



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

FIRST SECTION

**CASE OF L.F. v. HUNGARY**

*(Application no. 621/14)*

JUDGMENT

Art 8 • Home • No legal basis for inspections of applicant's house by various municipality authorities

STRASBOURG

19 May 2022

*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 L.F. v. Hungary,**

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

Marko Bošnjak, *President*,

Péter Paczolay,

Krzysztof Wojtyczek,

Alena Poláčková,

Raffaele Sabato,

Lorraine Schembri Orland,

Ioannis Ktistakis, *judges*,

and Liv Tigerstedt, *Deputy Section Registrar*,

Having regard to:

the application (no. 621/14) against Hungary lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Hungarian national, Mr L.F. (“the applicant”), on 19 December 2013;

the decision to give notice to the Hungarian Government (“the Government”) of the complaints concerning Articles 8 and 14 of the Convention;

the decision not to have the applicant’s name disclosed;

the observations submitted by the respondent Government and the observations in reply submitted by the applicant;

the comments submitted by the European Roma Rights Centre, who were granted leave to intervene by the President of the Section;

Having deliberated in private on 26 April 2022,

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

## INTRODUCTION

1. The case concerns the inspection carried out by the representatives of the local government of Gyöngyöspata in the applicant’s home.

## THE FACTS

2. The applicant was born in 1956 and lived in Gyöngyöspata. He was represented by Ms S. Kapronczay, a lawyer practising in Budapest.

3. The Hungarian Government (“the Government”) were represented by their Agent, Mr Z. Tallódi, of the Ministry of Justice.

4. On 8 April 2015 the applicant died. On 1 September 2016 his son, Mr L.F. junior, expressed his wish to pursue the application in his stead. On 12 October 2016 the applicant’s wife, Mrs L.F., and his two other children, Ms I.F. and Mr M.F. also expressed their wish to pursue the application in the applicant’s stead.

5. The facts of the case, as submitted by the parties, may be summarised as follows.

6. Following anti-Roma demonstrations and paramilitary marches in Gyöngyöspata (see, for example, *R.B. v. Hungary*, no. 64602/12, 12 April 2016) the mayor of the municipality resigned and a politician of the Movement for a Better Hungary (*Jobbik Magyarországért Mozgalom*), J.J.O., was elected in his place as of July 2011. During his tenure, tensions between Roma and non-Roma inhabitants increased. One of the measures he adopted was the so-called “Érpatak model”, which referred to a social scheme established by the mayor of Érpatak based on the idea that social benefits should only be paid to residents who contribute to the development of the community and respect law and order, rather than to those who are “destructive”.

7. It appears that in their preparation to introduce a similar scheme in Gyöngyöspata, on 13 October 2011 the mayor, the chief councillor of the mayor’s office and the chief of cabinet, a person privately contracted by the mayor’s office turned up at the applicant’s house, accompanied by police officers. The police stayed outside, while the others went inside and inspected and measured every room in the applicant’s flat. It is also alleged that video recordings were made of the interior, although this was later contested by the authorities. The applicant was not informed of the purpose of the visit. His wife and children were also present at the time.

8. According to a report by the Parliamentary Commissioner for the Rights of National and Ethnic Minorities, other Roma families were also subjected to similar inspections in Gyöngyöspata in October 2011. The Commissioner was of the view that the practice in question appeared to have no legal basis and invited the Heves County Governmental Office (*Heves Megyei Kormányhivatal*) to conduct a thorough investigation into the home inspections and take the necessary steps in order to restore legality and prevent similar breaches of the law in the future (see paragraph 29 below).

9. On 19 October 2011 the applicant filed a criminal complaint concerning the inspection of his home, alleging unlawful entry into private property.

10. Responding to the police inquiry, the mayor’s office submitted that the aim of the inspection, carried out by the mayor, the chief counsellor and officer responsible for social and guardianship affairs, and the chief of cabinet of law enforcement, had been to verify whether the applicant’s home complied with the requirements of Government Decree no. 253/1997 (XII.20) on National Urban Planning and Construction (*OTÉK*). Section 85(4)(a) of that Decree stipulates that each room should have at least 15 cubic meters of air per person. The mayor’s office also added that the applicant’s wife was in receipt of a monthly housing benefit from the local municipality, and the secondary aim of the inspection had been to verify the family’s living conditions. It was further submitted that the representatives of the

municipality had been accompanied by two police officers, who had not entered the applicant's house.

11. On 23 November 2011 the Gyöngyös police department dismissed the complaint for the absence of evidence that an offence had been committed, given that the applicant had not asked the mayor and his colleagues to leave his home, which would have been the precondition for establishing illegality. In any event, the police department accepted that the measure was based on section 85(4)(a) *OTÉK* and, in addition, had been necessary since the applicant's wife had been in receipt of housing benefit from the municipality.

12. On 12 December 2011 the applicant objected to the dismissal of his criminal complaint, arguing that the offence within the meaning of Article 176 of the Criminal Code (unlawful entry into private property) could also be committed by someone pretending to conduct an official procedure, in which case it was unreasonable to require the victim to object to the intrusion. Therefore, the applicant took the view that the investigation should verify whether there had been a genuine official procedure behind the visit, or whether it had been spurious.

13. On 21 December 2011 the Gyöngyös public prosecutor's office dismissed the objection, finding the impugned decision lawful and duly reasoned. It reiterated that the officials had entered the applicant's home pursuant to section 85(4)(a) *OTÉK*.

14. On 16 January 2012 the applicant requested the Heves County Governmental Office to examine the procedure and verify, in particular, whether the persons who had entered and inspected his home had been legally entitled to do so.

15. On 17 May 2012 the Heves County Governmental Office found that on 13 October 2011 there had been no pending procedures in the framework of which the delegation of the mayor's office could have lawfully entered the applicant's home. The Governmental Office also informed the applicant that the fulfilment of the *OTÉK* requirement concerning the cubic content of air in rooms could only be verified in the framework of specific building control procedures which did not fall within the competence of local government. It further noted that, although it had obtained all relevant documents from the Gyöngyöspata local government concerning the housing benefit paid to the family, there did not appear to have been any decision adopted after July 2011 to assess the applicant's family's eligibility for that benefit.

16. On 29 May 2012 the Heves County Governmental Office issued a reply to the Parliamentary Commissioner's report concerning its findings concerning the municipality's conduct (see paragraph 30 below). It held, *inter alia*, that *OTÉK* could not be relied on for the inspection in question and that there had been no ongoing procedures on 13 October 2011 in respect of the applicant or his wife concerning the allocation of social benefits, since the last decision on the matter had been issued in July 2011.

