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DH-DD(2014)604

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Meeting: 1201 meeting (3-5 June 2014) (DH)

Item reference: Action report (05/05/2014)

Communication from the Slovak Republic concerning the case of Mižigárová against Slovak Republic
(Application No. 74832/01)

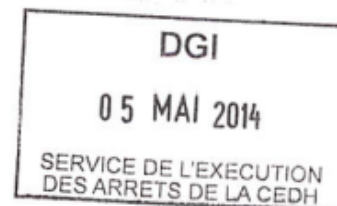
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Réunion : 1201 réunion (3-5 juin 2014) (DH)

Référence du point : Bilan d'action

Communication de la République slovaque concernant l'affaire Mižigárová contre République slovaque
(requête n° 74832/01) (**anglais uniquement**).



ACTION REPORT
App. No. 74832/01 *Mižigárová v. Slovakia*,
judgment of 14/12/2010, final on 14/03/2011

Introductory case summary

This case concerns a violation of the right to life as the police failed in their positive obligation to protect the health and well-being of the applicant's husband Mr Šarišský, who committed a suicide whilst being questioned by at the police station by Lieutenant F. in 1999. The ensuing investigation was deemed inadequate and lacking in independence (substantive and procedural violations of Article 2) by the Court. Specifically, the Court in its judgment highlighted that the domestic courts held that Lt. F's failure properly to secure his service weapon amounted to negligence which resulted in the death of Mr Šarišský. The Court found that even if Mr Šarišský committed suicide in the manner described by the Government and the investigative authorities, the authorities were in violation of their obligation to take reasonable measures to protect his health and well-being while he was in police custody. There has accordingly been a violation of Article 2 of the Convention under its substantive limb. As to the independence of the police investigation (procedural limb of Article 2 of the Convention) the Court noted that the criminal investigation was supervised by police officers from the Department of Supervision and Inspection at the Ministry of the Interior. However, *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. 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 found that the investigation was not sufficiently independent. As to adequacy of the investigation the Court stated that 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.

I. Payment of just satisfaction and individual measures

a) Details of just satisfaction

Pecuniary damage	Non-pecuniary damage	Costs and expenses	Total
-	45 000	8 000	53 000
Paid on 26/04/2011			

b) Individual measures

On 18 October 2000 Lt. F., who questioned the applicant's husband in 1999, was convicted by penal order of Poprad District Court 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 as a result, the applicant's husband had managed to draw the weapon from the case and to cause with it a lethal injury to himself. Lt. F. was sentenced to one year's imprisonment, suspended for a two-and-a-half-year probationary period (see §§ 42-43 of the judgment). Subsequently, on 23 January 2001 Lt. F. committed a suicide (see §§ 45 of the judgment). Under the Slovak law, the reopening of criminal proceedings against a deceased person is not allowed.

Therefore, no individual measures, other than payment of the just satisfaction, appears to be possible.

II. General measures

Publication and dissemination

The judgment was published in the Judicial Revue (*Justičná Revue*) No. 4/2011.

The judgment was sent to the President of Police Corps, to the General Prosecutor, to the President of the Constitutional Court, to the President of the Criminal Chamber of the Supreme Court and was distributed to all regional and district courts.

The judgment was given attention at a seminar organized by the Judicial Academy on 14 – 15 November 2011 attended by judges and prosecutors, during which the Agent of the Government held a presentation “*The rights of the victim in the criminal proceedings according to the case-law of the European Court of Human Rights under the European Convention on Human Rights*”. The Agent of the Government drew the attention to the judgment also at the meeting of prosecutors on 10 November 2011.

A prosecutor responsible for extremism exists in each judicial district; a special police department within the office of the head of police and in each police district deals with extremism; and 231 police officers specialised in minorities/ Roma operate at the level of regional police departments. The Strategy for Combating Extremism for 2011-2014 of the Ministry of Interior has resulted in the creation of a database of extremist symbols for consultation by judges, prosecutors and police, and new guidelines for police will soon be finalised. The police undergo periodic training on measures to combat new forms of extremist criminal acts and to prevent the excessive use of police force against Roma. The authorities also plan to increase the number of police officers of Roma origin. A Committee for Prevention and Elimination of Racism, Xenophobia, Anti-Semitism and Other forms of Intolerance acts as an advisory body under the Ministry of Interior.

