



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

FIRST SECTION

CASE OF V.D. v. CROATIA (No. 2)

(Application no. 19421/15)

JUDGMENT

STRASBOURG

15 November 2018

FINAL

18/03/2019

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

In the case of V.D. v. Croatia (no. 2),

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

Linos-Alexandre Sicilianos, *President*,

Ksenija Turković,

Aleš Pejchal,

Krzysztof Wojtyczek,

Pauliine Koskelo,

Tim Eicke,

Jovan Ilievski, *judges*,

and Abel Campos, *Section Registrar*,

Having deliberated in private on 16 October 2018,

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

PROCEDURE

1. The case originated in an application (no. 19421/15) 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, Mr V.D. (“the applicant”), on 10 April 2015. The President of the Section decided not to have the applicant’s name disclosed (Rule 47 § 4 of the Rules of Court). Following the applicant’s death on 16 November 2017, his common-law wife, Ms T.V., informed the Court of her wish to pursue the application introduced by the applicant.

2. The applicant, who had been granted legal aid, was represented by Ms L. Horvat, a lawyer practising in Zagreb. The Croatian Government (“the Government”) were represented by their Agent, Ms Š. Stažnik.

3. The applicant alleged, in particular, that the investigation into his allegations of ill-treatment by the police during his arrest had not been effective. He relied on Article 3 of the Convention.

4. On 30 March 2016 the complaint was communicated to the Government and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1960.

A. Background to the case

6. On 11 August 2006 the applicant, who suffered from schizophrenia, was arrested in his parents' flat following an argument with his relatives.

7. The Court, in connection with that incident, in its judgment of *V.D. v. Croatia* (no. 15526/10, 8 November 2011) found that the investigation into the applicant's arguable claim of ill-treatment by the police during the arrest had not been effective, contrary to the requirements of the procedural limb of Article 3 of the Convention. It also found that the Government had not furnished any convincing or credible arguments which would provide a basis to explain the manner in which the applicant had sustained his injuries during the arrest. The Court thus concluded that the applicant had been subjected to inhuman and degrading treatment by the police, in breach of the substantive limb of Article 3 of the Convention.

8. On 16 August 2012, in the context of the procedure for the execution of the Court's judgment, the Government submitted an action plan indicating that the applicant had sought the reopening of the case against the police officers implicated in the incident (S.P., V.B., D.K. and T.S.) before the relevant criminal courts. To date, the Committee of Ministers has not concluded its supervision of the execution of the judgment under Article 46 § 2 of the Convention.

9. On 8 March 2013 the Zagreb County Court (*Županijski sud u Zagrebu*) ordered the reopening of the proceedings against the police officers, S.P. and V.B. That decision was upheld by the Supreme Court (*Vrhovni sud Republike Hrvatske*) on 16 January 2014.

10. On 4 October 2013 the Zagreb Municipal Criminal Court (*Općinski kazneni sud u Zagrebu*) ordered that the proceedings against D.K. and T.S., the other two police officers involved in the applicant's arrest, be reopened. That decision became final on 5 November 2013.

11. Following the court orders for the reopening of the proceedings against the police officers, the Zagreb Municipal State Attorney's Office (*Općinsko državno odvjetništvo u Zagrebu*; hereinafter: "the State Attorney's Office") assumed responsibility for conducting the investigation.

B. Criminal investigation in respect of the police officers

12. On 13 June 2014 the State Attorney's Office informed the applicant that it had opened an investigation in respect of the police officers concerning his allegations of ill-treatment during his arrest on 11 August 2006. The applicant was also served with the decision on the opening of the investigation, which indicated that in the further course of the proceedings it would be necessary to question him, his parents and his common-law wife, Ms T.V., as well as the relevant police officers, and that a forensic expert report concerning the injuries which the applicant had sustained in the

incident would be ordered. In addition, the applicant was served with a list of his rights as a victim in the proceedings, which included, in particular, the right to be represented by a lawyer, to lodge a civil claim, to propose that certain facts be established and evidence obtained in the proceedings, and to have access to the file.

13. On the same day, the State Attorney's Office received a letter from the applicant's lawyer (dated 12 June 2014) asking whether further proceedings would be conducted and whether the applicant would be able to propose that certain evidence be obtained in the proceedings.

14. In the meantime, the suspect police officers challenged the decision to reopen the investigation. On 10 July 2014 the Zagreb County Court dismissed their appeals. The decision thereby became final.

15. On 24 September 2014 the State Attorney's Office summoned the applicant for questioning. The applicant was again provided with a list of his rights as a victim in the proceedings. A summons was served on the applicant's father, who informed the State Attorney's Office that the applicant was living abroad and that he was unable to appear for questioning. The applicant also sent a letter to the State Attorney's Office providing the same justification for his absence. The applicant was then summoned to appear on 30 October 2014.

16. During his questioning on 30 October 2014, the applicant stated that on the day of the incident he had been at his parent's flat in Zagreb together with his common-law wife, Ms T.V., and their son. As they had had a dispute, somebody had called the police, who had intervened at the scene. He had first spoken to the police officers but when they had asked him to accompany them to the police station, he had refused. They had then thrown him to the ground face down and had started beating him. At one point they had also handcuffed him and tied his legs. He had managed to bite one of the police officers and as he had been in agony from the beating, he had also bitten his own tongue. The applicant also stated that there had been two paramedics present at the scene.

17. On 5 November 2014 the applicant's lawyer asked the State Attorney's Office to send her a copy of the record of the applicant's questioning. On 28 November 2014 a copy of the record was sent to her.

18. In the further course of the investigation, the State Attorney's Office questioned the applicant's parents and two other relatives (D.D. and M.D.) who had witnessed the incident, as well as the relevant police officers.

19. During the questioning, D.D. stated that she had only seen the applicant being taken out of the flat by the police officers. M.D. stated that he had seen the applicant and the police officers talking in the flat and that at one point the applicant had tried to punch one of the police officers, after which the police officers had engaged in suppressing his resistance. However, at that point M.D. had left the room where that had been happening. The applicant's mother stated that she had left the room after the

police officers had handcuffed the applicant and tied his legs. She had then heard screams, and on re-entering the room she had seen a lot of blood and the police officers standing around the applicant. Oral evidence to the same effect was given by the applicant's father.

