



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

FOURTH SECTION

CASE OF KONTROVÁ v. SLOVAKIA

(Application no. 7510/04)

JUDGMENT

STRASBOURG

31 May 2007

FINAL

24/09/2007

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 Kontrová v. Slovakia,

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

Sir Nicolas BRATZA, *President*,

Mr J. CASADEVALL,

Mr G. BONELLO,

Mr K. TRAJA,

Mr L. GARLICKI,

Ms L. MIJOVIĆ,

Mr J. ŠIKUTA, *judges*,

and Mr T.L. EARLY, *Section Registrar*,

Having deliberated in private on 10 May 2007,

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

PROCEDURE

1. The case originated in an application (no. 7510/04) 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 a Slovakian national, Ms Dana Kontrová (“the applicant”), on 20 February 2004.

2. The applicant was represented by Ms I. Rajtáková, a lawyer practising in Košice. The Slovak Government (“the Government”) were represented by their Agent, Ms M. Pirošíková.

3. The applicant alleged, in particular, that the police had failed to take appropriate action to protect her children's lives and her private and family life despite knowing of her late husband's abusive behaviour and fatal threats and that it had been impossible for her to obtain compensation for the non-pecuniary damage she had suffered. She relied on Articles 2, 6 and 8 of the Convention. The Court also decided to examine the application of its own motion under Article 13 of the Convention, taken in conjunction with Articles 2 and 8 of the Convention.

4. By a decision of 13 June 2006 the Court declared the application partly admissible.

5. The applicant and the Government each filed further written observations (Rule 59 § 1 of the Rules of Court). The Chamber having decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 3 *in fine*), the parties replied in writing to each other's observations.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1974 and lives in Michalovce.

A. The factual background

7. The applicant was married. The marriage produced two children: a daughter who was born in 1997 and a son who was born in 2001.

8. On 2 November 2002 the applicant filed a criminal complaint against her husband with the Michalovce District Police Department (*Obvodné oddelenie Policajného zboru*). She accused him of having assaulted and beaten her with an electric cable the previous day. She submitted a medical report by a trauma specialist indicating that her injuries would incapacitate her from work for up to seven days. The applicant also stated that there was a long history of physical and psychological abuse by her husband.

9. At an unspecified time between 15 and 18 November 2002 the applicant and her husband went to the District Police Station. They sought to withdraw the applicant's criminal complaint. A police officer, Mr H., advised them that, in order to avoid a prosecution, they would have to produce a medical report showing that after the incident on 1 November 2002 the applicant had not been incapacitated from work for more than six days. The applicant produced such a report on 21 November 2002.

10. On 26 November 2002 officer H. decided that the above matter was to be dealt with under the Minor Offences Act (Law no. 372/1990 Coll.) and, under section 60(3)(a) of that Act, decided to take no further action (*odloženie veci*).

11. During the night of 26 to 27 December 2002 a relative of the applicant called the emergency service of the District Police Department to report that the applicant's husband had a shotgun and was threatening to kill himself and the children. The applicant herself made a similar phone call later that night. The phone calls were received by a police officer, Mr B., who instructed a police officer, Mr P.Š., to arrange for a police patrol to visit the premises. The patrol found the applicant in the village of Tušická Nová Ves. The applicant's husband had left the scene prior to their arrival. The policemen took the applicant to her parents' home and invited her to come to the police station the following morning so that a formal record of the incident could be drawn up.

12. In the morning of 27 December 2002 the applicant, accompanied by her brother, went to the Trhovište District Police Station, where she spoke to a police officer, Mr M.Š.

13. In the morning of 31 December 2002 the applicant and her brother went to the Michalovce District Police Station, where she talked to officer H. She enquired about her criminal complaint of 2 November 2002 and also mentioned the incident of the night of 26 to 27 December 2002.

