Crime victims' rights from the perspective of ECHR case law

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The Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as the "Convention") does not include a specific provision regarding crime victims' rights (hereinafter referred to as the "victim"). Nevertheless, the European Court for Human Rights (hereinafter referred to as the "Court") drew guarantees in its case law from the Convention's single articles, which have a significant impact on the position of the victim in the proceedings held before domestic authorities. Should the above guarantees be violated by domestic authorities, the victims may lodge a petition with the Court.

Article 2 of the Convention

Pursuant to the Court's case law, the first sentence of Art. 2, section 1 imposes an obligation on the State not only to refrain from intentional and unlawful deprivation of life, but also to adopt appropriate measures to protect life of individuals who are subjects to its authority. In the Court's view, this commitment includes a State's primary obligation to ensure the right to life by implementing effective criminal law provisions deterring from commitment of crimes against individuals and by having in place a law enforcement system to ensure prevention, suppression and punishment for the violation of the above provisions. At the same time, this commitment may under certain circumstances arise into a positive obligation of state authorities to adopt preventative operational measures to protect the life of an individual where it is known, or ought to have been known to them in view of the circumstances, that he or she is at real and immediate risk from the criminal acts of a third party. Keeping in mind the difficulties of managing the current society, the unpredictability of human behavior and the necessity to balance out priorities with the allocation of resources, the scope of the above obligations shall be interpreted as not to put an unbearable or disproportionate burden on state authorities. Therefore, not every presumed danger that threatens the life puts an obligation on state authorities to adopt measures under the Convention to prevent its materialization. A positive obligation shall arise based upon the finding that the state authorities knew or should have known at the time about the existence of an actual and immediate threat posed onto the life of a specific individual due to the crime activities of a third party and they failed to adopt measures within their authority that are deemed reasonable and appropriate to prevent the threat.

The obligation to protect the right to life under Article 2 of the Convention also requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force. The essential purpose of such investigation is to secure the effective implementation of the domestic laws which protect the right to life and, in those cases involving State agents or bodies, to ensure their accountability for deaths occurring under their responsibility. What form of investigation will achieve those purposes may vary in different circumstances. Whatever mode is employed, however, the authorities must act of their own motion, once the matter has come to their attention. They cannot leave it to the initiative of the next-of-kin either to lodge a formal complaint or to take responsibility for the conduct of any investigative procedures. For an investigation into an alleged unlawful killing by State agents to be effective, it may generally be regarded as necessary for the persons responsible for and carrying out the investigation to be independent from those implicated in the events. This means not only a lack of hierarchical or institutional

connection but also a practical independence. The investigation must also be effective in the sense that it is capable of leading to the identification and punishment of those responsible. This is not an obligation of result, but of means. The authorities must have taken the reasonable steps available to them to secure the evidence concerning the incident, including, inter alia, eyewitness testimony, forensic evidence and, where appropriate, an autopsy providing 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 or persons responsible will risk falling foul of this standard. A requirement of promptness and reasonable expedition is implicit in this context. While there may be obstacles or difficulties which prevent progress in an investigation in a particular situation, a prompt response by the authorities in investigating a use of lethal force may generally be regarded as essential in maintaining public confidence in their adherence to the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts. For the same reasons, there must be a sufficient element of public scrutiny of the investigation or its results to secure accountability in practice as well as in theory. The degree of public scrutiny required may well vary from case to case. In all cases, however, the next-of-kin of the victim must be involved in the procedure to the extent necessary to safeguard his or her legitimate interests.

In the case *Mižigárová vs. Slovak Republic* (judgment of 14 December 2010), the applicant objected under Article 2 of the Convention a violation of the right to life due to the fact that her husband died of the consequences of a lethal injury that he suffered in the course of police custody and that Slovak authorities failed to conduct a thorough and factual investigation into the circumstances of his death. The applicant complained under Article 3 of the Convention that her husband was ill-treated in police custody and that the authorities failed to carry out an adequate investigation into that ill-treatment. The applicant complained that she had not had an effective remedy for her complaints under Articles 2 and 3 within the meaning of Article 13 of the Convention. The applicant complained that her rights, and the rights of her deceased husband, under Articles 2, 3 and 13 of the Convention were violated in conjunction with Article 14 on grounds of ethnic origin.

The facts of the case may be summarized as follows: At approximately 8.00 to 8:30 p.m. on 12 August 1999 police officers apprehended the applicant's husband and another person on suspicion of having stolen the bicycles they were riding. Police officers used force to apprehend them and drove them to the District Police Department in Poprad. At the time of his arrest, the applicant's husband (Mr. Šarišský) was in good health. After four policemen questioned him, Mr. Šarišský was taken to another room for further interrogation by Lieutenant F., an off-duty officer with whom he had had previous encounters. At some point during the interrogation, the applicant's husband was shot in the abdomen. He died after four days in hospital as a result of the sustained wounds. On 29 May 2000 a public prosecutor indicted Lt. F. with the offence of causing injury to health under Section 224(1) and (2) of the Criminal Code as a result of his negligence in the course of duty. In the indictment the public prosecutor stated, inter alia, that according to the reconstitution of the events of 4 May 2000 Lt. F.'s testimony that the pistol was on his belt covered by the shirt was not true, because if that had been the case, the applicant's husband could not have pulled it away from him. On 18 October 2000 a judge of the District Court in Poprad issued a penal order under Section 314e of the Code of Criminal Procedure. In it he convicted Lt. F. of injury to health caused by negligence in the course of duty within the meaning of Section 224(1) and (2) of the Criminal Code. The penal order stated that Lt. F. had failed to secure his service weapon contrary to the relevant regulations and that as a result, the applicant's husband had managed to draw the weapon from the case and to inflict with it a lethal injury on himself. Lt. F. was sentenced to

one year's imprisonment, suspended for a two-and-a-half-year probationary period. Neither the public prosecutor nor Lt. F. challenged the penal order which thus became final. Lt. F. committed suicide on 23 January 2001.

With its judgment of 14 December 2010, the Court stated on the merits of the case, that Article 2 of the Convention has been violated. In this respect the Court stated that even if the applicant's husband committed suicide in the manner described by national authorities, they violated their duty to take appropriate measures to protect his health and physical integrity during police custody. The Court also noted that the circumstances of the case did not provide any grounds for the police office on duty to have a weapon on him during the interrogation of the applicant's husband who had been arrested on suspicion of bicycle theft. Secondly, the Court noted that at the time of Mr Šarišský's death there were regulations in force which required police officers to secure their service weapons in order to avoid any "undesired consequences". Consequently, the Court found that there has accordingly been a violation of Article 2 of the Convention under its substantive limb.