20. The police officers denied ill-treating the applicant. They all provided evidence to the extent that when they had intervened at the scene they had immediately realised that they were facing an individual with a mental disorder. He had threatened to kill them, although he had said that he would spare one of them because he had blue eyes. When they had approached him, the applicant had started to resist so they had decided to handcuff him. At that point, he had bitten the hand of police officer S.P. A commotion had then ensued, in the course of which the applicant had fallen on the ground. He had also started kicking, so the police officers had tied his legs. The applicant had also bitten his tongue and had hit his head against the floor, so the police officers had decided to hold his head and to put him on his side. Afterwards, a medical team had intervened at the scene and the applicant had been taken to hospital.

21. On 24 November 2014 the State Attorney's Office ordered a report from a forensic expert, D.M., concerning the injuries which the applicant had sustained following his arrest.

22. On 27 November 2014 the State Attorney's Office asked the Zagreb emergency service to provide the names of the members of the medical team who had intervened at the scene during the applicant's arrest. The next day, the emergency service replied that they could not find the requested information in their records.

23. However, on the basis of a statement given by one of the suspects, V.B., the State Attorney's Office established the identity of one of the paramedics who had intervened at the scene. As that person had in the meantime moved out of Zagreb, on 28 November 2014 he was interviewed by telephone. In his interview with the prosecutor he denied having seen any ill-treatment of the applicant during the arrest. However, he stated that the applicant had been very agitated and that he had seen him attacking and biting a police officer.

24. Meanwhile, on 27 November 2014 the expert, D.M., issued his report. The expert report indicated that the injuries which the applicant had sustained to his face had been caused by two blows, probably by a fist. The further injuries on his arms, legs and body had been caused either by several blows or possibly also by a fall, as well as by handcuffing. Some of the injuries appeared to have been caused by the body being scratched with an object or dragged across the floor while lying face down. There was also damage to the applicant's tongue as a result of a bite, but it had been impossible to establish exactly how that injury had been caused.

25. The State Attorney's Office found that the forensic expert, D.M., needed to be questioned concerning his report and that he should be

presented with some further evidence obtained during the investigation, namely photographs of the crime scene and the individuals concerned taken immediately after the incident, the statements of the relevant police officers and the statement given by the paramedic.

26. On 28 November 2014 the State Attorney's Office questioned D.M. The latter stated that the injuries to the applicant's face could not have been caused when the police officers had attempted to prevent the applicant from self-harming by holding his face, but that it was possible that he had banged his head against the stretcher while being transported by the paramedics. D.M. stressed that, likewise, the tongue laceration which the applicant had sustained could have been caused by his fall and by him banging his head against the stretcher. D.M. also explained that, having seen the photographs of the applicant taken after the incident, he did not believe that the injuries he had sustained had been caused by beating, but were likely to have been caused by the commotion during the arrest.

27. On 9 December 2014 the State Attorney's Office, by a reasoned decision analysing all the evidence obtained and the facts established during the investigation, terminated the investigation on grounds of lack of evidence of any ill-treatment or any other excessive use of force by the police during the applicant's arrest.

28. The decision to discontinue the investigation was served on the applicant on 15 December 2014. It was served on his lawyer the next day. The applicant was informed that he could take over the proceedings as a subsidiary prosecutor.

29. The applicant challenged the decision of the State Attorney's Office before the Constitutional Court (*Ustavni sud Republike Hrvatske*). On 19 February 2015 the Constitutional Court declared the applicant's complaints inadmissible on the grounds that the impugned decision did not concern any of his civil rights or obligations, or any criminal charge against him.

30. The decision of the Constitutional Court was served on the applicant's representative on 5 March 2015.

C. Other relevant facts

31. On 6 December 2007 the applicant instituted civil proceedings against the State in the Zagreb Municipal Civil Court (*Općinski građanski sud u Zagrebu*), seeking damages for the injuries sustained during his arrest.

32. In the course of the proceedings, the Zagreb Municipal Civil Court obtained evidence from several expert witnesses concerning the injuries which the applicant had sustained. One of the experts, V.P., concluded that the injuries on the applicant's body could have been caused by blows or by the body being dragged across the floor, and that the injuries to his hands and legs could have been caused by impact against a hard surface. The

injuries on his face had not been properly documented but such injuries were usually caused by punches delivered with lesser intensity. She also found that there had been an injury to the applicant's tongue. Another expert, S.D., found that it was impossible to draw any firm conclusion as to how the tongue injury had been caused.

33. On 31 March 2014 the Zagreb Municipal Civil Court ruled in the applicant's favour. On appeal, the Zagreb County Court increased the amount of compensation for damage, awarding the applicant 17,400 Croatian kunas (HRK). On 20 April 2016 the State paid the applicant in total HRK 66,716.88 (approximately 8,850 euros (EUR)) in compensation for damage, costs and expenses incurred for the proceedings, and interest.

34. Following intervention by the police and the medical service, the applicant was placed in a psychiatric hospital, where he died on 16 November 2017. An autopsy report indicated that the cause of death was heart failure. An investigation into the event is pending before the relevant State Attorney's Office.

II. RELEVANT DOMESTIC LAW

35. The relevant domestic law is set out in *V.D. v. Croatia* (cited above, §§ 40-41).

36. On 18 December 2008 a new Code of Criminal Procedure was enacted (Official Gazette, no. 152/2008). As later amended, it was applicable to the reopened investigation in the case at issue. The relevant provisions of the Code of Criminal Procedure are summarised in *Remetin v. Croatia* (no. 2) (no. 7446/12, §§ 59-63, 24 July 2014).

37. With regard to victims' rights, in particular, the Code of Criminal Procedure provides as follows:

Article 43

“(1) Under this Code a victim of a criminal offence shall be entitled to:

...

2) participate in the criminal proceedings as the injured party;

3) receive notifications from the State Attorney's Office on actions concerning his or her complaint (Article 206a) and to lodge a complaint with the higher State Attorney's Office (Article 206b);

4) other rights prescribed by law.

...

(4) When undertaking the first measure in which the victim is involved, the court, the State Attorney's Office, the investigator or the police authority shall notify the victim of:

- 1) the rights referred to in paragraphs 1, 2 and 3 of this Article and Articles 44 and 45 of this Code;
- 2) the rights which the victim has as an injured party.”

