



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

SECOND SECTION

**CASE OF ŠKORJANEC v. CROATIA**

*(Application no. 25536/14)*

JUDGMENT

STRASBOURG

28 March 2017

**FINAL**

**28/06/2017**

*This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.*



**In the case of Škorjanec v. Croatia,**

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

Işıl Karakaş, *President*,

Julia Laffranque,

Nebojša Vučinić,

Paul Lemmens,

Ksenija Turković,

Jon Fridrik Kjølbro,

Stéphanie Mourou-Vikström, *judges*,

and Stanley Naismith, *Section Registrar*,

Having deliberated in private on 21 February 2017,

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

## PROCEDURE

1. The case originated in an application (no. 25536/14) against the Republic of Croatia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Croatian national, Ms Maja Škorjanec (“the applicant”), on 20 March 2014.

2. The applicant was represented by Ms N. Owens, a lawyer practising in Zagreb. The Croatian Government (“the Government”) were represented by their Agent, Ms Š. Stažnik.

3. The applicant alleged, in particular, a failure by the domestic authorities to effectively discharge their positive obligations in relation to a racially motivated act of violence against her. She relied on Articles 3 and 8 taken alone and in conjunction with Article 14 of the Convention.

4. On 30 June 2014 the application was communicated to the Government.

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1988 and lives in Zagreb.

### A. Background to the case

6. On 9 June 2013 Zagreb police (*Policajska uprava Zagrebačka*, hereinafter “the police”) received an emergency call informing them that two men were attacking a man and a woman of Roma origin.

7. The police immediately went to the scene, where they found the applicant and her partner Š.Š., and another individual, I.M., with whom the applicant and her partner had had a verbal and physical conflict. They all had visible injuries. Soon afterwards, nearby, the police found and arrested another man, S.K., who had also been involved in the conflict.

8. A preliminary report prepared by the police stated that the applicant and her partner had first had an argument with I.M. and S.K., during which S.K. had said “all Gypsies should be killed, we will exterminate you”. S.K. and I.M. had then attacked the applicant’s partner. The applicant and her partner had tried to escape but I.M. and S.K. had managed to catch them. S.K. had grabbed the applicant’s T-shirt and thrown her to the ground and then kicked her in the head. I.M. and S.K. had then continued beating the applicant’s partner, whose hands had been slashed with a knife by S.K..

9. The police report stated that the applicant had a contusion that was visible below her left eye. The emergency medical services also attended the scene. A doctor recorded the applicant’s injuries as minor bodily injuries. On the same day the applicant was examined at a hospital, where her injuries were confirmed. She was told to rest and take painkillers.

10. In connection with the incident, the police carried out an on-site inspection and a further assessment of the available material. The police also interviewed the applicant and her partner as well as the two assailants.

11. In his police interview of 9 June 2013 the applicant’s partner Š.Š. stated that he was of Roma origin. On the day of the incident he had been at a flea market with the applicant when some passers-by had pushed her. He had realised that it had been two young men and he had told the applicant to ignore them because they were drunk (“wasted”). One of them had heard him and had turned to Š.Š., saying “Fuck your Gypsy mother, who is wasted? Who are you to tell me that? You should all be exterminated, I fuck your Gypsy mother” (*Jebem ti mater cigansku, tko je urokan, šta ti meni imaš govoriti, sve vas treba istrijebiti mamu vam cigansku jebem*). The other man had also turned towards Š.Š., saying “Fuck your mother, you should all be exterminated, I will kill you” (*Jebem vam majku, treba vas istrijebiti, ubit ću te*). Š.Š. stated that he had then panicked and had drawn a knife in order to scare them. However, that had created a further outburst of anger from the two men; one of them had taken out a knife and they had started chasing Š.Š. As Š.Š. was running away, the applicant had joined him and they had started running away together, looking for help. However, the attackers had managed to get hold of Š.Š. and had started beating him. At that point the applicant had tried to help and had also been hit. The two men

had then continued beating Š.Š., saying that he was a Rom and should be killed.

12. In her police interview of 9 June 2013 the applicant stated that she lived with Š.Š., with whom she had had two children. She confirmed Š.Š.'s version of events, saying that she had been pushed by the two men. After Š.Š. had reacted by saying that the men should be left alone because they were drunk, one of the two men had said, "Who is drunk? Fuck your Gypsy mother, you should all be exterminated, this will be a white Croatia again, you are garbage" (*Tko je pijan, jebem ti mater cigansku, vas treba istrijebiti, ovo će ponovno biti bijela Hrvatska, smeće jedno*). The applicant stated that after this the two men had started attacking Š.Š. She had tried to approach them to help Š.Š. but another woman had prevented her from doing so. However, at one point she had joined Š.Š. and they had started running away. The two men had then caught them and one of them had grabbed her by the T-shirt and said, "What are you going to do now you bitch? I will beat you now" (*Što ćeš sad kujo jedna, sad ću te prebiti*). He had then kicked her in the head. The two men had continued beating Š.Š., while she had run away and looked for help.

