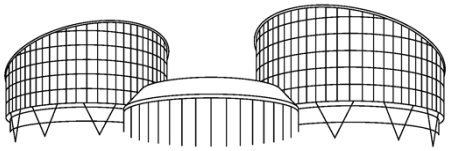

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF LAKATOŠOVÁ AND LAKATOŠ v. SLOVAKIA

(Application no. 655/16)

JUDGMENT

STRASBOURG

11 December 2018

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

In the case of Lakatošová and Lakatoš v. Slovakia,

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

Vincent A. De Gaetano, *President,*
Branko Lubarda,
Helen Keller,
Dmitry Dedov,
Pere Pastor Vilanova,
Alena Poláčková,
Georgios A. Serghides, *judges,*
and Stephen Phillips, *Section Registrar,*

Having deliberated in private on 20 November 2018,

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

PROCEDURE

1. The case originated in an application (no. 655/16) against the Slovak Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by Slovak nationals, Ms Žaneta Lakatošová (the first applicant) and Mr Kristián Lakatoš (the second applicant), on 21 December 2015.

2. The applicants were represented by Mr A. Ujlaky, Director of the European Roma Rights Centre, based in Budapest, Hungary.

The Government of the Slovak Republic ("the Government") were represented by their Agent, Ms M. Pirošíková.

3. Relying on Article 2, in conjunction with Article 14 of the Convention, the applicants alleged, in particular, that the Slovak authorities had failed to consider properly the alleged racial overtones of the crime committed against them and their family members. They furthermore challenged the lack of reasoning in the sentencing judgment. In addition, they alleged, under Article 2, in conjunction with Article 13 of the Convention, that they had not been able actively to participate in the criminal proceedings.

4. On 10 November 2016 the complaints concerning Articles 2, 13 and 14 of the Convention were communicated to the Government, and the remainder of the application was declared inadmissible, pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants are a married couple of Roma origin. They were born in 1986 and live in Hurbanovo.

A. Events of 16 June 2012

6. On 16 June 2012, around 9 a.m., Mr J., a municipal police officer who was off duty that day, took an illegally purchased gun with two full magazines and some extra ammunition and drove in his private car to the town of Hurbanovo, where around a thousand Roma people live.

7. Around 10 a.m. he stopped in front of the applicants' family house, entered the property and, without saying a word, started firing bullets at the family members who happened to be in the yard. He stopped shooting when the cartridge of the gun was empty. Three members of the applicants' family, namely the second applicant's father, brother, and brother-in-law, were shot dead. The first applicant was seriously injured in the hips and thighs and the second applicant in the liver, lower appendix, stomach, and elbow.

8. After the shooting, Mr J. returned to the car. On his way, he met two other Roma men, members of the applicants' family, and threatened to kill them. Then he got into his car and drove away. Eventually, he arrived at the house of the mayor of Hurbanovo, in front of which he was arrested.

B. Criminal proceedings

1. Pre-trial stage

9. Mr J. was charged on 17 June 2012 with premeditated first-degree murder, partly accomplished and partly attempted (*zločin úkladnej vraždy, sčasti dokonaný a sčasti v štádiu pokusu*), in connection with the offences of prohibited acquisition and possession of a firearm and forcible entry into a dwelling.

(a) Questioning of Mr J.

10. During his pre-trial questioning on 16 and 17 June and 12 July 2012 Mr J. provided several statements concerning his recollection of the above events, confessed to the charges on all counts, and expressed remorse.

11. His first statement of 16 June 2012 reads as follows:

> "... I woke up at around 8.30-9.00 a.m. and I don't know what came into my mind but I told myself that I must do something with those Roma people, it was nothing specific ... I put on my boiler suit and slippers, took a gun – a pistol which I had in my

wardrobe ... this morning I loaded the gun, ... got into my car and went to deal with everything, including the Roma ... Afterwards, I wanted to shoot myself; somehow it weighed heavily [on my mind] ... I went down to Hurbanovo, where I arrived at around 9.20 a.m. ... I went across the city of Hurbanovo and I came to the houses at the end of the city, where Roma live. I slowed down nearby one house [and] looked into the yard, but there was only one girl, so I drove further to another house. ... By the next house ... I saw a gate opened and Roma in the yard, I pulled up, got out of the car and entered the yard ... I had the gun already in my hand as I was getting out of the car ... they were sitting and I started to fire shots at them ... I wanted to kill them. ..."

The investigator further asked why Mr J. had entered that particular yard and started shooting. Mr J. answered:

"... I did not care which yard I entered, if there had been more Roma in that first yard where only one girl had been, I would have entered there and opened fire in that first yard."

12. During a second interview on 17 June 2012, Mr J. stated, *inter alia*, that he was not able to explain the reasons for his actions, that he did not remember most of the events, and that he had wanted to commit suicide shortly after the shooting. He had just fired at some people – not at a specific person – and could not remember how many times he had fired. He also declared that he did not know the applicants' family personally, only by sight, having had dealings with them as a municipal police officer. He had often gone to Hurbanovo to deal with problems of public order and remembered meeting some members of the applicants' family – in particular, the late brother of the second applicant, since he had once slapped him because of his aggressive behaviour after he had been caught stealing.

In particular, his statement reads as follows:

"The investigator: What brought you to the decision to go and shoot at those people?

Mr J.: This I don't know ... maybe because I have been working as a policeman for twenty years and there were always problems with Roma, but I have never been aggressive towards them.

...

Investigator: Why did you enter that particular yard and start shooting?

Mr J.: Because there were people; if there had been people in the first yard, I would have maybe gone in there.

The investigator: Did you care about the nationality, age, ethnicity of those people in the yard?

Mr J.: I did not think about that. ..."

13. At a third interview conducted on 12 July 2012, Mr J. confirmed his previous statements and further stated:

"... these thoughts that I had about dealing with the Roma in Hurbanovo – that is to say to do something with them – had been crossing my mind. When I was loading the gun with bullets I might have been thinking also about a radical solution, as

eventually happened ... I had been thinking about my work, how to resolve the public-order issue in the town. I felt that I had been dealing with this for a long time without any success, that there had been some kind of a failure or ineffectiveness ... I could have been nervous because of all this; I could have been tense and all this resulted in my actions."

