

European Court of Human Rights
Council of Europe
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Intervention as a third party

Honoured President of the Chamber,

By letter of 5 September 2025 granting leave to intervene, the Court invited written observations from the Public Defender of Rights of Slovakia. These submissions address the substantive and procedural questions under Article 3, in regard to the case of *Patrik Miko and Denis Jano v. Slovakia*, application no. 33651/24. Please, allow me to share my findings concerning the police intervention, which took place on 23 July 2019 in Milhost' and subsequently at a police station in Čaňa. My intervention, content-wise, focuses on two of the questions to the parties, i. e. questions on the substantive and procedural aspects of the Article 3 of the Convention in this case, marked as questions no. 2 and 3 in the courts request.

The observations are informed by my Office's inquiries into the Milhost' incident, by systemic findings presented in a recent Extraordinary Report to the National Council of the Slovak Republic, and by analysis of relevant Slovak legal provisions.

I. Article 3 — Substantive Limb (Question 2)

In this part of my submission, I am focusing on two main aspects regarding the alleged excessive use of force by the police officers, that is supposed to be in contradiction with the requirements laid down by Article 3. Firstly, I will address some systemic shortcomings in the Police use of force, illustrated on the example of the Milhost' incident. Subsequently, I will briefly touch upon a possible inconsistency between the act on the Police Corps in Slovakia and the legal requirements for a justified use of force, as required by the Article 3 of the Convention.

Systemic Shortcomings in Police Use of Force

In August 2019, my predecessor received a complaint from the European Roma Rights Centre regarding the intervention of police officers against Roma residents in the village of Milhost' on 23 July 2019. After my appointment, I have continued in the investigation. I have analysed the two criminal case files of the Bureau of the Inspection Service (case files ČVS: UIS-218/OISV-2019 and ČVS: UIS-241/OISV-2019).

The applicants, Mr. Miko and Mr. Jano, were reportedly subjected to physical assaults not only during their apprehension but also throughout their transport and later during their detention at the Čaňa

police station. These assaults raised significant concerns regarding the proportionality and legality of the force used by the police, which I have investigated.

Moreover, the case indicates that requests for medical assistance made by those detained were ignored by the authorities. This neglect suggests a failure to provide adequate care and protection to persons in custody, further compounding the concerns regarding the overall conduct of the intervention.

Drawing on institutional oversight and reporting, the Public Defender has identified **recurring risks** concerning proportionality assessments, documentation of coercive measures (including the application and duration of restraints), and access to medical care in police operations. Where persons sustain injuries while in police control, the State bears the burden to provide a plausible account consistent with Article 3 standards.

According to the medical reports and the facts included in the subject matter of the case ¹ both Mr. Miko and Mr. Jano suffered several injuries during the time they were arrested and detained at the police station. The established case law of the Court reiterates, that the Article 3 of the Convention safeguards one of the fundamental values of democratic societies — the prohibition of torture and inhuman or degrading treatment or punishment — which is closely linked to the concept of human dignity. In the case of persons deprived of their liberty, or individuals confronted by police officers, any use of physical force that is not strictly necessary due to the person's own conduct diminishes their human dignity and, in principle, constitutes a violation of the rights enshrined in Article 3 of the Convention.²

Additionally, where an individual is taken into police custody in good health but is found to be injured at the time of release, the State is obliged to provide a plausible explanation as to the causing of the injury, failing which a clear issue arises under Article 3 of the Convention.³

According to international human rights standards, the decision to use means of restraint must be properly justified, pursue a legitimate aim, and be proportionate to that aim.⁴ It must be based on an individual assessment of both the situation and the person against whom the means of restraint are being used (Individual Risk Assessment).

The reasoning behind the decision to apply restraints should be individualized and must include specific reasons that led to the decision to use handcuffs. The record must also reflect that this decision was continuously reassessed — that is, whether the reasons justifying the initial use of handcuffs remained valid over time. A person who was initially restrained may calm down after a few hours, and further restraint may no longer be necessary.

Therefore, the official record should identify the individual reasons for the use of force and specify the duration of the restraint — the exact time when the handcuffs were applied to the person and the exact time when they were removed. If service handcuffs are applied to a detained person for several hours, it is essential that the officer who made the decision to apply the restraints regularly reassesses the need for their continued use.

¹ Published by the Court on 14 April 2025

² Case of Bouyid against Belgium [GC]; application no. 23380/09, para. 81 and 86

³ Case of Aksoy against Turkey; application no. 21987/93, para. 61

⁴ Such as United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, para. 4 and 5; or United Nations Code of Conduct for Law Enforcement Officials adopted by the General Assembly resolution 34/169.

In this case, medical reports confirmed the presence of multiple injuries sustained by the apprehended individuals. However, the police officers failed to provide a credible explanation for the origin of these injuries, nor did they demonstrate the necessity and proportionality of the use of force against Mr. Jano. Statements from the police officers and the official record regarding the deprivation of liberty of Mr. Jano indicate that no coercive measures were used during the intervention and that the individual did not sustain any injuries. However, this statement was contrary to the findings of the medical experts.

