries due to physical violence suggesting the action of another person were found on his body”.

Upon reviewing the case file and finding that the termination of the investigation was “premature and not justified”, the Prosecutor-General requested on 8 June 2004

¹ <http://www.cpt.coe.int/documents/svk/2006-05-inf-eng.htm>

that the case be re-opened. In particular, the Prosecutor-General observed that the autopsy report concerning the death of Mr PUKY was not "conclusive" as to the time of death, and recommended that a new expert opinion be requested. Further, he directed the Trebišov Public Prosecutor to identify and interview other witnesses from the group of persons who had been pursued and detained in the context of the Trebišov operation. He also pointed out that the allegation of ill-treatment by the police, as reported by the brother of the deceased, had not been investigated, and asked to be kept informed of that investigation.

In the second expert opinion prepared by the Institute of Forensic Medicine in Martin, it was once again concluded that the cause of death was suffocation by drowning; however, rather than on 24 February 2004, it was concluded that the probable date of death was between 1 and 4 March 2004, i.e. five to eight days after Mr PUKY had last been seen alive. No attempt to examine the discrepancy as to the probable date of death between the first and second expert opinions was evident in the documents examined by the delegation. As to the action taken to investigate the alleged ill-treatment of Mr PUKY, it was rather perfunctory. The investigators merely verified that his name did not appear in the documentation at the Trebišov District Police Directorate pertaining to the persons apprehended in the context of the police operation of 24 February 2004; however, they did not interview any of the officers participating in that operation. The second criminal prosecution was dismissed on 22 October 2004, and an appeal against this decision was pending at the time of the visit.

The CPT would like to be informed of the outcome of the appeal against the decision to dismiss the criminal proceedings in the case of Mr Radoslav PUKY.”

55. In their response the Government described the further investigation into the case and the decisions given. They stated that the proceedings had been discontinued because it was incontestable that no other person had been involved in the death of Radoslav Puky¹.

COMPLAINTS

56. The applicant complained under Article 2, both taken alone and in conjunction with Article 13 of the Convention, that the Slovak authorities had failed to carry out a thorough and effective investigation into the death of his brother.

57. With reference to his and his brother's ethnic origin and the facts of the case, the applicant further alleged a breach of Article 14 in conjunction with Articles 2 and 13 of the Convention.

¹ <http://www.cpt.coe.int/documents/svk/2006-06-inf-eng.htm>

THE LAW

A. Exhaustion of domestic remedies

58. The Government argued that the applicant had not exhausted domestic remedies. With reference to the Constitutional Court's decision of 17 April 2007 and its practice in similar cases, the Government were of the view that the applicant should have petitioned prosecutors at a higher level, under the Prosecution Service Act 2001, prior to lodging his second constitutional complaint.

59. The applicant disagreed.

60. The Court notes that the General Prosecutor's Office carried out some form of control over the investigation into the case. Following the decision to discontinue the proceedings of 26 April 2004 it reviewed the case on its own initiative and ordered further investigation with a view to having the relevant facts established (see paragraph 17 above). Subsequently, in reaction to the applicant's first constitutional complaint, it again ordered that a fresh investigation be carried out into the case (see paragraph 27 above).

61. The applicant filed a complaint against the last decision to discontinue the criminal proceedings delivered on 16 June 2005, which the District Prosecutor's Office in Trebišov had dismissed on 7 July 2005. He thus exhausted the remedies which were available to him under the Code of Criminal Procedure. The above information indicates that the General Prosecutor's Office supervised the lawfulness of the investigation on its own initiative, also in the light of the attention which the case had attracted both in Slovakia and by the CPT.

62. In these circumstances, and also noting that an "official and effective investigation" capable of establishing the causes of death and identifying and punishing those responsible must be carried out of the authorities' own motion (see, for example, *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, § 74, ECHR 2002-II, and *Tsintsabadze v. Georgia*, no. 35403/06, § 85, 15 February 2011), the Court does not consider that the applicant was required, for the purposes of Article 35 § 1 of the Convention, to explicitly seek a third review of the case by prosecuting authorities at higher levels by means of a petition under the Prosecution Service Act 2001.

63. Accordingly, in the particular circumstances of the case the Government's objection relating to the applicant's failure to exhaust domestic remedies must be rejected.