(b) Statements of witnesses

14. On 16 June 2012 several witnesses were interviewed, including the applicants' relatives. In general, they did not know of any particular racially motivated behaviour on the part of Mr J. against Roma. However, one of the witnesses, Mr D.L., stated that Mr J. was harsher on Roma than on other people. Other witnesses – including Mr J's daughters, the mayor of Hurbanovo and Mr J.'s direct supervisor – stated that he had not shown any anti-Roma sentiment.

15. The police conducted further interviews on 19 June and 20 June 2012. The witnesses, including colleagues of Mr J., stated that he had not expressed any anti-Roma opinions or comments.

16. On 3 July 2012 the police interviewed other witnesses; they also again interviewed Mr D.L., who stated that approximately a week or two before the incident Mr J. had had a conflict with his nephew, M. who had been shot dead during the attack. M. had been caught stealing in a scrap yard with two other Roma boys. Mr J. had allegedly tried to kick one of them, slapped M. and told them that they were lucky that it was not him who had caught them.

(c) Expert opinion

17. On 16 July 2012 the investigator requested expert examinations of Mr J. by two experts in psychiatry and one expert in clinical psychology. They drafted a joint expert opinion.

18. The experts were asked questions, *inter alia,* about Mr J.'s mental state and possible illness or disorder, his ability to recognise the lawfulness of his actions, his ability to control his own behaviour, a possible motive for his actions from a psychological point of view, his ability to fully comprehend the course of events, and his credibility.

19. The report concluded that Mr J. did not remember clearly what had happened. However, he was able to credibly reconstruct some events and acknowledge that he had fired at someone. During the examination, he had also mentioned some incidents that he and his colleagues had experienced involving people of Roma origin, his worries, his fear of them, and his despair at his inability to deal with them. In particular, he had also stated:

"This family has paid for all of them ..."

20. The report further concluded that Mr J. had been suffering mounting emotional tension for a long time, which had been released by "the escalation effect" and had possibly been affected by the alcohol he had

consumed the night before. He was suffering from a temporary mental disorder, known as "abnormal short-term reaction failure with the clinical result of the escalation effect" (*abnormná skratová reakcia s klinickým priebehom vystupňovaného afektu*), which had resulted in his becoming of unsound mind at the critical moment. Therefore, while he had been committing the crime in question he had had a significantly reduced ability to recognise the unlawfulness of his actions and to control them.

21. Furthermore, the clinical psychologist concluded that Mr J. was not suffering from any mental illness such as psychosis, or from any dependency. Rather, he had been developing a paranoid personality connected to an intense fear of the aggressive behaviour of some "Roma fellow citizens" towards him or people close to him. This had triggered a perceived need to protect himself, born of paranoia. The psychologist considered that Mr J. had:

> "... the paradoxically altruistic motive of [finding] a radical solution to public order issues in the town, in particular towards that part of it which contained the non-adaptable and problematic Roma people. [Mr J.'s] ambition to personally deal with the public order issues in the town, in particular as regards the Roma minority, is evidently overdesigned [*predimenzovaná*] [and] is beyond the actual capabilities of one person ... it can be stated that [Mr J.] had been developing burnout syndrome as another of the possible motivating factors."

22. In his conclusion, the psychologist found that an important motive determining his behaviour before and during the crime could have been his continual frustration about his own work and the fact that he had been unable to resolve the public-order issues in the town – in particular, the problems concerning the Roma part of the population. He had been developing burnout syndrome as well. However, the immediate motive for his behaviour at the critical moment was unclear.

23. On 23 November 2012 the investigator interviewed the psychologist, who further confirmed that Mr J.'s aggression had manifested itself shortly before the attack against the Roma boys who had been caught stealing and that this aggression had been internally intensified by a growing feeling of helplessness and fear of danger from the Roma. Furthermore, the expert noted that Mr J. had believed that he could solve the "Roma question" and that his action was in the interest of society. He also stated that:

> "... the anger, rage and hatred of the accused concerned those from the Roma ethnic minority, who had been repeatedly subject to his interventions ..."

24. The expert concluded that he could not confirm unequivocally a racial motive.

(d) The indictment

25. On 11 December 2012 the special prosecutor filed a bill of indictment with the Specialised Criminal Court (*Špecializovaný trestný súd*) (hereinafter "the SCC"), charging Mr J. with (i) premeditated first-degree

murder under Article 144 § 1 and § 2 (c) of the Criminal Code, with reference to Article 138 (j) of the Criminal Code, partly accomplished and partly attempted (*zločin úkladnej vraždy, sčasti dokonaný a sčasti v štádiu pokusu*), and (ii) the offence of carrying a concealed weapon under Article 294 § 1 and § 2 of the Criminal Code, in concurrence with the offence of illegal entry into a dwelling under Article 194 § 1 and § 2 (a) of the Criminal Code, with reference to Article 138 (a) of the Criminal Code.

26. The special prosecutor referred to, *inter alia*, the testimony of Mr J., of the applicants, and of other witnesses, as well as the expert reports and the statements given by the experts when they had been interviewed, including the psychologist's statements concerning the earlier violent confrontation between Mr J. and Roma children, and Mr J's growing feelings of helplessness, his fear of the Roma, and his belief that in acting as he had he had believed that he was solving an issue with the Roma.

27. As regards the legal classification of the offence of murder, the bill of indictment reads, in the relevant part, as follows:

> "it is necessary to classify ... the action of the accused, as far as it concerns the shooting [and killing] of the five members of the Lakatoš family ... as ... the offence of first-degree murder within the meaning of Article 144 §§ 1 and 2 (c) of the Criminal Code ... In the present case, there was no accidental behaviour (murdering) caused by the arising of a situation (for example, an argument or ... outburst at the place in question); rather, the murder was premeditated (that is to say a motive had been considered in advance). ... [T]he term "in advance" is not confined to a particular time and ... the motive could have been formed ... over years, months, hours, or several minutes ... In the case of the accused, he had committed himself to the decision to kill ... when he ... decided to drag out a weapon from its hiding place ... and left the house. ... [M]oreover, the experts also identified a longer and continuing internal feeling of dissatisfaction with the state of affairs ... which resulted exactly in the decision to go and shoot with an intention to kill and which had also manifested itself for several moments externally; for example, by the earlier obtaining of an illegal weapon."