As to the procedural part of Article 2 of the Convention, i.e. investigation into the circumstances surrounding the death of the applicant's husband, the Court concluded that it was not sufficiently independent. The criminal investigation was supervised by police officers from the Department of Supervision and Inspection at the Ministry of the Interior. The Court observes that these police officers were under the command of the Ministry of the Interior. Even if the Court were to assume that these officers were sufficiently independent for the purposes of Article 2 of the Convention, it is concerned that they did not commence their investigation until 13 August 1999, when an officer interviewed the wounded Mr Šarišský in hospital. The task-force that was formed immediately after the shooting was comprised of police officers from Poprad, which was the district in which Lt. F. was based. It was these officers who conducted the initial forensic examination of the scene. Moreover, after the Department of Supervision and Inspection took over, officers from Poprad continued to be involved in the investigation. In particular, it is clear from the record of the reconstruction conducted on 4 May 2000 that the technicians carrying out the experiments were from the Criminal Police Department in Poprad, which was Lt. F.'s department. Further investigations were also carried out by the Regional Investigation Office in Prešov. Whilst the Court acknowledges that the local police cannot remain passive until independent investigators arrive, in the absence of any special circumstances, immediate action by local police should not go beyond securing the area in question. In the present case, the task-force examined the crime scene, photo-documented it and recovered fingerprints and ballistic, biological and material evidence. They did not, however, have the necessary technical equipment to test Lt. F.'s hands for gunshot residue, and instead permitted him to return home, although they submitted that he remained under the constant supervision of a police guard. No further details have been provided concerning the identity of this guard or the extent of the supervision. However, as police officers from the Department of Supervision and Inspection at the Ministry of the Interior did not arrive until the following day, it must be assumed that the guard was also from Lt. F.'s department in Poprad. The Court is also concerned about the continued involvement of technicians from Lt. F.'s department in Poprad in the investigation, most notably during the reconstruction carried out on 4 May 2000. Their involvement diminished the investigation's appearance of independence and this could not be remedied by the subsequent involvement of the Department of Supervision and Inspection. The Court therefore finds that the investigation was not sufficiently independent.

Moreover, the Court finds that the failure of the investigators to give serious consideration to Mr Šarišský's claim that he shot himself after Lt. F. handed him the gun amounted to a serious deficiency in the Šarišský's death. The allegation that Lt. F. voluntarily gave Mr Šarišský his gun amounts to a much more serious allegation against Lt. F than that of

causing injury to health by negligence, and yet the investigators do not appear to have considered it, preferring instead to rely on Lt. F.'s claim that Mr Šarišský forcibly took the weapon from him. The Court further observes that in a case such as the present, where there were no independent eyewitnesses to the incident, the taking of forensic samples was of critical importance in establishing who was responsible for Mr Šarišský's death. If the investigators had brought the necessary equipment to the police station, samples of gunpowder residue could have been taken from Lt. F.'s hands in the immediate aftermath of the shooting. If such samples had been taken, it might have been possible either to exclude or confirm that he pulled the trigger. Instead, samples were not taken until the following day. Although the Government submitted that Lt. F. remained under the supervision of a police guard until the samples were taken, the Court has concerns about the independence of the guard, who was most likely a police officer from Lt. F.'s department. Consequently, the result of the gunpowder residue test cannot be relied on. Although a ballistics test later confirmed that Mr Šarišský "most probably" shot himself, if conducted properly the gunpowder residue test could have been conclusive. Thus, there was a failure by the investigators to take reasonable steps to secure evidence concerning the incident which in turn undermined the ability of the investigation to determine beyond any doubt who was responsible for Mr Šarišský's death. Finally, the Court observes that very little attention appears to have been paid to the applicant's claim that her husband had injuries to his face, shoulder and ear, even after the autopsy confirmed the presence of these injuries. The Government have subsequently indicated that these injuries were ignored because they were not relevant to determining the cause of death. They were, however, relevant to determining whether Mr. Šarišský was ill-treated by police officers either during his arrest or in police custody, which in turn is relevant both to an investigation into a potential violation of Article 2 of the Convention and to a separate allegation under Article 3. The Court therefore finds that the failure to investigate the applicant's claim that her husband was ill-treated by police officers prior to the shooting amounted to a serious shortcoming in the criminal investigation and prevented the authorities from obtaining a clear and accurate picture of the events leading to Mr. Šarišský's death. In light of the above, the Court concludes that no meaningful investigation was conducted at the domestic level capable of establishing the true facts surrounding the death of Mr. Šarišský. It follows that there has also been a violation of the procedural limb of Article 2 of the Convention.

The Court awarded the applicant 45,000 EUR in respect of non-pecuniary damages and 8,000 EUR in respect of legal costs and expenses. The Court dismissed the remainder of the applicant's claim.

In the case *Eremiášová and Pechová vs. the Czech Republic* (judgment of 16 February 2012) the applicants objected that in the case of Mr. V. P., who was respectively the partner of Ms. Eremiášová and the son of Ms. Pechová, and who died in July 2002 as a result of a fall through a window of the building of the Czech Police Regional Department in Brno, the right to life protected by Article 2 of the Convention was violated, and namely due to two reasons: on the one hand, this death is attributable to national authorities, on the other hand its investigation was not effective, since some important investigative steps were not taken duly and thoroughly, nor was it independent, since it was conducted mainly in its initial stage by police officers and not by an authority independent of the police.

In terms of violation of the substantive head of Article 2, the Court dealt with the fact whether national authorities were responsible for the death in question. The Court stated, *inter alia*, that a state must adopt reasonable measures to safeguard the life of everyone within its jurisdiction, including certain preventative measures, and even more so in the case of detained persons, in which case the police must be vigilant. The Court had grave concerns about the

extent to which the authorities have provided "a satisfactory and convincing explanation". Even if the Court were to accept that V. P. died in his attempt to escape from the police, which the police had tried to prevent shortly before the incident, they should have been more vigilant when they walked him next to a window without bars. The Court noted the obligation of state authorities to take reasonable measures to protect persons from harming themselves. Even though national authorities claimed that the victim behaved in a calm way, they had not allowed him to use toilets on the second floor, where there were no bars on the windows, and they escorted him to a toilet with bars on the windows and due to security reasons they did not allow him to close the door. In the view of the above, state authorities were aware of the risk that V.P. might attempt to escape. Article 2 was thus violated due to the reason that state authorities failed to provide V.P. with sufficient and adequate protection as required by Article 2 of the Convention.

Subsequently the Court analyzed in the light of its case law the manner in which investigation of the death was conducted. It noted the importance of the requirement for a due investigation into the circumstances surrounding his death. The Court held that although the investigation started of official power, however from the beginning it admitted only one version of events, and namely potential participation of police officers in V. P.'s suicide. This led to an excessive reduction of the scope and manner of conducting the investigation. When the applicants filed criminal charges, the prosecution labelled the investigations conducted until that time as manifestly insufficient. Despite that, some investigating acts such as reconstitution of the events, analysis of the victim's clothes or separate interrogation of the police officers, in order to find the cause of V.P's death, were not conducted in a timely manner or at all and some other circumstances were not verified. The Court furthermore noted that although the investigation was conducted by various police authorities, including the Inspectorate of the Interior Ministry, the majority of them, similarly to potential offenders, were hierarchically subject to the City Police Director, and all of them to the Interior Minister in the end. Although the Court did not find any evidence about a link or a bias of the investigating authorities, they did not seem independent and no sufficient guarantees were provided as to potential pressure from their superior authorities. Moreover, the inspection itself to a substantial degree based its investigation on actions taken by police authorities on the local level. Considering the aforementioned facts, the Court stated a violation of Article 2 also in the procedural part.