17. On the basis of that information, on 25 June 2012, the applicant filed another criminal complaint, alleging unlawful entry onto his private property on the basis of a spurious procedure, as well as abuse of authority. He drew the authorities' attention to the perceptible racist motive behind the inspection, relying on the findings of the report by the Parliamentary Commissioner for the Rights of National and Ethnic Minorities (see paragraph 29 below).

18. By decision of 23 July 2012, amended on 3 August 2012, the Gyöngyös police department dismissed the applicant's complaint, noting that according to the inquiry carried out by the Governmental Office there had been no official procedures pending concerning the applicant which would have allowed the authorities to enter his home. Furthermore, the public notary could not specify the legal basis for carrying out a home inspection in order to verify its conformity with *OTÉK*. The police department nonetheless held that the offence of unlawful entry onto private property could only be committed intentionally – if the alleged perpetrator was (mistakenly) persuaded to have the necessary entitlement or consent of the victim, there could be no criminal liability. As regards the alleged abuse of authority, the Gyöngyös police department transferred the case to the county police department.

19. On 6 August 2012 the applicant challenged the decision of the Gyöngyös police department, maintaining that the conduct in question had constituted unlawful entry into his private property on the pretence of conducting an official procedure. He relied on the findings of the Parliamentary Commissioner's report.

20. On 22 August 2012 the Gyöngyös public prosecutor's office ordered an investigation into the applicant's criminal complaint. The decision stated that the main question to be answered during the investigation was whether the persons concerned had been aware of the lack of a legal basis for entering the applicant's flat, since "unlawful entry into private property" could only be committed intentionally. The Gyöngyös police department requested its exclusion from the case in the light of the regular contact between the police officers in Gyöngyös and the mayor and his colleagues. The investigation was thus conducted by the Hatvan police department.

21. On 28 May 2013 the Hatvan police department discontinued the investigation. It found that the inspection of the applicant's home had related to a request for housing benefit submitted by the applicant's wife on 5 July 2011 and granted on 31 July 2011. The police department noted that according to section 7 of decree no. 3/2009 (II. 2.) on Social Benefits, of the Assembly of the Local Government of Gyöngyöspata the provision of housing benefit required an on-site inquiry. Furthermore, section 8 of the decree authorised the mayor to reassess the allocation of social benefits. The police department thus concluded that the inspection had been carried out for the further provision of housing benefit.

22. On 11 June 2013 the applicant objected to the discontinuation of the investigation. He alleged, in particular, that his wife's request for housing benefit had already been granted on 31 July 2011. Therefore, there had not been any procedures pending in that case on 13 October 2011 – which information was also confirmed by the Heves County Government Office on 17 May 2012. He submitted that the persons present in his house had been acting in an official capacity and had thus entered his private property unlawfully on the pretence of conducting official proceedings.

23. On 19 July 2013 the Gyöngyös public prosecutor's office dismissed the applicant's objection concerning the discontinuation of the investigation. It held, in essence, that the provisions of Decree no. 3/2009 (II. 2.) of the Assembly of the Local Government of Gyöngyöspata on Social Benefits concerning the method of calculating housing benefit had been amended on 28 September 2011, and section 8 of the decree empowered the mayor to review annually or as necessary the social benefits. The prosecutor's office found it established, based on witness testimonies, that the on-site inquiry had been carried out not in connection with the provision of social benefits but to assess the conditions for the further payment of established social benefits, and it was the amendment to the calculation method which had made the home inspection necessary. Therefore, in the opinion of the prosecutor's office, the impugned inspection did not constitute a criminal offence, even if it had not been conducted in full compliance with the provisions of Act no. CXL of 2004 on the General Rules of Administrative Proceedings and Services.

## RELEVANT LEGAL FRAMEWORK AND PRACTICE

24. Government Decree no. 253/1997 (XII.20) on National Urban Planning and Construction (*OTÉK*) provides as follows:

### **Section 85 Room dimensions**

“ ...

(4) The volume of each premise – having regard to its capacity should be at least

a) 15 m<sup>3</sup>/person in rooms, hospital rooms and in offices at workplaces.

...”

25. The relevant provisions of Act no. IV of 1978 on the Criminal Code, as in force at the material time, provided as follows:

### **Unlawful entry into private property Article 176**

“(1) Any person who enters onto, or remains on, the home or other property or the confines attached to such, of another person by force, or by pretending to conduct an

official procedure, is guilty of a minor offence punishable by imprisonment of up to two years.”

26. Act CXXV of 2003 on Equal Treatment and Promotion of Equal Opportunities (hereafter “Equal Treatment Act”) provides, in its relevant part, as follows:

**Section 4**  
**Scope of the Act**

“The principle of equal treatment shall be observed by

- a) the Hungarian State,
- b) local and minority self-governments and the bodies thereof,
- c) organisations exercising powers as authorities,

...”

**Harassment, unlawful segregation**  
**Section 10**

“(1) Harassment is conduct of a sexual or other nature violating human dignity related to the relevant person’s characteristics defined in Article 8 with the purpose or effect of creating an intimidating, hostile, degrading, humiliating or offensive environment around the particular person.

...”

**Section 14**

“(1) The Authority

(a) shall, at request or in cases defined herein *ex officio*, conduct investigations to establish whether the obligations of equal treatment have been violated, and shall also conduct investigations at request to establish whether the employers obliged to do so have approved an equal opportunities plan, and shall finally make decisions on the basis of the investigations;”

**Section 15**

“(1) A violation of the principle of equal treatment within the scope of this Act shall be investigated by

- a) the Authority or
- b) another public administration body that has been granted authority in a separate act for assessing violations of the principle of equal treatment, as chosen by the offended party

...”

**Section 17/A**

“(1) If the Authority has established that the provisions ensuring the principle of equal treatment laid down herein have been violated, they may

- a) order that the situation constituting a violation of law be terminated,



- b) prohibit the further continuation of the conduct constituting a violation of law,
  - c) order that its decision establishing the violation of law be published,
  - d) impose a fine,
  - e) apply a legal consequence determined in a special act.
- ...

27. Act no IX of 1998 on the Criminal Procedure Code, as in force at the material time, provided as follows:

**The private party  
Section 54**

- “(1) The private party is the victim enforcing a civil claim in criminal proceedings.
  - (2) The private party may enforce the civil claim against the defendant which arose as a consequence of the act being the subject of the accusation.
- ...

28. The relevant provisions of Decree no. 3/2009(II.2.) on Social Benefits of the Assembly of the Local Government of Gyöngyöspata, as in force at the material time, provided as follows:

**Section 7**

“(1) Prior to the granting of benefits governed by the present decree, a social inquiry report should be made about the social situation of the applicant and his or her close relatives living in the same household.