13. In their interviews of 9 June 2013 the two assailants explained that the conflict had broken out because Š.Š. had offended them by saying that they were drunk. They denied the conflict had had any racial overtones.

14. On 10 June 2013 the police lodged a criminal complaint against S.K. and I.M. with the Zagreb Municipal State Attorney's Office (*Općinsko državno odvjetništvo u Zagrebu*) for suspected commission of a hate crime, perpetrated by attempting to inflict grievous bodily harm on Š.Š., and motivated by the latter's Roma origin. The applicant was mentioned in the criminal complaint as a witness.

15. In the course of the investigation the Zagreb Municipal State Attorney's Office questioned the two suspects and on 17 June and 31 July 2013 it instructed the police to conduct an identification procedure and formal questioning of the applicant and Š.Š. as witnesses.

16. When questioned as a witness, Š.Š. repeated the statement he had given during the first police interview. He explained how, after the two men had pushed the applicant, one of them had turned towards him and uttered the insults related to his Roma origin (see paragraph 11 above). Š.Š. also stated that the applicant had been attacked after she had tried to help him when the two men were beating him up.

17. During her questioning as a witness, the applicant repeated the statement she had given during the first police interview (see paragraph 12 above).

## **B. The criminal proceedings concerning the attack on the applicant's partner**

18. Upon completion of the investigation, on 30 October 2013 the Zagreb Municipal State Attorney's Office indicted S.K. and I.M. in the Zagreb Municipal Criminal Court (*Općinski kazneni sud u Zagrebu*) on charges of making serious threats against Š.Š. and inflicting bodily injury on him, associated with a hate-crime element. The indictment also made reference to the attack on the applicant, suggesting that she had been kicked in the head while trying to save Š.Š. from the beating.

19. The indictment was confirmed and the case was sent for trial on 21 March 2014.

20. Meanwhile, on 31 October 2013 the Zagreb Municipal State Attorney's Office informed Š.Š., as a victim in the proceedings, that an indictment had been lodged against S.K. and I.M. in connection with the attack on him. On 23 January 2014 the Zagreb Municipal State Attorney's Office informed Š.Š.'s lawyer, L.K., of the institution of the proceedings in the Zagreb Municipal Criminal Court.

21. At a hearing on 9 October 2014 the Zagreb Municipal Criminal Court questioned Š.Š. He repeated the statements given to the police. When asked whether the two assailants had said anything to the applicant related to Š.Š.'s racial origin, Š.Š. stated that she had told him something but he could no longer remember the details. He thought that she had said that the two assailants had told her that she was also Roma if she was with a Roma man. On the basis of an agreement between the parties, including Š.Š.'s representative, the applicant's statement to the police was admitted in evidence and she was not questioned further at the trial.

22. By a judgment of 13 October 2014 the Zagreb Municipal Criminal Court found S.K. and I.M. guilty as charged and sentenced them to one year and six months' imprisonment.

## **C. The applicant's criminal complaint**

23. In the meantime, on 29 July 2013 the applicant and her partner, represented by the lawyer L.K., had lodged a criminal complaint with the Zagreb Municipal State Attorney's Office against two unidentified suspects in connection with the incident of 9 June 2013 (see paragraphs 6-13 above). It was alleged in the criminal complaint that one of the suspects had first pushed the applicant and had then told her that she was a "bitch" (*kuja*) who had a relationship with a Roma man and that she would be beaten. She had been grabbed by the T-shirt and thrown to the ground, banging her head. The assailants had then continued beating Š.Š., threatening to kill him and the applicant. The criminal complaint also alleged that the assailants had stolen two mobile telephones from Š.Š. at the same time.

24. The applicant's representative tried to obtain the relevant information about the attackers from the police on the grounds that she needed the information in order to institute court proceedings. On 12 November 2013 the police informed the applicant's representative that they had lodged a criminal complaint with the Zagreb Municipal State Attorney's Office against two individuals in connection with a suspicion that they had committed the offence of attempted grievous bodily harm against the applicant and her partner, which, in the circumstances of the case, had been classified as a hate crime. The applicant's representative was also informed that she should contact the Zagreb Municipal State Attorney's Office for all further information.