14. On 31 December 2002 between 11 a.m. and 11.15 a.m. the applicant's husband shot their two children and himself dead.

B. The criminal proceedings

15. On 31 January 2003 the Košice Branch of the Police Inspection Service (*Úrad inšpekčnej služby Policajného zboru* – “the Inspection Service”) charged officer M.Š. with abuse of public authority (Article 158 § 1 (c) of the Criminal Code) on the ground that on 27 December 2002 he had failed to accept and duly register the applicant's criminal complaint and to commence criminal proceedings against the applicant's husband immediately.

16. On 3 February 2003 the Inspection Service charged officer P.Š. with dereliction of duty (Article 159 § 1 and 2 (b) of the Criminal Code) on the ground that on the night of 26 to 27 December 2002 he had failed to take appropriate action in response to the emergency calls from the applicant and her relative, in particular, to launch a criminal investigation, to keep a proper record of the emergency calls and to advise the next shift of the situation and of the fact that the applicant would be visiting the police station the following morning to file a formal criminal complaint.

17. On 7 February 2003 the Inspection Service charged officer H. with abuse of public authority (Article 158 § 1 (a) of the Criminal Code) for altering records pertaining to the applicant's criminal complaint of 2 November 2002 and arbitrarily treating it as a minor offence calling for no further action.

18. On 12 February 2003 the Inspection Service commenced criminal proceedings against an unknown police officer for abuse of public authority (Article 158 § 1 (a) of the Criminal Code) in connection with an allegation that on 31 December 2002 he had wrongfully refused to register a criminal complaint from the applicant concerning the incident of the night of 26 to 27 December 2002. These proceedings later resulted in charges against officer H. On the same day the Inspection Service charged officer B. with abuse of public authority (Article 158 § 1 (a) of the Criminal Code) on the ground that on the night of 26 to 27 December 2002 he had failed to take appropriate action in connection with the allegations that the applicant's husband had threatened violence. He was accused, *inter alia*, of having omitted to carry out a search in the register of firearms and firearms licence holders.

19. On 30 April 2003 the Prešov District Military Prosecutor (*Vojenský obvodný prokurátor*) discontinued the proceedings that had been commenced on 12 February 2003 and had subsequently led to the charges against officer

H. After examining documentary evidence and testimony by the applicant, the accused and witnesses, the prosecutor found that the purpose of the applicant's conversation with officer H. on the morning of 31 December 2002 had not been to lodge a new formal criminal complaint against her husband. She had merely sought information about the state of the proceedings further to her criminal complaint of 2 November 2002 and there was no suspicion that officer H. had committed any criminal offence.

20. On 28 July 2003 the Košice Regional Investigation Office (*Krajský úrad vyšetrovania*) discontinued the criminal proceedings instituted against officer H. on 7 February 2003. Observing that he had acted in good faith and in accordance with the applicant's express wishes, the investigator decided that the actions of officer H. had not involved the element of social gravity that was requisite in order to constitute a criminal offence. The investigator also observed that officer H. had already been discharged from the police and that therefore no disciplinary proceedings could be brought against him. The applicant challenged this decision by means of a complaint which the District Military Prosecutor declared inadmissible on 15 August 2003, finding under Article 142 § 1 of the Code of Criminal Procedure (CCP) that she had no right to make it.

21. On 4 August 2003 the District Military Prosecutor summoned officers B., P.Š. and M.Š. for trial in the Michalovce District Court (*Okresný súd*) on a charge of negligent dereliction of duty (Article 159 §§ 1 and 2 (b) of the Criminal Code) in connection with the above events. The summons set out in detail the internal regulations of the Ministry of the Interior the officers were alleged to have breached.

22. On 20 October 2003, following a hearing on the same day in which the applicant took part through the intermediary of her lawyer, the District Court dismissed the summons. It found that the criminal offence of dereliction of duty presupposed a complete or enduring failure to discharge the duty. Merely impeding the discharge of the duty was not enough. It found that in the present case the officers' actions did not amount to such a failure to discharge their duty and that the connection between their actions and the tragedy of 31 December 2002 was not sufficiently direct.