The special prosecutor furthermore argued that the intention to kill was obvious from the manner in which the accused had acted. The special prosecutor identified one aggravating factor in the offence under Article 144 § 2 (c) of the Criminal Code – namely, that Mr J.'s attack had been directed simultaneously against five persons. The ethnicities of the victims or racial motives were not mentioned and addressed.

2. Hearing

28. Between 25 and 28 March 2013 a public hearing took place, during which Mr J. gave no evidence, stated that he did not deny the charges, and responded affirmatively to the presiding judge's questions as to whether he understood the facts of the crime, whether his defence rights had been properly granted, whether he comprehended the legal status of the offence, whether he had been informed of the penalties under the law for the

criminal offences in question, and whether he had confessed to the crime voluntarily.

29. The applicants, together with six other members of the family, joined the criminal proceedings as civil parties. Their lawyer claimed compensation for damage on their behalf.

30. On 26 March 2013 two of the experts testified and referred to the conclusions of their report. To the applicants' representative's questions, the expert in psychiatry stated that it was not within their remit to assess the issue of racism. Later, the representative also attempted to question the clinical psychologist regarding Mr J.'s aggression towards Roma. However, since a civil party could raise only issues concerning a claim for damages (see paragraph 53 below), the court did not allow him to ask those questions. In his final remarks, the applicants' representative expressed doubts about the objectivity and accuracy of the expert opinion, and in relation to the Mr J.'s motive stated that:

> "... the assessment of the motivational foreground is, in my opinion, inadequate. The experts ... underestimated or misjudged the racial motive of the offender's actions."

The applicants' representative proposed that a second expert opinion be ordered. This was rejected by the court. The court reasoned that the issue of the accused's motive for the purposes of the claim for damages was of a legal nature and could thus not be assessed by such experts.

3. Judgment and following proceedings

31. On 27 March 2013 the SCC delivered a simplified version of the judgment. Owing to the fact that Mr J., his lawyer, and the prosecutor had all waived their right to appeal, the judgment contained only a brief description of the criminal act in question and the sentencing part, pursuant to Article 172 § 2 of the Code of Criminal Procedure. The judgment did not contain any legal reasoning.

32. The SCC found Mr J. guilty of a serious criminal offence as charged, killing three people and injuring two. The court established that:

> "[The accused] ... after he woke up at around 9 a.m. ... with a view to definitively resolving the problem with the unintegrated [*neprispôsobivé*] citizens of Hurbanovo by causing their deaths, took a weapon [and] loaded it with two full magazines; in addition ... he took twelve pieces of single 7.62 x 25 mm ammunition and ... drove himself to the front of the family house ... in Hurbanovo, where at around 10.10 a.m. he left the vehicle, unlawfully entered the yard ... and without a word ... aimed and shot eight times at persons at the yard ..."

33. Mr J. was sentenced to nine years' imprisonment. The sentence was exceptionally reduced owing to Mr J.'s diminished soundness of mind, pursuant to Article 39 § 2 (c) of the Criminal Code. His gun was forfeited and protective psychological treatment in an institution was ordered for him, together with protective supervision amounting to three years.

34. The applicants' claim for damages was referred to the civil courts.

35. As can be seen from the file, on 19 April 2013 two appeals were lodged. The first appeal was lodged by Ms I.L. She argued, *inter alia*, that the court had failed to consider the possibility of a racial motive. The second appeal was lodged (through their representative) by all members of the family, including the applicants and Ms I.L. In their appeal, they cited procedural errors, including the lack of any reasoning for the impugned judgment.

36. On 18 September 2013 the applicants' appeal was dismissed by the Supreme Court (*Najvyšší súd*). It concluded that the applicants, as civil parties, did not have the right to challenge the judgment in respect of the guilt of and sentence imposed on Mr J. and that their appeal could only have been directed against the ruling on compensation for damage. However, since the applicants had been referred to civil courts to claim such compensation, and having regard to the fact that those proceedings were ongoing at the material time, the Supreme Court considered their appeal premature in this part.

37. On 26 June 2013 and 4 March 2014 the applicants, together with other injured parties, sought leave from the Minister of Justice to lodge an extraordinary appeal on points of law. Such leave was refused by the Minister of Justice on 17 September 2013 and 3 April 2014, respectively.

C. Constitutional proceedings

38. On 24 May 2013 the applicants lodged a constitutional complaint (*ústavná sťažnosť*) against the judgment delivered by the SCC. They alleged a violation of Articles 2, 6, 8, 13 and 14 of the Convention and the corresponding provisions under the Constitution. In sum, they claimed that the SCC had erroneously concluded that Mr J. had had diminished soundness of mind at the time that the crime had been committed, and that as a consequence the SCC had imposed an inappropriately low sentence, which could not serve to discourage the future occurrence of the behaviour in question.

39. They furthermore complained of the ineffectiveness of the criminal prosecution owing to the questionable quality of the expert report and the alleged bias of its authors, the court's refusal to order a second expert opinion, the fact that it had been impossible for their lawyer to ask questions and cross-examine the expert witnesses, the absence of any reasoning in the final judgment, and the lack of any assessment of the racial overtones of the crime. They also alleged a lack of reasoning in the SCC's judgment and that they had had no opportunity to challenge the conviction in their position as civil parties in the criminal proceedings, apart from the part concerning compensation for damage.

40. On 27 May 2015 the Constitutional Court (*Ústavný súd*) dismissed the applicants' complaint. It held that the impugned judgment had been delivered in accordance with the Code of Criminal Procedure. It furthermore held that even if it had found the lack of reasoning incorrect it could not have found any violation of the applicants' constitutional rights on the basis of that conclusion. The court noted that:

> "... the sole fact that the impugned judgment ... is not reasoned complicates the assessment of its constitutionality. The Constitutional Court can assess other applicants' complaints only generally on the basis of other documents from the [respective] case file (in particular, the expert opinion and minutes from the main hearing)."