...

(3) It is not necessary to make a social inquiry report if the applicant’s living conditions have been examined as part of any other procedure and there is no reason to believe that essential changes have occurred since that examination.”

**Section 8**

“Social benefits regulated under the decree are reviewed by the mayor annually or as it is needed.”

29. The Report of the Parliamentary Commissioner for the Rights of National and Ethnic Minorities on public employment, minor offence proceedings, and education in Gyöngyöspata, published in December 2011, contains the following passages:

“3.3 A peculiar phenomenon: “official inspections” in Gyöngyöspata

“Several complainants mentioned during the on-site investigation that in mid-October, a relatively large group of people visited Roma families in Gyöngyöspata with the intention of inspecting “the living environment and if the criteria for housing subsidy are met”. According to those concerned, the mayor, the municipal clerk, the mayor’s chief of cabinet, two social workers, and two policemen visited the families without prior announcement. First they reviewed the living environment from the outside and made a video recording, and then they all entered the homes in question,

measured the size of the rooms and made video recordings. The chief of cabinet, G.P., confirmed the above, with the exception that the two policemen did not enter the homes and video recordings were not made within the homes. The chief of cabinet said that the objective of the proceedings was to evaluate the living environment of the residents concerned and to prepare for the introduction of the so-called ‘Érpatak model’. They wanted to assess how many persons habitually lived in a given flat. He also stated that this measure affected every local resident receiving housing subsidies, rather than only the Roma families. Since it was not clear to me what the aim and legal basis of these measures were, I have addressed two written requests to the public notary of Gyöngyöspata. I have also requested that documents, audio or video recordings of the procedure be sent to me. Unfortunately, I have not received an answer yet and can only express my opinion based on the partial information I have and on Decree no. 3/2009(II.2.) on Social Benefits of the Assembly of the Local Government of Gyöngyöspata. Section 30/A of the above decree enumerates the preconditions for the maintenance of house yards and gardens so as to qualify for unemployment allowances. Sub-section (2) of the same provision provides for an on-site inspection and states that the latter is the responsibility of the public notary, who conducts the inspection ‘with the involvement of a member of the Committee on communal development, environmental protection and public order’. The provisions of the decree on housing benefit do not refer to the special rules on on-site inspection. Thus, the legitimate justification of six or seven ‘public officials’ showing up at the families’ homes, inspecting their living conditions inside the house cannot be established.

Section 57/A(4) of Act no. CXL of 2004 on the General Rules of Administrative Proceedings and Services provides for the recording of on-site inspections, objects, procedures. However it is questionable whether in the present case the authorities’ measures can be regarded as on-site inspections, which are subject to strict statutory rules.

In order to carry out a successful and safe on-site inspection, section 57/B(1) allows for the presence of police officers, if the nature of the inspection so requires. In the circumstances of the present case, however, it is not clear what justified the presence of the police officers alongside the already large number of public officials.

Irrespective of the legal basis of the measure, it can clearly be established that such an inspection, interfering with the private sphere and involving a high number of persons of authority, would be threatening not only to the residents of Gyöngyöspata, but to anyone else. However, in Gyöngyöspata, where those in power are the same forces that can be associated with the spring ‘law enforcement’ action, residents may have experienced this form of inspection as heightened intimidation or even as a form of reprisal.

As mentioned above, in the absence of cooperation by the municipality, neither the legal basis nor the factual circumstances of the measures could be established. Therefore, I recommend that the Heves County Governmental Office should conduct an in-depth enquiry into the background and circumstances of the measure and take steps, if necessary, to re-establish legality and prevent further breaches of the law.

...”

30. On 29 May 2012 the Heves County Governmental Office issued a reply to the Commissioner’s request. It contained the following relevant passages:

“...

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Our Office contacted the public notary of Gyöngyöspata to request the documents concerning the particular case and information as regards the nature of the administrative proceedings in which the on-site inspection had been conducted. We have further requested a copy of any local governmental decree that was applicable in the particular case.

In his reply of 22 March the public notary informed us that [name] received housing benefit in 2006 and 2007. The public notary stated that the aim of the on-site inspection carried out at [address] on 13 October 2011 was to verify whether provisions of Government Decree no. 253/1997 (XII.20) on National Urban Planning and Construction (*OTÉK*), prescribing that in each room there should be at least 15 cubic meters of air per person had been respected. The public notary referred to the fact that [name] was in receipt of housing benefit, and thus the on-site inspection, to which the client had given his consent, had had the secondary aim of verifying whether the living environment had been tidy.

The Heves County Governmental Office requested further information from the public notary in its letter of 28 March, as it had been established that *OTÉK*, as invoked by the public notary, was applicable during the construction of buildings and, additionally, the Government Office could not identify any legal provision which would have allowed the application of § 85 of *OTÉK* in any other procedure. The Governmental Office had further requested all the relevant documents, including the evidence of the client's consent in the form of a public document.

In his letter of 18 April the public notary stated that the on-site inspection had been carried out by J.J.O., the mayor of Gyöngyöspata, following a report that too many persons had been living at the address in question.

On the basis of the information received from the public notary and of the documents at hand, the Governmental Office had established that on 13 October 2011 there had been no ongoing proceedings (either administrative or municipal) which would have allowed the employees of the mayor's office to legally enter the premises in question. It can be clearly established that, in the absence of jurisdiction, the public notary does not have the power to verify compliance with the *OTÉK*. Based on the documents transmitted by the public notary, following the decision issued in July 2011, no documented procedural measures (inspection) had been taken place in the procedure concerning [name], and the file had contained no statement of consent. The public notary did not provide any legal provision or his professional point of view.

The Government Office informed [name]'s legal representative about these findings. The legal representative was also informed that the Government Office, as the supervisory organ, had no power to remedy the infringement of the client's right in the course of administrative proceedings. We have forwarded our findings to the mayor's office and to the public notary of Gyöngyöspata with a request to verify whether labour proceedings should be initiated.

...”

In addition, the reply stated that the Government's Office had initiated proceedings reviewing the legality of Decree no. 3/2009 (II. 2.) of the Assembly of the Local Government of Gyöngyöspata on Social Benefits. The Governmental Office established, *inter alia*, that the delegation of power to the mayor to decide on housing benefit had been unlawful. It had further been unlawful to make the provision of social benefits subject to the orderliness of the living environment and that this element could be verified with the

involvement of a member of the Committee on communal development, environmental protection and public order. Since the municipality had not informed the Governmental Office of the planned measures, the supervisory body initiated proceedings before the *Kúria*. In the meantime, the municipality had repealed Decree no. 3/2009 and adopted new regulations.