The applicant appeared in the District Court as a witness and was not served with a copy of the judgment.

23. On 21 January 2004 the Košice Regional Court (*Krajský súd*) dismissed an appeal by the District Military Prosecutor against the judgment of 20 October 2003. No further appeal was available.

The applicant was neither officially informed about the appellate proceedings nor served with a copy of the Regional Court's judgment.

24. The Prosecutor General, however, challenged the Regional Court's decision of 21 January 2004 by lodging a complaint in the interests of the law (*sťažnosť pre porušenie zákona*) in the Supreme Court (*Najvyšší súd*).

25. On 29 September 2004 the Supreme Court quashed both the Regional Court's decision of 21 January 2004 and the District Court's judgment of 20 October 2003. The Supreme Court found that the lower courts had assessed the evidence illogically, that they had failed to take account of all the relevant facts and that they had drawn incorrect conclusions. The Supreme Court found that it was clear that the accused officers had acted in dereliction of their duties. It concluded that there was a direct causal link between their unlawful actions and the fatal consequence. The Supreme Court remitted the case to the District Court for reconsideration and pointed out that, pursuant to Article 270 § 4 of the CCP, the latter was bound by its above legal views.

26. On 14 March 2006 the District Court held a hearing in which the applicant took part in the capacity of a witness. Following the hearing, on the same day, the District Court found officers B., P.Š. and M.Š. guilty as charged and sentenced them to, respectively, six, four and four months' imprisonment. All sentences were suspended for 12 months. It was found that the accused had negligently breached the applicable service regulations and had thereby caused the death of the applicant's children. When determining the sentence, the District Court took into account *inter alia* the fact that the accused had thus far been leading honest lives, their work appraisals were positive and officers B. and M.Š. had already been discharged from service in the police. All the accused and the public prosecution service appealed. Officer B. later withdrew his appeal.

27. On 26 September 2006 the Regional Court heard and dismissed the outstanding appeals. It found that the District Court had adequately established and correctly assessed the facts and had drawn accurate legal conclusions both as regards the guilt and the sentences. No ordinary remedy was available against the Regional Court's judgment.

C. The first set of proceedings in the Constitutional Court

28. On 26 February 2003 the applicant, who was represented by a lawyer, lodged a complaint under Article 127 of the Constitution with the Constitutional Court (*Ústavný súd*). She formally directed her complaint against the District Police Department, maintaining that its officers' failure to act had led to a violation of her right to protection of her personal integrity (Article 16 § 1 of the Constitution), her right to protection from unjustified interference with her private life (Article 19 § 2 of the Constitution) and her right to legal protection (Article 46 § 1 of the Constitution). She asserted that the police had been well aware of the situation that had preceded the tragedy of 31 December 2002 and, in breach of their positive obligations, had failed to take the necessary action. She claimed that responsibility for this failure lay with the District Police Department. She also maintained that the criminal proceedings which were currently pending could not afford her complete redress for the damage she had sustained.

29. On 2 July 2003 a three-judge bench of the Constitutional Court declared the complaint inadmissible. It observed that the Constitutional Court only had jurisdiction if the matter concerned did not fall within the jurisdiction of another authority. Its power to award just satisfaction in respect of non-pecuniary damage could only be exercised if the Constitutional Court had substantive jurisdiction over the matter. In the present case the primary issue was whether the officers who had dealt with the applicant's case had complied with the applicable regulations. That issue fell within the jurisdiction of the ordinary courts and was being examined in the criminal proceedings which were currently under way and in which the applicant could claim standing to intervene as an aggrieved party. A ruling on that issue could nevertheless also be sought before the civil courts. To that end, the bench observed that the applicant's range of options was not limited to actions of the type specifically provided for by statute. The bench concluded that, in these circumstances, the applicant's complaint was premature and the Constitutional Court had no jurisdiction to entertain it.