41. In so far as the applicants complained of the failure of the criminal justice authorities to address the racial motive of the attack, as well as their inability to challenge the conviction and the sentence, the Constitutional Court considered that these complaints were directed against provisions of the Code of Criminal Procedure and the position of an injured party under Slovak criminal law. However, the court observed that the applicants could not challenge the compatibility of the law with the Constitution and the Constitutional Court had no competence to address their grievances.

42. In addition, the court scrutinised the adequacy of the sentence and summarised that the accused had been diagnosed with diminished soundness of mind at the time of the commission of the crime. This was the conclusion reached by a lawfully obtained expert report, which had also examined the motive of the accused and provided a comprehensive explanation in that regard. The criminal court had had discretion to impose such a reduced sentence, as long as it was done in accordance with the law. As to the applicants' complaint about the lack of a decision on their claim for damages in the criminal proceedings and the lack of any reasoning given by the court in respect of their claim for damages, the Constitutional Court referred to the Supreme Court's reasoning and rejected this part of the complaint.

D. Other relevant proceedings

43. On 10 October 2012 the family of the applicants' late relatives lodged a civil claim for damages with the Komárno District Court (*okresný súd*). After the SCC referred the applicants to the civil courts with their claim for damages, on 30 May 2013 they requested to be allowed to join the pending proceedings.

44. By a decision of 22 October 2013, the District Court dismissed the applicants' request. Following an appeal by the applicants, the Nitra Regional Court (*krajský súd*) quashed that decision on 31 January 2014 and allowed the applicants to join the pending proceedings in respect of damages.

45. On 22 November 2016, at the hearing before the District Court, the applicants withdrew their claims and the court discontinued the proceedings.

46. On 18 June 2013 the Ministry of Justice awarded the first applicant the sum of 2,358 euros (EUR) and the second applicant EUR 7,545.60, in accordance with Act no. 215/2006 Coll. on compensation for victims of violent crimes. Furthermore, the second applicant received EUR 4,090 in respect of his father's death.

47. On 9 March 2015 the District Prosecutor's Office dismissed a criminal complaint lodged by the applicants against Mr J., which was based on the suspicion that he had committed a criminal offence by disposing of property in order to defraud creditors (*poškodzovanie veriteľa*) by transferring the title to his house to his daughter and giving EUR 5,000 to his wife as a gift.

II. RELEVANT DOMESTIC LAW

A. Criminal Code (Law no. 300/2005 Coll., as in force at the material time)

48. Article 144 § 1 provided that any person who premeditatedly and intentionally killed another person would be liable to a term of imprisonment of between twenty and twenty-five years. Under Article 144 § 2 (c), if a person committed such a crime acting in a more serious manner (*závažnejším spôsobom konania*), or under Article 144 § 2 (e) with a specific motive (*z osobitného motívu*), he or she would be subject to a term of imprisonment of twenty-five years or life imprisonment.

49. Under Article 138 (j), "a more serious manner" referred to an offence that was committed against several people.

50. A "specific motive" for the commission of a crime was defined in Article 140. Under Article 140 (f) a specific motive was defined as the commission of a crime on the grounds of national, ethnic and racial hatred, or hatred based on skin colour.

51. Under Article 194, any person who, without lawful authority, entered the dwelling of another or remained there would be liable to a term of imprisonment of up to two years. The offender would be liable to a term of imprisonment of between one and five years if he committed the offence, *inter alia*, acting in a more serious manner (Article 194 § 2 (a)), or by reason of a specific motive (Article 194 § 2 (d)).

52. Under Article 294, any person who, for himself or another person, manufactured, imported, exported, transited, transported, procured or possessed ammunition without a licence, or who mediated such activity, would be liable to a term of imprisonment of one to five years. If the action in question concerned a firearm, that person would be liable to a term of imprisonment of between three and eight years.

B. Code of Criminal Procedure (Law no. 301/2005 Coll., as in force at the material time)

53. Article 46 provided, *inter alia*, that a party aggrieved by a criminal offence could attach a third-party claim for damages to the criminal proceedings and request that the court convicting the person charged with a criminal offence order the latter to pay compensation for the damage caused to the aggrieved party by the offence. The aggrieved party furthermore had the right to adduce evidence and to comment on it, to inspect the case file, to take part in the hearing, and to make submissions. Furthermore, Article 271 allowed the aggrieved party to ask questions after the adducing of evidence; Article 272 § 1 stipulated that an aggrieved party (or his or her representative) was authorised to ask questions within the scope of his or her claim for damages after the prosecutor's questioning was concluded.

54. If a court convicted a person indicted for an offence (*obžalovaný*) by which damage had been caused, it generally ordered the defendant to pay the aggrieved party damages (Article 287), unless the evidence taken was not sufficient for making such a ruling, in which case the court referred the aggrieved party to lodge the claim in question with the civil courts (Article 288).

55. Under Article 172 § 2 of the Code of Criminal Procedure a simplified version of a judgment (that is to say without any reasoning) could be delivered, provided that both the prosecutor and the accused waived their right to appeal after the pronouncement of such a judgment, or that they had done so within three days of the delivery of the judgment.

56. Under Article 230 a prosecutor supervises criminal proceedings to ensure their lawfulness. The public prosecutor is especially entitled to give to an investigator binding instructions or quash his unlawful or unreasonable decisions and substitute them by own decisions.

57. Article 237 provides, *inter alia*, that the criminal court can adjudicate the case only on the basis of a bill of indictment, submitted and represented by a public prosecutor.

58. Article 307 stipulated the persons entitled to appeal against the judgment. In particular, it provided that the aggrieved party had the right to appeal only in so far as the appeal concerned rulings on compensation for damage.

III. RELEVANT INTERNATIONAL MATERIALS

59. The relevant standards concerning recognising hate crimes and hate crime indicators were summarised in *Balázs v. Hungary*, no. 15529/12, § 21, 20 October 2015.