As of August 2013 an investigation related to extremism must be conducted by a police investigator (not any more by an ordinary police officer). In order to improve investigation further, an amendment to section 115 of the Code of Criminal Procedure is envisaged to allow the use of wire-tapping also in the investigation of criminal offences listed in Section 140 a) of the Criminal Code (extremist offences). Moreover, it is proposed that the police follow the same investigation procedure in all extremist-crime cases and that a mandatory requirement of recording all interventions by the security forces on an audio-visual tape be introduced.

In the context of the violation found by the Court, the Government submit the additional information concerning the practice of Police Corps of the Slovak Republic:

a) As to the violation of Article 2 of the Convention under its substantive limb

In relation to the issue of the unreasoned keeping of service weapon during interrogation of the suspect from theft (§ 89 of the judgment), the Government submit the statement of the Ministry of Interior of the Slovak Republic, Office of criminal police (Annex No. 1), according to which the activities of the Police Corps are regulated by Act no. 171/1993 on Police Corps as amended. According to Article 1 § 1 of the noted act, the Police Corps are armed security corps, conducted during the performance of their activities by the Constitution, constitutional acts, acts and other generally binding legal rules, as well intern acts of conduct. In line with **the resolution of the Ministry of Interior of the Slovak Republic no. 35/1995 on allocating, carrying and storing service weapons during performance of official duties**, member of the Police Corps must be aware of the legal regulation on the use of service weapon and must care for the allocated weapon not to be stolen or lost. **Members of the Police Corps are regularly acquainted and continuously educated about the resolution and the keeping compliance with the resolution is regularly monitored.** In addition, **the members of the Police Corps were specifically acquainted in 2012 with the conclusions of the noted judgment.**

b) As to the violation of Article 2 of the Convention under its procedural limb

As stated by the Department of Control and Inspection Service of the Ministry of Interior of the Slovak Republic (Annex No. 2) in relation **to the independency of the police investigation**, the Department of Control and Inspection Service of the Ministry of Interior of the Slovak Republic is from the point of view of managing relations directly subsumed under the Minister of Interior of the Slovak Republic. Supervision of criminal proceedings is carried out by the respective prosecution in accordance with Act no. 153/2001 on Prosecution, as amended. The prosecution, as independent state authority protecting rights and legally protected interests, when carrying out supervision, assesses all acts and decisions of the investigator and is entitled to instruct the investigator on how to proceed with investigation. In connection with the independency of investigation, it shall be pointed out to the fact that the inspection service was established in 1994 and at the time of the happenings in the present case in 1999 its main task was to discover criminal activities, that is, to carry out operative-inquisitive activities. Investigation into criminal activities of the policemen was carried out by the actual competent authorities of investigation upon venue at the Regional Directorates of the Police Corps, therefore a certain intentness may not be excluded, or collegiality when discovering criminal activities of policemen by own investigators. **Recently, the inspection service became a fully independent service of the Police Corps, carrying out abbreviated investigation, investigation into and discovery of criminal activities including the right to use informational and technical means and means of operative-inquisitive activities in accordance with the law.** As regard the reference to the inadequacy of police investigation, the Department stated that a successful investigation into criminal offences depends on several factors, whereas one of the most important is the conduct at the initial acts and securing of the venue of the offence. The actual practice when investigating into criminal offences by the members of the Police Corps shows that the set mechanisms and ways of securing the venue of the offence, as ruled by the Code of Criminal Procedure, as well the Regulation of the Minister of Interior of the Slovak Republic no. 175/2010 on determining competence of the units of the Police Corps and the Ministry of Interior of the Slovak Republic, suffice when uncovering criminal offences, finding their offenders, as well as to ensure their conduct in criminal proceedings. **Shortcomings which occurred in 1999 may be attributed rather to the fail of human factor and insufficient practise and specialized readiness of the actual investigators, or policemen of the inspection service.** Upon these negative experiences measures were adopted for the enhancement of personal selection for certain units, to which the inspection service also belongs and which are regulated by internal act of operation. Members of the office of inspection service are selected upon strict criteria in order for them to have sufficient practise and to be professionally prepared for the investigation into criminal offences, when the offender is a member of the Police Corps.