30. The presiding judge, however, did not share the majority view and gave a dissenting opinion. According to him, in view of its primary purpose, namely to uphold constitutionality, the Constitutional Court was free to examine complaints under the legal provisions which it considered to be the most relevant. The present case was to be examined primarily from the standpoint of the right to life and, in particular, the positive obligations inherent in that right. Contrary to the bench's finding, and in breach of the positive obligations in question, there were no remedies available to the applicant under civil or criminal law permitting her to claim and obtain adequate and sufficient redress for her alleged non-pecuniary damage. He pointed out that not even the bench had clearly identified the remedies available to the applicant for that purpose. Finally, the presiding judge said that the principle that the Constitutional Court's jurisdiction was subsidiary, which was set out in Article 127 of the Constitution, was to be interpreted with a degree of flexibility in the light of the circumstances of each particular case. In his view, the Constitutional Court was the only authority to which the applicant could have made her claim for compensation for non-pecuniary damage in the present case. It therefore should not have been precluded from examining the case by the possible existence of other remedies which in any event were not complete.

D. The second set of proceedings in the Constitutional Court

31. On 26 February 2004 the applicant, who was represented by a lawyer, lodged a fresh complaint against the District Police Department with the Constitutional Court. She reiterated the arguments she had submitted in the first complaint and added that the criminal proceedings had ended without producing any positive results in respect of her complaints. She maintained

that she had no remedy before any other authority as regards the non-pecuniary damage she had suffered. She concluded that the Constitutional Court was therefore called upon to deal with the merits of her case. She alleged a violation of her children's right to life (Article 15 §§ 1 and 2 of the Constitution and Article 2 § 1 of the Convention). She further alleged a violation of her right to protection of her personal integrity and privacy (Article 16 § 1 of the Constitution), her right to protection from unjustified interference with her private and family life (Article 19 § 2 of the Constitution), her right to legal protection (Article 46 § 1 of the Constitution), her right to security of person (Article 5 of the Convention) and her right to respect for her private and family life (Article 8 of the Convention).

32. On 8 September 2004 the Constitutional Court declared the complaint of 26 February 2004 inadmissible, holding that it had no jurisdiction to entertain it. In this context the Constitutional Court held that the principal questions of whether there had been any illegal action causing damage to the applicant and who was responsible for it fell to be determined by the ordinary courts. More specifically, the question of whether a crime had been committed in connection with the events complained of was to be determined in criminal proceedings. The Constitutional Court noted that in the criminal proceedings in the present case the applicant had failed to claim standing as an aggrieved party, which would have given her a series of procedural rights enabling her to influence their outcome. The fact that the criminal courts had sole jurisdiction in the matter meant that the Constitutional Court had power to intervene only if the criminal courts had acted manifestly arbitrarily. The applicant had, however, put forward no arguments to that effect. The Constitutional Court further held that, in any event, in so far as the complaint pertained to the District Police Department's failure to take action in November and December 2002, it had been submitted outside the statutory two-month time-limit. Furthermore, the applicant had no right of petition, either of her own or on behalf of her late children, in respect of the alleged violation of their right to life. Finally, part of the second complaint was in any event inadmissible as it raised issues that were *res judicata* by virtue of the decision of 2 July 2003.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Protection of personal integrity

33. The law concerning protection of personal integrity under Articles 11 et seq. of the Civil Code is summarised in the decision of 13 June 2006 in the present case. In addition, the following judicial decisions are of relevance.

34. In an action in the Nitra District Court (file no. 10C 142/2002) a mother claimed, among other things, financial compensation for non-

pecuniary damage in connection with the death of her daughter. She relied on the previous conviction for manslaughter of a car driver who had run over her daughter.

In a judgment of 15 May 2006 the District Court accepted that the plaintiff had suffered damage of a non-pecuniary nature and awarded her 200,000 Slovakian korunas by way of compensation.