60. In its General Policy Recommendation No. 13, adopted on 24 June 2011, the European Commission against Racism and Intolerance (ECRI)

reiterated that "anti-Gypsyism" was a specific form of racism-a form of dehumanisation and institutional racism nurtured by historical discrimination – which was expressed, *inter alia*, by violence, hate speech, exploitation, stigmatisation and the most blatant kind of discrimination; stressed that anti-Gypsyism was an especially persistent, violent, recurrent and commonplace form of racism; and emphasised the need to combat this phenomenon at every level and by every means.

61. On 19 June 2014, the ECRI issued a Report on Slovakia (CRI(2014)37)). It mentioned, *inter alia*, the case of the Hurbanovo shooting; paragraph 68 reads as follows:

> "NGOs reported nine violent criminal offences against Roma between 2009 and 2012. In other cases, Roma settlements were the target of vandalism that endangered the lives of the inhabitants. The worst incident so far, which received extensive biased media coverage justifying the killing, took place in June 2012 when three Roma were killed and two wounded by an off-duty municipal police officer in Hurbanovo."

62. The ECRI in its Report further reiterated its recommendation that:

> "... the Slovak authorities ensure effective investigations into allegations of racial discrimination or misconduct by the police and ensure as necessary that the perpetrators of these types of acts are adequately punished."

63. The UN Committee on the Elimination of Racial Discrimination adopted concluding observations in respect of Slovakia in 2013 (CERD/C/SVK/CO/9-10). In paragraph 6 of the concluding observations it dealt with the concern and recommendation regarding racially motivated violence and crimes, and stated as follows:

> "The Committee recommends that the State party take effective measures to prosecute hate crimes in an effective manner so as to discourage racist and extremist organizations. ..."

64. Similarly, the UN Committee on the Elimination of Racial Discrimination, in its concluding observations in respect of Slovakia of 2018 (CERD/C/SVK/CO/11-12) expressed serious concerns about reports of verbal and physical attacks against ethnic minorities, including Roma, and recommended, *inter alia*, that:

> "... all racially motivated crimes, including verbal and physical attacks, are investigated, that perpetrators are prosecuted and punished, and that motives based on race or on skin colour, descent or national or ethnic origin are considered as an aggravating circumstance when imposing punishment for a crime."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 14, READ IN CONJUNCTION WITH ARTICLE 2 OF THE CONVENTION

65. The applicants complained that the Slovak authorities had failed in their obligation to conduct an effective investigation into the racial overtones of the crime committed against them. They furthermore challenged the lack of reasoning in the sentencing judgment, which had rendered it impossible to demonstrate any accountability for the racist motive for the crime. They relied on Articles 2 and 14 of the Convention, which read as follows:

Article 2

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

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

(a) in defence of any person from unlawful violence;

(b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

(c) in action lawfully taken for the purpose of quelling a riot or insurrection."

Article 14

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

A. Admissibility

66. The Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It furthermore notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicants

67. The applicants maintained that the attack had resulted from the fact that they were of Roma origin and that the authorities had failed to comply with the Convention standards. They pointed out that the expert reports had indicated a racial motive and that there was evidence that Mr J. had been violent towards Roma and that he had assaulted one of the victims one week prior the massacre. They also submitted that their lawyer emphasised the need to unmask any racial motive at the main hearing of 26 March 2013.

68. Moreover, the applicants emphasised a key failure on the part of the trial court to deliver a reasoned judgment because this had been the only way to unmask racial motivation, given that it had not been mentioned in the bill of indictment. They also argued that there was a climate of anti-Gypsyism in Slovakia generally, and a climate of institutional anti-Gypsyism among police in particular. In their opinion, the failure to conduct an effective investigation and trial capable of exposing and punishing racial motivation had not only impacted the applicants, but had exacerbated a situation in which Roma had reason to believe that they were targets of police violence and murder. Furthermore, the lack of reasoning in the trial court's judgment, accompanied by the impossibility of lodging an appeal against the conviction, had also pre-empted the possibility of an effective constitutional review by the Constitutional Court.

(b) The Government

69. The Government submitted that the authorities had established the relevant facts of the case, including the potentially racist motive of the perpetrator, and had gathered evidence in this regard. The authorities, however, had arrived at the conclusion that the committed crime had not been racially motivated. Therefore, as a racial motive had not been proved, the delivery of a simplified judgment could not have affected the applicants' rights.

70. Furthermore, the Government admitted that the applicants' representative had had reservations regarding the evidence heard during the trial; however, in their opinion, he did not make any allegation about a racial motive before the trial court or in the appeal. In fact, this had been raised for the first time only in the applicants' constitutional complaint.

71. The Government also stated that the applicants had had enough opportunities to participate in the proceedings, assert their rights, propose evidence and question the evidence. In particular, during the proceedings the applicants had had the opportunity to contest the conclusions of the

experts, and their representative could have suggested in an earlier stage of the proceedings that an additional expert opinion be ordered.

2. The Court's assessment

(a) General principles

72. The Court reiterates that the obligation to protect the right to life under Article 2 of the Convention, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within [its] jurisdiction the rights and freedoms defined in [the] Convention", requires by implication that there should be some form of effective official investigation when individuals have been killed (see *Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, § 110, ECHR 2005-VII), even where the presumed perpetrator of the attack is not a State agent (see *Georgi Georgiev v. Bulgaria* (dec.), no. 34137/03, 11 January 2011 with further references; *Fedorchenko and Lozenko v. Ukraine*, no. 387/03, § 64, 20 September 2012; and *Balázs*, cited above, § 51).