25. The applicant's representative then informed the Zagreb Municipal State Attorney's Office that the applicant and her partner would participate in the proceedings as victims and requested to be informed of all relevant procedural steps. On 17 February 2014 the applicant's representative, invoking the domestic authorities' obligations under the Convention, requested information from the police and the Zagreb Municipal State Attorney's Office about the criminal complaint lodged on behalf of the applicant.

26. On 31 October 2014 the Zagreb Municipal State Attorney's Office rejected the applicant's criminal complaint. It examined the materials related to the investigation into the incident of 9 June 2013 and the criminal proceedings against S.K. and I.M. (see paragraphs 10-22 above). The relevant part of the decision reads:

"In view of the above, it is established without any doubt that on the day in issue there was a physical conflict between S.K. and I.M. and Š.Š. whereby [S.K. and I.M.] caused bodily injury to and threatened Š.Š., and those offences were committed primarily because of hatred towards Roma.

However, the statements of the witnesses Š.Š. and Maja Škorjanec show that [S.K. and I.M.] pushed her in the back, causing her to fall onto a [flea market] stall, not because she was the partner of Š.Š., who is of Roma origin, but because they were drunk and they accidentally pushed her towards the stalls.

Furthermore, the medical documentation regarding Maja Škorjanec, as well as the records of the questioning of the witnesses Š.Š. and Maja Škorjanec and the statements of S.K. and I.M. given in their defence in the proceedings before the Zagreb Municipal Criminal Court, show that there is no doubt that S.K. kicked Maja Škorjanec in the left side of the face with the result that she sustained a minor bodily injury.

Given that there is no indication that S.K. and I.M. inflicted injuries on Maja Škorjanec because of hatred towards Roma, as she is not of Roma origin, the criminal offence under Article 117 § 2 in conjunction with Article 87(21) of the Criminal Code has not been established.

In particular, the injury which Maja Škorjanec sustained would, by its nature, suggest an injury within the meaning of Article 177 § 1 of the Criminal Code. ... As criminal proceedings for the offence under Article 177 § 1 of the Criminal Code are instituted on the basis of a private prosecution, the criminal complaint ... must be

rejected ... on the grounds that the impugned criminal offence is not an offence that is prosecuted of the prosecutor's own motion.

With regard to the criminal offence under Article 139 § 2 in conjunction with Article 87(21) of the Criminal Code, it should be pointed out that it is obvious that S.K. and I.M. threatened Š.Š. and not Maja Škorjanec ... Moreover, ... it does not follow from the record of Maja Škorjanec's witness statement, which has been examined, that S.K. and I.M. threatened her, but rather Š.Š., and thus the criminal complaint ... should be rejected on the grounds that the impugned criminal offence is not an offence that is prosecuted of the prosecutor's own motion."

27. The applicant was informed that she could take over the prosecution of S.K. and I.M. as a subsidiary prosecutor, as provided for under the relevant domestic law (see paragraph 30 below).

## II. RELEVANT DOMESTIC LAW AND PRACTICE

### A. Relevant domestic law

#### 1. Criminal Code

28. The relevant provisions of the Criminal Code (*Kazneni zakon*, Official Gazette nos. 125/2011, with further amendments) read as follows:

#### Article 87

"(21) Hate crime is a criminal offence committed on the grounds of race, skin colour, religion, national or ethnic origin, disability, sexual orientation or gender identity of another person. Such conduct shall be deemed an aggravating circumstance if a more severe punishment is not explicitly prescribed in this Code."

#### Bodily injury

#### Article 117

(1) Whoever inflicts bodily injury on another or impairs a person's health shall be punished by a fine or by imprisonment not exceeding one year.

(2) Whoever commits an act punishable under paragraph 1 motivated by hate ... shall be punished by imprisonment not exceeding three years.

(3) A criminal offence punishable under paragraph 1 shall the subject of a private prosecution."

#### Threats

#### Article 139

"(2) Whoever makes a serious threat to kill or to inflict serious bodily injury on another ... shall be punished by a fine or by imprisonment not exceeding three years.

...



(4) ... [A] criminal offence punishable under paragraph (2) of this Article shall be prosecuted at the request [of the victim], save for an offence committed as a hate crime ... [which shall be prosecuted of the prosecutor's own motion]."

## 2. Code of Criminal Procedure

29. The relevant part of the Code of Criminal Procedure (*Zakon o kaznenom postupku*, Official Gazette, nos. 152/2008, 76/2009, 80/2011, 121/2011, 91/2012, 143/2012, 56/2013, 145/2013 and 152/2014) provides:

### Article 2

"(1) Criminal proceedings shall only be instituted and conducted upon the request of a competent prosecutor. ...

(2) In respect of criminal offences subject to public prosecution the competent official shall be the State Attorney, and in respect of criminal offences that may be prosecuted privately the competent prosecutor shall be a private prosecutor. ...