31. The relevant part of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation provides:

**Article 2**  
**Concept of discrimination**

“1. For the purposes of this Directive, the ‘principle of equal treatment’ shall mean that there must be no direct or indirect discrimination whatsoever on any of the grounds referred to in Article 1.

...

3. Harassment shall be deemed to be a form of discrimination within the meaning of paragraph 1, when unwanted conduct related to any of the grounds referred to in Article 1 takes place for the purposes or with the effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment. In this context, the concept of harassment may be defined in accordance with the national laws and practice of the Member States.

...”

## THE LAW

### I. PRELIMINARY ISSUE REGARDING *LOCUS STANDI* OF THE APPLICANT’S HEIRS

32. The Government challenged the right of the heirs of the applicant, who had died in the course of the proceedings (see paragraph 4 above), to pursue the application in his stead. In their view, those heirs did not have a valid interest in obtaining a ruling by the Court, because, although the applicant had died on 8 April 2015, they had not contacted the applicant’s representative until 1 September and 12 October 2016, respectively, to express their intention to pursue the application before the Court in the applicant’s stead. In the Government’s view, the heirs had only requested the Court to continue examining the application because the applicant’s representative had persuaded them to do so. They invited the Court to strike the case out of its list of cases under Article 37 § 1 of the Convention.

33. The applicant’s representative did not comment on that point.

34. The Court notes that on 1 September and 12 October 2016 the applicant’s representative informed the Court that the applicant had died on 8 April 2015 and that his heirs wished to continue in his stead the proceedings before the Court. The applicant’s representative also submitted a succession certificate. Thus, in the present case, the request to pursue the proceedings

was submitted by persons who had the status as both direct heirs and very close relatives of the deceased applicant.

35. It is true that under Article 34 the existence of a victim of a violation is indispensable for the Convention's protection mechanism to be put in motion. However, this criterion cannot be applied in a rigid, mechanical and inflexible way throughout the proceedings. The Court's approach to cases introduced by applicants themselves and only continued by their relatives after their deaths differs from its approach to cases in which the application has been lodged after the death of the direct victim. Moreover, the transferability or otherwise of the applicant's claim is not always decisive, for it is not only material interests which the successors of deceased applicants may pursue by their wish to maintain the application. Cases before the Court generally also have a moral or principled dimension, and persons close to an applicant may thus have a legitimate interest in obtaining a ruling even after that applicant's death (see *Hristozov and Others v. Bulgaria*, nos. 47039/11 and 358/12, § 73, ECHR 2012 (extracts), with further references).

36. The Court considers that Mr L.F.'s widow and children have a legitimate interest in obtaining a ruling on whether the inspection carried out in the applicant's home by the authorities constituted a breach of the right to respect for home, the right to an effective remedy and the prohibition of discrimination, on which he had relied in his application. The Court therefore considers that the conditions for striking the case out of the list of pending cases, as defined in Article 37 § 1 of the Convention, are not met and that it must accordingly continue to examine the application at the heirs' request. However, for practical purposes, reference will still be made to the applicant throughout the ensuing text.

## II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

37. The applicant complained that the inspection of his home had been unlawful and carried out in breach of his right to respect for his "home" and that the Hungarian authorities had failed properly to investigate this incident. He relied on Articles 8 and 13 of the Convention. The Court considers that the above complaint falls to be examined under Article 8 of the Convention which, in so far as relevant, reads as follows:

"1. Everyone has the right to respect for ... his home ....

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."

## **A. Admissibility**

### *1. The Court's jurisdiction ratione personae*

#### **(a) The parties' submissions**

38. The Government requested the Court to declare the application inadmissible *ratione personae* with the provisions of the Convention. In their view, the domestic authorities had acknowledged the violation of the applicant's rights under Article 8 of the Convention, given that both the Parliamentary Commissioner (see paragraph 8 above) and the Heves County Governmental Office (see paragraph 15 above) acknowledged that the provisions of the municipal decree underlying the authorities' actions had been unlawful. Moreover, by amending the decree in question, the necessary measures had been taken to prevent future violations.

39. The applicant maintained that the report of the Parliamentary Commissioner had contained no binding ruling concerning his case and that the actions taken by the Heves County Governmental Office before the *Kúria* were directed against the provisions of the municipal decree that had had no bearing on his case, since they had not been in force at the material time and concerned a different kind of social benefit.

#### **(b) The Court's assessment**

40. The Court recalls that the question whether an applicant can claim to be the victim of the violation alleged is relevant at all stages of the proceedings under the Convention (see, *inter alia*, *Gäfgen v. Germany* [GC], no. 22978/05, § 115, ECHR 2010). A decision or measure favourable to the applicant is not, in principle, sufficient to deprive him of his status as a "victim" for the purposes of Article 34 of the Convention unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention (see, *inter alia*, *Dalban v. Romania* [GC], no. 28114/95, § 44, ECHR 1999-VI).

41. The Court observes that while it is true that the report of the Parliamentary Commissioner and the inquiry of the Heves County Governmental Office both concluded that the conduct of the municipal authorities had lacked a legal basis or that their practice based on legal provisions invoked by those authorities had been unlawful (see paragraphs 8, 15, 29 and 30 above), they did not contain any element establishing that the applicant's right to respect for his home had been infringed. It is also relevant that the Governmental Office itself held that it had no power to remedy the infringement of the applicant's right in the course of administrative proceedings (see paragraph 30 above). In these circumstances, the Court considers that the statements relied on by the Government were not such as to redress the alleged violation of the applicant's rights under Article 8 of the Convention and to deprive him of his victim status. The application therefore

cannot be rejected as being incompatible *ratione personae* with the provisions of the Convention.

2. *The Government's objections regarding non-exhaustion of domestic remedies and failure to respect the six-month time-limit*

(a) **The parties' submissions**

42. The Government requested the Court to declare this complaint inadmissible for failure to exhaust domestic remedies. Firstly, they submitted that the applicant should have pursued substitute private prosecution proceedings. In the Government's submission, the criminal complaint lodged by the applicant had constituted an effective remedy only in respect of the allegedly unlawful entering onto his property but could not be regarded as an effective remedy for the domestic authorities' alleged failure to carry out an effective investigation. Substitute private prosecution was not an alternative to a criminal complaint, since it had been conceived specifically to redress alleged errors in criminal investigations. It could also help protect victims' rights by obtaining further evidence and allowing the victim to present his legal position, independently from the standpoint of the public prosecutor. Furthermore, had the applicant availed himself of this legal avenue he could have further challenged the decision of the courts before the Constitutional Court by means of a constitutional complaint.