Article 47

“(1) In criminal proceedings, the injured party shall be entitled to:

...

- 3) be represented by a lawyer;
- 4) indicate the facts and suggest evidence;
- 5) be present at the evidentiary hearing;
- 6) be present at the hearing, participate in evidentiary proceedings and make a closing statement;
- 7 inspect the case file pursuant to Article 184 § 2 of this Code;
- 8) request notifications from the State Attorney’s Office on measures undertaken regarding his or her complaint (Article 206a) and lodge a complaint with the higher State Attorney’s Office (Article 206b);

...

11) be informed if criminal charges are dismissed or the State Attorney’s Office decides not to proceed with the criminal prosecution;

12) take over the criminal prosecution from the State Attorney’s Office;

...

14) be informed of the outcome of the criminal proceedings.

...

(3) The State Attorney’s Office and the court shall inform the injured party of his or her rights [under this Article].”

Article 184

“(1) The parties shall have the right to inspect the case file.

(2) The victim, the injured party and their legal representative shall have the right to inspect the case file. If prior inspection of the case file would affect the testimony of the victim and the injured party, they shall acquire the right to inspect the case file only after they have been questioned.”

38. In addition, Articles 206a and 206b (concerning the lodging of a criminal complaint), and Article 229 (concerning the conduct of the investigation) of the Code of Criminal Procedure provide the victim with the possibility of complaining of the actions or inaction of the State Attorney’s Office to the hierarchically higher office.

39. The relevant provision of the State Administration System Act (*Zakon o sustavu državne uprave*, Official Gazette of the Republic of Croatia no. 75/1993, 92/1996, 48/1999, 15/2000, 127/2000, 59/2001, 199/2003, 79/2007) provided:

Section 14

“Damage caused to a citizen, legal entity or any other party by an illegal or irregular act of the state administration body, local administration body or any legal entity with public powers when exercising the authority of the state administration, shall be redressed by the Republic of Croatia.”

THE LAW

ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

40. The applicant complained that the fresh investigation into his allegations of ill-treatment by the police during his arrest had fallen short of the requirements of Article 3 of the Convention, which reads as follows:

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

A. Admissibility

1. Locus standi of the applicant's common-law wife

41. The Court finds it important first to address the issue of Ms T.V.'s entitlement to pursue the application following the applicant's death on 16 November 2017 (see paragraphs 1 and 34 above).

42. According to information from the case file, Ms T.V. had been the applicant's common-law wife for a number of years up until his death (see *V.D. v. Croatia*, no. 15526/10, § 10, 8 November 2011). Moreover, it would appear that Ms T.V. and the applicant had a child together (see paragraph 16 above). The Government did not argue otherwise, nor did they challenge Ms T.V.'s standing in the proceedings before the Court.

43. The Court has previously considered similar requests from individuals wishing to pursue applications introduced by their partners, who had died in the course of the proceedings before the Court. In such cases, the Court referred to the existence of family ties for the purposes of Article 8 of the Convention. It also stressed that the decisive point was not whether the rights in question were transferable to the heirs wishing to pursue the procedure, but whether the heirs could in principle claim a legitimate interest in requesting the Court to deal with the case on the basis of the applicant's wish to exercise his or her individual and personal right to lodge an application with the Court. It has also stated that human rights cases before the Court generally have a moral dimension and persons near to an applicant may thus have a legitimate interest in ensuring that justice be done, even after the applicant's death (see *Ergezen v. Turkey*, no. 73359/10,

§ 29, 8 April 2014, and *Ivko v. Russia*, no. 30575/08, §§ 68-69, 15 December 2015).

44. In the case at hand, the evidence convincingly shows that the applicant and Ms T.V. were in a close relationship which equated to family ties. The Court is therefore satisfied that the condition of close kinship has been met and that Ms T.V. has a legitimate interest in ensuring that the application on behalf of the applicant is pursued (compare *Ivko*, cited above, § 69).

45. Accordingly, the Court finds that Ms T.V. has standing to continue the proceedings in the applicant's stead. However, for practical reasons, Mr V.D. will continue to be called "the applicant" in this judgment.

2. Whether Article 46 of the Convention precludes the examination of the applicant's complaint

46. In examining the admissibility of the present application, the Court must ascertain whether it has jurisdiction to consider the applicant's complaint without encroaching on the prerogatives of the respondent State and the Committee of Ministers under Article 46 of the Convention in the execution of the Court's judgment in the case of *V.D. v. Croatia* (cited above).

47. With regard to the relevant principles concerning its jurisdiction in this context, the Court refers to the principles recently set out in the case of *Moreira Ferreira v. Portugal* (no. 2) ([GC], no. 19867/12, §§ 47-48, ECHR 2017 (extracts); see also, in the context of the procedural obligation under Article 3 of the Convention, *Egmez v. Cyprus* (dec.), no. 12214/07, §§ 48-56, 18 September 2012).

48. Applying the above principles to the case before it, the Court must therefore ascertain whether the present follow-up application concerns only the execution of the initial application without raising any relevant new facts or whether it contains relevant new information possibly entailing a fresh violation of the Convention, for the examination of which the Court is competent *ratione materiae* (see *Egmez*, cited above, § 57).

49. The Court notes that in its judgment of 8 November 2011 it found that an investigation into the applicant's arguable claim of ill-treatment by the police during his arrest had not been effective, contrary to the requirements of the procedural limb of Article 3 of the Convention. Moreover, it concluded that the applicant had been subjected to inhuman and degrading treatment by the police, in breach of the substantive limb of Article 3 of the Convention (see paragraph 7 above).

50. In order to execute the Court's judgment, in March and October 2013 the domestic courts reopened the proceedings against the police officers suspected of the applicant's ill-treatment during the arrest, and the relevant State Attorney's Office conducted a fresh investigation into the incident (see paragraphs 8-11 above; see, in the context of the duty to

investigate following the Court's judgment, *Jeronovičs v. Latvia* [GC], no. 44898/10, 5 July 2016).