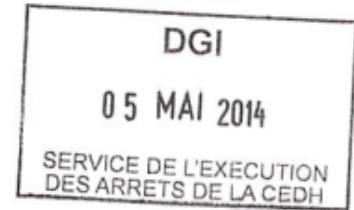
In conclusion, the authorities consider that adopted measures are sufficient and adequately applied in practise in order to prevent the reoccurrence of a situation as arose in the case of Mr. Šarišský in 1999.

III. Conclusions of the respondent state

The Government consider that the Slovak Republic has thus complied with their obligations under Article 46 § 1 of the Convention.

In Bratislava, 2 May 2014

Marica Pirošíková
Agent of the Slovak Republic
before the European Court of Human Rights



Annex 2.

MINISTRY OF INTERIOR OF THE SLOVAK REPUBLIC
DEPARTMENT OF CONTROL AND INSPECTION SERVICE
Pribinova 2, 812 72 Bratislava

Office of the Agent of the Government of the Slovak Republic
before the European Court of Human Rights
Župné nám. 13
813 11 Bratislava

Your ref./of Bratislava	Our ref	Attended by
17943/2013/AB, 18.7.2013SKIS-OO-2013/002039	mjr. Ing. Grão/55327	21.10.2013

RE

Execution of the judgment of the European Court of Human Rights in the case of Mižigárová v. the Slovak Republic – forward of documents

The Department of Control and Inspection Service of the Ministry of Interior of the SR received your request for information concerning the measures taken in regard of the judgment in case of Mižigárová v. the Slovak Republic. In connection to the previous communication in the noted case, the Committee of Ministers of the Council of Europe stressed the „key issues“ which in the opinion of the Committee of Ministers of the Council of Europe should be reflected to by amendment of legislature, or practise. One of the issues according to the Committee of Ministers of the Council of Europe was the procedural breach of Article 2 of the Convention on the Protection of Human Rights and Fundamental Freedoms in relation to the independency and inadequacy of the police investigation (section 99 to 103 of the judgment).

In relation to the independency of the police investigation it shall be stated that the Department of Control and Inspection Service of the Ministry of Interior of the SR is from the point of view of managing relations directly subsumed under the minister of interior of the SR. Supervision above the activity in criminal proceedings is carried out by the respective prosecution in accordance with Act no. 153/2001 on Prosecution, as amended. The prosecution, as independent state authority protecting rights and legally protected interests, when carrying out supervision, assesses all acts and decisions of the investigator and is entitled to order the investigator how to proceed with investigation.

In connection with the independency of investigation, it shall be pointed out also the fact that the inspection service was established in 1994 and at the time of the happenings in the present case in 1999 its main task was to discover criminal activities, that is, to carry out operative-inquisitive activities. Investigation into criminal activities of the policemen was carried out by the actual competent authorities of investigation upon venue at the Regional Directorates of the Police Corps, therefore a certain intentness may not be excluded, or collegiality when discovering criminal activities of policemen by own investigators. Recently, the inspection service is a fully independent service of the Police Corps, carrying out abbreviated investigation, investigation into and discovery of criminal activities including the right to use informational and technical means and means of operative-inquisitive activities in accordance with the law.

As regard the reference to the inadequacy of police investigation, we state that a successful investigation into criminal offences depends on several factors, whereas one of the most important is the conduct at the initial acts and securing of the venue of the offence. The actual practice when investigating into criminal offences by the members of the Police Corps shows that the set mechanisms and ways of securing the venue of the offence suffice and result mainly from the Code of Criminal Procedure, as well the Regulation of the Minister of Interior of the Slovak Republic no. 175/2010 on determining competence of the units of the Police Corps and the Ministry of Interior of the Slovak Republic when uncovering criminal offences, finding their offenders and on the conduct in criminal proceedings.

Shortcomings which occurred in 1999 may be attributed rather to the fail of human factor and insufficient practise and specialized readiness of the actual investigators, or policemen of the inspection service.

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Also upon these experiences measures were adopted for the enhancement of personal selection for certain units, where the inspection service also belongs and which is regulated by internal act of operation. Members of the office of inspection service are selected upon strict criteria in order for them to have sufficient practise and to be professionally prepared for the investigation into criminal offences, when the offender is a member of the Police Corps.