43. They also argued that the allegedly low success rate of substitute private prosecution proceedings (see paragraph 47 below) did not mean that this procedure was inefficient, since the dismissal of such applications was mainly due to non-compliance with the formal requirements of private prosecution. Besides, pursuant to a study carried out between 2003 and 2010 the most frequent reason for the discontinuation of proceedings had been the withdrawal of complaints by the substitute private prosecutor.

44. The Government contested the applicant's arguments concerning fear of retribution (see paragraph 47 below). They pointed out that no charges could be brought against a person for falsely initiating substitute private prosecution proceedings, and substitute private prosecutors were not required to be present when the defendants were being heard before the courts.

45. They further maintained that the applicant could have initiated civil proceedings seeking damages for the alleged unlawful actions of public authorities or for the violation of his personality rights. The aim of such civil proceedings would not have been to establish criminal responsibility but to provide compensation for the alleged breach of the applicant's rights. By submitting a criminal complaint only, the applicant had deprived himself of an effective legal remedy providing compensation for the alleged violation of his rights under Article 8.

46. Lastly, Government requested that the Court declare this complaint inadmissible inasmuch as it had been directed against the discontinuation of

the investigation into the alleged abuse of authority, since the applicant had failed to lodge his complaint within the six-month time-limit provided for in Article 35 § 1 of the Convention. They submitted that the six-month time-limit had started to run on 3 August 2012, the date of the termination of the criminal investigations into this crime, which the applicant had not challenged subsequently.

47. The applicant, for his part, submitted that substitute private prosecution proceedings would not have provided an effective remedy affording redress, in particular given the difficulties in obtaining evidence and in taking other investigation measures. He argued that the low success rate of substitute private prosecution proceedings proved that they had no prospect of success either in his case or in general. He also maintained that there had been a real risk of retribution, since a person bringing private prosecution proceedings before the courts could subsequently be charged with falsely accusing someone of having committed a crime. This risk had been particularly relevant in his case, since the alleged perpetrators had been members of the local government and since the police and the prosecutor's office had clearly been unwilling to ensure the protection of his rights against those authorities.

48. The applicant argued that by lodging a criminal complaint in respect of the unlawful entry into his property, he had exhausted the available domestic remedies and was thus not required to initiate separate civil compensation proceedings against the person responsible for the incident. In addition, since the issue of liability had not been clarified by the criminal investigation, it had been doubtful whether his civil action would have had any prospect of success.

49. Lastly, the applicant contested the Government's argument that his complaint should be dismissed for failure to respect the six-month time-limit. He argued that he had pursued his criminal complaint concerning the unlawful entry into his property by the authorities.

**(b) The Court's assessment**

50. In assessing whether an applicant has complied with Article 35 § 1 of the Convention, it is important to bear in mind that the requirements contained in that Article concerning the exhaustion of domestic remedies and the six-month period are closely interrelated. The pursuit of remedies which do not satisfy the requirements of Article 35 § 1 will not be considered by the Court for the purposes of establishing the date of the "final decision" or calculating the starting point for the running of the six-month rule. It follows that if an applicant has recourse to a remedy which is doomed to failure from the outset, the decision on that appeal cannot be taken into account for the calculation of the six-month period (see *Jeronovičs v. Latvia* [GC], no. 44898/10, § 75, 5 July 2016, and the cases cited therein). Moreover, an applicant who has exhausted a remedy that is apparently effective and



sufficient cannot be required also to have tried others that were available but probably no more likely to be successful (see *Aquilina v. Malta* [GC], no. 25642/94, § 39, ECHR 1999-III).

51. The Court notes that, in the present case, the applicant diligently explored the criminal avenue of redress by lodging a criminal complaint against those allegedly responsible for the specific incident, alleging unlawful entry onto private property and abuse of authority (see paragraph 17 above). In his complaint of 6 August 2012 about the discontinuation of the proceedings he insisted that the authorities had unlawfully entered his property on the pretence of conducting official proceedings (see paragraph 19 above). While it is true that the applicant did not pursue his complaint concerning the abuse of authority, he did maintain his claims concerning the unlawful entry into his home by the authorities in his further complaint against the discontinuation order obtained at first instance (see paragraph 22 above).

52. The Court further points out that the applicant complained before it that his right to respect for his home had been violated owing to the unlawful entry of public officials into his house. The focus of the criminal proceedings before the domestic investigating and prosecuting authorities was precisely the question whether or not the mayor and other members of the municipal administration had acted in breach of the Criminal Code, which prohibited unlawful entry into private property. The remedy pursued by the applicant allowed for the examination of criminal responsibility, whereby the investigating authorities were under the obligation to gather evidence and establish the circumstances of the incident. Those proceedings were thus capable of leading to the identification and, if appropriate, punishment of those responsible. In these circumstances, the Court finds that the applicant raised the complaint about the infringement of his right to respect for his home and thus provided the domestic authorities with the opportunity to put right the alleged violation, irrespective of the fact that he had not pursued his complaint about the alleged abuse of authority. In any event, the effectiveness of the criminal complaint concerning the unlawful entry into private property has not been disputed by the Government (see paragraph 42 above).

53. As regards the Government's submission concerning the applicant's failure to initiate private prosecution proceedings, the Court has held in a number of cases that applicants are not required, with respect to the exhaustion of domestic remedies, to bring substitute private prosecutions, essentially because to do so would constitute the pursuit of a legal avenue that would have the same objective as their criminal complaints (see *R.S. v. Hungary*, no. 65290/14, § 38, 2 July 2019; *M.F. v. Hungary*, no. 45855/12, § 34, 31 October 2017; *R.B. v. Hungary*, cited above, §§ 60-65; and *Borbála Kiss v. Hungary*, no. 59214/11, §§ 25-27, 26 June 2012; see also *Matko v. Slovenia*, no. 43393/98, § 95, 2 November 2006). The Court sees no reason to hold otherwise in the circumstances of the present case.

54. As to the question whether the applicant ought to have brought separate civil proceedings in addition to lodging a criminal complaint, the Court refers, first of all, to its above-mentioned finding that the choice to initiate criminal proceedings constituted an effective remedy for the applicant's complaint about the infringement of his right to respect for his home.

55. In this respect, the Court recalls that, where several remedies are available, the applicant is not required to pursue more than one and it is normally that individual's choice as to which. Consequently, the Court considers that the present applicant cannot be required to avail himself of an additional legal avenue in the form of a civil action (see *Karakó v. Hungary*, no. 39311/05, § 14, 28 April 2009, with further references). It is satisfied that the applicant has thus exhausted domestic remedies.

56. In view of the foregoing, the Government's objection to the effect that the applicant failed to exhaust domestic remedies, within the meaning of Article 35 § 1 of the Convention, must be rejected.

