



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

FIRST SECTION

CASE OF ĐURĐEVIĆ v. CROATIA

(Application no. 52442/09)

JUDGMENT

STRASBOURG

19 July 2011

FINAL

19/10/2011

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

In the case of Đurđević v. Croatia,

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

Anatoly Kovler, *President*,

Nina Vajić,

Peer Lorenzen,

Elisabeth Steiner,

Khanlar Hajiyeu,

George Nicolaou,

Mirjana Lazarova Trajkovska, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 28 June 2011,

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

PROCEDURE

1. The case originated in an application (no. 52442/09) 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 three Croatian nationals, Mr Đuro Đurđević (“the first applicant”), his wife Katica Đurđević (“the second applicant”) and their son Danijel Đurđević (“the third applicant”), on 14 September 2009.

2. The applicants were represented by Ms Lovorka Kušan and Mr Zlatko Kušan, lawyers practising in Ivanić Grad. The Croatian Government (“the Government”) were represented by their Agent, Ms Š. Stažnik.

3. On 10 September 2010 the President of the First Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicants were born in 1967, 1966 and 1994 respectively and live in Kloštar-Ivanić.

1. The two incidents of 16 June 2009

(a) The applicants' version of events

5. The applicants allege that on 16 June 2009 at about 9.30 p.m. the third applicant and his brother Z.Đ were attacked in front of the “Yogi” restaurant in Ivanić Grad by a group of six men. The police intervened and took the third applicant and his brother to the Ivanić Grad police station. The third applicant refused to sign the police incident report, which stated that he had 1 g/kg of alcohol in his blood. When, at about 10.30 p.m., the first and second applicants arrived at the police station they found that the third applicant had been beaten up and had blood all over him.

6. When the second and third applicants went to their car, two police officers, one of whom was S.M., approached them. The unidentified police officer opened the door and S.M. pulled the second applicant out of the car, twisting her right arm, punched her in the chest and kicked her in the abdomen. S.M. then kicked the third applicant in the abdomen and seized him by the throat. The second applicant called the Zagreb Police to tell them about the incident, but there was no reaction.

7. After the incident, the applicants and other members of their family went to Ivanić Grad Medical Emergency Centre (*Služba hitne medicinske pomoći, ispostava Ivanić Grad*), where the doctor refused to record the applicants' injuries. The applicants and other family members then went to Bjelovar General Hospital (*Opća Bolnica Bjelovar*), where they were examined at about 2 a.m. It was established that the second applicant had suffered contusions of the chest, head and pelvis (*contusio thoracis, capitis et pelveos*), while the third applicant had suffered contusions on the head, with abrasions, and on the nose (*contusio capitis cum excoriations et contusio nasi*). The injuries were classified as minor bodily injuries.

8. On an unspecified date, the first applicant complained to the Ministry of Health and Social Welfare (*Ministarstvo zdravstva i socijalne skrbi*) that his family had not been treated correctly at Ivanić Grad Medical Emergency Centre. On 17 August 2009 S.L., the principal of Zagrebačka County Health Centre (*Dom Zdravlja Zagrebačke Županije*), submitted his observations to the Ministry, stating that the applicants had pressured the doctor in charge to diagnose injuries, but the doctor had behaved professionally and refused to record injuries that did not exist.

(b) The Government's version of the events

9. The Government alleged that on 16 June 2009 in the evening Z.Đ., a son of the first and second applicants and brother to the third applicant, was having dinner at the “Yogi” restaurant in Ivanić Grad when M.Š., obviously very drunk, approached him, insulted him because of his Roma origin and spat in his food. Z.Đ. left the restaurant, but soon afterwards, at about

9.30 p.m., came back with the third applicant to retrieve his car, which had been parked in front of the restaurant.

10. There was a verbal and then a physical dispute between Z.Đ. and the third applicant on the one side and M.Š. on the other. Z.Đ. and the third applicant were aided by their relatives S.Đ., V.Đ., T.Đ. and B.Đ. The police soon arrived and the conflict then ceased. The participants were taken to the Ivanić Grad police station.

11. At about 10.30 p.m. the same day a small group of Roma, including the first and the second applicants, arrived at the police station in search of M.Š. When the police officers warned them off, they left the police station. However, the second applicant continued to shout in front of the police station, insulting and threatening the police officers. Police officers S.M. and A.B., now dressed in plain clothes as they were no longer on duty, approached the second applicant asking her to calm down, without using any force. The second applicant then left.

12. The applicants had then gone to the Ivanić Grad Medical Emergency Centre, where the doctor was unable to detect any injuries to them.

(i) The proceedings concerning the events of 16 June 2009 at about 9.30 p.m.

13. On 16 June 2009 the Ivanić Grad police interviewed Z.Đ., M.Š. and the third applicant, as well as a witness, I.G., a waitress in the “Yogi” restaurant.

14. I.G. stated that at the critical time she had been serving Z.Đ. in the restaurant when M.Š. had approached him, insulted him because of his Roma origin and spat in his food. Z.Đ. had left and had soon come back with three other Roma persons, a man and two women. A dispute, at first verbal and then physical, had ensued. She could not see clearly who had hit whom, but had heard verbal insults from everyone.

15. The third applicant said that after his brother had come home and told him about the abuse by M.Š. at the restaurant, the two of them had returned to the restaurant, since their car had been left there. A group of unknown men, including M.Š., had approached them. The third applicant had started to run home when suddenly somebody had hit him in the back. He had fallen to the ground and the men had continued to beat him all over the body. He had lost consciousness.

16. Z.Đ. also described the incident in the restaurant and said that when he had come back with the third applicant to retrieve his car, which was parked in front of the restaurant, a group of unknown men, including M.Š., had approached them. He and his brother had started to run home. When he got home and saw that his brother was not there, he had gone back to look for him. He had found him in Babonićeva Street. They had telephoned their relatives V.Đ. and S.Đ. and they had all returned to the restaurant, where they had found M.Š., who had immediately started to insult them and then approached them and hit them. They had hit him back. M.Š. had then kicked

S.Đ. several times in the belly. The police had then arrived and the fighting had ceased.

17. M.Š. also described the incident in the restaurant, admitting that he had verbally insulted Z.Đ. because of his Roma origin and then spat in his food. He explained that after a few minutes Z.Đ. had come back with his brother and two Roma women. They had started to insult him and then attacked him. He had defended himself by hitting and kicking the attackers. The police had then arrived and the fighting had ceased.

18. On 9 July 2009 the Ivanić Grad police indicted M.Š., Z.Đ., the third applicant, S.Đ. and V.Đ. in the Ivanić Grad Minor Offences Court. On the same day, on the basis of the police report and without holding a hearing, that court found M.Š., Z.Đ., S.Đ. and V.Đ. guilty of:

“on 16 June 2009 at about 9.30 p.m. in Kloštar Ivanić, ... in the “Yogi” bar ..., disturbing public order and peace in that the first defendant M. entered the said premises obviously drunk, approached a table where the second defendant Z. was sitting, started to insult him ..., and spat in his food. Immediately after that the second defendant Z. stood up and left the restaurant. After some time, the second defendant Z. came back, together with his brother, the third defendant D., to retrieve his car, which was parked in front of the restaurant. The first defendant M., together with three unknown men, approached them, and then also the fourth defendant S. and the fifth defendant V., who sided with the second and the third defendants and insulted the first defendant and the others ...

After the verbal insults, the first defendant M. attacked the fourth defendant S., who is pregnant, and the fifth defendant V., as well as T. and B.Đ. who were in their company, and hit them several times in the belly. The second defendant Z. and the third defendant D. also got involved in the fight with the first defendant M., all hitting and kicking each other.

When officers from the Ivanić Grad police station arrived, the defendants stopped disturbing the peace.”

19. The Minor Offences Court issued a minor-offences order finding M.Š. guilty under section 6 of the Minor Offences Against Public Order and Peace Act (*Zakon o prekršajima protiv javnog reda i mira*), and fined him 1,170 Croatian kunas (HRK). The other defendants were found guilty under Article 13 of the same Act and fined HRK 195. The order in respect of M.Š. became final, while Z.Đ., S.Đ. and V.Đ. objected, and on 17 November 2009 the same court, after having heard the defendants, again found them guilty and issued a warning against them. No appeal ensued.