73. In order to be "effective" in the context of Article 2 of the Convention, an investigation must firstly be adequate (see *Ramsahai and Others v. the Netherlands* [GC], no. 52391/99, § 324, ECHR 2007‑II). That is to say it must be capable of leading to the establishment of the facts and, where appropriate, the identification and punishment of those responsible, where those responsible are State agents, but also where they are private individuals (see *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, § 71, ECHR 2002-II; *Rantsev v. Cyprus and Russia*, no. 25965/04, § 233, ECHR 2010 (extracts); and *M. and M. v. Croatia*, no. 10161/13, § 148, ECHR 2015 (extracts)). The obligation to conduct an effective investigation is an obligation which concerns the means to be employed, and not the results to be achieved (see *Nachova and Others*, cited above, § 160, and *Mižigárová v. Slovakia*, no. 74832/01, § 93, 14 December 2010), but the nature and degree of scrutiny satisfying the minimum threshold of effectiveness depends on the circumstances of the particular case, and it is not possible to reduce the variety of situations which might occur to a bare check-list of acts of investigation or other simplified criteria (see *Tanrıkulu v. Turkey* [GC], no. 23763/94, §§ 101-110, ECHR 1999-IV, and *Velikova v. Bulgaria*, no. 41488/98, § 80, ECHR 2000‑VI).

74. Furthermore, at all events, there must be a sufficient element of public scrutiny of the investigation or its results to secure accountability in practice (see *McKerr v. the United Kingdom*, no. 28883/95, § 115, ECHR 2001-III with further references), maintain public confidence in the authorities' adherence to the rule of law, and prevent any appearance of collusion in or tolerance of unlawful acts (see, for example, *Dimitrova*

and Others v. Bulgaria, no. 44862/04, 27 January 2011, § 77). 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 (see *Mižigárová*, cited above, § 95).

75. In relation to alleged racist attacks, the Court reiterates that according to its well-established practice, the State authorities 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. Treating racially induced violence and brutality on an equal footing with cases that have no racist overtones would be to turn a blind eye to the specific nature of acts which are particularly destructive of fundamental rights. A failure to make a distinction in the way in which situations that are essentially different are handled may constitute unjustified treatment irreconcilable with Article 14 of the Convention (see, for example, *Nachova and Others*, cited above, § 160, which concerned the shooting and killing of two Roma men by a military officer; *Bekos and Koutropoulos v. Greece*, no. 15250/02, § 70, ECHR 2005-XIII (extracts), which concerned the beating of two Roma men by police officers; *Šečić v. Croatia*, no. 40116/02, § 66, 31 May 2007, which concerned the beating of a Roma by a skinhead group; *Fedorchenko and Lozenko*, cited above, § 65, which concerned the death of the applicants' relatives as the result of an arson attack; and *Ciorcan and Others v. Romania*, nos. 29414/09 and 44841/09, § 158, 27 January 2015, which concerned the shooting and injuring of a large number of Roma during a police raid).

76. Admittedly, proving racial motivation will often be extremely difficult in practice. The respondent State's obligation to investigate possible racist overtones to a violent act is an obligation to use best endeavours and not absolute (see, for example, *Šečić v. Croatia*, no. 40116/02, § 66, 31 May 2007). However the authorities must do what is reasonable, given the circumstances of the case (see *Fedorchenko and Lozenko*, cited above, § 66), in particular to collect and secure the evidence, explore all practical means of discovering the truth and deliver fully reasoned, impartial and objective decisions, without omitting suspicious facts that may be indicative of racially induced violence (see *Bekos and Koutropoulos*, cited above, § 69, and *Balázs*, cited above, § 52).

77. The Court furthermore notes that the authorities' duty to investigate the existence of a possible link between racist attitudes and an act of violence is an aspect of their procedural obligations arising under Article 2 of the Convention, but may also be seen as implicit in their responsibilities under Article 14 of the Convention, taken in conjunction with Article 2 to secure the enjoyment of the right to life without discrimination. Owing to the interplay of the two provisions, the issues may fall to be examined under

one of the two provisions only, with no separate issue arising under the other, or may require examination under both Articles. This is a question to be decided in each case on its facts and depending on the nature of the allegations made (see *Nachova and Others*, cited above, § 161, and *Balázs*, cited above, § 54).

78. In the present case, the Court considers that in view of the allegations made by the applicants to the effect that the ineffectiveness of the investigation stems precisely from the fact that the authorities insufficiently investigated the racist aspects of the acts of violence, the Court considers that the complaint should be considered from the angle of Article 14, read in conjunction with Article 2 of the Convention (see *Nachova and Others*, cited above, § 162, and *Balázs*, cited above, § 55).

(b) Application of those principles to the present case

79. The Court observes that under Article 144 § 2, in conjunction with Article 140 (f) of the Criminal Code, as in force at the material time, the intentional killing of other persons with premeditation for those persons' connection with a particular group constituted a criminal offence punishable by twenty-five years or life imprisonment (see paragraph 48 above).

80. In view of the above, the Court considers that the Slovak legal system provided, in principle, adequate legal mechanisms to afford an acceptable level of protection to the applicants in the circumstances. It must therefore examine whether the manner in which the criminal-law mechanisms were implemented was adequate (see *Škorjanec v. Croatia*, no. 25536/14, § 62, 28 March 2017), regard being had to the requirements of the Convention in this respect (see paragraphs 57-58 above).

81. The Court notes that following the incident of 16 June 2012, the police immediately conducted a preliminary investigation, in the course of which the police interviewed Mr J., his relatives and colleagues, and the victims' relatives. Mr J. confirmed that he had armed himself with a gun and driven to the applicants' house with the intention of "dealing with" the Roma. He also confirmed that he had been thinking about a radical solution, that he had been looking for a yard containing more Roma people and that he had been acquainted with some members of the applicants' family (see paragraphs 10-13 above).

82. The victims' relatives stated that they had not been aware of any disputes between the victims' family and Mr J. However, one witness described a conflict between Mr J. and Roma boys who had been caught stealing. Mr J. allegedly slapped one member of the victims' family a week or two before the incident (see paragraph 14-16 above). Other witnesses-namely Mr J.'s relatives and colleagues – denied any previous prejudicial statements or biased behaviour on the part of Mr J. against Roma (see paragraph 15 above).