The Court would further note that the Gyöngyös public prosecutor's office issued the decision on the discontinuation of the investigation on 19 July 2013 and that the applicant then went on to lodge his application with the Court on 19 December 2013. It follows that the applicant complied with the six-month rule and that the Government's objection in this respect must likewise be rejected.

**(c) Conclusion as to admissibility**

57. The Court furthermore notes that the complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

**B. Merits**

*1. The parties' submissions*

**(a) The applicant**

58. The applicant argued that representatives of the public authorities intruded into his home without any legal basis. He pointed out that a number of enquiries had been carried out concerning the authorities' actions, and that during those procedures the mayor's office had invoked different reasons and legal provisions to substantiate the legality of the inspection in question, including the need to verify the number of people living in the house for its compliance with urban construction rules and the need to assess the eligibility of the applicant's wife for social benefits. However, as concluded by the Parliamentary Commissioner and the Heves County Governmental Office, there had been no legal basis for the mayor and his colleagues to enter his home.

59. The applicant also contested the legitimacy of the aim of the interference, arguing that the public interest in protecting the economic well-being of the country was not a valid reason for inspecting the living conditions of persons in receipt of housing benefit. In any case, all the information allegedly sought by the authorities had been available in official registers.

60. The applicant further submitted that the authorities had failed to investigate effectively the public officials' intrusion into his home. He complained of several perceived omissions on the part of the investigating authorities. In particular, they had erroneously relied on the fact that the applicant had not objected to the inspection, since this element had been irrelevant in situations where authorities entered private property on the pretext of conducting an official procedure. In the applicant's view, there had been clear indications that the authorities had misled the applicant about the nature of the inspection; yet those elements had been ignored by the investigation authorities. Nor had the investigating authorities considered the public officials' intentions or whether the latter had been aware of the unlawfulness of their actions.

61. In the applicant's view, the investigating and prosecuting authorities had clearly demonstrated their unwillingness to carry out an effective investigation. In particular, the Gyöngyös Police Department had only requested its exclusion for bias after having dismissed his criminal complaint twice. Furthermore, the authorities had unreasonably delayed the investigation, even though the facts of the case had never been disputed.

**(b) The Government**

62. In the Government's submission, the applicant's complaint concerned not the inspection of his home but the fact that the alleged perpetrators had not been indicted and that no criminal law remedy had been provided for his complaint. The Government initially admitted that the inspection had been unlawful under public law since it had been based on a municipal decree that had subsequently been repealed. It had also been in breach of the Administrative Proceedings Act. Nonetheless, it had not constituted an offence under the Criminal Code. In that sense, for the Government, the interference had been in accordance with the law. In their subsequent submissions the Government contested the argument that the legal provisions underlying the actions in question had been unlawful and maintained that sections 7 and 8 of Municipal Decree no. 3/2009 provided for a legal basis of the inspection.

63. The Government argued that the conduct of the representatives of the municipality administration had constituted a criminal offence only if they had been aware that they had not acted in their official capacity. The Government relied on the findings of the prosecuting authorities that since it could not be established that the public officials had been deliberately

pretending to carry out an official procedure, no crime could be established. The Government maintained that the applicant had not provided any domestic case-law substantiating his argument that public officials should be held criminally responsible for conduct which they had believed to be lawful.

64. In the Government's view, in so far as the applicant's complaint was to be understood as requiring the legislator to enact criminal-law sanctions for the conduct in question, this went beyond the States' positive obligations under Article 8 of the Convention. Criminal-law sanctions should only be applicable for the most serious breaches of the law.

### *2. The third-party intervener*

65. The European Roma Rights Centre (ERRC), in their third-party observations, pointed out that the inspection of the applicant's home had been an example of anti-Gypsyism in Hungary. This phenomenon, in their view, also manifested itself in the provision of social benefits, where many social assistance recipients were required to engage in economically insignificant labour in order to receive subsistence-level support. They also pointed out that Roma faced discriminatory treatment by the local authorities.

### *3. The Court's assessment*

#### **(a) General principles**

66. The Court reiterates that any measure, if it is no different in its manner of execution and its practical effects from a search, amounts, regardless of its characterisation under domestic law, to interference with applicants' rights under Article 8 of the Convention (see *Belousov v. Ukraine*, no. 4494/07, § 103, 7 November 2013).

67. The Court further notes from its well-established case-law that the wording "in accordance with the law" requires the impugned measure both to have some basis in domestic law and to be compatible with the rule of law (see *Halford v. the United Kingdom*, 25 June 1997, § 49, *Reports of Judgments and Decisions* 1997-III), which is expressly mentioned in the Preamble to the Convention and inherent in the object and purpose of Article 8. The law must thus be adequately accessible and foreseeable, that is, formulated with sufficient precision to enable the individual – if need be with appropriate advice – to regulate his conduct. For domestic law to meet these requirements, it must afford adequate legal protection against arbitrariness and accordingly indicate with sufficient clarity the scope of discretion conferred on the competent authorities and the manner in which it is exercised (see *Malone v. the United Kingdom*, 2 August 1984, §§ 66-68, Series A no. 82, and *Amann v. Switzerland* [GC], no. 27798/95, § 56, ECHR 2000-II).

68. The interference with the right to respect for private and family life must therefore be based on a "law" that guarantees proper safeguards against

arbitrariness. There must be safeguards to ensure that the discretion left to the executive is exercised in accordance with the law and without abuse of powers. The requirements of Article 8 with regard to safeguards will depend, to some degree at least, on the nature and extent of the interference in question (see *Solska and Rybicka v. Poland*, nos. 30491/17 and 31083/17, § 113, 20 September 2018).

**(b) Application of those principles to the present case**

*(i) Whether there was an interference*

69. The Court notes that various authorities of the Gyöngyöspata municipality performed “inspections” of the applicant’s house on 13 October 2011. The Court, having regard to its case-law (see paragraph 66 above), considers that this constituted an interference with the applicant’s right to respect for his home, protected under Article 8 of the Convention.

70. In order to be justified under Article 8 § 2 of the Convention, any interference must be in accordance with the law, pursue one of the listed legitimate aims and be necessary in a democratic society (see *Pretty v. the United Kingdom*, no. 2346/02, § 68, ECHR 2002-III).

*(ii) Whether the impugned interference was “in accordance with the law”*

71. In their submissions under this head, the parties disagreed as to the applicable law and the existence of a legal basis under domestic law.

72. The Court observes that according to the information contained in the case file, the authorities did not rely on any provision of domestic law in carrying out the actions in dispute and failed to prepare an official record of the procedure.