20. The proceedings in respect of the third applicant were severed since he was a minor. On 22 October 2009 the Minor Offences Court found him guilty of participating in a fight with his brother Z. against M.Š. and a court reprimand was issued against him. No appeal ensued.

(ii) The proceedings concerning the events of 16 June 2009 at about 10.30 p.m.

21. On 16 June 2009 the Ivanić Grad police station indicted the second applicant before the Ivanić Grad Minor Offences Court, alleging that on 16 June 2009 at about 10.30 p.m. she had disturbed the peace in Ivanić Grad in that she had approached her husband's car and shouted and pressed the car's horn. She had also verbally insulted the police officers at the Ivanić Grad police station, calling them thieves, threatening to burn their houses down and cursing them.

22. On 17 June 2006 the Bjelovar General Hospital submitted a report to the Ivanić Grad police station stating that the second applicant had been seen by a doctor in that hospital on 17 June 2009 at 2 a.m. and that she had sustained contusions to the chest, head and pelvis at the hands of an unknown person; and that the third applicant had suffered contusions on the head, with abrasions, and a contusion on the nose.

23. A medical report of 19 June 2009 shows that ultrasound examination of the second applicant revealed a subcutaneous haematoma in the sacral area measuring 92x74x23 millimetres.

24. On 1 July 2009 the Ivanić Grad police station interviewed M.Šk., a waitress at the "Argentina" bar located near the scene of the incident of 16 June 2009 at about 10.30 p.m. She said that at that time she had been at the terrace of the bar together with two police officers, S.M. and A.B. She had heard noise coming from a nearby car park, the noise of a car horn and shouting. Police officer A.B. had gone to see what was going on. She had heard female voices shouting. Other police officers soon joined him. Shortly afterwards she had heard S.M. shout "Stop! Police!". She had gone back into the bar and then come out again. She had seen police officers approaching the car and the situation had calmed down. Soon after that M.S., who lived nearby, had come to the bar saying that the noise had woken him. She had told him not to go there and that the police had already taken care of the situation. She also said that it was not true that the police officers had used force, they had only asked the unknown persons to calm down.

25. On the same day the Ivanić Grad police station interviewed M.S., who said that on 16 June 2009 at about 10.30 p.m. he had been on the terrace of the "Argentina" together with M.Šk. and two police officers from the Ivanić Grad police station, S.M. and A.B. He had heard noise from the nearby car park – someone had been sounding a car horn. Officer A.B. had gone over to see what was going on. The shouting had continued and judging by the voices he had heard he had concluded that they belonged to several women. Police officer S.M. had also gone to the car park. Soon after that he had heard S.M. shout "Stop! Police!". He had then left the terrace and approached the car park, where he had seen a group of Roma coming from the direction of the police station, talking loudly. One of the women in the group had probably called the Zagreb Police telling them that she had

been beaten by two police officers in Ivanić Grad, which was untrue. Soon after that one or two uniformed police officers had appeared and the situation had calmed down. He also said that it was not true that the police officers had used force, they had only asked the unknown persons to calm down.

26. On an unspecified date the second applicant lodged a criminal complaint against the two police officers with the Ivanić Grad Municipal State Attorney's Office (*Općinsko državno odvjetništvo u Ivanić Gradu*), on charges of ill-treatment while on duty or in the exercise of services on behalf of a public authority (*zlostavljanje u obavljanju službe ili javne ovlasti*). She alleged that two police officers, one of whom was S.M., had beaten her and her son and that they had then started to shout.

27. On 12 October 2009 an identification parade was held at the Ivanić Grad police station with five men, one of whom was police officer A.B. The second applicant did not identify any of the men as the perpetrators of the alleged violence against her on 16 June 2009.

28. On 30 November 2009 the Ivanić Grad Municipal State Attorney's Office dismissed the second applicant's complaint, finding, *inter alia*, that she had been unable to identify the alleged perpetrators during the identification parade, and that the surveillance camera at the Ivanić Grad police station had not recorded anything suspicious. The relevant part of the decision reads:

"Katica Đurđević lodged a criminal complaint against police officer S.M. and an unknown police officer from the Ivanić Grad police station for the criminal offence of ill-treatment while on duty or in the exercise of services on behalf of a public authority ...

In her criminal complaint she alleges that on 16 June 2009 at about 11 p.m. she and her husband Đuro went to the Ivanić Grad police station because their sons Z. and Danijel had been taken there. Danijel was covered in blood and she took him out of the police station and they sat in their car parked in front of the police station. While she was lighting a cigarette a police officer opened the car door, grabbed her by her right arm, almost breaking it, dragged her out of the car and kicked her in the chest and belly. S.M., who was with the police officer, took Danijel out of the car, kicked him in the belly, grabbed him by the neck and lifted him against the car. This whole event was recorded by the surveillance video camera, and she suggests that the recording be seen.

S.M. said that he was employed as a police officer in the Ivanić Grad police station and that on 16 June 2009 he had been sent to Kloštar Ivanić because [someone was] disturbing the peace. At about 9.45 p.m. he had arrived at the "Yogi" restaurant, where he had found M.Š. sitting in front of the restaurant, obviously drunk, and several persons of Roma origin who were shouting at M.Š. He and other police officers who had arrived saw that there had been a fight between M.Š. and the Roma persons and that M.Š. had hit these persons several times. He had taken M.Š. to the Ivanić Grad police station and then he had gone off duty and left the police station at about 10.15 p.m. to go to the "Argentina" bar. At about 10.30 p.m. he had heard noises and cursing outside the bar ... so he had gone with another police officer to see

what was going on. As they approached an “Opel” type car with Dutch licence plates he had heard a woman’s voice shouting even louder and someone was also sounding the car horn, so they had tried to calm them down. They had not calmed down, however, and more police officers had come out of the police station, and he had returned to the bar. He asserted that neither he nor any of the other police officers had used any force against any of the persons present.

Danijel Đurđević said that ... he had been taken to the police station, where he had been told that he had 1 g/kg of alcohol in his blood, which was not true, so he had refused to sign the report. Soon after that his parents had arrived and when he was sitting in their car, parked outside the police station, a man in grey clothes had come and opened the car door, grabbed his mother Katica by the arm, dragged her out of the car and hit her. After that another unknown man in plain clothes had grabbed him by his arms, dragged him out of the car and kicked him in the belly, grabbed him by the neck and pressed him against the car.

M.S. said that on 16 June 2009 at about 10.30 he had been in the “Argentina” bar situated next door to the Ivanić Grad police station. The waitress was M.Šk. and there was also another customer, S.M. At one moment he had heard noises and the sound of a car horn coming from the parking lot and S.M. had gone there. He was also curious and had gone out onto the terrace to see what was going on. He had seen a large group of Roma persons coming from the direction of the police station, talking loudly, and one of the women had called the police complaining that she had been beaten by two policemen, which was untrue since M.S. had been standing only a couple of metres away and had seen everything. After that a few more police officers had arrived and the noise had stopped.

M.Šk. said that she had been working as a waitress when she heard noise coming from the car park – a car horn and women shouting. She had heard someone shout “Stop! Police!”, and had gone back into the bar. She explained that the police officers had not used any force but had merely asked the persons present to calm down.

...

The medical report of 17 June 2009 from Bjelovar General Hospital states that Katica Đurđević allegedly suffered blows to the chest, head and pelvis, without mentioning visible signs of injuries.

The criminal offence of ill-treatment while on duty or in the exercise of services on behalf of a public authority is committed by an official who in the performance of duties on behalf of a public authority ill-treats or insults another person or behaves in a manner which harms his or her dignity. An identification parade was held in the police station but Katica Đurđević failed to pick out the person who had aggressed her on 16 June 2009 from among the five police officers in the line-up.

The Ivanić Grad police station submitted video recordings from the surveillance video cameras for 16 June 2009, which showed no evidence that police officers had beaten Katica Đurđević or any other person.

Neither the information collected nor the video tape indicated that S.M. or any other police officer had hit Katica Đurđević or ill-treated her in any other manner, and therefore there is no reasonable suspicion that he committed a criminal offence.

...”

