

MIŽIGÁROVÁ v. SLOVAKIA

(Application no. 74832/01)

1. Reference Details

Jurisdiction: European Court of Human Rights (Fourth Section)

Date of decision: 14 December 2010

Case Status: Not final

Link to full court judgment:

<http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=Slovakia&sessionid=63877761&skin=hudoc-en>

2. Facts

The husband, a Romani man named Mr. Ľubomír Šarišský, of the applicant, Mrs. Miluša Mižigárová, was arrested by the police on 12 August 1999 on suspicion of having stolen bicycles. He was subsequently taken to the District Police Department in Poprad where he was interrogated by Lt. F. At some point during the interrogation, Mr. Šarišský was shot in the abdomen. He died four days later in hospital as a result of the bullet wound sustained during his interrogation.

An investigation was carried out following the shooting, during which Lt. F. claimed (in a number of inconsistent accounts of the incident) that Mr. Šarišský had managed to remove Lt. F's gun from its holster around his waist and had proceeded to shoot himself in the abdomen, leaving behind a note which read "say hello to Kristina". When interviewed in the hospital during the days between the incident and his death, Mr. Šarišský, who was only able to move his head in response to questions, informed a police officer of the Department of Supervision and Inspection Service of the Ministry of the Interior that he had shot himself, and then proceeded to tell his wife that he did not shoot himself.

Following the criminal investigation on the death of Mr. Šarišský, the District Court in Poprad issued a penal order under Section 314e of the Code of Criminal Procedure, convicting 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. This finding was based on the fact that Lt. F. had failed to secure his service weapon contrary to the relevant regulations and that, as a result, Mr. Šarišský 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.

On the basis of the penal order issued by the District Court in Poprad, the applicant and her daughter made claims for damages in the domestic courts, but these were rejected. On 5 November 2008 the Constitutional Court dismissed their complaint, based on Articles 2, 3, 8 and 13 of the Convention, as manifestly ill-founded.

3. Law

National Law

Criminal Code (Article 224)

Code of Criminal Procedure (Articles 166, 314e and 314g)

European Convention of Human Rights

Article 2 (right to life)

Article 3 (prohibition of torture and inhuman treatment)

Article 13 (effective remedy)

Article 14 (prohibition of discrimination) taken in conjunction with Article 2 (right to life), Article 3 (prohibition of torture and inhuman treatment) and Article 13 (effective remedy)

4. Legal Arguments

Applicant

The applicant claimed that the Slovakian authorities had violated Article 2 of the Convention because her husband died in police custody and they subsequently failed to undertake a thorough and effective investigation into his death. She submitted that her husband was in good health when he arrived at the police station and that it was therefore incumbent on the State to provide a plausible explanation for his death. The applicant argued that the suggestion that her husband had committed suicide was highly implausible. She further argued that the investigation carried out by the authorities included many notable omissions, including the failure to collect adequate forensic evidence.

The applicant claimed that the authorities had violated Article 3 of the Convention for the same reasons owing to the treatment which her husband had been subjected to in police custody, and she submitted that her Article 13 rights had also been violated as she had not had an effective remedy in Slovakia for her complaints under Articles 2 and 3 of the Convention. Finally, the applicant claimed that her rights and those of her husband, under Articles 2, 3 and 13 had been violated in conjunction with Article 14 on the grounds of ethnic origin. She submitted that the combination of the Romani origin of her husband with the “legacy of widespread and systematic abuse of Roma in police custody” placed an obligation on the authorities to investigate a possible racist motive for his death.

Government of Slovakia

The Government submitted that far from being highly implausible, the investigation into Mr. Šarišský’s death suggested that “in all probability” he had committed suicide. In response to the suggestion that the investigation had been inadequate, the Government argued that a task-force from the District Criminal Police Department in Poprad was dispatched to the

scene immediately after the shooting of the applicant's husband and there followed "an effective, impartial, thorough and careful investigation into the death of Mr. Šarišký which led to the person responsible, Lt. F., being identified and punished". The Government further submitted that "there was no evidence to suggest that Mr. Šarišký was subjected to significantly harsher treatment by the police on account of his Roma ethnicity".

5. Decision

Article 2

The Court held unanimously that there had been a violation of Article 2 of the Convention under its substantive limb on the basis that irrespective of who was responsible for shooting Mr. Šarišký, the authorities had an obligation to protect him whilst he was in custody and this included an obligation to prevent him from harming himself. The Court noted that there were not sufficiently compelling reasons to justify why the interrogation was carried out by an armed police officer, nor why Lt. F. had not complied with regulations in force at the time which required police officers to secure their weapons in order to avoid such consequences.

With regard to the procedural limb of Article 2 of the Convention which requires that an effective investigation should be carried out into such incidents, the Court held unanimously that the investigation was not sufficiently independent nor was it meaningful given the significant omissions which were identified. These omissions included (i) the failure to consider adequately the claim by Mr. Šarišký that Lt. F. had handed him the gun, (ii) the failure to collect forensic samples in a timely manner, and (iii) the failure to consider the additional injuries sustained by Mr. Šarišký during the interrogation (including injuries to his face, shoulder and ear) which were not related to the bullet wound.

Article 3

Having considered the applicant's complaints under Article 2 of the Convention, the Court found that it was not necessary to make a separate finding under Article 3.

Article 13

The Court found that, as the applicant's complaints under Article 13 related to the alleged inadequacy of the investigation into her husband's death and her consequent inability to pursue a civil action for damages arising out of the death, it was unnecessary to make a separate finding under Article 13 of the Convention as these issues had been addressed in relation to the Article 2 claim.

Article 14 taken in conjunction with Article 2

The Court held by six votes to one that there had been no violation of Article 14 taken in conjunction with Article 2 in its substantive aspect. It found that the behaviour of Lt. F. was not a sufficient basis to conclude that his actions were racially motivated. Further, arguments relating to evidence of widespread police abuse of Roma in Slovakia were not

sufficient to demonstrate racial motivation in this particular case. Finally, the court found that the failure of the authorities to carry out an effective investigation into Mr. Šarišký's death was not sufficient to shift the burden of proof to the Slovakian government with regard to the alleged violation of Article 14.

Whilst the Court acknowledged that Article 14 imposes a procedural obligation upon States according to which they "have the additional duty 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", in this case it held that the objective evidence was not "sufficiently strong in itself to suggest the existence of such a motive". Contrary to the findings made in *Nachova and Others v Bulgaria*, the Court found that the authorities did not have sufficient information before them when carrying out the investigation to suggest that there had been any racial motivation behind the events leading up to and resulting in the death of Mr. Šarišký. As such, the Court held by six votes to one that there had been no violation of the procedural aspect of Article 14 taken in conjunction with Article 2.

In a partly dissenting opinion, Judge David Thór Björgvinsson argued that there had been a violation of the procedural head of Article 14 in conjunction with Article 2 of the Convention on the basis that there was "enough objective evidence to suggest the existence of a hostile racist motive" which placed an obligation on the authorities to conduct an investigation into whether racist motives were indeed behind the death of Mr. Šarišký.