The court awarded the applicants 10,000 EUR in respect of non-pecuniary damages and 2,000 EUR in respect of legal costs and expenses. The Court dismissed the remainder of the applicant's claim.

In the judgment *Kontrová vs. Slovak Republic* (judgment of 31 May 2007) the Court noted that in the applicant's case the police had failed to meet its duties under the applicable criminal code provisions and service regulations, such as: register the applicant's criminal complaint; launch a criminal investigation and criminal proceedings against the applicant's husband immediately; keep a proper record of the emergency calls and advise the next shift of the situation; and, take action concerning the allegation that the applicant's husband had a shotgun and had threatened to use it. The Court deemed proven that the shooting of the applicant's children by her husband had been a direct consequence of the police officers' failure to act. The above was *de facto* stated already by the Supreme Court upon abolishing the decision of the Regional Court of 21 January 2004 and the judgment of the District court of 20 October 2003. The District Court dismissed the summons. It found that the criminal offence of dereliction of duty presupposed a complete or enduring failure to discharge the duty. Merely impeding the discharge of the duty was not enough. It found that in the present case the officers' actions did not amount to such a failure to discharge their duty and that the

connection between their actions and the tragedy of 31 December 2002 was not sufficiently direct. The Regional Court dismissed an appeal against the judgment. The Supreme Court took action on the merits based on a complaint in the interest of the law lodged by the Prosecutor General. The Supreme Court found that the lower courts had assessed the evidence illogically, that they had failed to take account of all the relevant facts and that they had drawn incorrect conclusions. The Supreme Court found that it was clear that the accused officers had acted in dereliction of their duties. It concluded that there was a direct causal link between their unlawful actions and the fatal consequence. The Supreme Court remitted the case to the District Court for reconsideration and pointed out that, pursuant to Article 270 § 4 of the CCP, the latter was bound by its above legal views. the District Court found officers B., P.Š. and M.Š. guilty as charged and sentenced them to, respectively, six, four and four months' imprisonment. The Court held that the applicant had no effective remedy available on the national level, through which it would have been possible for her to make a claim in respect of non-pecuniary damage she had sustained in relation to her children's death, which was the direct consequence of the Government's failure to meet its positive obligations under Article 2 of the Convention. In the proceedings before the Court the Government argued that an action for protection of personal integrity was a remedy that the applicant should have used in respect of her complaints under Articles 2 and 8 of the Convention in order to comply with the requirement to exhaust domestic remedies pursuant to Article 35 § 1 of the Convention. In support of this argument, the Government relied on judicial decisions and maintained that these decisions showed that the action in question was available to the applicant both in theory and practice. The Government argued that in an action in the Nitra District Court (file no. 10C 142/2002) a mother claimed, among other things, financial compensation for non-pecuniary damage in connection with the death of her daughter. She relied on the previous conviction for manslaughter of her daughter. In a judgment of 15 May 2006 the District Court accepted that the plaintiff had suffered damage of a non-pecuniary nature and awarded her 200,000 SKK by way of compensation. In an action in the Žiar nad Hronom District Court (file no. 7 C 818/96) a mother claimed, among other things, financial compensation for non-pecuniary damage caused to her and her son in connection with the latter's violent death. She relied on the defendant's previous conviction for the extremely violent and racist murder of her son. The District Court concluded that the plaintiff and her son had suffered non-pecuniary damage and in a judgment of 9 September 2004 it awarded the plaintiff 100,000 SKK by way of compensation of the non-pecuniary damage she suffered and 200,000 SKK by way of compensation of the non-pecuniary damage her son suffered. On 19 January 2005 the Banská Bystrica Regional Court upheld the first-instance judgment. The Court dismissed the Government's objection on the failure to exhaust domestic remedies. It found that there was no sufficiently consistent case-law in cases similar to the applicant's to show that the possibility of obtaining redress in respect of non-pecuniary damage by making use of the remedy in question was sufficiently certain in practice and offered reasonable prospects of success as required by the relevant Convention case-law. The Court observed at the admissibility stage that there had been some development in academic understanding and judicial practice in respect of the scope of actions for protection of personal integrity. The events which gave rise to the present case occurred in 2002. The decisions on which the Government recently relied date from 2006. Any relevance they might possibly have in respect of the present case is therefore reduced by the fact that that they were taken after the relevant time.

For the determined violation the Court awarded the applicant 25,000 EUR in respect of non-pecuniary damage and 4,300 EUR in respect of legal costs and expenses. The Court dismissed the remainder of the applicant's claim.

Consequently the Slovak Republic was found guilty in the case Kontrová due to the fact that the Court agreed with the applicant's allegation that no effective national remedy was available to her in relation to the objected violation of the right to life, through which she would have been able to apply for compensation for non-pecuniary damage.

In the case *Furdík vs. Slovak Republic* (decision of 2 December 2008) the applicant *inter alia* objected violation of Article 2 of the Convention in that the state involved failed to adopt necessary measures to protect the life of his daughter who died as a result of injuries which she sustained while climbing the Široká veža peak in the High Tatras. He claimed that Slovak law did not provide sufficient guarantees to ensure efficient organizing of medical rescue service in similar cases. Mainly, no specific time limit was set, during which the rescue service would be obliged to get to the injured person. In the applicant's opinion it should have been within 10 - 15 minutes from when an emergency call was placed, with the exception of vis major cases. The applicant claimed that he would have been able to successfully demand compensation before national authorities only if national law incorporated a similar guarantee. The Government argued that the applicant had not exhausted domestic remedies as required by Article 35 § 1 of the Convention. In particular, he could have sought redress by means of an action under Act 514/2003 as well as by means of an action for protection of personal integrity under Articles 11 et seq. of the Civil Code. As regards both the decisions of civil courts on such claims and the above conclusions reached by the prosecuting authorities, the applicant could have ultimately sought redress before the Constitutional Court pursuant to Article 127 of the Constitution. The Government maintained that, in any event, domestic law contained comprehensive and sufficient guarantees for ensuring effective and timely assistance to persons in emergency. It was not realistic to fix in the relevant regulations a specific time-limit for the air rescue team to reach a person whose life was in danger as suggested by the applicant.