The second applicant was instructed that she could take over the prosecution and bring charges before the Ivanić Grad Municipal Court within eight days.

29. On 17 December 2009 the second applicant brought charges (*optužni prijedlog*) against S.M. and an unknown police officer before the Ivanić Grad Municipal Court (*Općinski sud u Ivanić Gradu*). She alleged that on 16 June 2009 at about 10.30 p.m. the two police officers had beaten her and her son Danijel. On 29 January 2010 the court asked the second applicant to amend her submissions within three days. The second applicant complied. However, on 4 March 2010 the Municipal Court found that the second applicant’s submissions did not take the form required by the Code of Criminal Procedure.

30. The second applicant has seen doctors on several occasions since the alleged incident. On 8 February 2010 she was diagnosed with a mild chronic neural lesion (*blaža kronična neuralna lezija*).

2. The alleged incidents of violence against the third applicant at the school he is attending

31. The medical report of 27 October 2008 on the third applicant shows that he complained that he had been hit by a pupil at the school he was attending. He had a deviation of the nasal septum which could be of a post-traumatic character. There were no signs of broken nasal bones.

32. On 19 December 2008 the first applicant complained to the Government that his son, the third applicant, had been constantly insulted and frequently beaten by other pupils because of his Roma origin.

33. An interview with the third applicant was conducted at the Ivanić Grad police station on 12 January 2009. He explained that on an unspecified date in late October 2008, after physical training, he had gone to the changing room to pick up his things. Pupil L.R. had been in front of him. Someone had pushed L.R. and his head had hit the third applicant’s face, hurting his nose. He had reported it to the class teacher, who had sent him to see a doctor. He had not had any other symptoms and the pain had ceased after a few days.

34. On 9 January 2009 the Ministry of Science, Education and Sport asked the school authorities to reply to the first applicant’s allegations of 19 December 2008. The school prepared two reports. The relevant part of the first report, drawn up on 14 January 2009 by the applicant’s class teacher, reads:

“... after only two weeks at this school I encountered conflicts between pupils. D. Đurđević first reported a run-in with another pupil when pupil L.R. unintentionally hit him on the nose with his head because Danijel was standing behind L.R. when L.R. swung his head back. ... Danijel came to me complaining that his nose hurt and told me that L.R. had hit him hard. He made it quite clear that the blow had been

unintentional, which other pupils who witnessed the incident confirmed. The next day Danijel complained that his nose still hurt, so I sent him to see a doctor. I also tried to inform the Đurđević family, but their mobile telephone was switched off. Since it was established that the contact between Danijel and L.R. had been accidental, with no intention of hurting Danijel, I had no reason to punish anyone. This happened on 21, 22 and 23 October 2008.

On 22 October 2008, during a break, a verbal and physical conflict involving pupils I.D., M.K., L.R. and D. Đurđević occurred. From interviews with these pupils I learned that I.D., M.K. and L.R. were playing with a box ... which annoyed Danijel, who wanted to throw the box away, so Danijel and the other pupils started arguing. Pupils I.D., M.K. and L.R. said that after some pushing and shoving Danijel threatened them with physical violence and I.D., M.K. and L.R. answered by swearing at him. Danijel then hit M.K. and L.R. During the following break the pupils reported the incident to me and I reported it to the authorities. A class teacher gave pupils I.D., N.K. and L.R. oral warnings. Pupil D. Đurđević was given a written warning because he had already had oral warnings.

On 16 December, during a break, my pupils came to me to report a fight started by Danijel. They told me that P.G. and D.A. had been standing outside the history classroom talking when Danijel had arrived and kicked P.G.'s bottom. D.A. had asked him why had he done it and Danijel had insulted her. She had returned the insults and entered the classroom. Danijel had followed her in, pressed her against a wardrobe in the classroom, grabbed her by her hair and kneed her in the hip and belly. The pupils had seen Danijel hit her seven times before the boys had managed to separate them. With the help of the history teacher ... Danijel confessed that he had started the fight and explained what he had done ... He confirmed the pupils' version of events and wrote it all down on paper, as did the girls who witnessed it. He even demonstrated how he had pressed D.A. against the wardrobe and held her while he hit her. I reported the incident to a pedagogue, V.V., who immediately talked to Danijel, D.A. and the pupils who witnessed the incident, then called Danijel's and A.'s parents and the police. Defectologist A.N. was also informed and set about resolving the situation. I informed the teachers of the incident at their meeting on 19 December 2008 and suggested giving Danijel Đurđević a written reprimand for causing and participating in verbal and physical conflicts, inflicting bodily injuries on D.A. and violating the school rules by not wearing school slippers, and that suggestion was unanimously accepted.

As regards unacceptable behaviour towards pupil Đurđević, Danijel complained to me on three occasions that other pupils had been teasing him ... about his age and his alleged liking for a pupil in another class. After Danijel's complaint I warned the pupils concerned and instructed them to avoid verbal conflicts. I also talked to Danijel on several occasions, and he told me that if the teasing continued he would hit the pupils concerned. On the basis of these interviews I concluded that Danijel identified verbal insults with physical violence and considered it appropriate to react to teasing with violence, without showing any remorse.

After the incident in December when Danijel inflicted injuries on D.A, the pupils told me that Danijel's usual reaction to teasing among the pupils included threats of physical violence, swearing and inappropriate comments about a girl pupil from his class, with allusion to her physical attributes and to sexual activity. As an example of his typical behaviour, the pupils mentioned Danijel's kicking of pupils in passing. He would bend his knee and kick them with a sudden backwards movement of his leg.

During our latest conversation the pupils told me that they had been avoiding Danijel for some time, explaining that they had stopped teasing him out of fear that he would put his threats of physical violence into practice. Danijel, on the other hand, has never complained to me that any of the pupils have tried to harm him.”

35. The relevant part of the second report, drawn up on 15 January 2009 by the pedagogue at the same school, reads:

“Danijel Đurđević, has very frequent verbal conflicts with his classmates and sometimes with his teachers as well. The interviews with him reveal that in his opinion the cause of these conflicts is that he ‘wants to have fun and make jokes but the others do not see it that way.’ On innumerable occasions the class teacher, the defectologist and I have explained to him that what he perceives as a joke is not necessarily [seen as such] by others, and that sometimes people are not in the mood for jokes but that does not require a vehement reaction.

He is repeating the sixth grade and at the beginning of the school year he said he missed his friends from his former class, but he also promised to be a better pupil, to listen to teachers, me and the defectologist and to refrain from arguing with other pupils. I praised him for that attitude; he showed some improvement in his school work, but the conflicts with other pupils have persisted. Mostly pupils from his class are involved, but sometimes he would go to the class attended by his sister D. and try to solve her problems, in an inappropriate manner, shouting and threatening younger pupils. As regards educational measures, on 23 September [2008] he was issued an oral reprimand by a class teacher and on 28 October 2008 a written warning for fighting with other pupils, of which the parents were informed orally by the class teacher. The other pupils involved in the fighting were given oral warnings while Danijel got a written warning for repeating the unacceptable behaviour for which he had been warned orally on 23 September 2008.

On 16 December 2008 during a break ... there was a scuffle between Danijel and pupil D.A. The pupils who witnessed it came to me and the class teacher. [We found] D.A. at the scene, crying, with dishevelled hair, obviously in shock, clutching her belly with both hands. The pupils told us what had happened. I took D.A. to my office and assessed whether an ambulance had to be called. D.A. said that she was frightened and had pains in her head and belly, but that there was no need to see a doctor. She had no external injuries, save for pulled hair and red marks on her belly.

Danijel had no injuries, he said that he had hit her because they had said something to him which had made him angry. The parents of both pupils were informed. The Đurđević parents came immediately, and D.A.’s mother came later ... The Đurđević parents wanted to talk with D.A. immediately to see what had happened. Since they were shouting and talking at the same time as Danijel, I asked them to calm down and told them that they had no right to question D.A. without her parents being present. As they had been informed about the incident, I told them to go home and that my duty was to report the incident to a welfare centre and the police, and I asked them to take Danijel home. Dissatisfied with what I had said, they reacted inappropriately, especially Mrs Đurđević, complaining that when Danijel had been insulted there had been no reaction and the police had not been called. They said they would deal with it in their own way. An hour later D.A.’s father came to my office, upset and disappointed that I had not called an ambulance and that the police had not come to the school.