35. In an action in the Poprad District Court (file no. 9C 688/2002) Mrs M. brought claims for protection of personal integrity against the State, in the person of the police, in connection with the death of her husband. She relied on a penal order (*trestný rozkaz*) of that court of 18 October 2000 in which a police officer had been found guilty of manslaughter under Article 224 §§ 1 and 2 of the Criminal Code on the ground that, while questioning the applicant's husband at a police station, he had failed to secure his service gun in an appropriate manner. He had thereby enabled the applicant's husband to grab the gun and shoot himself dead.

Mrs M. claimed, *inter alia*, financial compensation for the non-pecuniary damage suffered by herself and her late husband. She later withdrew the claim while at the same time submitting a similar claim in the name of her and her husband's daughter, Miss M.

In a judgment of 31 May 2006 the District Court allowed the withdrawal of the claim by Mrs M. and discontinued the proceedings in respect of that claim. At the same time, it dismissed the claim in the name of Miss M. The reasons for dismissing her claim were multiple. The State was not the defendant to be sued in the present case, the police having their own legal personality and the capacity to be sued. The claim was statute-barred. And finally, at the time of the tragedy Miss M. had only been 10 months old and had mainly not been living with her father. She therefore could not have suffered any trauma. The action is still pending on appeal.

B. Code of Criminal Procedure (Law no. 141/1961 Coll., as applicable at the relevant time)

36. Pursuant to Article 2 §§ 3 and 4, the public prosecution service is obliged to prosecute all criminal offences of which it learns, unless a statute or an international treaty provides otherwise. Authorities involved in prosecution, that is to say the police, investigators, public prosecution service and courts, are obliged to act on their own initiative.

37. If a criminal complaint does not contain information excluding the possibility that a criminal offence was committed, and if there are no special circumstances, the police or investigator, as the case may be, are obliged to commence criminal prosecution immediately (Article 160 § 1).

C. Criminal Code (Law no. 140/1961 Coll., as applicable at the relevant time)

38. The concept of a criminal attempt is defined in Article 8. Conduct which is dangerous for society, which immediately leads to the completion of a criminal offence and which the culprit carries out with the intention to commit a criminal offence is considered a criminal attempt provided that the offence itself has not been completed. A criminal attempt is liable to the same punishment as the completed offence to which it leads.

D. Police Corps Act of 1993 (Law no. 171/1993 Coll., as amended)

39. The Act governs the organisation and powers of the police. Pursuant to section 2(1)(a), (b) and (d) the police serve, *inter alia*, to protect fundamental rights and freedoms, life, health, personal safety and property, to investigate criminal offences, to identify culprits and to examine criminal complaints and other applications for a criminal prosecution to be opened.

40. Pursuant to section 9, a police officer on duty – and also, unless there are special circumstances, off duty – is obliged to intervene if a criminal offence is being committed and if there is an imminent danger to life, limb or property.

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTION

41. As at the admissibility stage, the Government argued that an action for protection of personal integrity was a remedy that the applicant should have used in respect of her complaints under Articles 2 and 8 of the Convention in order to comply with the requirement to exhaust domestic remedies pursuant to Article 35 § 1 of the Convention. In support of this argument, the Government relied on the newly identified judicial decisions (see paragraphs 34 and 35 above) and maintained that these decisions showed that the action in question was available to the applicant both in theory and practice. As she had not made use of this action, the relevant part of the application was inadmissible.

42. The applicant disagreed and argued that, according to both established judicial practice and legal theory, for an action for protection of personal integrity to be admissible, it was a prerequisite that the dignity and social standing of the person concerned had to have been diminished. This was not

so in the present case. Furthermore, the applicant contended that the recent decisions relied on by the Government were not final.

43. The Court notes that at the admissibility stage in the present case it examined *in extenso* the question of the effectiveness, from the point of view of Article 35 § 1 of the Convention, of an action for protection of personal integrity. It found that there was no sufficiently consistent case-law in cases similar to the applicant's to show that the possibility of obtaining redress in respect of non-pecuniary damage by making use of the remedy in question was sufficiently certain in practice and offered reasonable prospects of success as required by the relevant Convention case-law.