83. The police furthermore requested an expert examination of Mr J.'s mental state, as well as a possible motive for his actions (see paragraph 18 above). The psychologist concluded that the immediate motive of Mr J.'s behaviour at the critical moment was unclear. Nevertheless, he confirmed that an important motive determining his actions before and during the crime could have been his continual frustration with his own work and that he had been unable to resolve the public order issues in the town – in particular, problems concerning the Roma (see paragraphs 19-21 above). Moreover, during his interview on 23 November 2012 (see paragraph 23 above) the expert expressly referred to the incident with Roma boys who had been caught stealing and Mr J.'s aggressive behaviour towards them. In his opinion, Mr J.'s aggression had been intensifying, as his feelings of helplessness and fear of danger from Roma had been growing. In the expert's opinion, Mr J. had believed that he could solve what the expert called "the Roma question" (see paragraphs 23 above). However, the expert did not confirm unequivocally a racial motive for Mr J.'s attack (see paragraph 24 above).

84. The Court has already found that any specific information capable of suggesting that there had been any racial motive would suffice to open an investigation into a possible causal link between alleged racist attitudes and a death (see *Mižigárová*, cited above, § 122). In particular, such an attitude can be present where any evidence of racist verbal abuse comes to light in an investigation (see *Škorjanec*, cited above, § 65, and *Balázs*, cited above, § 61), when the attackers belonged to a group which is by its nature governed by extremist and racist ideology (see *Abdu v. Bulgaria*, no. 26827/08, § 49, 11 March 2014, and *Šečić*, cited above, § 68), but also in cases of allegedly racially motivated violence when another alleged non-racist motive was not supported by any information (see *Fedorchenko and Lozenko*, cited above, § 67) or when the complexity of facts was seen against the background of published accounts of the existence of general prejudice and hostility against Roma (see *Ciorcan and Others*, cited above, § 163, and *Fedorchenko and Lozenko*, cited above, § 68).

85. Turning to the present case, the Court considers that investigators and the prosecutors involved in the present case had before them plausible information which was sufficient to alert them to the need to carry out an initial verification and, depending on the outcome, an investigation into possible racist overtones in the events that led to the death of three people and the injuring of two more.

86. As regards the Government's argument that the authorities had established the relevant facts of the case, including a potential non-proven racist motive, the Court observes that the investigating authorities questioned Mr J. and other witnesses about a possible racist background for his actions and requested an expert to assess Mr J's motive. However, they did not extend their investigation and analysis to any potential racist

element of the violent attack of 16 June 2012. The investigating authorities in particular failed to carry out a thorough examination of the fact that Mr J. had acted violently against Roma shortly before the attack, even though the expert witness suggested a link between this incident and the shooting (see paragraph 23 above). The Court would reiterate, in this connection, that where any evidence of racist bias comes to light in an investigation, it must be checked; if such bias is confirmed, a thorough examination of all the facts should be undertaken in order to uncover any possible racist motives (see *Balázs*, cited above, § 61, and *Nachova*, cited above, § 164).

87. In addition, the general context of the attack should have been taken into account. As explained in the Court's case-law, the domestic authorities should be mindful that perpetrators may have mixed motives, being influenced as much or more by situational factors as by their biased attitude (see *Škorjanec*, cited above, § 65). In the case in issue, the relevant situational factors, stemming especially from the expert opinion of the psychologist, were not taken into account. Nevertheless, even assuming that the authorities considered the evidence to be contradictory, they did not take any procedural steps or examine whether any inference could be drawn from any other circumstantial evidence (contrast *Balázs*, cited above, § 64 and § 66).

88. In this connection, the Court cannot but note that on 11 December 2012 the special prosecutor indicted Mr J., charging him explicitly with the offence of premeditated first-degree murder under Article 144 § 1 and § 2 (c) of the Criminal Code (partly accomplished and partly attempted). In the bill of indictment, the special prosecutor identified only one aggravating form under Article 144 § 2 of the Criminal Code-specifically, that Mr J.'s attack had been directed against five people. The other possible aggravating form of racial motive – that is to say under Article 144 § 2 (e) of the Criminal Code, with reference to Article 140 (f) of the Criminal Code – was not addressed and discussed at all (see paragraph 25-27 above).

89. The Court further notes that the applicants, together with six other members of the family, joined the criminal proceedings before the court as civil parties (see paragraph 29 above). During the trial, their lawyer contested the objective nature and the accuracy of the experts' conclusions, particularly in relation to Mr J.'s motive. He attempted to question the experts. One of the experts (the psychiatrist) stated that it was not within their remit to assess the issue of racism, and another question from the lawyer for the clinical psychologist was not allowed by the SCC. A proposal by the applicants' representative to order a second expert opinion was rejected (see paragraph 30 above). Eventually, the SCC delivered only a simplified judgment, which contained a brief description of the criminal act and stipulated the sentence imposed (see paragraph 31 above). The question

of Mr J.'s motives and the legal classification of his actions was not addressed (see paragraph 32 above).

90. In this regard, the Court does not accept the Government's suggestions that (i) the applicants failed to allege before the trial court that Mr J.'s actions had been racially motivated (contrast *Mižigárová*, cited above, § 122, and *Vasil Sashov Petrov v. Bulgaria*, no. 63106/00, § 72, 10 June 2010), and (ii) the allegations that they had made had been of a vague and general nature (see, by contrast, *Adam v. Slovakia*, no. 68066/12, § 94, 26 July 2016). Indeed, not only did their lawyer raise the issue of racism before the SCC and attempt to interview expert witnesses about Mr J.'s motive, but one family member even expressly argued in her appeal that the SCC had failed to consider that there might have been a racial motive for the attack (see paragraph 35 above). The applicants' representative was not allowed to pursue the line of questioning concerning a racial motive for Mr J.'s actions since a civil party could raise only issues concerning a claim for damages (see paragraph 53 above). Moreover, an injured party claiming damages could not prevent the court from delivering a simplified judgment under Article 172 § 2 of the CCP; nor could that party lodge an appeal with the appellate court as regards the ruling on Mr J.'s guilt and sentencing (see paragraph 56 above).