At a teachers' meeting on 19 December 2008 it was decided that a written reprimand would be issued against Danijel for serious physical conflict in which he had inflicted bodily injury. Although this was not his first attack on a pupil at the school and the usual measure would be a harsh reprimand, in view of his overall social condition, which affected his development, a more lenient punishment was issued.

It is to be stressed that we regularly talk to Danijel, at his request (at least two or three times a week), and we also provide him with adequate aid in terms of conversations with him, alone and together with other pupils; he receives help with his school work (once I personally cleaned the muddy sneakers he wore to school instead of slippers, because he did not know how to do it).

Today he is reported to have punched pupil I.M. on the left cheek because I.M. threw his cap at him.

As regards the incident when his nose was hurt on 21 and 22 October 2008 (I do not know the exact date because Danijel cannot remember exactly when it happened), Danijel said in the presence of his parents that he happened to be standing behind a boy who swung his head back because he had long hair, and that his nose had been like that before, which is confirmed by medical documents submitted by the parents ...

I would like to stress that in both my personal and my professional capacity I have done a lot to help the Đurđević parents and their children. Many times the Đurđević parents have objected that we do not know how to resolve problems with Roma people, alleging that the pupils at school, as well as other people, had been denigrating them. I expressed my regret at such behaviour and stressed that they could not have experienced anything like that from me (which they confirmed), and reassured them that I would certainly react in the event of such behaviour by the pupils, in order to protect their children, and direct the pupils as to the correct attitude to adopt towards the Roma. I could not be held responsible for other people's reactions because these things are a matter of personal culture.

I advised them to tell their older, grown-up children who come to the school to take their younger siblings home to wait outside the school or not to enter the school before the end of classes without registering with a pupil on duty (they would get angry when asked to show their identity cards by pupils on duty, and would go to the classrooms without authorisation). In conversations with them, they have admitted that their children also sometimes use bad language they hear at home, and I think that their complaint that their children are the only ones ill-treated at school is not true.

The social services and the police were informed about the supervision of pupils in order to help them with their existential problems.

36. On an unspecified date the second applicant lodged a criminal complaint with the Velika Gorica Municipal State Attorney's Office (*Općinsko državno odvjetništvo u Velikoj Gorici*) on charges of bodily harm (*tjelesna ozljeda*). It appears that this complaint was related to beatings the third applicant had suffered at school.

37. On 24 February 2009 the second and third applicants were invited to the Velika Gorica Municipal State Attorney's Office for an interview in connection with the incident of 16 December 2008.

38. The medical report of 26 March 2009 indicates that the third applicant claimed that a pupil had hit him in the back with a ball and that he had been beaten by pupils at school and insulted constantly for a week. He alleged that he had pains in his belly and back. There were no visible injuries. He was diagnosed with abdominal contusions (*contusio abdominis*). The ultrasound examination did not show any injuries. He refused hospitalisation.

39. On 18 September 2009, the first applicant lodged a complaint with an unspecified body against the school authorities who were, in his view, not being proactive in protecting his son, the third applicant, from constant beatings.

40. On 15 December 2009 the third applicant was examined in connection with his headaches by the ophthalmologist in Dubrava Hospital (*Klinička bolnica Dubrava*). The applicant alleged that he had been beaten up at school and out of school. The doctor requested the opinion of the school authorities and the school psychologist.

41. On 8 February 2010 the third applicant was examined again, and was diagnosed as having serious impairment to the sight in his right eye as a result of a contusion (*cephaela gradus gravis post contusionem*). The applicant said that he had been beaten up at school and out of school. The doctor observed that there had been no response from the school authorities or the school psychologist and asked once again for their opinion. The third applicant was referred to a neurologist and a brain surgeon. There is no indication that he followed the recommendation.

42. On the same day the Velika Gorica Municipal Court found the third applicant guilty of inflicting bodily harm on D.A. on 16 December 2008 and ordered him to apologise to D.A. and to be placed under strict care and supervision.

43. On an unspecified date the second applicant complained about the violence against the third applicant in school and submitted medical documentation. She alleged that she and the boy's father had complained to the school about Danijel being beaten by other pupils on many occasions and that nothing had been done. She also alleged that they (the parents) had been thrown out of the school and not allowed to pay insurance for Danijel at the school. She enclosed medical documentation concerning the third applicant dated 17 March 2010, showing that he had been hit on the head on 26 March and 9 December 2009 and 16 February 2010.

44. On 7 April 2010 the school head master drew up a report at the request of the Zagreb Clinic for the Protection of Children. The relevant part of the report reads:

“Observations about pupil Danijel Đurđević

...

In the sixth grade [Danijel] has had frequent verbal conflicts with pupils from his class (sometimes also physical conflicts such as pushing, or pulling clothes), and sometimes with teachers as well. The interviews with him reveal that in his opinion the cause of these conflicts is that he 'wants to have fun and make jokes but the others do not see it that way'. On innumerable occasions the class teacher and professional assistants at school have explained to him that what he perceives as a joke is not necessarily [seen as such] by others and that sometimes people are not in the mood for jokes, but that does not require a vehement reaction.

The police intervened for the first time during Danijel's sixth grade in December 2008, after an serious incident with a pupil. ...Danijel grabbed the girl by the head and kicked her in the belly. After our intervention with the relevant outside services the parents, possibly dissatisfied with our conduct, complained to the Office for National Minorities, which asked for our observations.

[the incident when Danijel was hit on the nose is described]

...

In December last year Danijel complained about having a headache because 'he had been hit with an iron bar'. During the interview with him, we learned that the previous day Danijel had been hit by unknown persons ..., out of school, after lessons. He refused our suggestion to call his parents to come to take him home. Instead, he asked for painkillers as he frequently does ... After a few moments he left the school without authorisation, went to see a doctor and returned after an hour with two prescriptions ...

On 4 March 2010 the Đurđević parents were invited to the school to fetch their daughter, who was in sixth grade and who was throwing chairs and benches in her classroom following a verbal conflict with other pupils in her class. When Danijel heard about it, he tried to 'solve the situation in his way', by threatening the pupils and teachers (he mentioned a knife). The teachers calmed him down but he had already called his brother or father on a mobile telephone and soon his grown-up elder brother arrived at the school. At the entrance he brushed past the pupil on duty and shouted at him, and opened various classroom doors looking for his sister and brother. One of the teachers ... heard the noise and asked the young man to stop making noise and disturbing classes and told him that he would find his brother and sister. But the brother continued to address the teacher in an inappropriate manner and threatened to 'take things into his own hands'. The teacher immediately called the police and it is possible that this is incident the Đurđević parents were referring to in connection with police intervention.

Danijel frequently complains to teachers of headaches and asks for pills and permission to leave the classroom. Sometimes he leaves without authorisation or without the teachers' knowledge. ...

In principle we do not give pills to pupils but call the parents to pick up their children and take care of them.

Danijel is also complaining less frequently of being insulted by other pupils. We have talked to these pupils and taken educational measures when such incidents continued. It has been noticed lately that Danijel has been refusing schoolwork, has reacted vehemently to advice and would sometimes address the pupils and teachers in an inappropriate manner.

I would like to stress that the class teachers informed the parents at parent-teacher meetings of verbal incidents involving individual pupils, and the parents reacted more than correctly and apologised. I would also like to stress that six other Roma pupils attend our school and that they are good pupils and cooperation with their parents is satisfactory for all.”

II. RELEVANT DOMESTIC LAW

45. The relevant part of the Code of Criminal Procedure (Official Gazette nos. 62/2003 – *Zakon o kaznenom postupku*) provides as follows:

Article 2

“...

(3) Where not otherwise provided by law, the State Attorney shall bring a criminal prosecution where there is a founded suspicion that an identified individual has committed a criminal offence liable to official prosecution and where there are no statutory obstacles for prosecution of that person.”

Article 171

“(1) All State bodies and all legal entities are obliged to report criminal offences liable to official prosecution, whether they have been informed thereof or have learned about such offences on their own.

...”

Article 173

“(1) A criminal complaint shall be lodged with a competent State Attorney in writing or orally.

...”