51. The fresh investigation gave rise to a number of further procedural measures that were taken by the State Attorney's Office, which led to the collection of further evidence and the establishment of new facts concerning the applicant's case (see paragraphs 12-30 above, and compare and contrast *Egmez*, cited above, §§ 62-65, where the investigation was merely opened but then came to a complete standstill as the investigator could not contact the applicant and proceed with the investigation). The applicant's complaints in the present case concern the effectiveness of the fresh investigation after the Court's judgment in *V.D. v. Croatia* and the decision of the State Attorney's Office to terminate that investigation on the basis of new evidence adduced and facts established (see *Moreira Ferreira (no. 2)*, cited above, § 47).

52. In these circumstances, the Court considers that the alleged lack of effectiveness of the fresh investigation, and more specifically the errors which the applicant claimed had vitiated the decision of the State Attorney's Office to terminate the proceedings, constitute new information in relation to the Court's previous judgment (compare *Moreira Ferreira (no. 2)*, cited above, § 56). As these issues could not have been decided by the previous judgment since they are related to the way the new investigation was conducted, they may be dealt with by the Court in the present case (*ibid.*, § 47(b); and *Egmez*, cited above, §§ 52-55).

53. The Court notes that a supervision procedure in respect of the execution of the initial judgment is still pending before the Committee of Ministers (see paragraph 8 above; and compare *Moreira Ferreira (no. 2)*, cited above, § 23). However, as explained above, that does not prevent the Court from considering a new application in so far as it includes new aspects which were not determined in the initial judgment.

54. The Court therefore finds that Article 46 of the Convention does not preclude its examination of the new complaint under the procedural limb of Article 3 of the Convention.

3. *Non-exhaustion of domestic remedies*

(a) **The parties' arguments**

55. The Government argued that the applicant had failed to exhaust domestic remedies as he had not taken over the prosecution from the State Attorney's Office as a subsidiary prosecutor by lodging a bill of indictment with the relevant criminal court or instituting proceedings before an investigating judge. In the Government's view, this would have allowed the applicant to address the alleged shortcomings in the investigation conducted by the State Attorney's Office, yet he had failed to avail himself of that opportunity. Moreover, the applicant could have complained to the higher

State Attorney's Office of deficiencies in the investigation but he had also failed to avail himself of that remedy.

56. The applicant stressed that it was the obligation of the State authorities to conduct an official effective investigation into his arguable claim of police ill-treatment and that he had not had a duty to take over the prosecution as a subsidiary prosecution. As to the possibility of lodging a complaint with the higher prosecutor, the applicant argued that he had not been required to use that remedy either, as it would not have been effective for his particular complaints of deficiencies in the investigation.

(b) The Court's assessment

57. The Court refers to the general principles on exhaustion of domestic remedies set out in the case of *Vučković and Others v. Serbia* ((preliminary objection) [GC], nos. 17153/11 and 29 others, §§ 69-77, 25 March 2014).

58. In cases involving allegations of ill-treatment by State agents, the Court has held that the injured parties, after bringing their complaints to the attention of the relevant prosecuting authority, are not required to pursue the prosecution of the State agents on their own by lodging a bill of indictment, this being the responsibility of the public prosecutor who is certainly better, if not exclusively, equipped in that respect (see *Stojnšek v. Slovenia*, no. 1926/03, § 79, 23 June 2009, and *V.D. v. Croatia*, cited above, § 53; see also *Borbála Kiss v. Hungary*, no. 59214/11, § 26, 26 June 2012, and *Haász and Szabó v. Hungary*, nos. 11327/14 and 11613/14, §§ 30-32, 13 October 2015).

59. It is true that the Court has accepted that in some instances in which an applicant has availed himself or herself of the possibility of pursuing a private or subsidiary prosecution, such proceedings have to be taken into account in its assessment of the effectiveness of the domestic authorities' compliance with their procedural obligation (see *Habimi and Others v. Serbia*, no. 19072/08, § 72, 3 June 2014, with further references). However, for the reason stressed above (see paragraph 58), the Court did not consider that applicants should be obliged to use the avenue of private or subsidiary prosecution in order to exhaust domestic remedies.

60. In view of these principles, the Court finds that after instituting the relevant proceedings before the domestic authorities, which resulted in the opening of a fresh criminal investigation into his complaints before the relevant State Attorney's Office, the applicant made proper and sufficient use of domestic remedies. Thus, the Government's objection of non-exhaustion of domestic remedies related to the possibility of the applicant pursuing the proceedings against the police officers as a subsidiary prosecutor must be rejected.

61. For similar reasons, taking into account the obligation of the State authorities to act on their own motion in cases of ill-treatment by State agents, the Court has already held that the provisions of the Code of

Criminal Procedure opening a possibility for victims to complain to the higher State Attorney's Office are not to be understood as imposing an obligation on victims to use them in the context of exhaustion of domestic remedies (see *Tadić v. Croatia*, no. 10633/15, § 43, 23 November 2017). Accordingly, the Government's objection of non-exhaustion of domestic remedies in this respect is rejected.

4. Conclusion

62. The Court notes that the application 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' arguments

63. The applicant contended that the investigation conducted by the State Attorney's Office had not been independent, prompt and effective and had not ensured his effective participation in the proceedings. He stressed that already in his request for the reopening of the proceedings at domestic level, he had clearly informed the domestic authorities that he had been represented by a lawyer. However, his lawyer had not been duly informed of the further procedural steps taken in the investigation. Moreover, the domestic criminal procedure system was deficient as it did not allow the victim and his or her representative to take part in particular investigative measures during the investigation. The applicant also contended that the manner in which some of the investigative measures had been carried out during the investigation, in particular the ordering and examining of the forensic expert report and the interviewing of the paramedic by telephone, had raised doubts as to the impartiality of the State Attorney's Office and the validity of its conclusions. In the applicant's view, the ineffectiveness of the investigation had also been manifest from the fact that in the civil proceedings the State had been found responsible for the injuries he had sustained during the arrest. Moreover, the findings of the expert report obtained by the State Attorney's Office differed from the findings of the experts in the civil proceedings which the applicant had instituted against the State. Thus, the reliance on a deficient expert report and the evidence obtained in an inadequate manner when discontinuing the investigation had shown that the decision of the State Attorney's Office had been manifestly defective.