91. The Court observes that the Slovak legal system does not allow an injured party to act as a subsidiary (see, for example, *Kitanovski v. the former Yugoslav Republic of Macedonia*, no. 15191/12, § 89, 22 January 2015) or as a private prosecutor (see, for example, *M.C. v. Poland*, no. 23692/09, § 41, 3 March 2015) and that the role of the public prosecutor is essential. It is only the public prosecutor who supervises the investigation conducted by the police authority in the pre-trial stage of the criminal proceedings (see paragraph 56 above), outlines in principle, on the basis of the bill of indictment, the extent of the trial court's adjudication (see paragraph 57 above), and has a right to commence full review before the appellate court (see paragraph 58 above). In the present case, there is no indication that the prosecution gave any instructions to police in the course of the investigation in relation to a possible racist motive of Mr J., even though already his very first statement of 16 June 2012 contained an apparent racial motive for his action (see paragraph 11 above). Further, Mr J. was not charged with a racially motivated crime (see paragraph 9 above) and the public prosecutor did not correct this lacuna on the part of the investigation authorities (see paragraph 56 above). In addition, the public prosecutor failed to discuss in the bill of indictment a possible racial motive (see paragraphs 27 and 88 above) which became even more apparent from the evidence collected in the course of the investigation, and in particular gave no reasons why the previous violent behaviour of Mr J. and his own statement, together with the findings of the clinical psychologist, could not be linked to racial motives for the attack (contrast *Stoica*

v. Romania, no. 42722/02, § 120, 4 March 2008). Moreover, because the prosecutor (with the defendant) had waived his right to appeal, a full appeal was no longer possible before the appellate court.

92. Thus, in this procedural situation, it was not open to the appellate court to amend the impugned SCC judgment solely on the basis of an appeal lodged by the applicants because their appeal was limited to their claims concerning damages. Moreover, the applicants' complaint that the prosecuting authorities' failure to assess whether there had been any racial motive for the attack was considered by the Constitutional Court jointly with their grievances concerning their inability to challenge Mr J.'s conviction and sentence and thus dismissed as being outside the court's competence (see paragraph 41 above).

93. The Court is mindful that it is not its task to verify whether the decision of the public prosecutor to waive the right to appeal and the courts' decisions were correct in terms of Slovak law; nevertheless, it considers that in cases raising issues under Article 2 and 3 of the Convention, this procedural arrangement calls for greater vigilance on the side of the authorities dealing with prosecution to secure the effective implementation of the domestic criminal laws.

94. In this connection the Court emphasises that racial violence is a particular affront to human dignity and, in view of its perilous consequences, requires from the authorities special vigilance and a vigorous reaction. It is for this reason that the authorities must use all available means to combat racism and racist violence, thereby reinforcing democracy's vision of a society in which diversity is not perceived as a threat but as a source of its enrichment (see *Nachova and Others*, cited above, § 145).

95. The Court is aware of the seriousness of the applicants' allegations, as well as the sensitive nature of the situation related to Roma in Slovakia at the relevant time (see paragraphs 61-64 above). It is also aware that its role is not to rule on the application of domestic law or to adjudicate on the individual guilt of persons charged with offences, but to review whether and to what extent the competent authorities, in reaching their conclusion, may be deemed to have submitted the case to the careful scrutiny required by the procedural obligations under the Convention (see *Škorjanec*, cited above, § 69). Likewise, aware of its subsidiary role, the Court is conscious that it is prevented from substituting its own assessment of the facts for that of the national authorities (see *Balázs*, cited above, § 75).

96. Nevertheless, it remains the case that the prosecuting authorities failed to examine a possible racist motive in the face of powerful racist indicators and in particular failed to give any reasons whatsoever whether the attack of 16 June 2012 had or had not been motivated by racial hatred. In the absence of any reaction by the courts to the limited scope of the investigation and prosecution, the adequacy of the action taken by the authorities dealing with the investigation and prosecution in this case was

impaired to an extent that is irreconcilable with the State's obligation in this field to conduct vigorous investigations, having regard to the need to continuously reassert society's condemnation of racism in order to maintain the confidence of minorities in the ability of the authorities to protect them from the threat of racist violence (see *Koky and Others v. Slovakia*, no. 13624/03, § 239, 12 June 2012; *Amadayev v. Russia*, no. 18114/06, § 81, 3 July 2014; and *Balázs*, cited above, § 52).

97. The combined effect of the above considerations is such as to amount to a violation of Article 14, read in conjunction with Article 2 of the Convention.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

98. Lastly, the applicants complained under Article 2, in conjunction with Article 13 of the Convention, about their inability to cross-examine or otherwise challenge the experts' conclusions as to Mr J.'s mental state, which had prevented them from actively participating in the proceedings.

99. The Court observes firstly that of all that the essence of these complaints overlaps to a significant extent with that of the complaints presented and examined above under Article 2, in conjunction with Article 14 of the Convention. Having regard to the finding of a violation of Article 2, in conjunction with Article 14 of the Convention, the Court considers that, while the complaint under Article 13, taken in conjunction with Article 2 of the Convention, is admissible, there is no need for a separate examination of this complaint on its merits (see, for example, *Koky and Others*, cited above, §§ 242-244; *Dimitrova and Others*, cited above, § 59; and *Mižigarová*, cited above, §§ 111 and 123).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

100. Article 41 of the Convention provides:

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

A. Damage

101. The applicants claimed jointly 50,000 euros (EUR) in respect of non-pecuniary damage.

102. The Government considered this claim to be excessive.

103. Having regard to all the circumstances of the present case, the Court accepts that the applicants have suffered non-pecuniary damage which cannot be compensated for solely by the finding of a violation.

Making its assessment on an equitable basis, and taking into account the amount of their claim, the Court awards each applicant EUR 25,000 in respect of non-pecuniary damage, plus any tax that may be chargeable to them.

B. Costs and expenses

104. The applicants did not make a claim for costs. Consequently, no award is made under this head.

C. Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 14, read in conjunction with Article 2 of the Convention;

3. *Holds* that there is no need to examine the complaint under Article 13, read in conjunction with Article 2 of the Convention;

4. *Holds*
   (a) that the respondent State is to pay each of the applicants, within three months from the date on which the judgment becomes final, in accordance with Article 44 § 2 of the Convention, EUR 25,000 (twenty five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period, plus three percentage points;

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

Done in English, and notified in writing on 11 December 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips Registrar	Vincent A. De Gaetano President