46. The relevant part of the Minor Offences against Public Order and Peace Act (Official Gazette nos. 5/1990, 47/1990 and 29/1994) reads:

Section 6

“Anyone who acts in an exceptionally insolent and impolite manner in public by insulting citizens or disturbing their peace, shall be fined for a minor offence ... or imprisoned for up to thirty days.”

Section 13

“Anyone who fights, quarrels or shouts in public or otherwise disturbs public order and peace, shall be fined for a minor offence ... or imprisoned for up to thirty days.”

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLE 3 OF THE CONVENTION IN CONNECTION WITH THE INCIDENT ON 16 JUNE 2009 AT ABOUT 9.30 P.M.

47. The third applicant complained that on 16 June, at about 9.30 p.m., he had been beaten up by private individuals and that the national authorities had done nothing to identify and punish the perpetrators. He relied on Article 3 of the Convention which reads as follows:

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

Admissibility

1. The parties' submissions

48. The Government argued that the applicants had not exhausted domestic remedies because they had not submitted a criminal complaint with the competent State Attorney's Office or taken private action against the alleged perpetrator.

49. The applicants argued that by informing the police they had exhausted domestic remedies.

2. The Court's assessment

50. The Court does not have to address the exhaustion issue raised by the Government in connection with the incident at issue since the complaints related to it are in any event inadmissible for the following reasons.

51. Assuming that the facts surrounding the incident in question fell within the ambit of Article 3 of the Convention, the Court would accept that this Article required the implementation of adequate criminal-law mechanisms (see *Beganović v. Croatia*, no. 46423/06, § 69, ECHR 2009-... (extracts), with further references). In this connection Article 3 requires States to put in place effective criminal-law provisions to deter the commission of offences against personal integrity, backed up by law-enforcement machinery for the prevention, suppression and punishment of breaches of such provisions (see, *mutatis mutandis*, *A. v. the United Kingdom*, 23 September 1998, § 22, *Reports* 1998-VI, and *Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, § 96, ECHR 2005-VII), and this requirement also extends to ill-treatment administered by private individuals (see *Šečić*, cited above, § 53). On the other hand, it goes

without saying that the obligation on the State under Article 1 of the Convention cannot be interpreted as requiring the State to guarantee through its legal system that inhuman or degrading treatment is never inflicted by one individual on another or that, if it is, criminal proceedings should necessarily lead to a particular sanction. In order that a State may be held responsible it must in the view of the Court be shown that the domestic legal system, and in particular the criminal law applicable in the circumstances of the case, fails to provide practical and effective protection of the rights guaranteed by Article 3 (see *X and Y v. the Netherlands*, 26 March 1985, § 30, Series A no. 91, and *A. v. the United Kingdom*, cited above, opinion of the Commission, § 48).

52. The Court notes at the outset that the present case does not concern the verbal abuse against Z.Đ. inside the “Yogi” restaurant while he was having dinner, since Z.Đ. has not complained to the Court and is not the applicant in the present case. The present case concerns the incident that took place at about 9.30 p.m. in front of the “Yogi” restaurant when Z.Đ. and his brother, the third applicant, came back to retrieve their car.

53. As regards the incident in question, the Court notes that the police interviewed M.Š., Z.Đ. and the third applicant, who were all involved in the incident, and a neutral witness I.G. They all gave similar accounts of the event in question and the police filed an indictment with the Ivanić Grad Minor Offences Court. That court, without holding a hearing, and on the basis of the police report, found M.Š. and the other participants, but not the third applicant, guilty of verbal insults and fighting. M.Š. was fined HRK 1,170. This ruling became final.

54. The other perpetrators objected, and the same court held a hearing and again found them guilty.

55. The third applicant was also found guilty of participating in a fight. He did not lodge an appeal against that first-instance decision.

56. Against this background and in view of the nature of the incident in question, the Court finds that the national authorities established the relevant facts and, by finding M.Š. guilty and fining him, have properly discharged their procedural duty under Article 3 of the Convention.

57. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3(a) and 4 of the Convention.

II. ALLEGED VIOLATIONS OF ARTICLE 3 OF THE CONVENTION IN CONNECTION WITH THE INCIDENT ON 16 JUNE 2009 AT ABOUT 10.30 P.M.

58. The second and third applicants also complained that on 16 June 2009, at about 10.30 p.m., they had been ill-treated by the police and that the official investigation into the ill-treatment was ineffective. They relied on Article 3 of the Convention.

A. Admissibility

1. *The parties' submissions*

59. The Government argued that the applicants had not taken over the prosecution of the alleged perpetrators; or lodged a civil action for damages or an administrative complaint for an unlawful act.

60. The applicants argued that by informing the police they had exhausted domestic remedies. The second applicant had informed the Velika Gorica Municipal Court about it. In any event it was for the State to conduct an effective and thorough investigation into her allegations of police brutality, supported by medical evidence, irrespective of her own actions.

2. *The Court's assessment*

61. 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. The purpose of Article 35 is to afford the Contracting States the opportunity of preventing or putting right the violations alleged against them before those allegations are submitted to it (see, for example, *Mifsud v. France* (dec.) [GC], no. 57220/00, § 15, ECHR 2002-VIII). The obligation to exhaust domestic remedies requires an applicant to make normal use of remedies which are effective, sufficient and accessible in respect of his Convention grievances. To be effective, a remedy must be capable of remedying directly the impugned state of affairs (see *Balogh v. Hungary*, no. 47940/99, § 30, 20 July 2004).

62. The Court further reiterates that in cases where an individual has an arguable claim under Article 3 of the Convention, the notion of an effective remedy entails on the part of the State a thorough and effective investigation capable of leading to the identification and punishment of those responsible (see *Selmouni v. France* [GC], no. 25803/94, § 79, ECHR 1999-V). The Court has held on many occasions that this requirement cannot be satisfied solely by instituting civil proceedings (see, among other authorities, *Krastanov v. Bulgaria*, no. 50222/99, § 60, 30 September 2004).

63. In the instant case, the second applicant lodged a criminal complaint against the police officers. The criminal complaint triggered a preliminary investigation but was ultimately dismissed by the State Attorney due to lack of evidence that the officers had committed the alleged criminal offence.

64. It is true, as the Government argued, that the applicants could have pressed charges against the officers and attempted to pursue criminal proceedings against them as subsidiary prosecutors. However, as the Court has already found in similar cases (see *Matko v. Slovenia*, no. 43393/98, § 95, 2 November 2006, and *Stojnšek v. Slovenia*, no. 1926/03, § 79, 23 June 2009), having been informed of the criminal complaint the State

Attorney was under a duty to ensure that the preliminary investigation was carried out, that the evidence was obtained and that, if the evidence against the alleged perpetrators was sufficient, criminal proceedings were pursued against them. The Court therefore sees no reason to require the applicants to pursue the prosecution of the accused officers on their own by pressing charges, this being the responsibility of the State Attorney, who is certainly better placed, if not exclusively competent, in that respect (see *Matko*, § 90, and *Stojnšek*, § 79, both cited above). It accordingly concludes that by lodging a criminal complaint the applicant afforded the State an opportunity to put matters right by instituting an effective official investigation (see *H.D. v. Poland* (dec.), no. 33310/96, 7 June 2001). The Court will assess on the merits of the case whether such an investigation was in fact carried out.

65. As regards the Government's argument that the applicant could have brought a civil action for damages against the State, the Court has repeatedly held that the procedural obligation of the State under Article 3 to conduct a thorough, official, effective and prompt investigation into allegations of ill-treatment cannot be substituted by the payment of damages. The Court confirms that a civil action is not capable, without the benefit of the conclusions of a criminal investigation, of making any findings as to the identity of the perpetrators, much less of establishing their responsibility. Furthermore, a Contracting State's obligation under Article 3 of the Convention to conduct an investigation capable of leading to the identification and punishment of those responsible in cases of ill-treatment might be rendered illusory if, in respect of complaints under that Article, an applicant were required to exhaust an action leading only to an award of damages (see, *Parlak and Others v. Turkey* (dec.), nos. 24942/94, 24943/94 and 25125/94, 9 January 2001; *Okkali v. Turkey*, no. 52067/99, § 58, ECHR 2006-XII (extracts); and *Taymuskhanov v. Russia*, no. 11528/07, § 75, 16 December 2010).