...

(4) Where the State Attorney finds that there are no grounds to institute or conduct criminal proceedings, the victim may take his place as a subsidiary prosecutor under the conditions prescribed by this Act."

30. Articles 55 to 63 regulate the rights and duties of private prosecutors and of victims acting as subsidiary prosecutors. A private prosecutor (*privatni tužitelj*) is a victim who brings a private prosecution in respect of criminal offences for which such a prosecution is expressly allowed by the Criminal Code (less serious offences). A victim acting as a subsidiary prosecutor (*oštećeni kao tužitelj*) is an individual taking over criminal proceedings in respect of criminal offences subject to public prosecution where the relevant prosecuting authorities, for whatever reason, have decided not to prosecute. When acting as a subsidiary prosecutor, the victim has all the rights in the proceedings which the State Attorney's Office would have as a public prosecuting authority, save for those vested in the State Attorney's Office as a State body. Under Article 58 § 2, the State Attorney's Office is authorised, on a discretionary basis, to take over a prosecution from a subsidiary prosecutor at any point before the end of the trial.

## **B. Relevant domestic practice and materials concerning discrimination**

31. The relevant domestic practice and other materials concerning discrimination in general are set out in the case of *Guberina v. Croatia* (no. 23682/13, §§ 27 and 29-31, ECHR 2016).

### C. Other relevant domestic practice

32. The list published on the Constitutional Court's Internet site (available at <http://www.usud.hr>) of various domestic authorities' decisions which are not amenable to review on the basis of individual constitutional complaints includes a decision rejecting a victim's criminal complaint. Reference is made to the following case-law of the Constitutional Court: U-III-1523/2000, U-III-1122/2007, U-III-2411/2012 and U-III-1488/2014.

### III. RELEVANT INTERNATIONAL MATERIALS

33. In 2009 the Organization for Security and Cooperation in Europe (OSCE) published "Hate Crime Laws: A Practical Guide" as a tool to assist States in implementing their commitment to "consider enacting or strengthening, where appropriate, legislation that prohibits discrimination based on, or incitement to hate crimes". The relevant part of the Guide (pp. 50-51) reads:

"The United States has a well-documented pattern of crimes directed at interracial couples and families. Similarly, a study in Finland found that one-fifth of hate crime cases involved victims who were ethnically Finnish "in the company of a person of foreign extraction" or whose 'spouse was of foreign extraction.'

...

Persons affiliated or associated with a group that shares a protected characteristic can easily be overlooked as a category to include in hate crime laws. Therefore, hate crime laws should also penalize those who attack others on the basis of their association with members of protected groups."

34. In the further publication entitled "Preventing and responding to hate crimes: A resource guide for NGOs in the OSCE region" (2009) the OSCE stressed the following (pp. 22-23):

"The Characteristics of the Victim and the Perpetrator

...

Characteristics of a victim that may be indicators of hate crime include:

- The victim is identifiable as "different" from the attackers and, often, from the majority community, by such factors as appearance, dress, language or religion;

...

- The victim was in the company of or married to a member of a minority group."

## THE LAW

### I. ALLEGED VIOLATION OF ARTICLE 3 TAKEN IN CONJUNCTION WITH ARTICLE 14 OF THE CONVENTION

35. The applicant complained of a failure by the domestic authorities to effectively discharge their positive obligations in relation to a racially motivated act of violence against her. She relied on Articles 3, 8 and 14 of the Convention.

36. The Court finds that the domestic authorities' obligations related to the incident at issue may arise under all the Articles of the Convention relied upon by the applicant, namely Articles 3 and 8 taken alone and in conjunction with Article 14. However, in view of the injuries which the applicant sustained (see paragraph 9 above) and the presumed racially motivated violence against her, the Court considers that the applicant's complaint should be examined under Article 3 (see *Abdu v. Bulgaria*, no. 26827/08, § 39, 11 March 2014).

37. Further, the authorities' duty to investigate the existence of a possible link between a discriminatory motive and an act of violence can fall under the procedural aspect of Article 3 of the Convention, but may also be seen to form part of the authorities' positive responsibilities under Article 14 to secure the fundamental values enshrined in Article 3 without discrimination. Owing to the interplay of Articles 3 and 14 of the Convention in the context of violence motivated by discrimination, issues such as those raised by the present case may fall to be examined under Article 3 alone, with no separate issue arising under Article 14, or may require examination of Article 3 in conjunction with Article 14. This is a question to be decided in each case depending on the facts and the nature of the allegations made (see, for example, *B.S. v. Spain*, no. 47159/08, § 59, 24 July 2012).