B. Alleged violation of Article 2 of the Convention

64. The applicant complained that the Slovak authorities had failed to carry out a thorough and effective investigation into the death of his brother. He alleged a breach of Article 2 of the Convention which provides as follows:

Article 2

“1. Everyone’s right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:

- (a) in defence of any person from unlawful violence;
- (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
- (c) in action lawfully taken for the purpose of quelling a riot or insurrection.”

65. The Government maintained that the domestic authorities had complied with their obligation to carry out an effective investigation into the death of the applicant’s brother and that they had displayed due diligence in that context.

66. The applicant disagreed. He argued that the investigation had failed to reliably establish all the relevant facts and to logically explain the cause of his brother’s death.

67. In particular, the applicant maintained that the investigation had been flawed as the authorities had failed to clarify the discrepancy between the two forensic reports as to the time of his brother’s death. They had failed to investigate properly, on the basis of the second expert report, the whereabouts of the applicant’s brother between 24 February 2004 and the presumed immersion of his body in water on or after 1 March 2004.

68. The applicant further maintained that the authorities had failed to identify and question relevant witnesses, such as Romany residents and members of the police team who had intervened on 24 February 2004.

69. The Court reiterates that where lives have been lost in circumstances potentially engaging the responsibility of the State, Article 2 entails a duty for the State to ensure, by all means at its disposal, an adequate response – judicial or otherwise – so that the legislative and administrative framework set up to protect the right to life is properly implemented and any breaches of that right are repressed and punished. In cases where individuals have been killed as a result of the use of force, the obligation to protect the right to life requires by implication some form of investigation. The same standards were found to also apply to investigations in cases where a person dies in suspicious circumstances in which the State’s positive obligation

under Article 2 is at stake (see *Mikayil Mammadov v. Azerbaijan*, no. 4762/05, §§ 101 and 102, 17 December 2009, and *Branko Tomašić and Others v. Croatia*, no. 46598/06, § 62, 15 January 2009, both with further references).

70. In particular, such investigation must be effective in the sense that it is capable of ascertaining the circumstances in which the incident took place and, where appropriate, leading to the identification and punishment of those responsible. This is not an obligation of result, but of means. The authorities must take whatever reasonable steps they can to secure the evidence concerning the incident, including, *inter alia*, eyewitness testimony, forensic evidence and, where appropriate, an autopsy which provides a complete and accurate record of injury and an objective analysis of clinical findings, including the cause of death. Any deficiency in the investigation which undermines its ability to establish the cause of death or the person responsible will risk falling foul of this standard. The investigation should be independent, accessible to the victim's family, carried out with reasonable promptness and expedition and there must be a sufficient element of public scrutiny of it (see, for example, *McKerr v. the United Kingdom*, no. 28883/95, §§ 113-114, ECHR 2001-III, and *Juozaityienė and Bikulčius v. Lithuania*, nos. 70659/01 and 74371/01, § 86, 24 April 2008, with further references).

71. In the present case the applicant's brother died an unnatural death. The applicant alleged that his brother had disappeared in the context of a large-scale police action which had taken place on 24 February 2004 and that he had last seen his brother in the fields at the place where the police had surrounded the Roma running across the field. In these circumstances, the Court accepts that the procedural guarantees of Article 2 required that an effective investigation within the above meaning be carried out into the case.

72. In that respect the Court notes that the authorities took a number of steps to establish the relevant circumstances of the case. In particular, they promptly examined and documented the scene where the body was found, arranged for an autopsy and a forensic examination of the body to be carried out and questioned eight witnesses, including the applicant and his brother's partner. The proceedings were discontinued after two forensic experts had found no signs of physical violence on the body and had determined suffocation by drowning as the direct cause of the death.

73. Upon the instruction of the General Prosecutor's Office, an additional investigation was undertaken with a view to establishing all the relevant facts. It comprised the questioning of witnesses including Romany people and police officers with a view to establishing the whereabouts and details of the search for the applicant's brother, the reconstruction of the events at the place where the body had been found, the elaboration of a second forensic expert opinion, as well as the examination of the files

concerning the persons who had been apprehended by the police on 24 February 2004 (see paragraphs 18-34 above).