66. Awarding damages in civil proceedings could only complement by way of redress the results of a thorough and effective investigation capable of leading to the punishment of those responsible. In a situation where no such investigation has taken place, a civil action is not a sufficient remedy.

67. As regards a claim before the Administrative Court, the Court considers that such an action could in no way replace the requirement for an effective, thorough, official investigation into the allegations of ill-treatment by State officials.

68. In view of the above, the Court rejects the Government's objection that the applicant should have instituted criminal proceedings as a subsidiary prosecutor. Nor does it accept the objection that the applicant should have lodged a claim with the Administrative Court (see also *Lukenda v. Slovenia*, no. 23032/02, §§ 47-53, ECHR 2005-X, and *Stojnšek*, cited above, § 80) or a civil claim for compensation. It notes that the Government

have submitted no convincing arguments as to the effectiveness of these remedies in respect of the applicant's complaint under Article 3.

69. The Court finds that there are no other reasons to reject this complaint as inadmissible and it must therefore be declared admissible.

B. Merits

1. The parties' submissions

70. The applicants complained that on 16 June 2009 at about 10.30 p.m. the second and the third applicants had been beaten by two plainclothes policemen and that no effective investigation into their allegations of police brutality had taken place. As regards the identification parade held on 12 October 2009, the second applicant maintained that she had not been able to recognise A.B. as one of the police officers who had beaten her because he was not wearing his glasses as he had been on 26 June 2009 at the material time.

71. The Government argued that at the time of the event officers A.B. and S.M. were not on duty and therefore the second applicant's allegations did not concern police brutality. There was no evidence that the police officers had beaten any of the applicants. As to the investigation into the allegations of police brutality, the Government maintained that the police had interviewed the second and third applicants and their relatives D.Đ. (born in 1969), Z.Đ., S.Đ. and D.Đ. (born in 1972), as well as witnesses M.Šk. and M.S., and examined the video tapes of the surveillance cameras. All the police officers who were in any way implicated had submitted their reports. The police had also held an identification parade but the second applicant had not recognised A.B. as one of the alleged attackers. On the basis of that inquiry the Ivanić Grad State Attorney's Office had dismissed the applicants' criminal complaint for lack of evidence.

2. The Court's assessment

(a) General principles

72. As the Court has stated on many occasions, Article 3 enshrines one of the most fundamental values of democratic societies. It prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the circumstances and the victim's behaviour (see *Iwańczuk v. Poland*, no. 25196/94, § 49, 15 November 2001, and *E. and Others v. the United Kingdom*, no. 33218/96, § 88, 26 November 2002).

73. The Court reiterates that ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is relative: it depends on all the circumstances of the case, such as

the nature and context of the treatment, its duration, its physical and mental effects and, in some instances, the sex, age and state of health of the victim (see *Costello-Roberts v. the United Kingdom*, 25 March 1993, § 30, Series A no. 247-C, and *A. v. the United Kingdom*, cited above, § 20).

74. Treatment has been held by the Court to be “inhuman” because, *inter alia*, it was premeditated, was applied for hours at a stretch and caused either actual bodily injury or intense physical and mental suffering (see *Labita v. Italy* [GC], no. 26772/95, § 120, ECHR 2000-IV). Treatment has been considered “degrading” when it was such as to arouse in its victims feelings of fear, anguish and inferiority capable of humiliating and debasing them and possibly breaking their physical or moral resistance (see *Hurtado v. Switzerland*, 28 January 1994, opinion of the Commission, § 67, Series A no. 280, and *Wieser v. Austria*, no. 2293/03, § 36, 22 February 2007).

(b) Application of these principles in the present case

75. As regards the Government’s assertion that A.B. and S.M. were not acting in their official capacity during the incident of 16 June 2009 at about 10.30 p.m. since they had not been on duty at that time, the Court notes that it is undisputed that both A.B. and S.M. were police officers of the Ivanić Grad police station. Witnesses M.Šk. and M.S. both testified that A.B. identified himself as a police officer by shouting “Stop! Police!”. Furthermore, A.B. and S.M. had no other reason to intervene in the situation in question than in their capacity as police officers. Against this background, the Court considers that the incident in question may be seen as allegations of police violence.

76. As to the severity of the treatment, the Court notes that the medical documentation of 17 June 2009 in respect of the third applicant shows that he suffered from contusions to the head, with abrasions, and to the nose. Where the second applicant is concerned, the documentation of 17 June 2009 states that she suffered from contusions to the head, chest and pelvis but had no visible injuries. However, an ultrasound examination of 19 June 2009 revealed that she had a subcutaneous haematoma measuring 92x74x23 millimetres in the sacral area.

77. At this juncture the Court considers it appropriate to reiterate, regarding the use of force by the police, that in defusing situations, maintaining order, preventing offences, catching alleged criminals and protecting themselves and other individuals, police officers are entitled to use appropriate means, including force. Nevertheless, such force may be used only if indispensable and must not be excessive (see *Ivan Vasilev v. Bulgaria*, no. 48130/99, § 63, 12 April 2007, with further references). Recourse to physical force which has not been made strictly necessary by the individual’s own conduct diminishes human dignity and is in principle

an infringement of the right set forth in Article 3 of the Convention (see *Kuzmenko v. Russia*, no. 18541/04, § 41, 21 December 2010).

78. In the instant case there have been no allegations that the second and third applicants' conduct required the use of any force. While it was alleged that the second applicant was shouting and sounding a car horn, it has never been alleged that she in any manner attacked the police officers present or any other person, or acted in any other manner that would warrant the use of force against her. Against that background and in view of the above principles, the Court finds that in the present circumstances, where there were allegations that physical force was used by the police officers, the abovementioned injuries of the second and the third applicants were sufficiently serious to reach the "minimum level of severity" under Article 3 of the Convention.

(i) Substantive aspect of Article 3 of the Convention

79. The Court reiterates that allegations of ill-treatment must be supported by appropriate evidence. In assessing evidence, the Court has generally applied the standard of proof beyond reasonable doubt. However, such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII, and *Dedovski and Others v. Russia*, no. 7178/03, § 74, 15 May 2008).

80. In the present case there is no evidence, save for allegations by the second and third applicants, that the police officers used force against them. On the other hand, the medical documentation submitted shows that both the second and the third applicants sustained bodily injuries.

81. However, in view of the lack of assessment by the national authorities as to the exact circumstances of the incident in question, the Court is unable to establish beyond reasonable doubt whether the police officers used force against the second and the third applicants and whether the injuries sustained by them were the result of police violence.

82. That being so, the Court will conclude that there has been no violation of the substantive aspect of Article 3 of the Convention.

(ii) Procedural aspect of Article 3 of the Convention

83. The Court recalls that where an individual makes a credible assertion that he has suffered treatment infringing Article 3 at the hands of the police or other agents of the State, that provision, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within their jurisdiction the rights and freedoms defined in ... [the] Convention", requires by implication that there should be an effective official investigation. As with an investigation under Article 2, such investigation should be capable of leading to the identification and punishment of those responsible. Otherwise, the general legal prohibition of

torture and inhuman and degrading treatment and punishment would, despite its fundamental importance, be ineffective in practice and it would be possible in some cases for agents of the State to abuse the rights of those within their control with virtual impunity (see, among other authorities, *Labita* [GC], cited above, § 131, and *Boicenco v. Moldova*, no. 41088/05, § 120, 11 July 2006).

84. The investigation must also be effective in the sense that it is capable of leading to a determination of whether the force used by the police was or was not justified in the circumstances (see *Kaya v. Turkey*, 19 February 1998, § 87, *Reports* 1998-I). The investigation into serious allegations of ill-treatment must be thorough. That means that the authorities must always make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation or as the basis of their decisions (see the *Assenov and Others* judgment cited above, §§ 103 et seq.). They must take all reasonable steps available to them to secure the evidence concerning the incident, including, *inter alia*, eyewitness testimony and forensic evidence (see, *Tanrıkulu v. Turkey* [GC], no. 23763/94, ECHR 1999-IV, § 104 et seq. and *Gül v. Turkey*, no. 22676/93, § 89, 14 December 2000). Any deficiency in the investigation which undermines its ability to establish the cause of injuries or the identity of the persons responsible will risk falling foul of this standard (see *Boicenco*, cited above, § 123).