44. The Court observed at the admissibility stage that there had been some development in academic understanding and judicial practice in respect of the scope of actions for protection of personal integrity.

The events which gave rise to the present case occurred in 2002. The decisions on which the Government recently relied date from 2006 (see paragraphs 34 and 35 above). Any relevance they might possibly have in respect of the present case is therefore reduced by the fact that they were taken after the relevant time (see, for example, *V. v. the United Kingdom* [GC], no. 24888/94, § 57, ECHR 1999-IX).

Furthermore, it is to be noted that the judicial decisions of 2006 were given by courts at the lowest level of jurisdiction. There is no indication that they have been reviewed by higher courts and that they have already become final.

In the light of the above, the Court finds no reasons to depart from its conclusion in the decision of 13 June 2006 in the present case in respect of the effectiveness of an action for protection of personal integrity for the purposes of Article 35 § 1 of the Convention.

45. The Government's preliminary objection must therefore be dismissed.

II. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

46. The applicant complained that the State had failed to protect the life of her two children and alleged a violation of Article 2 of the Convention, which in so far as relevant reads as follows:

“1. Everyone's right to life shall be protected by law...”

47. With reference to the conclusions of the criminal courts, the Government acknowledged that, as regards the domestic authorities' failure to take appropriate positive action to protect the lives of the applicant's children, there had been a violation of Article 2 of the Convention.

Nevertheless, they emphasised that there had been a vigorous investigation into the matter by the Inspection Service and that those responsible had been brought to justice and duly sanctioned.

48. The applicant referred to her previous submissions and reiterated her complaint. She argued, in particular, that the police had been under a positive

obligation to protect the lives of her children and that they had failed to discharge that obligation. They should have classified her late husband's mere threats as criminal offences and should have investigated and prosecuted them of their own motion.

49. The Court reiterates that the first sentence of Article 2 § 1 enjoins the State not only to refrain from the intentional and unlawful taking of life, but also to take appropriate steps to safeguard the lives of those within its jurisdiction (see *L.C.B. v. the United Kingdom*, judgment of 9 June 1998, *Reports of Judgments and Decisions* 1998-III, p. 1403, § 36). This involves a primary duty on the State to secure the right to life by putting in place effective criminal-law provisions to deter the commission of offences against the person backed up by law-enforcement machinery for the prevention, suppression and punishment of breaches of such provisions. It also extends in appropriate circumstances to a positive obligation on the authorities to take preventive operational measures to protect an individual whose life is at risk from the criminal acts of another individual (see *Osman v. the United Kingdom*, judgment of 28 October 1998, *Reports* 1998-VIII, p. 3159, § 115).

50. Bearing in mind the difficulties in policing modern societies, the unpredictability of human conduct and the operational choices which must be made in terms of priorities and resources, the scope of the positive obligation must be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities. Not every claimed risk to life, therefore, can entail for the authorities a Convention requirement to take operational measures to prevent that risk from materialising. For a positive obligation to arise, it must be established that the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual from the criminal acts of a third party and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk (*ibid.*, pp. 3159-60, § 116).

51. In assessing the scope of such positive obligations under Article 2 of the Convention, the obligation of Contracting States under Article 1 of the Convention to secure the practical and effective protection of the rights and freedoms laid down therein should be taken into account (see, *mutatis mutandis*, *McCann and Others v. the United Kingdom*, judgment of 27 September 1995, Series A no. 324, pp. 45-46, §§ 146-147).

52. Turning to the facts of the present case, it is to be noted that, pursuant to section 2 (1) (a) and (b) of the Police Corps Act of 1993, it is one of the main tasks of the police to serve to protect fundamental rights and freedoms, life and health. The situation in the applicant's family was known to the local police department further to the various communications with her and her relatives in November and December 2002. Such communications included, *inter alia*, the criminal complaint of 2 November 2002 and the emergency phone calls of the night of 26 to 27 December 2002 which concerned such

serious allegations as long-lasting physical and psychological abuse, severe beating with an electric cable and threats with a shotgun.