The Court does not consider that the regulatory framework in place in Slovakia as such is inconsistent with the requirements of Article 2 of the Convention. The Court did not consider that the positive obligations under Article 2 stretch as far as to require the incorporation in the relevant regulations of an obligation of result, that is a time-limit within which an aerial ambulance must reach a person needing urgent medical assistance, as suggested by the applicant. Various limiting factors inherent to the operation of airborne medical assistance, such as its dependence on weather conditions, accessibility of terrain and technical constraints would render such a general obligation difficult to fulfil and impose a disproportionate burden on the authorities of Contracting States.

As for an action for protection of personal integrity, in the Court proceedings the Government noted next to the judgments in the case Kontrová another case from domestic practice that confirms the effectiveness of this remedy, namely the proceedings held at the Prešov District Court, file no. 6C 67/2004. In that case the plaintiff demanded compensation for non-pecuniary damage following the death of her mother due to shortcomings in medical assistance during the latter's confinement. On 17 May 2006 the District Court upheld the petition in part referring to expert reports stating that the plaintiff's mother did not receive adequate medical care as required by the law. The medical institution had been obliged to pay the plaintiff 400,000 SKK in compensation for non-pecuniary damage. That judgment became final on 6 November 2006.

The Court dismissed the Government's objection on the failure to exhaust domestic remedies noting that the decisions on which the Government relied date from 2006. Any relevance they might possibly have in respect of the present case is therefore reduced by the fact that that they were taken after the relevant time. The Court in relation hereto reminded that on 7 November 2005, an expert commission within the Health Care Supervisory Office

found an infringement of the relevant health care legislation by the Air Rescue Service. The Ministry of Health discontinued the proceedings in that respect, on 28 June 2006, holding that the Air Rescue Service had not contravened any of the duties imposed on it by law. In the context of the criminal proceedings which ended on 13 November 2006, the Regional Prosecutor's Office in Prešov expressed the view that there had been shortcomings in the organization of the rescue operation but that these did not qualify as criminal offences. Unjustified delay in the arrival of the rescue team was also noted in the report submitted by the Czech Mountaineering Association. The Court noted another case from domestic practice from 2006 that confirms the effectiveness of an action for the protection of personal integrity in the case of a death (the above judgment of the Prešov District Court that became final on 6 November 2006). The Court held in view of the above that the applicant could arguably claim redress under Article 11 et seq. of the Civil Code and, if unsuccessful, lodge a complaint with the Constitutional Court relying on the guarantees of Article 2 of the Convention or its constitutional equivalent.

If a person was deprived of his or her life as a result of a criminal offence or another unauthorized interference, his or her next-of-kin indicated in Art. 15 of the Civil Code may claim compensation of non-pecuniary damage due to unauthorized interference in the right to life and the physical integrity or their next-to-kin. Such an unauthorized interference with the right to life at the same time entails an unauthorized interference in private and/or family life of the next-of-kin, and hence they may request a compensation for the non-pecuniary damage inflicted on their personality rights. The amount of the compensation for non-pecuniary damage is up to the court's discretion, taking due consideration of the statutory criteria regarding the severity of the incurred damage and the circumstances, under which the unauthorized interference with the personality rights occurred. The specific amount of the compensation shall take due consideration of all the circumstances surrounding the case and must be in compliance with the requirement of justice. It should be noted that the payment of the court fee has been lifted for crime victims instigating proceedings for the compensation of damage or non-pecuniary damage incurred as a result of a criminal offence under Art. 4, section 2 (i) of the Act No. 71/1992 Coll. on court fees and penal registry excerpt fees with effect from 1 January 2006.

In conclusion, pursuant to Art. 287 of the Act no. 301/2005 Coll., as amended, if a court has found guilty a person charged with a criminal offence, as a result of which damage was inflicted to a third party, the court's judgment shall impose damage compensation to the victim, if the claim had been lodged in a due and timely manner. If no statutory hindrance exists, the court shall always impose to the charged person the obligation to compensate the damage if the amount is included in the description of the merits in the judgment, by which the charged person was found guilty or in case of compensation of moral damage incurred as a result of an intentional violent criminal offence under a special law as far as the damage has not been paid. The charged person's obligation to compensate the damage must specify the recipient and the claim. In justified cases the court may decide that the obligation shall be paid by instalments and the court shall specify the payment terms and conditions, taking into consideration the victim's submissions. The original provision of Art. 287, section 1 read as follows: "*If a court has found guilty a person charged with a criminal offence, as a result of which pecuniary damage was inflicted to a third party, the court's judgment shall usually impose compensation to the victim, if the claim had been lodged in a due and timely manner. If no statutory hindrance exists, the court shall always impose to the charged person the obligation to compensate the damage if the amount is described in the judgment, by which the charged person was found guilty, if the damage has not been paid in that amount."* Albeit Art.

46 of the Act no. 301/2005 Coll. defines the crime victim as an injured party who suffered an injury to health, pecuniary, non-pecuniary or other damage as a result of a criminal offence, compensation of other than pecuniary damage in criminal proceedings was excluded by the above wording of the provision of Art. 287, section 1. This provision was amended by Act No. 650/2005 Coll., which removed the above legal obstacle. In this regard we note the commentary to the Rules of Criminal Procedure concerning the provision of Art. 287, section 1, which *inter alia* states the following: *"Considering the definition of the term damage (Art. 46, section 1), the obligation to decide on the damage in the convicting judgment, if duly applied, applies to pecuniary, non-pecuniary as well as other damage, and also to the violation or jeopardy of other legal rights or freedoms of the victim, in that the term "damage" in relation to the harmful effects of intentional violent criminal offences pursuant to special law shall be interpreted in the case of death, rape or sexual violence according to the interpretation of the term "non-pecuniary damage" in civil proceedings."* This legislative amendment aligned the Slovak legal framework with the European standards and enables a crime victim to claim compensation of non-pecuniary (moral) damage in criminal proceedings (e.g. file no. 1To/10/2011, in which the Regional Court as the appeals court awarded non-pecuniary damage (EUR 10,000 each) to the parents of the victim killed as a result of the crime of manslaughter under Art. 147, section 1 of the Criminal Code). In this regard we note that legal systems exist in Europe (e.g. in France), where a court acting in a criminal matters decides on all aspects of a criminal offence within the criminal proceedings and without referring the victim to other proceedings to claim damages. We consider this approach correct not only in terms of a timely redress and victim protection (preventing revictimization in civil proceedings), but also in terms of economical court proceedings (civil courts don't need to take repetitive actions and get acquainted with the criminal file). In this regard we note that meanwhile the establishment of the pecuniary damage incurred as a result of a criminal offence may significantly exceed the scope of criminal proceedings, in the establishment of the compensation of non-pecuniary damage in most cases the evidence collected in relation to the circumstances surrounding the criminal offence and its commitment shall suffice. The Court, which often awards compensation of non-pecuniary damage, limits itself in the justification to the following wording: *"Ruling on an equitable basis, the Court decides to award the applicant..."* since the merits of the case have been sufficiently assessed in the justification of the Court's opinion concerning the violation of the rights guaranteed by the Convention.