85. For an investigation to be effective, it may generally be regarded as necessary for the persons responsible for and carrying out the investigation to be independent from those implicated in the events (see, for example, *Barbu Anghelescu v. Romania*, no. 46430/99, § 66, 5 October 2004). This means not only a lack of hierarchical or institutional connection but also a practical independence (see *Boicenco*, cited above, § 121).

86. As regards the present case, the Court considers that the medical evidence and the second applicant's complaints submitted to the competent domestic authorities together raised at least a reasonable suspicion that her injuries could have been caused by the use of force by the police. That being so, her complaints constituted an arguable claim and the Croatian authorities were thus under the obligation to conduct an effective investigation.

87. It appears in the instant case that the only investigation into the applicant's allegations was carried out by the Ivanić Grad Police, that is, by the very authorities to which the officers who had allegedly inflicted injuries on the applicant belonged organisationally and were subordinated hierarchically. Since the officers conducting the investigation were subordinated to the same chain of command as those officers subject to investigation, serious doubts arise as to their ability to carry out an independent investigation (see, *mutatis mutandis*, *Oğur v. Turkey* [GC], no. 21594/93, § 91, ECHR 1999-III, and *Matko*, cited above, § 89).

88. The Court further observes that it was ultimately the State Attorney's responsibility to ensure that an effective investigation was carried out into the second applicant's complaints. After having been informed about the applicant's allegation and her medical reports, the State Attorney was under an obligation to ensure that the preliminary investigation was carried out and that the necessary evidence, such as the identification of the alleged perpetrators and eyewitness evidence, was obtained. Furthermore, the State Attorney was not bound by the legal characterisation of the alleged criminal offence as provided in the applicant's criminal complaint, but was obliged to initiate criminal prosecution and request investigative measures if reasonable suspicion existed that the applicant had been subjected to ill-treatment by the police.

89. In the instant case, however, the State Attorney's conduct also lacked the necessary transparency and appearance of independence (see, *mutatis mutandis*, *McKerr v. the United Kingdom*, no. 28883/95, § 131, ECHR 2001-III, and *Hugh Jordan v. the United Kingdom*, no. 24746/94, § 123, ECHR 2001-III (extracts)). In this regard the Court notes that the State Attorney based his decision to dismiss the second applicant's criminal complaint solely on the reports submitted by the police.

90. The State Attorney did not undertake any independent steps, such as interviewing the second applicant, the officers involved and the eyewitnesses, ordering a forensic examination of the second applicant's injuries, and so on (see, by contrast, *Berliński v. Poland*, nos. 27715/95 and 30209/96, §§ 69 and 70, 20 June 2002). There are no indications that he was prepared in any way to scrutinise the police account of the incident.

91. As regards the steps taken by the police, the Court notes that the Government have not submitted any evidence that the police interviewed the second applicant – the one complaining of having been beaten by the police – or the police officers allegedly implicated.

92. Furthermore, the State Attorney based his conclusions on the evidence given by M.Šk. and M.S. The former, however, was not present at the scene and as regards the later, the accounts given by these two witnesses as to his presence at the scene differ (see above §§ 24 and 25).

93. The Court notes that both M.S. and M.Šk. claimed that a large group of Roma persons had been present at the scene. However, although the Government claimed that they were interviewed by the police, they have not submitted any evidence of these interviews.

94. The Court considers that the deficiencies described above are sufficient to conclude that the national authorities failed to carry out an adequate and effective investigation into the circumstances surrounding the alleged use of force by the police against the second and third applicants.

95. The Court finds that the shortcomings in the inquiry into the alleged police violence regarding its effectiveness and the lack of independence of the authorities involved were in breach of the requirements of Article 3 of

the Convention. There has accordingly been a violation of the procedural obligation under Article 3 of the Convention.

III. ALLEGED VIOLATION OF ARTICLES 3 AND 8 OF THE CONVENTION IN CONNECTION WITH THE ALLEGATIONS OF ILL-TREATMENT INFLICTED ON THE THIRD APPLICANT AT THE SCHOOL HE IS ATTENDING

96. Relying on Articles 3 and 8 of the Convention, the applicants complained that the school authorities had failed to protect the third applicant from frequent beatings at school.

Admissibility

1. The parties' submissions

97. The Government argued that the applicants had not exhausted domestic remedies since they had not submitted a criminal complaint.

98. They further argued that there was no positive obligation on the part of the State in connection with the allegations of violence against the third applicant at the school he was attending because the applicants had never informed the relevant authorities of any incident of violence. The only incident reported to the school authorities concerned an accident on 21 October 2008. Both the school and the police had established all relevant facts with respect to that incident and concluded that it had been an accident and not intentional act.

99. The applicants argued that the third applicant was a minor and that it was for the relevant authorities to establish the cause of his injuries, even if he had remained passive. However, they had not done this and his parents had informed the police and welfare centre about the violence he suffered at school. Furthermore, the medical report concerning the third applicant clearly showed that the school authorities had been informed about the injuries he had sustained as a result of violence by other pupils and that the school had ignored them.

100. The applicants argued that the medical documentation in respect of the third applicant showed that he had sustained multiple head injuries over a lengthy period of time and that he had been beaten on several occasions. It had all resulted in serious eye damage. He had frequently asked his teachers for painkillers. The doctor who had examined him had informed the school authorities and asked for their reaction. The applicants had informed the police, the welfare services and the school authorities of frequent incidents of violence by other pupils. In these circumstances the State had an obligation to address these allegations and take adequate measures to protect

the third applicant from violence at school. However, no action had been taken.

2. The Court's assessment

101. The Court considers that the nature of the complaint – lack of adequate measures to protect the third applicant from violence by his classmates and other pupils at the school he is attending – does not necessarily demand criminal prosecution or imply anyone's criminal responsibility. Therefore, there was no need for the applicants to submit a criminal complaint.

(a) General principles

102. As regards Article 3, further to the principles stated in paragraphs 78-80 above, the Court reiterates that, as regards the question whether the State could be held responsible, under Article 3, for ill-treatment inflicted on persons by non-state actors, the obligation on the High Contracting Parties under Article 1 of the Convention to secure to everyone within their jurisdiction the rights and freedoms defined in the Convention, taken together with Article 3, requires States to take measures designed to ensure that individuals within their jurisdiction are not subjected to torture or inhuman or degrading treatment or punishment, including such ill-treatment administered by private individuals (see, *mutatis mutandis*, *H.L.R. v. France*, 29 April 1997, § 40, *Reports* 1997-III). These measures should provide effective protection, in particular, of children and other vulnerable persons, and include reasonable steps to prevent ill-treatment of which the authorities had or ought to have had knowledge (*mutatis mutandis*, *Osman v. the United Kingdom*, 28 October 1998, *Reports* 1998-VIII, § 116, and *E. and Others*, cited above, § 88).

103. As regards school discipline, the Court held as follows in its above-cited judgment in *Costello-Roberts v. the United Kingdom*:

“27. The Court notes first that, as was pointed out by the applicant, the State has an obligation to secure to children their right to education under Article 2 of Protocol No. 1 (P1-2). It recalls that the provisions of the Convention and its Protocols must be read as a whole (see the *Kjeldsen, Busk Madsen and Pedersen v. Denmark* judgment of 7 December 1976, Series A no. 23, pp. 26 and 27, paras. 52 and 54, and the *Soering v. the United Kingdom* judgment of 7 July 1989, Series A no. 161, p. 40, para. 103). Functions relating to the internal administration of a school, such as discipline, cannot be said to be merely ancillary to the educational process (see, *mutatis mutandis*, the *Campbell and Cosans v. the United Kingdom* judgment of 25 February 1982, Series A no. 48, p. 14, para. 33). That a school's disciplinary system falls within the ambit of the right to education has also been recognised, more recently, in Article 28 of the United Nations Convention on the Rights of the Child of 20 November 1989 which entered into force on 2 September 1990 and was ratified by the United Kingdom on 16 December 1991. This Article, in the context of the right of the child to education, provides as follows:

‘2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child’s human dignity and in conformity with the present Convention.’