64. The Government argued that the investigation conducted by the State Attorney's Office had been effective. It had been completed within a period of about six months, it had been conducted by an independent and

impartial prosecutor, and the applicant had been sufficiently informed and given the opportunity to participate. The investigation had also been thorough, as all the aspects of the case had been elucidated. The decision of the State Attorney's Office had been based on a careful assessment of all the available evidence. In the Government's view, given that the procedural obligation was a requirement of means, and not one of results, the fact that the investigation had not led to a further prosecution was not indicative of its ineffectiveness. As regards the applicant's participation in the proceedings, the Government stressed that he had been informed of his rights and given an opportunity to have full access to the file. However, neither the applicant nor his lawyer had ever requested access to the file, nor had they asked the State Attorney's Office to take specific investigative measures. With regard to the taking of particular investigative measures, the Government argued that the State Attorney's Office had simply used all the means at its disposal to elucidate the circumstances of the case and that there was nothing to suggest that its actions had been unlawful or inappropriate.

2. The Court's assessment

(a) General principles

65. The Court refers to the general principles on the procedural obligation under Article 3 of the Convention concerning the complaints of police ill-treatment set out in the case of *Bouyid v. Belgium* ([GC], no. 23380/09, §§ 114-23, ECHR 2015).

66. With regard to the issue of victim participation in the proceedings, in particular, the Court would stress that the procedural obligation under the Convention requires that the investigation must be accessible to the victims to the extent necessary to safeguard their legitimate interests (see *Giuliani and Gaggio v. Italy* [GC], no. 23458/02, § 303, ECHR 2011 (extracts)). Victims should be able to participate effectively in the investigation in one form or another, in particular, by having access to the materials of the investigation. Moreover, following an investigation there should be a reasoned decision available to reassure a concerned public that the rule of law has been respected (see *Buntov v. Russia*, no. 27026/10, § 125, 5 June 2012, with further references).

(b) Application of these principles to the present case

67. The Court would emphasise at the outset that the scope of its examination in the present case is limited to the fresh investigation into the applicant's allegations of police ill-treatment conducted by the State Attorney's Office (see paragraphs 12-30 above). As already explained, the Court does not have jurisdiction to examine any of the issues pertaining to the execution of its previous judgment in the case of *V.D. v. Croatia*, as that

matter falls within the jurisdiction of the Committee of Ministers (see paragraphs 52-53 above).

68. As to the effectiveness of the investigation conducted by the State Attorney's Office, the Court notes the following.

69. First, the Court is satisfied that the investigation complied with the requirements of independence. It was conducted by the State Attorney's Office, which was both hierarchically and institutionally independent of those targeted by the investigation, namely the police. Moreover, the State Attorney's Office conducted all the investigative measures itself and did not rely on any findings of those who might have lacked the requisite hierarchical or institutional independence (see, by contrast, *Mafalani v. Croatia*, no. 32325/13, § 102, 9 July 2015).

70. Secondly, during the investigation the State Attorney's Office took the relevant measures capable of establishing the cause of the applicant's injuries and the responsibility of the suspected police officers. It questioned the police officers (see paragraph 20 above), the applicant and his relatives who had witnessed the incident (see paragraphs 16 and 18-19 above), as well as a paramedic who had responded at the scene (see paragraph 23 above), and it obtained the relevant expert and other evidence related to the incident (see paragraphs 21 and 25-26 above).

71. Concerning, in particular, the questioning of the paramedic, the Court is unable to subscribe to the applicant's argument that the manner in which it was conducted raised any issue of a lack of impartiality on the part of the State Attorney's Office. On the contrary, the State Attorney's Office made the effort to establish the identity of the members of the medical team that had responded at the scene and, despite the absence of official information from the Zagreb emergency service (see paragraph 22 above), eventually managed to obtain that information during the questioning of one of the police officers (see paragraph 23 above). Moreover, as the paramedic had moved out of Zagreb, the fact that the State Attorney's Office decided to conduct a telephone interview does not suggest any deficiency in the investigation but rather demonstrates an effort to obtain the relevant information in an expeditious and efficient manner.

72. As regards the expert evidence obtained and examined during the proceedings, the Court notes that the State Attorney's Office ordered a forensic expert report on the applicant's injuries and that it also questioned the expert in order to present him with further evidence obtained during the investigation, which had not been taken into account for the production of his written report (see paragraphs 21 and 25 above). Nothing from the manner in which those investigative measures were conducted, or the conclusions drawn from the expert's findings, suggests any deficiency in the investigation. Nor is there anything to suggest that the expert witness lacked impartiality and independence with regard to the police officers under investigation.

73. Moreover, the Court does not share the applicant's view that the expert evidence obtained by the State Attorney's Office was deficient as its findings, according to the applicant, differed from those of the experts heard in the civil proceedings. In this connection, it should be noted at the outset that there are no crucial and conclusive divergences in the expert report obtained during the criminal investigation and those obtained in the civil proceedings. Moreover, those reports were based on the different extent of information and evidence available to the experts and were concerned with the establishment of facts concerning different aspects of responsibility – criminal and civil respectively. Thus, the expert report obtained in the criminal investigation was based on the specific questions put to the expert by the prosecutor, and during his questioning the expert was presented with other evidence obtained during the investigation, which he then put in the context of the charges made against the police officers (see paragraphs 24 and 26 above). As already stressed, there is nothing demonstrating that the obtaining of expert evidence in such a manner, or the findings flowing from it, undermined the ability of the investigation to establish the cause of injuries and the responsibility of the relevant police officers.

74. Thirdly, as regards the applicant's participation in the proceedings, the Court notes that as soon as the investigation was opened, the applicant was informed of the investigative measures that would be taken and of all his rights as a victim in the proceedings (see paragraph 12 above). That information was given automatically, coincidentally at the same time as a question put by the applicant's lawyer in that respect (see paragraph 13 above). The applicant was then again advised of his rights in the summons for questioning by the State Attorney's Office (see paragraph 15 above).

75. The Court notes that those rights included, in particular, the right of access to the file, the right to be represented by a lawyer and the right to indicate the facts and suggest evidence to be obtained (see paragraph 37 above). However, neither the applicant nor his lawyer ever asked for access to the file, or suggested that any specific investigative measure be taken or specific questions be put to the suspects or witnesses. Indeed, the only action that his lawyer took during the investigation was to ask for the record of the applicant's questioning to be provided to her. That request was duly attended to by the State Attorney's Office (see paragraph 17 above).