73. When responding to the investigating authorities’ inquiry following the applicant’s criminal complaint of 19 October 2011, the position of the mayor’s office was that the inspection had been based on section 85(4)(a) of *OTÉK* (see paragraph 24 above), which, in their view, authorised the public notary to verify whether the applicant’s home complied with construction regulations (see paragraph 10 above). The applicant’s criminal complaint had been dismissed both by the police and the prosecutor’s office, finding that the measure had been carried out pursuant to that provision (see paragraphs 11 and 13 above). On 22 March 2012 the municipality’s public notary invoked the same legal basis in the course of the inquiry conducted by the Governmental Office. However, the Governmental Office concluded that that provision was inapplicable to the applicant’s case and that the municipal authorities were not empowered to carry out an inspection based on that provision (see paragraph 30 above). Thus, the subsequent decisions issued in connection to the applicant’s criminal complaint did not refer to the provisions of *OTÉK* as a legal basis for the inspection.

74. The Court further notes that as a secondary reason for the inspection, the mayor's office invoked before the investigating authorities the fact that the applicant's wife was in receipt of housing benefit from the municipality. The mayor's office nonetheless did not rely on any provision of domestic law in this respect in the first set of criminal investigation.

75. It was only submitted in the criminal investigation ensuing from the inquiry of the Governmental Office that those actions were taken in implementation of Municipal Decree no. 3/2009. This argument had been accepted by the national investigating and prosecuting authorities (see paragraphs 21 and 23 above).

76. In their submission, the Government also suggested that the above provisions were relevant for the inspection of the applicant's home (see paragraph 62 above).

77. The Court observes that the section 7 of the Municipal Decree provided for on-site inspections prior to the allocation of social benefits and in its section 8 for an annual revision of the provision of benefit. Even assuming that the persons appearing at the applicant's home had intended to rely on those provisions, the Court finds, firstly, that the provisions in question were not "foreseeable as to [their] effects" for the applicant. In particular, while it is primarily for the national authorities, notably the courts, to interpret and apply domestic law, in the present case the Court must note that the municipal decree only provided that on-site inspections could be carried out prior to the allocation of social benefits, but that there was no specific reference to inspections in connection with the subsequent provision of benefit.

78. More importantly, as established by the Governmental Office and not contested by the Government, the last decision on social benefits concerning the applicant's household had been issued in July 2011 and at the time of the inspection no official procedure – either for the provision or the revision of benefits – had been conducted. Thus, even supposing that section 7 taken in conjunction with section 8 of the municipal decree allowed for inspections to review the provision of social benefits, this was clearly irrelevant to the applicant's case in the absence of any official procedure. Thus, those provisions could not serve as a legal basis for carrying out the impugned actions.

79. No other legal instruments have been relied on either by the domestic authorities or by the Government as being applicable to the inspection of the applicant's home.

80. The foregoing considerations are sufficient for the Court to conclude that the interference was not "in accordance with the law". This renders it unnecessary for the Court to examine whether it was undertaken in pursuit of a "legitimate aim" and was "necessary in a democratic society", within the meaning of Article 8 of the Convention. There has accordingly been a violation of that provision.

### III. ALLEGED VIOLATION OF ARTICLE 14 IN CONJUNCTION WITH ARTICLE 8 OF THE CONVENTION

81. The applicant further complained that the actions of the Gyöngyöspata authorities and the lack of an effective investigation into the incident had also been discriminatory, based on his Roma origin. He relied on Article 14 taken in conjunction with Article 8 of the Convention. Article 14 of the Convention provides:

“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.”

#### **Admissibility**

##### *1. Applicability of Article 14 in conjunction with Article 8 of the Convention*

###### **(a) The parties’ submissions**

82. In the Government’s submission, since no crime had been committed by the local authorities, the alleged racist motive or racist attitude of the authorities had also been irrelevant in terms of criminal law. Racist motives alone, without the manifestation of a criminal conduct, did not constitute a criminal offence requiring investigation and prosecution.

83. The applicant maintained that his Roma origin had been a causal factor in the actions of the mayor and his colleagues, and their conduct had had an intimidating and frightening effect on him. In addition, in the applicant’s view, the State authorities had failed to comply with their positive obligations to take all reasonable steps to uncover any possible racist motives behind the incident.

###### **(b) The third-party intervener**

84. ERRC argued that the conduct of the authorities had constituted harassment – unwanted conduct relating to the applicant’s ethnic origin –and institutional racism manifest in the local authorities’ discriminatory policy and their failure to provide protection from discrimination.

###### **(c) The Court’s assessment**

85. Inasmuch as the Government’s argument can be understood as raising the issue of the applicability of Article 14 the Convention, the Court would reiterate its consistent case-law to the effect that this provision has no independent existence, but plays an important role by complementing the other provisions of the Convention and its Protocols, since it protects individuals placed in similar situations from any discrimination in the

enjoyment of the rights set forth in those other provisions. Although the application of Article 14 does not presuppose a breach of those provisions – and to this extent it is autonomous – there can be no room for its application unless the facts in issue fall within the ambit of one or more of the latter. The Court has also held that even in a situation where the substantive provision is not applicable, Article 14 may still be applicable (see *Dorđević v. Croatia*, no. 41526/10, §§ 157-58, ECHR 2012, with further references).

86. Discrimination on account of, *inter alia*, a person's ethnic origin is a form of racial discrimination. Racial discrimination is a particularly invidious kind of discrimination 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, thereby reinforcing democracy's vision of a society in which diversity is not perceived as a threat but as a source of enrichment. The Court has also held that no difference in treatment which is based exclusively or to a decisive extent on a person's ethnic origin is capable of being objectively justified in a contemporary democratic society built on the principles of pluralism and respect for different cultures (see *D.H. and Others v. the Czech Republic* [GC], no. 57325/00, § 176, ECHR 2007-IV, with further references).

87. On this point the Court also refers to Council Directive 2000/43/EC (see paragraph 31 above) and section 10 of the Hungarian Equal Treatment Act (see paragraph 26 above), both prohibiting harassment as a form of discrimination, which has the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment.

88. Furthermore, as the Court has previously held where alleged bias-motivated treatment constituted an interference with the applicant's right to private life under Article 8, that is, when a person makes credible assertions that he or she has been subjected to harassment motivated by racism, including verbal assaults and physical threats, an obligation may arise for the State authorities that to take all reasonable steps to unmask any racist motive and to establish whether or not ethnic hatred or prejudice may have also played a role in the events (see *R.B. v. Hungary*, cited above, §§ 83-84, and *Burlya and Others v. Ukraine*, no. 3289/10, § 163, 6 November 2018).