38. In the present case, in view of the applicant's allegations that the violence against her had racial overtones which were completely overlooked by the authorities in the investigation, the Court finds that the most appropriate way to proceed would be to subject the applicant's complaints to a simultaneous examination under Article 3 taken in conjunction with Article 14 (compare *Abdu*, cited above, § 46).

39. These provisions read as follows:

#### Article 3

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

### Article 14

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

#### A. Admissibility

##### 1. *The parties' arguments*

40. The Government argued that there had been no reason for the applicant to lodge her application with the Court while the relevant proceedings were still pending at the domestic level. They also argued that the applicant had failed to exhaust all the available remedies, in particular the mechanisms of a private or subsidiary prosecution, a civil action for damages and protection from discrimination or a constitutional complaint before the Constitutional Court.

41. The applicant contended that she had properly exhausted the available domestic remedies and had brought her application to the Court when it had become evident that there would be no criminal prosecution in connection with the attack on her. She also considered that a constitutional complaint was not an effective domestic remedy that needed to be used.

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

42. The Court reiterates that under Article 35 § 1 of the Convention, it may only deal with an application after all domestic remedies have been exhausted. States are dispensed from answering before an international body for their acts before they have had an opportunity to put matters right through their own legal system, and those who wish to invoke the supervisory jurisdiction of the Court as concerns complaints against a State are thus obliged to use first the remedies provided by the national legal system. The obligation to exhaust domestic remedies therefore requires an applicant to make normal use of remedies which are available and sufficient in respect of his or her Convention grievances. The existence of the remedies in question must be sufficiently certain not only in theory but in practice, failing which they will lack the requisite accessibility and effectiveness (see *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, §§ 70-71, 25 March 2014, and *Gherghina v. Romania* (dec.) [GC], no. 42219/07, § 85, 9 July 2015).

43. Article 35 § 1 also requires that the complaints intended to be made subsequently in Strasbourg should have been made to the appropriate domestic body, at least in substance and in compliance with the formal requirements and time-limits laid down in domestic law and, further, that any procedural means that might prevent a breach of the Convention should have been used (see *Vučković and Others*, cited above, § 72).

44. The Court further reiterates that the requirement for the applicant to exhaust domestic remedies is normally determined with reference to the date on which the application was lodged with the Court (see *Baumann v. France*, no. 33592/96, § 47, ECHR 2001-V (extracts)). However, the Court also accepts that the last stage of the exhaustion of domestic remedies may be reached shortly after the lodging of the application but before the Court determines the issue of admissibility (see, for instance, *Zalyan and Others v. Armenia*, nos. 36894/04 and 3521/07, § 238, 17 March 2016, with further references).

45. In the light of the above principles, the Court notes, firstly, that the applicant lodged her application with the Court on 20 March 2014 and that her case was finally determined at the domestic level on 31 October 2014 when the competent State Attorney's Office dismissed her criminal complaint (see paragraph 26 above). In those circumstances, there are no grounds for dismissing the applicant's complaint under Articles 3 and 14 of the Convention for failure to comply with the requirements of Article 35 § 1 of the Convention on the basis of the first objection raised by the Government (see, for instance, *Milić and Nikezić v. Montenegro*, nos. 54999/10 and 10609/11, § 74, 28 April 2015, and *Zalyan and Others*, cited above, §§ 238-239).

46. With regard to the Government's objection that the applicant should have pursued a subsidiary or private prosecution, the Court notes that it has already held that where an applicant has lodged a criminal complaint concerning acts of violence and alleging discriminatory motives behind the attack, that person is not required to pursue the matter by instituting a subsidiary prosecution (see *R.B. v. Hungary*, no. 64602/12, § 62, 12 April 2016) or private prosecution, which would not cover the alleged racist insults or the racist motives for the violence against the applicant, which are a fundamental part of the applicant's complaint (see *Abdu*, cited above, § 51). This is particularly true where domestic law provides for public criminal prosecution of violent offences with a hate-crime element, as it does in the present case (see paragraph 28 above).

47. Further, with regard to the possibility of lodging a civil action for damages, the Court has already held that such an action would not fulfil the State's procedural obligation under Article 3 in a case of assault (see *Beganović v. Croatia*, no. 46423/06, § 56, 25 June 2009, and *Abdu*, cited above, § 51). The same is true for a civil action for protection from discrimination, particularly given that the applicant had already raised her discrimination complaint in the criminal complaint she lodged with the competent State Attorney's Office (see paragraph 23 above, and compare *Guberina*, cited above, §§ 49-50, and *M.C. and A.C. v. Romania*, no. 12060/12, § 63, 12 April 2016).

48. Lastly, with regard to the Government's objection that the applicant should have lodged a constitutional complaint, the Court notes, in view of

the practice of the Constitutional Court (see paragraph 32 above), that it was not necessary for the applicant to use that remedy before lodging her application with the Court.