Moreover, the official records concerning the use of force against the minor showed significant deficiencies. None of the official reports indicated the total duration of the handcuffing, nor did they reflect any ongoing assessment of the justification for their continued use.

The Public Defender of rights prepared an **extraordinary report in 2025, focusing on the violation of rights by the police in Slovakia**.⁵ One of the systemic shortcomings he pointed out was the lack of proper official report on the use of force by the police. In an environment, where the body-worn cameras are being tested and implemented just now, it is particularly important that, until body-worn cameras are fully and systematically introduced, their absence be compensated by a sufficient amount of other high-quality evidence concerning the use of coercive measures. This is because, unlike in criminal proceedings, in cases concerning the assessment of interference with fundamental rights, the lack of evidence operates to the detriment of the state. The European Court of Human Rights applies the principle of reversed burden of proof, meaning that it is the state's obligation to demonstrate the justification and proportionality of the use of coercive measures.

In the absence of video footage, essential evidence includes testimonies of persons present at the scene or detailed official reports on the use of coercive measures. However, based on practical experience and recurring deficiencies in the securing of evidence — even in cases involving the same local police departments that previously pledged to implement the measures recommended by the public defender— it appears that such recommendations are **only accepted formally, without real application in practice**.

Just as my predecessors did, I continue to encounter cases where reports on the use of coercive measures **lack individually assessed reasons for the actions of the police officers**. Instead, they merely cite the legal provision under which the coercive measures were applied. In addition, I also encounter cases in which police officers do not record the use of coercive measures in official reports at all. According to international human rights standards, any decision to use coercive measures must be duly reasoned, must pursue a legitimate aim and be proportionate to that aim, and must be based on an **individual assessment of both the situation and the person against whom** such measures are applied.

These **systemic shortcomings increase** the risk of police ill-treatment and perpetuate impunity. They are inconsistent with the Court's jurisprudence, which requires Contracting States to maintain effective safeguards against ill-treatment of persons deprived of liberty.

The Slovak Legal Framework on Use of Force and its Divergence from Strasbourg Standards

The Slovak Act on the Police Corps authorises police to use coercive measures under conditions of necessity. However, the statutory wording allows the use of force provided it is not “manifestly disproportionate” to the dangerousness of an attack.

⁵ Extraordinary Report of the Public Defender of Rights on Facts Indicating a Serious Violation of Fundamental Rights and Freedoms by the Actions of the Police Force, available online at: https://vop.gov.sk/wp-content/uploads/2025/03/mimoriadna_sprava_policia.pdf

Such formulation might give a raise to concerns. The statutory reference to force that is not “manifestly disproportionate” **may be understood as more permissive** than the Convention standard that any force must be **strictly necessary** and **proportionate** to a legitimate aim. The disparity creates a legal environment in which excessive force may be tolerated domestically while still constituting a violation under the Convention.

The formulation contained in the Slovak Act on the Police Corps, which allows the use of force provided it is not “manifestly disproportionate” to the dangerousness of the attack, represents a qualitatively different standard from that required under Article 3 of the Convention and the Court’s well-established case law.

The difference lies in the fact that the Slovak law essentially requires disproportionality of the use of force to be **manifest, evident**, reaching a high threshold of visibility or obviousness. This means that certain interventions which are indeed **disproportionate**, but not to the degree of being “manifestly disproportionate”, may nevertheless be regarded as permissible under domestic law. In other words, a **legal gap** is created between the domestic standard and the Convention standard.

From the perspective of Article 3 of the Convention, however, the decisive criterion is that every single use of force must meet the test of **strict necessity and proportionality in relation to the legitimate aim pursued**. Where national legislation tolerates interventions that do not meet this test but do not reach the threshold of being “manifestly disproportionate”, it might raise questions, whether the domestic legal framework does provide sufficient protection against breaches of Article 3.

II. Article 3 - Procedural Limb (Question 3)

Article 3 of the Convention imposes a duty on States to conduct prompt, thorough, and impartial investigations into allegations of ill-treatment. The effectiveness of such investigations is crucial to the prevention of impunity.

In Slovakia, responsibility for investigating police misconduct lies primarily with the Bureau of the Inspection Service (*Úrad inšpekčnej služby*), a body formally situated within the Ministry of Interior.

Successive Public Defenders of Rights have repeatedly raised concerns regarding the lack of institutional independence of the Inspection Service since 2013 and the incident of police raid in Moldava nad Bodvou.⁶

Already in 2013, the Public Defender of Rights, Jana Dubovcová, highlighted the absence of an independent body for investigating police conduct towards individuals. In her extraordinary report, she stated that the Slovak Republic had still not established conditions for independent and effective investigations into police procedures involving the use of physical force.⁷

In that 2013 report, following her investigation into the Moldava case, she recommended the creation of a legally established body for the external and independent oversight of police conduct.