89. The Court observes that the applicant's complaint about discrimination relates to the authorities' intrusion into his home, which clearly falls within the ambit of Article 8. The Court also agrees with the assertion of the applicant and the third-party intervener that the notion of discrimination within the meaning of Article 14 also includes cases where the alleged discrimination occurs as harassment related to racial or ethnic origin.

Having regard to the foregoing considerations, the Court finds that Article 14 of the Convention, in conjunction with Article 8, is applicable.



2. *Exhaustion of domestic remedies*

(a) **The parties' submissions**

90. The Government pointed out that although the applicant had submitted a complaint concerning the discontinuation of the investigation by the police on 11 June 2013 (see paragraph 22 above), this complaint did not concern the alleged racist motive of the municipal authorities' conduct. Thus, in their view the applicant had not exhausted all domestic remedies available to him. Furthermore, in reply to the third-party observations, the Government submitted that the applicant could have initiated proceeding under the Equal Treatment Act.

91. The applicant observed, in particular, that he had explained in detail in his second criminal complaint of 25 June 2012 that in his view the mayor and his colleagues had entered his house with the intention of harassing him because of his Roma origin. However, the law-enforcement authorities failed to detect the racist motive behind this conduct.

(b) **The Court's assessment**

92. The Court notes that it has already examined the issue of exhaustion of domestic remedies as regards a discrimination complaint separately from the exhaustion issues concerning the main complaint (see *Valkov and Others v. Bulgaria*, nos. 2033/04 and 8 others, §§ 104-08, 25 October 2011). This approach goes hand in hand with the principle that where a substantive Article of the Convention or its Protocols has been relied on both on its own and in conjunction with Article 14 and a separate breach has been found of the substantive Article the Court may not always consider it necessary to examine the case under Article 14 as well, though the position is otherwise if a clear inequality of treatment in the enjoyment of the right in question is a fundamental aspect of the case (see *Dorđević*, cited above, § 159). Consequently, admissibility issues concerning Article 14 may be assessed separately.

93. The object of the rule of exhaustion of domestic remedies is to allow the national authorities (primarily the judicial authorities) to address the allegation made of violation of a Convention right and, where appropriate, to afford redress before that allegation is submitted to the Court. In so far as there exists at national level a remedy enabling the national courts to address, at least in substance, the argument of violation of the Convention right, it is that remedy which should be used. If the complaint presented before the Court has not been put, either explicitly or in substance, to the national courts when it could have been raised in the exercise of a remedy available to the applicant, the national legal order has been denied the opportunity to address the Convention issue which the rule on exhaustion of domestic remedies is intended to give it. It is not sufficient that the applicant may have, unsuccessfully, exercised another remedy which could have overturned the

impugned measure on other grounds not connected with the complaint of a violation of a Convention right. It is the Convention complaint which must have been aired at national level for there to have been exhaustion of “effective remedies”. It would be contrary to the subsidiary character of the Convention machinery if an applicant, ignoring a possible Convention argument, could rely on some other ground before the national authorities for challenging an impugned measure, but then lodge an application before the Court on the basis of the Convention argument (see *Azinas v. Cyprus* [GC], no. 56679/00, § 38, ECHR 2004-III).

94. As regards the present case, the Court will examine under Article 14 the issue of exhaustion of domestic remedies in relation to the Government’s assertion that the applicant had not raised his discrimination complaint at the national level.

95. In his application to this Court, the applicant’s position was that the motive behind the on-site inspection had been to harass him because of his Roma origin and that the investigating authorities had not taken all reasonable steps to uncover any possible racist motive behind the incident.

96. In his criminal complaint of 25 June 2012 the applicant submitted that the acts of the authorities had constituted unlawful entry into his private property by means of a spurious official procedure, as well as abuse of authority, with a racist motive, as evidenced by the Commissioner’s report (see paragraph 17 above). Accordingly, before the Gyöngyös police department, both the intrusion of the applicant’s home and the biased attitude of the authorities were challenged. He reiterated the same arguments in his objection to the dismissal of his criminal complaint (see paragraph 19 above).

97. However, in the course of the resumed investigation proceedings the applicant’s objection lodged with the prosecutor’s office against the decision of the Hatvan police department discontinuing the investigation the applicant only put forward the arguments that the authorities’ conduct constituted the offence of intrusion of private property. He did not reiterate before the Gyöngyös prosecutor’s office his argument that the inspection had had racist motives (see paragraph 22 above).

98. In addition the Court notes the Government’s argument that a victim of discrimination can pray in aid the Equal Treatment Act, which in its section 17/A provides for various forms of injunctive, declaratory and/or punitive relief to victims of discrimination (see paragraph 26 above). The Court observes that the applicant had not made use of this legal avenue.

Against the above background, the Court considers that the applicant had failed to make use of the remedies available to him in respect of the alleged racist motive behind the incident.

99. It therefore follows that this complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

#### IV. 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 applicant’s heirs claimed 5,000 euros (EUR) in respect of non-pecuniary damage.

102. The Government contested this claim. They argued that the applicant’s heirs had not suffered any non-pecuniary damage on account of the violation of the applicant’s right to home, evidenced by the fact that they had not intended to pursue the application.

103. The Court awards the applicant’s heirs, jointly, EUR 4,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

##### **B. Costs and expenses**

104. The applicant’s heirs also claimed EUR 2,248 for the costs and expenses incurred before the domestic courts and EUR 1,705 for those incurred before the Court. In total they claimed EUR 3,953 in respect of costs and expenses. In support of this claim, they submitted pro-forma invoices and payslips from their lawyers. They also submitted a detailed time sheet indicating the amount of hours spent by the lawyers for the preparation of the case: 145 hours of legal work, charged at an hourly rate of EUR 15.5 in respect of the proceedings before the Hungarian authorities, and 110 hours of legal work, charged at an hourly rate of 15.5 in respect of the proceedings before the Court.

105. The Government contested the applicant’s heirs’ claim for the costs and expenses incurred in the domestic proceedings. They argued that those costs had not occurred to rectify the alleged violation of the Convention but in relation to other proceedings.

106. According to the Court’s case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 3,953 covering costs under all heads, plus any tax that may be chargeable to the applicant’s heirs.

### C. Default interest

107. 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 complaint concerning Article 8 of the Convention admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 8 of the Convention;
3. *Holds*
  - (a) that the respondent State is to pay the applicant's heirs, jointly, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
    - (i) EUR 4,000 (four thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
    - (ii) EUR 3,953 (three thousand nine hundred fifty-three euros), plus any tax that may be chargeable to the applicant's heirs, in respect of costs and expenses;
  - (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;
4. *Dismisses*, the remainder of the claim for just satisfaction.

Done in English, and notified in writing on 19 May 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Liv Tigerstedt  
Deputy Registrar

Marko Bošnjak  
President