Articles 3 and 8 of the Convention

Pursuant to the Court's case law, the obligation of the High Contracting Parties under Article 1 of the Convention is to secure to everyone within their jurisdiction the rights and freedoms defined in the Convention in conjunction with Article 3: States are required to take measures designed to ensure that individuals under their authority shall not be ill-treated, including by other private individuals. Where an individual makes a credible assertion that he has suffered treatment infringing Article 3, that provision, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within their jurisdiction the rights and freedoms defined in ... [the] Convention", requires by implication that there should be an effective official investigation. This obligation must be capable of leading to the identification and punishment of those responsible and must not be limited to cases of ill-treatment by state employees. Similarly, the right to respect of private life includes positive obligations inherent in effective "respect" for private and family life and these obligations may involve the adoption of measures in the sphere of the relations of individuals between themselves. Albeit it is the government's discretion to choose the means to ensure compliance under Article 8 to provide protection against ill-treatment by private persons, an effective

countering of serious criminal offences where basic values and private life elements are at stake, requires adequate criminal law provisions. Children and other vulnerable individuals, in particular, are entitled to effective protection. The State's positive obligation under Article 8 to protect the physical integrity of an individual may be extended onto issues concerning effective investigation.

In the case *Kummer vs. the Czech Republic* (judgment of 25 July 2013) the applicant was placed for about an hour in a police cell, where his hands were painfully shackled to iron rings on the walls of the cell and lastly, his legs were tied with a leather strap. The restrained applicant allegedly suffered physical aggression by the police officers. In the police's account there had been no physical aggression of the applicant and his restraining was not disproportionate. One of the circumstances, on which the parties agree, was a certain degree of intoxication of the applicant by alcohol while his personal freedom was restrained at the police station.

As to the violation of the substantive aspect of Article 3, the Court noted that due to a lack of evidence it is not in a position to assess, which of the parties is right when it comes to physical aggression of the applicant while restrained in the police cell. The Court furthermore criticized the fact that the applicant was restrained and took into account the opinions of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter referred to as the "CPT") concerning the practice of using restraints on a person already in a police cell. In the opinion of CPT a police cell is a secure environment where it is not necessary to use further restraints such as shackles. The detainee should instead be kept under close supervision in a secure setting and, if necessary, police officers should seek medical assistance or manual control techniques. In the event of a person in custody behaving in a highly agitated or violent manner, the short-term use of handcuffs may be justified. However, the person concerned should not be shackled to fixed objects in the cell.

The Court considered also the applicant's injuries that he had sustained while he was detained at the police station, but which were denied and downplayed by the police. Since the cause and seriousness of the injuries could not be elucidated based on the evidence submitted to the Court beyond any doubt, the Court adhered to its well-established practice in similar cases and the principle that where an individual is taken into police custody in good health but is found to be injured at the time of release, it is incumbent on the State to provide a plausible explanation of how those injuries were caused, which was not the case in this case. Differently from the two expert medical opinions commissioned by the Police Inspectorate that ruled out that the injuries could have resulted from beatings, the expert opinion submitted by the applicant did not rule out that the injuries could have been caused by beatings. An aggravating circumstance for the respondent State was to have placed the applicant who was manifestly intoxicated by alcohol in a police cell. The Court noted that due to his drunkenness the applicant was in a vulnerable state, in a cell with no possibility of asking for assistance other than by banging on the door. When he did so, he was handcuffed to an iron ring. As the applicant did not calm down, the police officers continued to apply increasingly intrusive restraints. The Court considers that such a situation must have aroused in the applicant feelings of fear, anguish and inferiority and was an attack on his dignity. In assessing a violation of Article 3 in its substantive aspect, the Court concluded that it cannot lose sight of the whole picture. The events unrolled from a minor offence when the applicant was allegedly urinating in a public place. The applicant was apprehended on the street 50 m from his home only because he did not carry any identity documents with him, even though there is no obligation under domestic law to carry identity documents at all times.

As to the procedural aspect of violation of Article 3 of the Convention, the Court stated that if a relevant suspicion exists that the police may have violated Article 3 of the Convention, the Government has an obligation to conduct an effective and independent investigation into the case. As regards the first aspect, the Court notes that the applicant lodged his criminal complaint on the day of the alleged ill-treatment. However, the police officers who were allegedly responsible for it were questioned almost three months later, after the applicant had complained about the inactivity of the Police Inspectorate. Such an approach by the Police Inspectorate can hardly be reconciled with their obligation to conduct the investigation with exemplary diligence and promptness. Regarding the question of the independence of the Police Inspectorate, the Court notes that it was still a unit of the Ministry of the Interior. Yet, unlike the Supervision Department considered by the Court in the case *Eremiášová and Pechová* (cited above) the head of the Police Inspectorate was appointed by, and responsible to, the Government and not to the Minister of the Interior. While the Court agrees that this aspect increased the independence of the Police Inspectorate vis-à-vis the police, the Court does not consider that this sole difference can justify reaching a different conclusion from the one reached in the case of *Eremiášová and Pechová*. The Court also took into account that members of the Police Inspectorate remained police officers who had been called to perform duties in the Ministry of the Interior. This fact alone considerably undermined their independence vis-à-vis the police. In the Court's view, such an arrangement did not present an appearance of independence and did not guarantee public confidence in the State's monopoly on the use of force. The Court noted that the merely supervisory role of the prosecutor was not sufficient to make the police investigation comply with the requirement of independence. Accordingly, the Court concluded violation of Article 3 also in its procedural aspect.

The Court decided on the matter of just satisfaction in a separate judgment (judgment of 27 March 2014), in which it approved the parties' agreement reached in this respect. The applicant was paid CZK 100,000 in respect of non-pecuniary damage, CZK 5,040 in respect of pecuniary damage for the injuries he had sustained and CZK 13,648 in respect of legal costs and expenses.

In the case *M. C. vs. Bulgaria* (judgment of 4 December 2003) the applicant alleged before the Court to have been raped twice (on 31 July 1995 and 1 August 1995), however Bulgarian law does not provide an effective protection from rape and sex assault because rape perpetrators are prosecuted only in the presence of evidence of significant physical resistance and that Bulgarian authorities failed to duly investigate the events of 31 July 1995 and 1 August 1995.

The Court observes that Article 152 § 1 of the Bulgarian Criminal Code[1] does not mention any requirement of physical resistance by the victim and defines rape in a manner which does not differ significantly from the wording found in statutes of other member States. What is decisive, however, is the meaning given to words such as "force" or "threats" or other terms used in legal definitions. In the present case, in the absence of case-law explicitly dealing with the question whether every sexual act carried out without the victim's consent is punishable under Bulgarian law, it is difficult to arrive at safe general conclusions on this issue. The Court is not required to seek conclusive answers about the practice of the Bulgarian authorities in rape cases in general. It is sufficient for the purposes of the present case to observe that the applicant's allegation of a restrictive practice is based on reasonable arguments and has not been disproved by the Government.