74. For the Court it is particularly relevant that two teams of forensic experts independently of each other determined suffocation resulting from drowning as having been the incontestable cause of the death of the applicant's brother. The experts found no traces of physical violence on the deceased person's body and no facts indicating the involvement of a third person were established by them. Those conclusions have not been challenged by the applicant.

75. It is true that the first team of forensic experts indicated in their report that 24 February 2004 could be the presumed date of the death of the applicant's brother, whereas the second team concluded that the body had been immersed in water for approximately three to six days before it was found on 7 March 2004. The investigator made further inquiries into this aspect of the case and the second team of experts explained the reasons for their conclusion. That conclusion was also supported by the fact that the position in which the body had been found corresponded to that of a person who had drowned. The experts from Martin re-confirmed that the death must have occurred during those three to six days.

76. The Court has before it no information which would put in doubt the above conclusion as to the reason for and the presumed date of the death of the applicant's brother.

77. Furthermore, the information available does not permit the conclusion that the applicant's brother was actually apprehended by the police. It can therefore not be assumed that the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of persons within their control, for example in custody. In this respect the present case is different from those where the burden of proof was regarded as resting on the authorities to provide a satisfactory and convincing explanation (see, for example, *Salman v. Turkey* [GC], no. 21986/93, § 99, ECHR 2000-VII).

78. In view of the above, decisive importance cannot be attached to the argument that the police investigator had failed to clarify the whereabouts of the applicant's brother after 24 February 2004, to establish the identity of and to hear all the police officers involved in the action which had taken place on 24 February 2004, or to question all the persons arrested and the inhabitants of the Roma settlement.

79. In the Court's view, the domestic authorities took appropriate action with a view to establishing the relevant facts of the case in the circumstances. The participation of lawyers from the League of Human Rights at the reconstruction of the events at the place where the body had been found and the CPT's involvement indicate that there was a sufficient element of public scrutiny of the investigation. The applicant did not complain and the Court finds no indication that he was not involved in the

procedure to the extent necessary to safeguard his or her legitimate interests, or that the investigation fell short of the requirement of independence. Finally, the investigation started on 7 March 2004 and the final decision was delivered on 7 July 2005. It thus lasted sixteen months. Considering the action taken and the decisions given during that period, it can be considered to be compatible with the requirement of promptness and reasonable expedition within the meaning of the case-law referred to above.

80. The investigation into the death of the applicant's brother did not, therefore, fall short of the requirements of Article 2 of the Convention.

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

C. Alleged violation of Article 14 of the Convention

82. With reference to his and his brother's ethnic origin and the facts of the case, the applicant further alleged a breach of Article 14 of the Convention which provides as follows:

“The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

83. The Government maintained that there was no indication of any discriminatory treatment contrary to Article 14 of the Convention in the context of the case of the applicant's brother.

84. The applicant argued that the authorities had failed to take all reasonable steps to unmask any racist motive and to establish whether or not ethnic hatred or prejudice may have played a role in the events leading to the death of his brother. He further maintained that the failure to carry out an effective investigation into the death of his brother was because of his Roma ethnic origin.

85. The Court has above declared inadmissible as being manifestly ill-founded the applicant's complaint under Article 2 of the Convention concerning the alleged shortcomings in the investigation into the death of his brother. It notes that the case was given special attention by the highest prosecuting authorities. There is no indication of discriminatory treatment contrary to Article 14 of the Convention in the circumstances of the present case.

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

D. Alleged violation of Article 13 of the Convention

87. Finally, the applicant complained that he had no effective remedy at his disposal in respect of his above complaints. He alleged a breach of Article 13 of the Convention which provides as follows:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

88. In the Government’s view, the applicant had an effective remedy at his disposal, namely a complaint to the Constitutional Court. However, he had failed to use that remedy in accordance with the formal requirements, as interpreted and applied by the Constitutional Court. Similarly, a petition under the Prosecution Service Act 2001 also represented an effective remedy for the complaints made by the applicant.

89. The applicant disagreed.

90. In the light of all the material in its possession and its above conclusions in respect of the applicant’s grievances under Articles 2 and 14 of the Convention, the Court finds that the complaint under consideration does not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

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

For these reasons, the Court by a majority

Declares the application inadmissible.

Santiago Quesada
Registrar

Josep Casadevall
President