49. In view of the above considerations, the Court rejects the Government's objections. It notes that the applicant's complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

## **B. Merits**

### *1. The parties' submissions*

50. The applicant submitted that it had been clear from the evidence that she had been the victim of a hate crime related to her relationship with Š.Š., who was of Roma origin. She argued that the domestic framework was deficient given that the relevant domestic law, as interpreted by the State Attorney's Office, did not provide protection for individuals who were victims of discriminatory violence by association with another person having the relevant characteristic. Moreover, she submitted that the competent domestic authorities had not paid due attention to the racial overtones implicit in the attack on her and had failed to prosecute the attackers for a hate crime merely because she had not been of Roma origin herself. That, in the applicant's view, had run counter to the domestic authorities' obligations under the Convention.

51. The Government argued that the police had diligently investigated all the circumstances of the attack on the applicant and Š.Š. In their view, it had been unequivocally established that Š.Š. had been attacked because of his Roma origin and that he had been the exclusive target of the attack. The applicant, on the other hand, had been a collateral victim and had been attacked only after she had tried to help Š.Š. However, the attackers had not continued to chase her after she had escaped but had continued beating Š.Š. instead. In that connection, the Government stressed that it remained open for the applicant to bring private prosecutions against S.K. and I.M. for the attack on her. The Government also pointed out that during the proceedings before the domestic authorities the applicant had never suggested that she had been the victim of a hate crime related to her partner's Roma origin. In those circumstances, the Government submitted that the domestic authorities had done everything which could reasonably be expected of them to elucidate the circumstances of the attack on the applicant.

## 2. *The Court's assessment*

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

52. The Court refers to the well-established principles of its case-law on Articles 3 and 14 of the Convention concerning the State's obligations when confronted with cases of violent incidents triggered by suspected racist attitudes, in particular related to the Roma origin of a victim (see *Šečić v. Croatia*, no. 40116/02, §§ 50-54 and 66-67, 31 May 2007; *Abdu*, cited above, §§ 40-46; *Balázs v. Hungary*, no. 15529/12, §§ 47-54, 20 October 2015; and *R.B. v. Hungary*, cited above, §§ 39-45).

53. In particular, the Court would reiterate that when investigating violent incidents triggered by suspected racist attitudes, the State authorities are required to take all reasonable action to ascertain whether there were racist motives and to establish whether feelings of hatred or prejudices based on a person's ethnic origin played a role in the events. Treating racially motivated violence and brutality on an equal footing with cases lacking any racist overtones would be tantamount to turning a blind eye to the specific nature of acts which are particularly destructive of fundamental human rights. A failure to make a distinction in the way in which situations which are essentially different are handled may constitute unjustified treatment irreconcilable with Article 14 of the Convention (see *Abdu*, cited above, § 44).

54. In practice it is, admittedly, often extremely difficult to prove a racist motive. The obligation on the respondent State to investigate possible racist overtones to an act of violence is an obligation regarding the means employed rather than an obligation to achieve a specific result. The authorities must take all reasonable measures, having regard to the circumstances of the case (*ibid.*, § 45, with further references),

55. In this connection it should be reiterated that not only acts based solely on a victim's characteristics can be classified as hate crimes. For the Court, perpetrators may have mixed motives, being influenced as much or more by situational factors as by their biased attitude towards the group to which the victim belongs (see *Balázs*, cited above, § 70). Moreover, Article 14 of the Convention, in the light of its objective and the nature of the rights which it seeks to safeguard, also covers instances in which an individual is treated less favourably on the basis of another person's status or protected characteristics (see *Guberina*, cited above, § 78).

56. It accordingly follows that the obligation on the authorities to seek a possible link between racist attitudes and a given act of violence, which is part of the responsibility incumbent on States under Article 3 taken in conjunction with Article 14 of the Convention, concerns not only acts of violence based on a victim's actual or perceived personal status or characteristics but also acts of violence based on a victim's actual or

presumed association or affiliation with another person who actually or presumably possesses a particular status or protected characteristic.

57. In such instances, the authorities must do what is reasonable in the circumstances to collect and secure the evidence, explore all practical means of discovering the truth and deliver fully reasoned, impartial and objective decisions, without omitting suspicious facts that may be indicative of racially induced violence. Moreover, where there are arguable grounds for believing that an individual has suffered acts contrary to Article 3, the national authorities are required to conduct an effective official investigation to establish the facts of the case and identify and, if appropriate, punish those responsible (see, for instance, *Balázs*, cited above, §§ 51-52, with further references).