76. As to the applicant's argument that there was no provision in the domestic law allowing the victim and his or her representative to participate in particular investigative measures, the Court notes that there is nothing in the procedural obligation under the Convention, as such, requiring that the victim be afforded such a possibility (see *Giuliani and Gaggio*, cited above, § 315).

77. The Convention requires, however, that the investigation be accessible to the victims to the extent necessary to safeguard their legitimate interests (see paragraph 66 above). This means that victims should be able

to participate effectively in the investigation and to have access to the materials of the investigation so they are not left in a complete vacuum as regards its progress (see, for instance, *Enukidze and Girgvliani v. Georgia*, no. 25091/07, § 250, 26 April 2011).

78. In these circumstances, given that adequate information about the applicant's rights as a victim in the proceedings was duly provided to him, including information on the investigative measures to be taken, and taking into account that he had access to the file and a possibility to indicate facts and propose evidence to be obtained in the investigation, the Court does not find that the investigation was not accessible to the applicant to the extent necessary to safeguard his legitimate interests (see, by contrast, *Slimani v. France*, no. 57671/00, § 44, ECHR 2004-IX (extracts); *Oleksiy Mykhaylovych Zakharkin v. Ukraine*, no. 1727/04, §§ 71-74, 24 June 2010, and *Enukidze and Girgvliani*, cited above, § 250).

79. Moreover, in this context the Court notes that the applicant was served with a duly reasoned decision of the State Attorney's Office terminating the investigation. That decision was based on a careful assessment of all the evidence obtained and facts established during the investigation (see paragraph 27 above) and there is nothing in the decision suggesting that it was based on hasty or ill-founded conclusions (see paragraph 66 above, and *Bouyid*, cited above, § 123) nor would it appear that the applicant ever raised this issue within the State Attorney's hierarchy. As to the applicant's argument that the decision contradicted the relevant courts' findings in the civil proceedings, the Court has already noted above that the civil responsibility differed in nature and scope from the criminal responsibility (see paragraph 73 above). This is therefore in itself not indicative of any deficiencies in the findings of the State Attorney's Office when discounting the criminal investigation against the police officers.

80. Lastly, the Court finds that the investigation before the State Attorney's Office was sufficiently prompt and expeditious. Despite the relative complexity of the case, which required the questioning of several witnesses, the obtaining of an expert report and other evidence concerning the incident, the investigation lasted in total some six months (see paragraphs 12 and 27 above), which cannot be considered excessive.

81. The foregoing considerations are sufficient to enable the Court to conclude that the fresh investigation into the applicant's allegations of police ill-treatment did not fall short of the procedural obligation under Article 3 of the Convention.

82. There has therefore been no violation of the procedural limb of Article 3 of the Convention.

FOR THESE REASONS, THE COURT

1. *Decides*, unanimously, that the applicant's common-law wife, Ms T.V., has *locus standi* in the proceedings;
2. *Declares*, by a majority, the application admissible;
3. *Holds*, unanimously, that there has been no violation of the procedural limb of Article 3 of the Convention.

Done in English, and notified in writing on 15 November 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Abel Campos
Registrar

Linos-Alexandre Sicilianos
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judges Koskelo and Eicke is annexed to this judgment.

L.A.S.
A.C.

PARTLY DISSENTING, PARTLY CONCURRING OPINION OF JUDGES KOSKELO AND EICKE

Introduction

1. For the reasons set out below we are of the view that, in the circumstances of this case, under Article 46 of the Convention the Court had no jurisdiction to examine the applicant's complaint and that this application should therefore have been held to be incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) and should have been rejected in accordance with Article 35 § 4. However, the majority having concluded that Article 46 did not deprive the Court of jurisdiction on the merits, we agree that the fresh investigation into the applicant's allegations of police ill-treatment did not fall short of the procedural obligation under Article 3 of the Convention.

The context

2. In its judgment in *V.D. v. Croatia*, no. 15526/10, §§ 78, 79 and 85, 8 November 2011, the Court found a violation of the substantive and the procedural limb of Article 3 of the Convention on the basis that:

“... regard being had to the applicant's allegations of ill-treatment, corroborated by the medical reports, and to the circumstances in which the applicant sustained the injuries, the Court considers that the Government have not furnished any convincing or credible arguments which would provide a basis to explain the manner in which the applicant had sustain these injuries.

The Court therefore concludes that the State is responsible under Article 3 on account of the inhuman and degrading treatment to which the applicant was subjected by the police officers.

...

... in the present case there has also been a violation of the procedural aspect of Article 3 of the Convention in respect of both sets of proceedings against the four police officers implicated ...”

3. By an Action Plan concerning the execution of this judgment, dated 8 February 2012, the Croatian Government informed the Committee of Ministers, under the heading “Individual Measures” that:

“On 17/02 2012 and on 13/04/2012 respectively, the applicant requested reopening of both criminal proceedings he instituted against four police officers, which were the subject of ECtHR judgment. Both requests are invoking Article 500, § 1 and Article 502 § 2 of the Law on Criminal procedure.

...

Proceedings for deciding on these requests are pending before the competent Zagreb County Court, and the Government shall inform the Committee of Ministers on further developments as soon as any new information becomes available.”

4. As the judgment notes at § 50, as a consequence and “[i]n order to execute the Court’s judgment, in March and October 2013, the domestic courts reopened the proceedings against the police officers suspected of the applicant’s ill-treatment during the arrest, and the relevant State Attorney’s Office conducted a fresh investigation into the incident”.

5. The Committee of Minister’s supervision of the execution of the judgment in *V.D. v. Croatia* is not yet closed and the Committee of Minister’s HUDOC EXEC webpage in relation to this case (last accessed on 21 October 2018) describes the “Status of Execution” in relation to individual measures in the following terms:

“...The competent domestic court has not yet made decision on his requests. On 12 April 2012, however, the applicant’s lawyer complained that on 17 January 2012, after the Court rendered the judgment at issue, the Supreme Court had found that the use of the police force in the instant case was not excessive. Information would be appreciated on the outcome of the domestic proceedings in *V.D.* as well as on individual measures taken within the context of *Mafalani* and *Tadić*.”