[1] This provision defines rape as sexual intercourse with a woman (1) incapable of defending herself, where she did not consent; (2) who was compelled by the use of force or threats; (3) who was brought to a state of helplessness by the perpetrator.

Turning to the particular facts of the applicant's case, the Court notes that, in the course of the investigation, many witnesses were heard and an expert report by a psychologist and a psychiatrist was ordered. The Court recognizes that the Bulgarian authorities faced a difficult task, as they were confronted with two conflicting versions of the events and little "direct" evidence. The Court thus considers that the authorities failed to explore the available possibilities for establishing all the surrounding circumstances and did not assess sufficiently the credibility of the conflicting statements made. It is highly significant that the reason for that failure was, apparently, the investigator's and the prosecutors' opinion that, since what was alleged to have occurred was a "date rape", in the absence of "direct" proof of rape such as traces of violence and resistance or calls for help. Furthermore, it appears that the prosecutors did not exclude the possibility that the applicant might not have consented, but adopted the view that in any event, in the absence of proof of resistance, it could not be concluded that the perpetrators had understood that the applicant had not consented. The Court considers that, while in practice it may sometimes be difficult to prove lack of consent in the absence of "direct" proof of rape, such as traces of violence or direct witnesses, the authorities must nevertheless explore all the facts and decide on the basis of an assessment of all the surrounding circumstances. The investigation and its conclusions must be centred on the issue of non-consent. That was not done in the applicant's case. The Court finds that their approach in the particular case was restrictive, practically elevating "resistance" to the status of defining element of the offence. The authorities may also be criticized for having attached little weight to the particular vulnerability of young persons and the special psychological factors involved in cases concerning the rape of minors. Furthermore, they handled the investigation with significant delays.

The Court finds that the investigation of the applicant's case and, in particular, the approach taken by the investigator and the prosecutors in the case fell short of the requirements inherent in the States' positive obligations – viewed in the light of the relevant modern standards in comparative and international law – to establish and apply effectively a criminal-law system punishing all forms of rape and sexual abuse. As regards the Government's argument that the national legal system provided for the possibility of a civil action for damages against the perpetrators, the Court notes that this assertion has not been substantiated. In any event, as stated above, effective protection against rape and sexual abuse requires measures of a criminal-law nature. The Court thus finds that in the present case there has been a violation of the respondent State's positive obligations under both Articles 3 and 8 of the Convention.

The Court awarded the applicant 8,000 EUR in respect of compensation of non-pecuniary damage and 4,110 EUR in respect of legal costs and expenses. The Court dismissed the remainder of the applicant's claim.

In the case *B. Č. vs. Slovakia* (judgment of 14 March 2006) the applicant claimed under Article 3 of the Convention that Slovak authorities failed to consider all relevant facts of the circumstances and punish her former husband for his misconduct in relation to their son. She mainly insisted that the investigator had been concerned exclusively with the incident of 7 July 1999 and failed to consider the boy's claims that his father oftentimes showed and intentionally handled his penis in the boy's presence.

The applicant filed a criminal complaint claiming that her former husband sexually misused their son. The criminal complaint was based on the fact that the applicant and her daughter on 7 July 1999 surprised the boy and his father who were undressed in the living room of their apartment, and the father's penis was erect. Expert opinions of several experts were produced in the course of the proceedings. One of them referred to the boy's statements, according to which the father moved his penis in the boy's presence as if he was playing the

guitar. Charges were brought against the father in relation to the incident that occurred on 7 July 1999. Courts of two instances reviewed the case. The appeal court noted that the expert opinions submitted in the file were contradictory. It referred the case back to the pre-trial stage and ordered the relevant authorities to obtain a new expertise produced by an expert to be recommended by the Slovak Chamber of Psychologists.

Pursuant to the above instruction the investigator requested the Research Institute of Child Psychology and Patho-psychology in Bratislava to produce an expertise concerning the disputed issues. The experts from the Institute submitted a lengthy expertise that was, unlike the previous expert opinions, drawn up on the basis of an examination of all the involved persons. Before reaching their conclusions, the experts had analysed also the other available expert opinions. The experts from the Institute concluded that the father's conduct did not pose a threat to the boy's mental development. They deemed credible the boy's statement, according to which the father had never hit him or touched his body or asked him to touch his genitals. In connection with the alleged misuse of the child the only incriminating information was the boy's claim that the father touched his penis as if he was playing the guitar. It was not possible to ascertain when, in connection to what and with what frequency this conduct occurred.

After having studied the extensive evidence that had been produced, the investigator discontinued the proceedings in the end, because nothing in the accused person's conduct could qualify as sexual misuse pursuant to the applicable law. The public prosecutor confirmed the above conclusion with reference to the expertise produced by the Research Institute of Child Psychology and Patho-psychology in Bratislava. The investigator and the public prosecutor considered the applicant's criminal complaint as well as the facts ascertained in the course of the investigation including the boy's statements. In the end they based their decision on the expertise of the experts who had examined all the involved persons.

The Court recognized the key role of experts also in similar cases when the issue arose of whether an inappropriate conduct or a conduct of a double meaning of an adult person in relation to a minor child or in the child's presence constituted sexual misuse. Taking into consideration all the available data the Court concluded that the domestic authorities had sufficiently investigated the circumstances surrounding the alleged sexual misuse of the applicant's son. Their final decision to discontinue the criminal proceedings in relation to the applicant's former husband was based on an expertise produced by the experts from the Research Institute, who had studied in detail the disputed issues including the contradictions present in the previous expert opinions and the expert opinions that were submitted later. In the Court's opinion, in the light of the particular circumstances of the case, such a decision could not be considered one that would fail to meet the requirements of the State's obligations under Article 3 of the Convention.

In its decisions concerning complaints lodged under Art. 127 of the Slovak Constitution the Constitutional Court concluded a violation of the procedural guarantees under Article 3 of the Convention in several cases.[2]

In the case I. ÚS 72/04 on 27 October 2003 the applicant lodged a constitutional complaint with the Constitutional Court under Art. 127 of the Constitution claiming *inter alia* a violation of Article 3 of the Convention. The applicant stated that on 7 July 2002 during a walk he was attacked by two persons from behind. He felt a strong kick in his back, after which he fell on the ground and they kept kicking him in his back, head and stomach. During the attack they insulted him *"dirty black Gipsy"* and made threats that *"he would die"*.

[2] See e.g. the finding of the Constitutional Court I. ÚS 72/04, III. ÚS 194/06.