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

58. The applicant argued that the existing domestic legal framework concerning racially motivated acts of violence, as interpreted by the relevant State Attorney's Office, was deficient and that the manner in which the relevant domestic authorities had responded to her complaint of racially motivated violence had been defective to the point of constituting a violation of the State's positive obligations under the Convention. The Court will therefore first assess the existence and adequacy of the legal mechanisms for the protection of people from violence motivated by discriminatory attitudes in the domestic legal order and then the manner of their application in practice (see *Beganović*, cited above, §§ 72 and 74; *Valiulienė v. Lithuania*, no. 33234/07, §§ 78-79, 26 March 2013; and *Abdu*, cited above, § 47).

59. With regard to the domestic legal framework, the Court notes that its case-law consistently and clearly establishes that Article 3 of the Convention requires the implementation of adequate criminal-law mechanisms once the Court has found that the level of severity of violence inflicted by private individuals attracts protection under that provision (see *Beganović*, cited above, 69). In the Court's view, those principles apply *a fortiori* in cases of violence motivated by racial discrimination (see paragraphs 36 and 46 above).

60. The Croatian legal framework in this context includes a special provision for hate crime as an aggravating form of other criminal offences. In particular, under Article 87 § 21 of the Criminal Code any offence committed against another on grounds of race is to be treated as an aggravating circumstance if a more serious punishment for hate crime is not already explicitly prescribed in the Criminal Code (see paragraph 28 above).

61. In so far as relevant for the case at issue, it should be noted that hate crime is explicitly described as an aggravating form of the offence of causing bodily injury under Article 117 § 2 of the Criminal Code. Moreover, both the offence of causing bodily injury and that of making



serious threats are liable to public criminal prosecution whenever a hate-crime element is arguably involved. In this connection the Court also notes that it is sufficient under the Criminal Code for a hate crime to be committed on the grounds of or out of racial hatred, without requiring the victim to personally possess the protected characteristic or status (see paragraph 28 above).

62. In view of the above, the Court considers that the Croatian legal system provided adequate legal mechanisms to afford an acceptable level of protection to the applicant in the circumstances. The Court must therefore examine whether the manner in which the criminal-law mechanisms were implemented in the instant case was defective to the point of constituting a violation of the respondent State's obligations under the Convention.

63. The Court notes that following the report about the attack on the applicant and her partner, the police immediately responded by going to the scene and conducted a preliminary investigation on the basis of a suspected attack on a couple motivated by hatred against people of Roma origin (see paragraphs 6-8 above).

64. In the course of the investigation the police interviewed the applicant, her partner and the two assailants. While the two assailants denied any racial overtones to the conflict (see paragraph 13 above), the applicant and her partner provided information to the contrary. The applicant's partner Š.Š. explained how the two men, after his remark that they were drunk, had turned on him and started uttering various insults related to his Roma origin, after which they had attacked him. He also explained that the applicant had been attacked when she had run to his aid (see paragraph 11 above). For her part, the applicant confirmed Š.Š.'s version of events (see paragraph 12 above). Their statements thus suggested that the applicant had fallen victim to a racially motivated attack owing to the fact that she had been in the company of Š.Š. (see paragraphs 21 and 23 above).

65. The Court would reiterate that where any evidence of racist verbal abuse comes to light in an investigation, it must be checked and, if confirmed, a thorough examination of all the facts should be undertaken in order to uncover any possible racist motives (see *Balázs*, cited above, § 61). Moreover, the general context of the attack has to be taken into account. As explained in the Court's case-law, the domestic authorities should be mindful that perpetrators may have mixed motives, being influenced as much or more by situational factors as by their biased attitude (see paragraph 55 above).

66. Likewise, it should be reiterated that under the Convention the obligation on the authorities to seek a possible link between racist attitudes and a given act of violence exists not only with regard to acts of violence based on the victim's actual or perceived personal status or characteristics but also with regard to acts of violence based on the victim's actual or

perceived association or affiliation with another person who actually or presumably possesses a particular status or protected characteristic (see paragraph 56 above). Indeed, some hate-crime victims are chosen not because they possess a particular characteristic but because of their association with another person who actually or presumably possesses the relevant characteristic. This connection may take the form of the victim's membership of or association with a particular group, or the victim's actual or perceived affiliation with a member of a particular group through, for instance, a personal relationship, friendship or marriage (see paragraphs 33-34 above).

67. In the case in issue, the prosecuting authorities confined their investigation and analysis to the hate-crime element of the violent attack against Š.Š. They failed to carry out a thorough assessment of the relevant situational factors and the link between the applicant's relationship with Š.Š. and the racist motive for the attack on them. Indeed, the police lodged a criminal complaint only with regard to the attack on Š.Š., treating the applicant merely as a witness, although she had also sustained injuries in the course of the same attack while in his company (see paragraphs 14 and 34 above).