Secondly, in the United Kingdom, independent schools co-exist with a system of public education. The fundamental right of everyone to education is a right guaranteed equally to pupils in State and independent schools, no distinction being made between the two (see, *mutatis mutandis*, the above-mentioned Kjeldsen, Busk Madsen and Pedersen judgment, Series A no. 23, p. 24, para. 50).

Thirdly, the Court agrees with the applicant that the State cannot absolve itself from responsibility by delegating its obligations to private bodies or individuals (see, *mutatis mutandis*, the Van der Mussele v. Belgium judgment of 23 November 1983, Series A no. 70, pp. 14-15, paras. 28-30).

28. Accordingly, in the present case, which relates to the particular domain of school discipline, the treatment complained of although it was the act of a headmaster of an independent school, is none the less such as may engage the responsibility of the United Kingdom under the Convention if it proves to be incompatible with Article 3 or Article 8 or both.”

104. The Court considers that the same applies as regards issues of school discipline in relations among pupils.

105. As regards Article 8 of the Convention, the Court reiterates that there is no doubt that the events giving rise to the present complaint pertain to the sphere of private life within the meaning of Article 8 of the Convention. Indeed, the physical and moral integrity of an individual is covered by the concept of private life. The concept of private life extends also to the sphere of the relations of individuals between themselves. There appears, furthermore, to be no reason in principle why the notion of “private life” should be taken to exclude attacks on one’s physical integrity (see *X and Y v. the Netherlands*, 26 March 1985, § 23, Series A no.91).

106. While the essential object of Article 8 is to protect the individual against arbitrary interference by public authorities, it does not merely compel the State to abstain from such interference: in addition to this negative undertaking, there may be positive obligations inherent in an effective respect for private or family life. These obligations may involve the adoption of measures designed to secure respect for private life even in the sphere of the relations of individuals between themselves (see *X and Y v. the Netherlands*, 26 March 1985, § 23, Series A no. 91; *Botta v. Italy*, 24 February 1998, § 33, *Reports of Judgments and Decisions* 1998-I; *Mikulić*, cited above, § 57; and *Sandra Janković v. Croatia*, no. 38478/05, § 44, ECHR 2009-... (extracts)).

107. As regards respect for private life, the Court has previously held, in various contexts, that the concept of private life includes a person’s physical and psychological integrity. Under Article 8 States have a duty to protect the physical and moral integrity of an individual from other persons. To that end they are to maintain and apply in practice an adequate legal framework

affording protection against acts of violence by private individuals (see *X and Y*, cited above, §§ 22 and 23; *Costello-Roberts v. the United Kingdom*, 25 March 1993, § 36, Series A no. 247-C; *D.P. and J.C. v. the United Kingdom*, no. 38719/97, § 118, 10 October 2002; *M.C. v. Bulgaria*, no. 39272/98, §§ 150 and 152, ECHR 2003-XII; *Bevacqua and S. v. Bulgaria*, no. 71127/01, § 65, 12 June 2008; and *Sandra Janković*, cited above, § 45).

(b) Application of these principles in the present case

108. The Court will therefore examine whether Croatia, in dealing with the applicants' case, has been in breach of its positive obligations under Articles 3 and 8 of the Convention.

109. The Court considers that the third applicant, as a fifteen years old minor at the time when the events in question took place, may be considered to fall within the group of "vulnerable individuals" entitled to State protection (see, *A. v. the United Kingdom*, cited above, § 22).

110. The Court notes that the applicants allege that the third applicant was frequently ill-treated by other pupils at the school he attended. They support these allegations with medical reports of 27 October 2008, 26 March and 15 December 2009 and 8 February and 17 March 2010 documenting the third applicant's complaints of beatings, belly and back pain, headaches and permanent eye damage.

111. The Court accepts that injuries such as permanent eye damage caused by blows to the head are of a serious nature and might call for the application of both Articles 3 and 8 of the Convention.

112. However, the Court also notes that in their submissions to the national authorities, as well as in their submissions before it, the applicants complained about the ill-treatment of the third applicant at school only in vague and general terms. They never indicated the exact dates or circumstances or any other details of specific incidents of the alleged ill-treatment.

113. The school authorities examined the allegations concerning the incident of 21 October 2008 and established that it had been an accident: pupil L.R. had swung his head back and accidentally hit the third applicant, who was standing behind him, on the nose. In order to trigger the State's positive obligations under Articles 3 and 8 of the Convention, however, the State authorities would have to have been aware of the risk of violence. It is clear that such is not the case in the event of accidental injuries.

114. As regards the injuries described in the medical documentation, the Court notes that the medical report of 27 October 2008 mentions an injury to the third applicant's nose and refers to the incident of 21 October 2008 when he was accidentally hit by another pupil. The medical report of 26 March 2009 does not indicate any visible injuries and the ultrasound examination did not detect any injuries. The medical report of 15 December

2009 indicates that on several occasions the third applicant had sustained blows to his head, in school and out of school. But no injuries were found.

115. On the other hand, permanent eye damage is a serious injury that was clearly established. However, the Court also notes that the third applicant alleged that he had been hit with an iron bar by unknown aggressors outside the school. The medical documentation of 8 February and 17 March 2010 does not indicate the cause of the third applicant's eye damage or whether it is connected with a specific incident of violence at school. Nor did the applicants refer to a particular incident of violence at school which could have been the cause of that injury.

116. Other than the incident of 21 October 2008, there are no actual details of the alleged incidents of violence against the third applicant. While there is a mention of insults by other pupils because of his Roma origin, the applicants never specified the nature of those insults or their origin. It is safe to assume that the third applicant would have known the names of the pupils who were allegedly insulting him since they were his classmates or at least attended the same school.

117. Furthermore, both the school headmaster and the pedagogue explained in their reports that when there were allegations of verbal insults, the pupils concerned had been warned and the school authorities had discussed the issue with the parents at parent-teacher meetings. In the absence of more specific allegations concerning the incidents of verbal violence the Court cannot hold the State responsible for the lack of an adequate response.

118. While well aware of the seriousness of the problem of violence among pupils, in the circumstances of the present case the Court cannot see how the applicants' allegations could trigger the State's positive obligations under Articles 3 and 8 of the Convention and require the relevant authorities to take concrete steps. For such an obligation to be triggered, allegations of violence must be specific and more detailed as to the place, time and nature of the acts complained of.

119. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3(a) and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

120. 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

121. In respect of non-pecuniary damage the first applicant claimed 5,000 euros (EUR), the second applicant EUR 20,000, and the third applicant EUR 30,000.

122. The Government deemed the sums claimed unsubstantiated and excessive.

123. The Court rejects any claim for non-pecuniary damage in respect of the first applicant since the application in respect of him has been declared inadmissible.

124. As regards the second and third applicants, the Court has found a violation of the procedural aspect of Article 3 in connection with the alleged police violence on 16 June 2009. The Court accepts that owing to the lack of an adequate investigation into the allegations of police brutality the second and third applicants suffered non-pecuniary damage. Making its assessment on an equitable basis, the Court awards the second and the third applicants jointly EUR 6,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on this amount.

B. Costs and expenses

125. The applicants also claimed EUR 2,240 for the costs and expenses incurred before the Court.

126. The Government deemed the sum claimed excessive.

127. 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 were 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 EUR 1,000, plus any tax that may be chargeable to the applicants on this amount.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning the alleged ill-treatment of the second and third applicants by the police officers on 16 June 2009 at about 10.30 p.m. admissible and the remainder of the application inadmissible;
3. *Holds* that there has been no violation of the substantive aspect of Article 3 of the Convention in respect of the event of 16 June 2009 at about 10.30 p.m.;
4. *Holds* that there has been a violation of the procedural aspect of Article 3 of the Convention in respect of the lack of a proper investigation into the event of 16 June 2009 at about 10.30 p.m.;
6. *Holds*
 - (a) that the respondent State is to pay to the second and third applicants 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 Croatian kunas at the rate applicable at the date of settlement:
 - (i) EUR 6,000 (six thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage to the second and third applicants;
 - (ii) EUR 1,000 (thousand euros), plus any tax that may be chargeable to the second and third applicants, 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;
7. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 19 July 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Anatoly Kovler
President