Despite the applicant's pleas to stop as he had been released from hospital shortly before, the offenders continued in the attack and started kicking him with even more violence and intensity. As a result of the criminal offence the victim developed movement disorders of the upper and lower limbs, his articulation and vision worsened, he suffered from balance disorders and walking instability. He was recovered at the neurology clinic for 7 weeks to recover from his injuries.

Albeit the victim identified very precisely the two attackers (he stated their names and the place of residence) upon filing a criminal complaint on 8 August 2002, the police failed to act and prosecute them, despite the attackers lived nearby the applicant's place of residence. The applicant claimed that the investigation in the matter failed to bring the offenders before an impartial court that could decide in the matter. To prove that the investigation procedure failed to be thorough, the applicant submitted a statement of the general prosecutor's office, by which his objections concerning the course and outcome of the investigation were accepted.

In assessing the conditions of an alleged violation of the right guaranteed under Article 3 of the Convention, and mainly its procedural guarantees, the Constitutional Court found that the offence that had allegedly happened on 7 July 2002 could amount to inhuman treatment of the applicant, which is a serious criminal offence, which had not been investigated until that time. The proceeding enjoys the protection under Article 3 of the Convention, i.e. protection from inhuman treatment. The applicant on 9 August 2002 filed a criminal complaint to the Bratislava IV Police Department (hereinafter referred to as the "Police Department"). Despite having identified the offenders and reported their place of residence, the criminal prosecution in the matter only started on 13 February 2003. Albeit the Police Department had accurate information about the offenders identified by the applicant and could have obtained a medical assessment of the applicant's injuries, the criminal prosecution was launched after 7 months, which was deemed unacceptable by the Constitutional Court from the constitutional perspective. The director of the Police Department claimed that they were understaffed, that some police officers had left on parental leave or had found a job outside the police corps, yet the above facts could not have hindered the compliance with the state's obligation to investigate offences that enjoy the protection under Article 3 of the Convention in a speedy manner. An inexcusable delay in launching the criminal prosecution on the part of the Police Department was deemed a violation of the procedural conditions by the Constitutional Court, thus amounting to a violation of the rights under Article 3 of the Convention. As regards the assessment of the procedure of the Judicial Police Office, the case was referred to them on 13 February 2003 and K. Č. was only accused on 23 June 2003 and his co-offender M. K. identified by the applicant was accused as late as 15 April 2004. The investigation procedure from the viewpoint of timeliness and completeness was assessed also unacceptable by the Constitutional Court from the constitutional perspective. The Constitutional Court pointed out at some other errors in the proceedings. The applicant raised objections concerning the classification of the offence as well as the investigation procedure and nevertheless was only interrogated once on 11 March 2003, i.e. at a time when no suspect was yet accused. The suspects had been identified from the very beginning, yet the first suspect was accused after nearly 1 year after a criminal complaint had been filed and the second suspect was accused after more than 20 months. The applicant's objections were well-founded and in the Constitutional Court's opinion this fact was confirmed by the General Prosecution's Office accepting the applicant's complaints. The Constitutional Court confirmed a violation of Article 3 of the Convention also in the procedure of the Judicial Police Office. The Constitutional Court awarded the applicant a just satisfaction amounting to SKK 100,000.[3]

[3] See the finding of the Constitutional Court of 12 October 2005.

In the case *Hajduová vs. Slovak Republic* (judgment of 30 November 2010) the applicant alleged that the domestic authorities had violated her rights under Article 8 of the Convention by the District Court failing to comply with their statutory obligation to order that her former husband A. be detained in an institution for psychiatric treatment, following his criminal conviction.

The circumstances of the case may be summarized as follows: On 21 August 2001 the applicant's (now former) husband, A., attacked her both verbally and physically while they were in a public place. The applicant suffered a minor injury and feared for her life and safety. This led her and her children to move out of the family home and into the premises of a non-governmental organisation in Košice. On 27 and 28 August 2001 A. repeatedly threatened the applicant, *inter alia*, to kill her and several other persons. Criminal proceedings were brought against him and he was remanded in custody. In the course of the criminal proceedings, experts established that the accused suffered from a serious personality disorder. His treatment as a psychiatric hospital was recommended. On 7 January 2002 the District Court Košice I convicted A. The court decided not to impose a prison sentence on him and held that he should undergo psychiatric treatment. At the same time, the court released him from detention on remand. A. was then transported to a hospital in Košice. That hospital did not carry out the treatment which A. required, nor did the District Court order it to carry out such treatment. A. was released from the hospital on 14 January 2002. After his release from hospital, A. verbally threatened the applicant and her lawyer. On 14 and 16 January 2002, respectively, the applicant's lawyer and the applicant herself filed criminal complaints against him. They also informed the District Court about his behaviour and of the new criminal complaints they had filed. On 21 January 2002 A. visited the applicant's lawyer again and threatened both her and her employee. On the same day he was arrested by the police and accused of a criminal offence. On 22 February 2002 the District Court arranged for psychiatric treatment of A. in accordance with its decision of 7 January 2002. He was consequently transported to a hospital in Plešivec. The applicant filed a complaint with the Constitutional Court. under Article 127 of the Constitution. The Constitutional Court rejected the applicant's complaint claiming that the applicant should have pursued an action for the protection of her personal integrity before the ordinary courts.

The Court in its judgment of 30 November 2010 held violation of Article 8 of the Convention. As for application admissibility, the Court considers that the Government have failed to show, with reference to demonstrably established consistent case-law in cases similar to the applicant's, that their interpretation of the scope of the action for protection of personal integrity was, at the material time, sufficiently certain not only in theory but also in practice and offered at least some prospects of success. In making this conclusion, the Court has also taken into consideration the applicant's personal circumstances, the particular vulnerability of victims of domestic violence and the need for active State involvement in their protection. The Court did not accept the Government's objection as to the exhaustion of domestic remedies in the form of an action for the protection of the applicant‘s personal integrity. As for the merits, having regard to the relevant facts of the case as well as the Government’s acknowledgement that the application is not manifestly ill-founded, the Court finds that the lack of sufficient measures taken by the authorities in reaction to A.'s behaviour, notably the District Court's failure to comply with its statutory obligation to order his detention for psychiatric treatment following his conviction on 7 January 2002, amounted to a breach of the State's positive obligations under Article 8 of the Convention to secure respect for the applicant's private life.

As for just satisfaction, the Court awarded the applicant EUR 4,000 in respect of compensation of non-pecuniary damage and EUR 1,000 in respect of legal costs and expenses.