68. The Court further notes that the applicant made specific allegations of racially motivated violence directed against her in her criminal complaint of 29 July 2013 (see paragraph 23 above). The Court also notes that the issue was raised in the course of the criminal proceedings against S.K. and I.M., where further information came to light suggesting that the applicant had been a victim of racially motivated violence (see paragraph 21 above). However, in its assessment of the available information concerning the violent attack on the applicant the State Attorney's Office emphasised the fact that the applicant was not of Roma origin herself and could therefore not be considered a victim of a hate crime. It did so without conducting further interviews or obtaining the relevant information related to the applicant's specific complaints (see paragraph 26 above).

69. The Court reiterates that its role is not to rule on the application of domestic law or to adjudicate on the individual guilt of persons charged with offences, but to review whether and to what extent the competent authorities, in reaching their conclusion, may be deemed to have submitted the case to the careful scrutiny required by the procedural obligations under the Convention (see *Abdu*, cited above, § 33). Likewise, aware of its subsidiary role, the Court is mindful that it is prevented from substituting its own assessment of the facts for that of the national authorities.

70. Nevertheless, the Court cannot but note that the prosecuting authorities' insistence on the fact that the applicant herself was not of Roma origin and their failure to identify whether she was perceived by the attackers as being of Roma origin herself, as well as their failure to take into account and establish the link between the racist motive for the attack and

the applicant's association with Š.Š., resulted in a deficient assessment of the circumstances of the case (see paragraphs 52-57 and 68 above).

71. That impaired the proper investigation by the domestic authorities of the applicant's allegations of a racially motivated act of violence against her to an extent irreconcilable with the State's obligation to take all reasonable steps to uncover any possible racist motives behind the incident (compare *Balázs*, cited above, § 75). In view of the failure of the State Attorney's Office to subject the case to the necessary scrutiny, as required under the Convention, the Court cannot but conclude that the domestic authorities failed to comply with their obligations under the Convention when they rejected the applicant's criminal complaint of a racially motivated violent attack on her without conducting a further investigation in that respect prior to their decision.

72. This is sufficient for the Court to conclude that there has been a violation of Article 3 under its procedural aspect in conjunction with Article 14 of the Convention.

## II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

73. The applicant complained that by not responding to her criminal complaint the domestic authorities had prevented her from obtaining the attackers' personal details, without which it had been impossible for her to bring a civil action for damages. She relied on Article 6 of the Convention.

74. The Government contested that argument.

75. The Court notes that by informing the applicant's partner of the indictment that had been lodged against S.K. and I.M. in the relevant criminal court and then also informing her legal representative of the matter (see paragraph 20 above), the State Attorney's Office gave the applicant sufficient information about the personal details of the two assailants to allow her to institute a civil action for damages against them. Moreover, she was informed of their personal details in the course of the criminal proceedings concerning their attack on her partner, who was represented by the same lawyer as later represented the applicant (see paragraph 21 above). She was also informed of the personal details of the assailants in the decision rejecting her criminal complaint (see paragraph 26 above).

76. It therefore follows that the applicant's complaint under Article 6 of the Convention is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

### III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

77. 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**

78. The applicant claimed 20,000 euros (EUR) in respect of non-pecuniary damage.

79. The Government considered the applicant’s claim excessive, unfounded and unsubstantiated.

80. Having regard to all the circumstances of the present case, the Court accepts that the applicant has suffered non-pecuniary damage which cannot be compensated for solely by the finding of a violation. Making its assessment on an equitable basis, the Court awards the applicant EUR 12,500 in respect of non-pecuniary damage, plus any tax that may be chargeable to her.

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

81. The applicant also claimed EUR 4,000 for the costs and expenses incurred before the domestic courts and for those incurred before the Court.

82. The Government considered this claim unfounded and unsubstantiated.

83. 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 have been 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 2,200 EUR covering costs under all heads plus any tax that may be chargeable to the applicant.

#### **C. Default interest**

84. 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 under Articles 3 and 14 of the Convention concerning the failure by the domestic authorities to effectively discharge their positive obligations in relation to a racially motivated act of violence against the applicant admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of the procedural aspect of Article 3 in conjunction with Article 14 of the Convention;
3. *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, the following amounts, to be converted into Croatian kunas at the rate applicable at the date of settlement:
    - (i) EUR 12,500 (twelve thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
    - (ii) EUR 2,200 (two thousand two hundred euros), plus any tax that may be chargeable to the applicant, 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 applicant's claim for just satisfaction.

Done in English, and notified in writing on 28 March 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith  
Registrar

Işıl Karakaş  
President