6. However, neither the applicant nor the Government appear to have notified the Committee of Ministers of either the end of the criminal investigation in respect of the police officers (judgment §§ 12 – 30) or the outcome of the civil proceedings leading to an award (and payment) of compensatory damages to the applicant (judgment §§ 31 – 33), apparently over and above the award of just satisfaction made by the Court in its judgment of 8 November 2011 (and paid by the Government on 19 March 2012).

7. Instead, by an application lodged on 10 April 2015, the applicant initiated the present proceedings before the Court complaining in reliance on Article 3 of the Convention that the investigation into his allegations of ill-treatment by the police during his arrest had not been effective.

Jurisdiction under Article 46

8. Article 46 of the Convention, in so far as relevant, provides as follows:

“Binding force and execution of judgments

1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.

2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution.

...

4. If the Committee of Ministers considers that a High Contracting Party refuses to abide by a final judgment in a case to which it is a party, it may, after serving formal notice on that Party and by decision adopted by a majority vote of two-thirds of the representatives entitled to sit on the committee, refer to the Court the question whether that Party has failed to fulfil its obligation under paragraph 1.

5. If the Court finds a violation of paragraph 1, it shall refer the case to the Committee of Ministers for consideration of the measures to be taken. If the Court finds no violation of paragraph 1, it shall refer the case to the Committee of Ministers, which shall close its examination of the case.”

9. On its face, it appears clear that Article 46 only confers jurisdiction on the Court in relation to adequacy of the execution of a judgment – and the question whether that might amount to a refusal to abide by that judgment – in the context of a referral by the Committee of Minister under Article 46 § 4 of the Convention. This was confirmed by the Grand Chamber in *Bochan v. Ukraine (no. 2)* [GC], no. 22251/08, § 33, ECHR 2015: “The question of compliance by the High Contracting Parties with the Court’s judgments falls outside its jurisdiction if it is not raised in the context of the “infringement procedure” provided for in Article 46 §§ 4 and 5 of the Convention (see *The United Macedonian Organisation Ilinden – PIRIN and Others v. Bulgaria (no. 2)*, nos. 41561/07 and 20972/08, § 56, 18 October 2011)”.

10. That said, the relationship between the jurisdiction of the Committee of Ministers and that of the Court in its judgment has repeatedly required careful calibration. The Grand Chamber has, most recently, summarised the Court’s approach in *Moreira Ferreira v. Portugal (no. 2)* [GC], no. 19867/12, § 47, 11 July 2017, a case concerning a refusal to re-open criminal proceedings which had been the subject of a prior judgment of the Court under Article 6:

“The Court observes that in its judgments in *Bochan v. Ukraine (no. 2)* ([GC], no. 22251/08, ECHR 2015) and *Verein gegen Tierfabriken Schweiz (VgT) v. Switzerland (no. 2)* ([GC], no. 32772/02, ECHR 2009) and its decision in *Egmez v. Cyprus* ((dec.), no. 12214/07, §§ 48-56, 18 September 2012) it considered the issue of its jurisdiction in relation to the prerogatives of the respondent State and of the Committee of Ministers under Article 46 of the Convention. The principles set out by the Court in those judgments and that decision may be summarised as follows:

(a) Findings of a violation in its judgments are essentially declaratory and, by Article 46 of the Convention, the High Contracting Parties undertook to abide by the final judgments of the Court in any case to which they were parties, execution being supervised by the Committee of Ministers (see *Verein gegen Tierfabriken Schweiz (VgT) (no. 2)*, cited above, § 61).

(b) The Committee of Ministers’ role in this sphere does not mean, however, that measures taken by a respondent State to remedy a violation found by the Court cannot raise a new issue undecided by the judgment and, as such, form the subject of a new application that may be dealt with by the Court. In other words, the Court may entertain a complaint that a retrial at domestic level by way of implementation of one of its judgments gave rise to a new breach of the Convention (*ibid.*, § 62; see also *Bochan (no. 2)*, cited above, § 33, and *Egmez*, cited above, § 51).

(c) On that basis, the Court has found that it had the competence to entertain complaints in a number of follow-up cases, for example where the domestic authorities had carried out a fresh examination of the case by way of implementation of one of the Court's judgments, whether by reopening the proceedings or by initiating an entirely new set of proceedings (see *Egmez*, cited above, § 52, and the references therein).

(d) It transpires from the Court's case-law that the determination of the existence of a "new issue" very much depends on the specific circumstances of a given case and that distinctions between cases are not always clear-cut (see *Bochan (no. 2)*, cited above, § 34, and, for an examination of that case-law, *Egmez*, cited above, § 54). The powers assigned to the Committee of Ministers by Article 46 to supervise the execution of the Court's judgments and assess the implementation of measures adopted by States under that Article are not encroached on where the Court has to deal with relevant new information in the context of a fresh application (see *Verein gegen Tierfabriken Schweiz (VgT) (no. 2)*, cited above, § 67)."

11. It is therefore, crucially, the exclusive role of the Committee of Ministers under Article 46 § 2 to ensure that the applicant receives *resitutio in integrum*, as reflected in "the principles of international law whereby a State responsible for a wrongful act is under an obligation to make restitution, consisting in restoring the situation which existed before the wrongful act was committed" (*Verein gegen Tierfabriken Schweiz (VgT) (no. 2)*, cited above, § 86; by reference to The International Law Commission's Articles on the Responsibility of States for Internationally Wrongful Acts) in relation to the violation found in the first judgment. The Court, by contrast, only has jurisdiction in relation to "new issues" or relevant "new information" which might constitute a new violation of the Convention.

12. In *Moreira Ferreira v. Portugal (no. 2)*, where the original judgment was solely concerned with a violation of a procedural obligation under Article 6 of the Convention, a majority of the Grand Chamber concluded that the Supreme Court in that case, in the context of the review proceedings, had "once again focused on the determination, within the meaning of Article 6 § 1 of the Convention, of the criminal charge against the applicant" and that the Court, therefore, had jurisdiction to consider the compliance of these second proceedings with Article 6 § 1.