In the case *V. C. vs. Slovak Republic* (judgment of 8 November 2011) The applicant maintained that the respondent State had failed to comply with its obligation under the

procedural limb of Article 3 to carry out an effective investigation into her sterilisation. A criminal investigation into the case should have been started at the initiative of the authorities after they had been informed about the interference. The general investigation into the sterilisation of Roma women which the Government had initiated could not be considered effective in respect of the applicant's own case. Similarly, the civil proceedings brought by the applicant had not complied with the requirements of Article 3. In particular, the applicant had been placed in a difficult position as the courts had been bound to examine the case only in the light of the parties' submissions, and the burden of proof had lain on the latter. Those proceedings had not led to the identification and punishment of those responsible. The Government disagreed with the applicant's arguments. In their view, there had been no breach of Article 3 under its procedural limb, given that the alleged practice of forced sterilisation of Roma women had been thoroughly examined in the context of the criminal proceedings initiated by the Government Office and a group of experts established by the Ministry of Health. Any specific obligations incumbent on the State in respect of the applicant's case had been complied with in the context of the civil proceedings initiated by her.

The Court has found above that the way in which the hospital staff acted was open to criticism, given that the applicant had not given her informed consent to the sterilisation. However, the information available does not indicate that the doctors acted in bad faith, with the intention of ill‑treating the applicant. In this respect the present case differs from other cases in which the Court held that the domestic authorities should start a criminal investigation of their own initiative once the matter had come to their attention. The applicant had the possibility of requesting a criminal investigation into her case but did not avail herself of it. She sought redress by means of an action under Articles 11 et seq. of the Civil Code for protection of her personal integrity. In the context of the civil proceedings she was entitled to submit her arguments with the assistance of a lawyer, indicate evidence which she considered relevant and appropriate and have an adversarial hearing on the merits of her case. The civil proceedings lasted for two years and one month over two levels of jurisdiction, and the Constitutional Court subsequently decided on the applicant's complaint concerning her relevant rights under the Convention within thirteen months. Hence, the applicant had an opportunity to have the actions of the hospital staff which she considered unlawful examined by the domestic authorities. The domestic courts dealt with her case within a period of time which is not open to particular criticism. In view of the foregoing, the applicant's argument that the respondent State failed to carry out an effective investigation into her sterilisation, contrary to its obligations under Article 3, cannot be accepted. There has therefore been no procedural violation of Article 3 of the Convention.

In the case *Zubal' vs. Slovak Republic* (judgment of 9 November 2010) the applicant claimed a violation of Article 8 of the Convention due to a house search of the applicant's home. In this regard the applicant alleged, in particular, that his house had been searched in breach of Art. 84 of the Code of Criminal Procedure and that the house search had been unfounded. The Constitutional Court addressed the applicant's individual objections based on a complaints lodged under Art. 127 of the Constitution. The Constitutional Court dismissed the applicant's complaint in March 2006. The Government objected that, as regards the justification for the search order and the search of the applicant's house on the basis of it, it was open to the applicant to seek redress before the criminal court dealing with the case, as indicated in the Constitutional Court's decision. The Court notes that the original criminal proceedings were discontinued at the pre-trial stage. It was therefore impossible for the applicant to claim any redress before a criminal court as suggested in the Constitutional Court's decision.

As regards the merits of the application, the Court found that the search had a basis in the domestic legal system, namely Articles 82 et seq. of the Code of Criminal Procedure..

Moreover, that it was conducted in connection to a crime investigation, i.e. the search had pursued the legitimate aim of preventing crime. The Court noted that the applicant was in the position of an injured party in the context of criminal proceedings. The Court is not persuaded by the government's argument for the house search, namely that the authorities presumed that the applicant might decline to submit the painting out of fear that he would be unable to obtain damages from the perpetrators of the crime. The applicant had no apparent reason for refusing to co-operate with the prosecuting authorities and thus exposing himself to the risk of a sanction, possibly a criminal one. The Court noted that the subsequent developments are in line with the above consideration because one and a half months later the police contacted the applicant and requested, under Article 78 of the Code of Criminal Procedure, that the painting be handed over to them. The applicant complied with the request immediately. The Court noted that the scope of the search was limited to a visual examination of the premises, and that it was carried out in the presence of a third person who was not involved in the case. The Court nevertheless considers relevant the applicant's argument that the presence of the police at his house could have repercussions for his reputation. The Court concluded that the search of the applicant's house, carried out without sufficient grounds, when the applicant was not suspected of any criminal offence but was an injured party in the criminal case in issue, was not "necessary in a democratic society". There has accordingly been a violation of Article 8 of the Convention.

Some rights of crime victims under Article 6 of the Convention (right to a fair trial)

Only the accused person may be the subject of the rights of the "criminal part" under Article 6 of the Convention. The injured party (crime victim) does not have any rights in the criminal proceedings under Article 6, insofar as its applicability is based on a "criminal accusation" of a third person, and not even the right to instigate the prosecution of a third person. If a private legal action is admissible by the legal system concerned, in which damages in connection with the criminal offence may be claimed concurrently or if such claims may be raised in adhesive proceedings, Article 6 section 1 is applied in respect to the injured party in the "civil part".

In the case *Loveček and others vs. Slovak Republic* (judgment of 21 December 2010) the applicants were clients of a private non-banking investment company SUN, a.s. and sued the Slovak Republic for a violation under Article 6 section 1 of the Convention in respect of undue delays in the criminal proceeding, in which they claimed compensation of damages as aggrieved persons. The applicants' individual claims to damages were later excluded by the Supreme Court from the criminal proceeding and they were referred to civil proceedings. In terms of the incompatible length of the criminal proceedings with the "reasonable time" requirement, the applicants objected under Article 13 of the Convention that they did not have any effective remedy available on the national level. The applicants lodged a complaint with the Constitutional Court on a violation of their right to a hearing "without unjustified delay" and "within a reasonable time". In August 2002 the Constitutional Court declared the complaint inadmissible. It observed that the primary aim of criminal proceedings was to detect criminal offences and to punish perpetrators and not to determine aggrieved parties' claims for damages. Aggrieved parties' claims for damages were of a private-law nature and were predominantly to be asserted before the civil courts.

In its judgment of 21 December 2010 the Court declared admissible the applicants' complaint concerning the unreasonable length of proceedings. The remaining part of the application was declared inadmissible. The Court disagreed with the government's argument that Article 6 section 1 of the Convention was inapplicable to the present case due to the fact that the applicants had been excluded with their individual claims for damages from the

criminal proceedings. In this regard the Court noted that until a decision was adopted by the Supreme Court to exclude the injured parties from the criminal proceedings, the applicants had a right to have their individual claims for damages resolved within a reasonable time. Furthermore, the Court considered that in the instant case the length of the proceedings was excessive and failed to meet the "reasonable time" requirement. There has accordingly been a breach of Article 6 § 1 of the Convention. Having examined all the material submitted to it, the Court considers that although the length of the criminal proceedings has been in part due to the complexity of the case, the Court cannot disregard the fact that it took over two years and three months to set up a special investigation unit. Delays in the pre-trial stage were also acknowledged by the Bratislava V District Office of Public Prosecution. The Court awarded the applicants a total of 56,150 EUR in respect of compensation of non-pecuniary damage and 63.50 EUR in respect of administrative expenses. The Court dismissed the remainder of the applicants' claim for just satisfaction.