53. In response to the applicant's situation, under the applicable provisions of the CCP and service regulations, the police had an array of specific obligations. These included, *inter alia*, accepting and duly registering the applicant's criminal complaint; launching a criminal investigation and commencing criminal proceedings against the applicant's husband immediately; keeping a proper record of the emergency calls and advising the next shift of the situation; and taking action in respect of the allegation that the applicant's husband had a shotgun and had made violent threats with it.

54. However, as established by the domestic courts, the police failed to ensure that these obligations were complied with. On the contrary, one of the officers involved assisted the applicant and her husband in modifying her criminal complaint of 2 November 2002 so that it could be treated as a minor offence calling for no further action. As found by the Supreme Court in its judgment of 29 September 2004, the direct consequence of these failures was the death of the applicant's children (see paragraphs 18, 21 and 25 above).

55. In the light of the above considerations and the admission by the Government, the Court concludes that there has been a violation of Article 2 of the Convention in this case.

III. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

56. The applicant also complained that the violation of Article 2 of the Convention alleged above constituted a violation of her right to respect for her private and family life under Article 8 of the Convention, which, in so far as relevant, provides as follows:

“1. Everyone has the right to respect for his private and family life, ...

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

57. The parties reiterated, *mutatis mutandis*, their arguments concerning the complaint under Article 2 of the Convention.

58. The Court observes that the complaint under Article 8 of the Convention has the same factual background as the above complaint under Article 2 of the Convention. It has found a violation of the latter provision (see paragraph 55 above). In the light of this finding and notwithstanding the concession made by the Government, the Court considers that it is not necessary to examine the facts of the case separately under Article 8 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

59. The applicant further complained that it had been impossible for her to make a claim in respect of non-pecuniary damage. In substance, she relied on Article 13 in conjunction with Articles 2 and 8 of the Convention. Article 13 of the Convention reads as follows:

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

A. Effective remedy in respect of the right to life

60. The Government argued that the applicant had had at her disposal a remedy compatible with Article 13 of the Convention. In support of that contention they relied on the finding of the Constitutional Court to the effect that it had no jurisdiction to entertain the matter as it fell within the jurisdiction of the ordinary courts, both criminal as well as civil. They pointed out that the applicant had failed to make use of her standing as an aggrieved party in the criminal proceedings, with all the procedural rights attached to it. They further argued that the applicant could claim compensation in respect of any damage of a non-pecuniary nature by way of an action for protection of personal integrity. To that end they referred to their arguments in respect of their preliminary objection (see above).

61. The applicant disagreed. She emphasised that the purpose of the criminal proceedings was to determine the criminal liability of the accused officers and not to examine her human-rights claims. An action for protection of personal integrity was not an available remedy in her situation and the applicant considered it to be inappropriate to require her to develop the existing case-law as to the scope of such an action beyond its established use by way of an *avant-garde* interpretation as suggested by the Government.

62. The Court reiterates that Article 13 of the Convention guarantees the availability at the national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they might happen to be secured in the domestic legal order. The effect of Article 13 is thus to require the provision of a domestic remedy to deal with the substance of an “arguable complaint” under the Convention and to grant appropriate relief, although Contracting States are afforded some discretion as to the manner in which they conform to their Convention obligations under this provision. The scope of the obligation under Article 13 varies depending on the nature of the applicant's complaint under the Convention. Nevertheless, the remedy required by Article 13 must be “effective” in practice as well as in law. In particular, its exercise must not be unjustifiably hindered by the acts or omissions of the authorities of the respondent State (see *Aksoy v. Turkey*, judgment of 18 December 1996, *Reports* 1996-VI, p. 2286, § 95, and *Aydin*

v. *Turkey*, judgment of 25 September 1997, *Reports* 1997-VI, pp. 1895-96, § 103).