We forward to you the above mentioned documents in relation to the letter of the Presidium of the Police Corps of 12.08.2010, no. PPZ-KP-AO-328-001/2013 containing documents in relation to the substantive violation of Article 2 of the Convention on Human Rights and Fundamental Freedoms, where it was pointed at the unreasoned keeping of service weapon during interrogation of the suspect.

Mjr. Ing. Ivan Ševčík
General director

Annex 1.

MINISTRY OF INTERIOR OF THE SLOVAK REPUBLIC
PRESIDIUM OF THE POLICE CORPS
Office of criminal police
Račianska no. 45, 812 72 Bratislava

Ministry of Justice of the Slovak Republic
Office of the Agent of the Government of

the Slovak Republic
Before the European court of Human Rights
Župné nám. 13
813 11 Bratislava

Your ref./of	Our ref	Attended by
Bratislava		
17943/2013/AB, 18.7.2013PPZ-KP-AO-328-001/2013		pplk. Ing. Arvay 12.8.2013

RE

Execution of the judgment of the European Court of Human Rights in the case of Mižigárová v. The Slovak Republic – information

In relation to your request for information about which measures, during what time we plan to carry out within the execution of the judgment of the European Court of Human Rights in case of Mižigárová v. The Slovak Republic (hereafter the “execution of the judgment”), forwarded by the President of the Police Corps for direct handling to the office of criminal police of the Presidium of the Police Corps, we state the following.

With regard to the preceding communication in case of execution of the judgment, upon the assessment of which you were delivered the letter of the director of the department for execution of judgments of the Council of Europe, stating that information concerning general measures in relation to the practise of the Police Corps are unclear and might thus not be assessed, as the “key issues” should be reacted to by change of legislature, or proving change of practise and in relation to the substantive violation of Article 2 of the Convention on the Protection of Human Rights and Fundamental Rights (hereafter the “Convention”), where such issue may be the unreasoned keeping of service weapon during interrogation of the suspect from theft (§ 89 of the judgment), we repeatedly state that the activities of the Police Corps are regulated by Act no. 171/1993 on Police Corps as amended. According to Article 1 § 1 of the noted act, the Police Corps are armed security corps, conducted during the performance of their activities by the Constitution, constitutional acts, acts and other generally binding legal rules, as well intern acts of conduct.

The resolution of the Ministry of Interior of the Slovak Republic no. 35/1995 on allocating, carrying and storing service weapons during performance of official duties, member of the Police Corps must be aware of the legal regulation on the use of service weapon, must care for the allocated weapon not to be stolen or lost. Members of the Police Corps are regularly acquainted and educated about the resolution and the keeping thereof is regularly monitored, which appears to be sufficient measure applied in the practise, that should prevent the occurrence of a situation as it was in the case of examination of Mr. Šarišský in 1999. The members of the Police Corps were however acquainted in 2012 also with the conclusions of the noted judgment.

The term of persuasive reasons for a police not to be armed during performance of some of the acts of official duty, in this case the interrogation of the person suspected for committing less grave criminal offence (in relation to the amount of possible punishment of imprisonment) is not defined either in the law, or the noted intern act of conduct.

Incorporating the limitation of carrying service weapon by police performing certain official duties into the draft of the legal act on the activities of the Police Corps or the amendment of the intern act of conduct in issue would be a disproportionate step towards the need to provide for the protection of health and lives of the members of the Police Corps performing such service duty with regard to the increasing arrogance and aggression of persons committing criminal offences already in case of offences with low scale of imprisonment. Our statement is reasoned also by cases where health was injured, or member of the Police Corps murdered by persons committing not only serious criminal offences – year 1991 lieutenant M. Dobiaš in Bratislava, year 1995 sergeant major I. Palacký and sergeant L. Nistor in Košice, year 2002 director of HO PZ in Petrovce J. Pala and soldier J. Mandičák, year 2003 major J. Izsák in Kolárovo, year 2006 police T. Bolech in Čachtice, year 2008 criminalist R. Vido in Levice.

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The department of control and inspection services of the Ministry of interior of the Slovak Republic under direct competence of the Ministry of Interior of the Slovak Republic shall be competent to comment on to the procedural violation of Article 2 of the Convention asserted by you consisting of the absence of independency and inadequacy of police investigation (§§ 99 to 103 of the judgment).

Lt-col. Mgr. Michal Ondrkal
director