⁶ These incidents have been decided by the Court in cases R.R. and R.D. against Slovakia, application no. 20649/18 and M.H. and others against Slovakia, application no. 14099/18

⁷ Extraordinary Report of the Public Defender of Rights Jana Dubovcová on Facts Indicating a Serious Violation of Fundamental Rights and Freedoms by the Actions of Certain Authorities, 2013, p. 17. Available online at: <https://vop.gov.sk/report/mimoriadna-sprava-2013/>.

Subsequently, in her 2016 extraordinary report, she once again emphasized that the Slovak Republic continued to lack such an independent investigative body.⁸

The establishment of the Office of the Inspection Service was a step in the right direction. She therefore recommended that the National Council of the Slovak Republic establish, by law, an independent body responsible for investigating police conduct and the conduct of other state authorities towards individuals in cases where there is a suspicion of unlawful use of force, torture, or cruel, inhuman, and degrading treatment. Such a body, she stressed, should not be subordinate to the Government of the Slovak Republic and should not form part of the Ministry of the Interior, the police force, or the prosecution service.

Although the National Council debated the report, it refused to take its findings into account. The recommended measure was later partially implemented through an amendment to the Police Force Act, which established the **Office of the Inspection Service** as a special unit of the Police Force. The director of the Office is accountable to the Government of the Slovak Republic.

It is necessary to acknowledge that in 2020, the independence of the Bureau of the Inspection Service was strengthened by introducing a selection procedure for the position of Director of the Bureau and by reinforcing the role of the selection committee in this process. However, following the amendment of the Act on the Civil Service of Members of the Police Force, the Slovak Information Service, the Prison and Court Guard Service of the Slovak Republic, and the Railway Police by Act No. 478/2021 Coll., the position of the Minister of the Interior in the appointment process of the Director of the Bureau of the Inspection Service was once again significantly reinforced.

My predecessor also pointed to the problematic nature of this legal framework, referring to relevant case-law of the Court.⁹ The revised selection process for the Director of the Inspection Service Office may raise concerns regarding hierarchical and functional independence from the Minister of the Interior and its collegial independence within the Police Force.

It is important to recall, in particular, the Court's judgments in Kummer and Eremiášová.¹⁰ Even the previous legal framework governing the status of the Inspection Service (prior to the amendment by Act No. 478/2021 Coll.) raised legitimate concerns as to whether the criteria of impartiality and independence, as interpreted by the Court, were being met. The former structure bore close resemblance to the system that was in place in the Czech Republic before the establishment of the General Inspection of Security Forces (GIBS).

In its jurisprudence concerning the Czech Republic's pre-GIBS structure, the Court **considered** that a unit situated within the Ministry, even with modified appointment procedures, **did not suffice** to meet independence requirements under Article 3. The Court thus found a violation of Article 3 of the Convention by the Czech Republic.¹¹ This judgment subsequently prompted the Czech authorities to undertake major reforms, resulting in the creation of GIBS as a structurally independent body responsible for investigating criminal offences committed by members of the police and other security forces.

Hence, the current legal **frameworks raise legitimate concerns, whether the investigation carried out by the Bureau of the Inspection Service is able to meet the criteria of effective**

⁸ Extraordinary Report of the Public Defender of Rights on Facts Indicating a Serious Violation of Fundamental Rights and Freedoms by the Actions of Police Authorities, 2016, p. 9. Available online at: <https://vop.gov.sk/wp-content/uploads/2021/09/Mimoriadnasprava-VOP-2016.pdf>.

⁹ Requesting the president of Slovak republic to veto the particular amendment

¹⁰ Case Eremiášová and Pechová against Czech Republic, application no. 23944/04, para. 154

¹¹ Case Kummer against Czech Republic, application no. 32133/11

investigation, namely the component of independence, as required by the procedural guarantees of Article 3 of the Convention.

IV. Conclusion

The Milhost' intervention and its aftermath raise serious questions under both the substantive and procedural aspects of Article 3 of the Convention. On the substantive level, the evidence available points to **possible shortcomings in the justification and proportionality of the use of force, as well as in the recording and assessment of coercive measures**. These gaps reflect a broader systemic issue of lacking standards for official reporting and struggling to fulfil the legal standards and the strict requirements of the Convention.

On the procedural level, while certain reforms have been introduced to strengthen the Bureau of the Inspection Service, its position within the structures of the Ministry of Interior continues to give rise to legitimate concerns regarding its independence. The persistence of such concerns has long been noted by my Office and echoes the Court's jurisprudence in comparable contexts.

In my submission, the issues identified in this case are not isolated but form part of wider systemic challenges in ensuring effective protection against ill-treatment. These observations are offered to assist the Court's analysis of the general issues raised under Article 3 regarding thresholds for the use of force, documentation duties, and the independence and effectiveness of investigations.

Sincerely,

Róbert Dobrovodský
Public Defender of Rights