63. On the basis of the evidence adduced in the present case, the Court has found that the respondent State is responsible under Article 2 of the Convention for failing to intervene to safeguard the lives of the applicant's children. The applicant's complaint in this regard is therefore "arguable" for the purposes of Article 13 in connection with Article 2 of the Convention (see *Boyle and Rice v. the United Kingdom*, judgment of 27 April 1988, Series A no. 131, p. 23, § 52).

64. It is the applicant's contention that she had no possibility of obtaining compensation for non-pecuniary damage. The question therefore arises whether Article 13 in this context requires that such compensation be made available. The Court itself will in appropriate cases award just satisfaction, recognising pain, stress, anxiety and frustration as rendering appropriate compensation for non-pecuniary damage. It has previously found that, in the event of a breach of Articles 2 and 3 of the Convention, which rank as the most fundamental provisions of the Convention, compensation for the non-pecuniary damage flowing from the breach should in principle be available as part of the range of possible remedies (see *Keenan v. the United Kingdom*, no. 27229/95, § 130, ECHR 2001-III).

65. In this case, the Court concludes that the applicant should have been able to apply for compensation for the non-pecuniary damage suffered by herself and her children in connection with their death. From the above finding as regards the Government's preliminary objection, it follows that the action for protection of personal integrity provided her with no such remedy.

Accordingly, there has been a breach of Article 13 of the Convention, taken together with Article 2 of the Convention.

B. Effective remedy in respect of the right to respect for private and family life

66. The Court observes that this complaint has the same factual background as the above complaint of the lack of an effective remedy in respect of the right to life. It has found a violation of Article 13 taken together with Article 2 of the Convention (see preceding paragraph). In the light of that finding the Court considers that it is not necessary to examine the facts of the case separately under Article 13 taken together with Article 8 of the Convention.

V. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

67. The applicant lastly complained that, as a result of the decisions of the Constitutional Court not to entertain her complaints, she had been denied access to a court to claim compensation for non-pecuniary damage. She relied

on Article 6 § 1 of the Convention, which, in so far as relevant, provides as follows:

“In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... by [a] ... tribunal...”

68. The Court observes that this complaint relates to the same facts as, and has a similar legal background to, the complaint examined above under Article 13 taken together with Article 2 of the Convention, concerning the lack of an effective remedy in respect of the right to life. In the light of its finding of a violation of these provisions, it holds that it is not necessary to examine the case separately under Article 6 of the Convention.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

69. 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

70. The applicant claimed 400,000 euros (EUR) by way of compensation for the non-pecuniary damage resulting from the death of her children and EUR 100,000 by way of compensation for the non-pecuniary damage linked to the resultant repercussions on her private and family life.

71. The Government contested these claims.

72. The Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards her EUR 25,000 under that head.

B. Costs and expenses

73. The applicant also claimed EUR 1,300 for the costs and expenses incurred before the Constitutional Court and EUR 3,000 for those incurred before the Court.

74. The Government contested the amount of the claim and invited the Court to determine the amount of the award in accordance with its case-law and the “value of the subject-matter”.

75. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the information in its

possession and the above criteria, the Court considers it reasonable that the sum claimed should be awarded in full.

C. Default interest

76. The Court considers it appropriate that the default interest 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. *Dismisses* the Government's preliminary objection;
2. *Holds* that there has been a violation of Article 2 of the Convention;
3. *Holds* that there has been a violation of Article 13, taken together with Article 2 of the Convention;
4. *Holds* that is not necessary to examine separately the complaints under Article 8, both taken alone and in conjunction with Article 13 of the Convention, and the complaint under Article 6 of the Convention;
5. *Holds*
 - (a) that the respondent State is to pay the applicant, 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) in respect of non-pecuniary damage and EUR 4,300 (four thousand three hundred euros) in respect of costs and expenses, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement; plus any tax that may be chargeable on the above amounts;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 31 May 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President