13. While we agree with Part I of the Joint Dissenting Opinion of Judges Raimondi, Nußberger, De Gaetano, Keller, Mahoney, Kjølbro and O'Leary in *Moreira Ferreira v. Portugal (no. 2)*, the difference in approach between the majority and the minority in that case does not need to be resolved in order to support our conclusion in the present case. It seems to us that the circumstances of that case can be clearly distinguished from those in the present case.

14. After all, while the original judgment in that case only found a procedural violation, the original judgment in the case of *Egmez v. Cyprus (no. 30873/96, ECHR 2000-XII)* – as in the present case – the relevant finding of the Court confirmed a substantive violation of Article 3 of the

Convention. When that case came back before the Court, the complaint was – as it is in the present case – also one of a failure to carry out an effective investigation into the original ill-treatment suffered by the applicant found to have amounted to a breach of Article 3 in the original judgment.

15. In these circumstances, the Court in its decision in *Egmez v. Cyprus* of 18 September 2012, which the Grand Chamber in *Moreira Ferreira v. Portugal* (no. 2) expressly relied upon, concluded that it had no jurisdiction to examine the applicant's complaint under that head and declared that aspect of his second case inadmissible *ratione materiae*. It did so on the basis that (§§ 61-63):

“The Court first observes that in so far as the appointment of the investigator and the ensuing investigation are concerned, these constituted the individual measures adopted by the Cypriot Government in order to execute the Court's judgment and to secure the rights of the applicant which the Court found to have been violated. Consequently, the steps taken by the Government cannot be considered as new factual developments as they formed part of the measures adopted in pursuance of the Court's initial judgment and thus fall within the supervision exercised by the Committee of Ministers. The Court, therefore, does not have jurisdiction to review these measures. This, it will be recalled, is a matter for the Committee of Ministers (...).

The question that remains is whether there were any factual developments or any new events or circumstances not determined by the first judgment in the case which could be said to raise a “new issue” capable of triggering a fresh investigative obligation under Article 3 of the Convention and thus a possible breach of that provision.

In this respect the Court reiterates that in the case of an investigation for the purposes of Articles 2 and 3, a procedural obligation may be revived subsequent to a new development, as the discovery of new evidence or information casting doubt on the results of an earlier investigation or trial (see, *mutatis mutandis*, *Brecknell v. the United Kingdom* no. 32457/04, §§ 73-75, 27 November 2007 – as regards an Article 2 complaint, and *Stanimirović v. Serbia*, no. 26088/06, §§ 29 and 33, 18 October 2011 – as regards an Article 3 complaint).” (emphasis added)

16. Having considered the evidence, the Court concluded that, in view of the evidence in that case, “it is clear that nothing much happened following the Court's judgment and that there have been no developments or any new events that could revive a procedural obligation under Article 3 and thus trigger a possible breach of that provision. The Court notes that the applicant himself has not relied on or pointed to any particular facts or developments that could warrant a different conclusion” (§ 66).

17. In the present case, the majority decided that the relevant “new facts” were “the alleged lack of effectiveness of the fresh investigation, and more specifically the errors which the applicant claimed had vitiated the decision of the State Attorney's Office to terminate the proceedings” (§ 52).

18. However, it seems to us to be clear that neither of these two “factual developments” were such as to “raise a ‘new issue’ capable of triggering a fresh investigative obligation under Article 3 of the Convention”, as the decision in *Egmez v. Cyprus* (rightly) requires. They are, to use the language

in that decision, no more than “part of the measures adopted in pursuance of the Court’s initial judgment” and, as such fell outside the jurisdiction of the Court and within the exclusive jurisdiction of the Committee of Ministers.

19. There are three further aspects of this case which provide further support for this conclusion:

(a) the Court, in *Egmez v. Cyprus* concluded that it had no jurisdiction despite the fact that, unlike in the present case, the Committee of Ministers in that case had already closed its procedure for supervising the execution of the original judgment by a final resolution. There was, therefore, no question of a concurrent exercise of jurisdiction by the Court and the Committee of Ministers. On the contrary, the decision of the Court led to the applicant, in relation to the issues complained about, being placed wholly outside the jurisdiction and protection of the Convention system. By contrast, a decision by the Court to declare the present case inadmissible *ratione materiae* would not have deprived the applicant of the protection of the Convention system as he remains (or would have remained) subject to the jurisdiction of the Committee of Ministers. In *Verein gegen Tierfabriken Schweiz (VgT) (no. 2)*, cited above, § 67, the Court clearly treated the question whether the issue “would escape all scrutiny under the Convention” as a relevant consideration in the context of the decision on jurisdiction;

(b) in light of the fact that the Committee of Ministers had expressly asked to be informed about the “outcome” of the domestic proceedings (see § 5 above) before forming a final view on the Respondent Government’s compliance with its obligations under Article 46 § 1, a merits decision of this Court plainly pre-empts that decision by the Committee of Ministers. While no doubt theoretically possible, especially in light of the fact that it is concerned with assessing execution not primarily against the standard of the substantive Convention provisions but against the restitution standards reflected in “the principles of international law whereby a State responsible for a wrongful act is under an obligation to make restitution, consisting in restoring the situation which existed before the wrongful act was committed” (*Verein gegen Tierfabriken Schweiz (VgT) (no. 2)*, cited above, § 86), it is difficult to see in practice on what basis the Committee of Ministers would disagree with the Court in relation to e.g. the adequacy of the domestic investigation; and

(c) the judgment seeks to distinguish the present case and *Egmez v. Cyprus* (see judgment § 51) on the basis that, unlike in the latter case, “[t]he fresh investigation gave rise to a number of further procedural measures that were taken by the State Attorney’s Office, which led to the collection of further evidence and the establishment of new facts concerning the applicant’s case (... compare and contrast *Egmez*, ..., §§ 62-65, where the investigation was merely opened but then came to a

complete standstill as the investigator could not contact the applicant and proceed with the investigation)". If that were, however, a valid distinction in the context of identifying a relevant "new fact" or "new development", it would in our view create a perverse incentive for Respondent States not to re-open any investigation following a finding of a substantive breach of e.g. Article 3. After all, if steps taken in the context of such an investigation were to trigger the (fresh) jurisdiction of the Court, following the majority's interpretation of *Egmez v. Cyprus*, a Respondent State might seek to rely on that judgment to avoid the Court's jurisdiction by not taking any effective steps at all in any subsequent investigation.