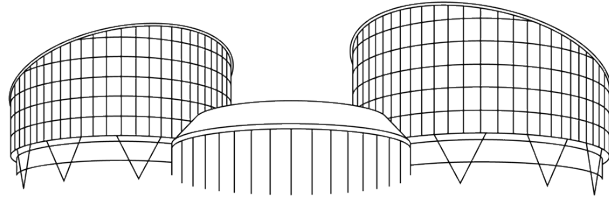

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

1959 · 50 · 2009

FIRST SECTION

CASE OF BEGANOVIĆ v. CROATIA

(Application no. 46423/06)

JUDGMENT

STRASBOURG

25 June 2009

FINAL

25/09/2009

This judgment may be subject to editorial revision.

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

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

Christos Rozakis, *President,*
Nina Vajić,
Anatoly Kovler,
Khanlar Hajiyev,
Sverre Erik Jebens,
Giorgio Malinverni,
George Nicolaou, *judges,*
and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 4 June 2009,

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

PROCEDURE

1. The case originated in an application (no. 46423/06) 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 Darko Beganović (“the applicant”), on 9 November 2006.

2. The applicant was represented by the Roma Rights Centre in Budapest and by Mrs L. Kušan, a lawyer practising in Ivanić Grad.

3. On 16 May 2008 the President of the First Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1977 and lives in Luka.

1. Background to the case

5. On 9 December 1999 a request that minor-offences proceedings be instituted against the applicant was lodged with the Zaprešić Minor Offences Court (*Prekršajni sud u Zaprešiću*), following an allegation that on 8 December 1999 the applicant (then aged twenty-two) and two other

individuals had physically attacked three minors, D.E., S.C. and I.Š., by hitting them and kicking them all over their bodies while simultaneously shouting obscenities. They had also damaged a vehicle owned by the mother of one of the victims and had broken one of its front lights and the front bumper.

6. On the evening of 23 April 2000 the above-mentioned D.E. (born on 17 February 1982), S.C. (born on 15 November 1982) and I.Š. (born on 25 July 1982), together with four friends, B.B. (born on 17 January 1983), F.P. (born on 28 May 1982), Z.T. (born on 18 December 1981) and S.T. (born on 25 May 1983), approached the applicant, who was in the company of five friends, and asked him about the incident of 8 December 1999. The applicant then verbally insulted D.E. on the basis of his Serbian origin. A fight ensued.

7. On 24 April and 8 June 2000 the police interviewed the individuals from the above group. Their statements concurred as to the fact that they had been friends with the applicant until the incident of 8 December 1999. On 23 April 2000 they had agreed that they would find the applicant and attack him. When they attacked the applicant, he had pulled out a knife and stabbed Z.T. twice. B.B. had then hit the applicant on the head with a wooden plank and all of them, including the applicant, had left the scene.

8. In his statement of 24 April 2000 I.Š. mentioned that the applicant was of Roma origin, but did not elaborate on this point. The relevant part of the statement reads:

> "As regards Darko Beganović, he is of Roma origin. He used to mistreat the others on occasions when any of them was alone. He threatened to attack them, which caused fear in the group because they were afraid of him and of such behaviour."

9. The police also interviewed the applicant and two other neutral witnesses. In his statement the applicant gave no indication that any of the assailants had made reference to his Roma origin.

2. Preliminary stage of the criminal proceedings

10. On 12 June 2000 the applicant, represented by legal counsel, lodged a criminal complaint with the Zagreb State Attorney's Office (*Općinsko državno odvjetništvo u Zagrebu*) against six identified individuals (F.P., Z.T., S.T., S.C., D.E. and B.B.) and a seventh unknown individual, alleging that on 23 April 2000 they had approached and surrounded him and proceeded to hit him until he fell to the ground. They had then started to kick him. When the beating stopped he had stood up, whereupon B.B. had hit him on the head with a wooden plank, causing him to lose consciousness. The attack had caused him severe bodily injuries. Furthermore, on 6 June 2000 the same men had told a certain D.K. to tell the applicant that they were going to burn him alive. The applicant alleged that they had thus committed two criminal offences, namely assault leading

to grievous bodily harm and threatening behaviour, and asked for criminal proceedings to be brought against them.

11. In a letter to the Zagreb Police Department dated 24 April 2000 the "Sveti Duh" General Hospital in Zagreb, where the applicant had been examined, described the applicant's injuries as grievous. A letter of discharge dated 29 April 2000 stated that the applicant had been admitted to the hospital on 24 April 2000 and had been diagnosed with concussion and numerous contusions to the head and body.

12. On 4 July 2000 the Zagreb Police Department lodged a criminal complaint with the Zagreb State Attorney's Juvenile Office against B.B., alleging that at around 11 p.m. on 23 April 2000 he and his friends, S.T., D.E., I.Š., Z.T. and S.C., had had a fight with the applicant. The complaint alleged that they had planned the fight beforehand and for that purpose had gone to a location where they expected to find the applicant. After verbally assaulting him, they had beaten him up and kicked him all over his body. One of them, B.B., had hit him on the head with a wooden plank and the applicant had lost consciousness. The complaint also cited the above medical records stating that the applicant had sustained grievous bodily injuries.

13. In submissions of 8 January 2001 the applicant's counsel pointed out that she had lodged a criminal complaint on 12 June 2000 and asked to be informed of the case-file number. She further contended that Articles 2 and 3 of the Convention and Article 6 § 2 of the Framework Convention for the Protection of National Minorities required State authorities to take all steps to identify within a reasonable time the perpetrators of criminal offences against life and limb, and to do so with particular urgency where, as in the case at issue, the victim was a member of a national minority (Roma). She added that all the circumstances indicated that the offence was racially motivated.

14. On 12 March 2001 the Zagreb State Attorney's Office forwarded the applicant's criminal complaint to the Velika Gorica State Attorney's Office. A medical report was prepared by a court expert in forensic medicine. As regards the injuries sustained by the applicant, the relevant part of the report reads:

> "Examination and treatment of the victim, Beganović Darko, established numerous blows which caused contusions and lacerations to his head and body each of which amounts to a bodily injury (under the previous classification, a lesser bodily injury). The injuries were caused by several blows from one or more hard objects, possibly a fist, a shoe-clad foot or a similar object. If some of the blows were struck by a shoe-clad foot, the victim was most probably bent over or lying on the ground. Since the injuries are not described in detail, it is not possible to establish their number or the number of blows. The blows were of minor to medium intensity.
>
> The diagnosis of concussion, although mentioned, was not objectively established in the medical documentation enclosed in the file, and could therefore not be forensically accepted.

> Taken together, all of the injuries sustained by the victim Beganović Darko amount to a bodily injury."

As regards the injuries sustained by Z.T., the relevant part of the report reads:

> "Examination of Z.T. revealed two stab wounds on his back. Since these wounds are not described in detail, only an indirect conclusion can be reached, namely that, given the lack of injuries in deeper structures, the wounds were shallow and each of them, taken separately and together, amounted to bodily injury. The injuries were caused by two separate knife stabs or stab blows by a similar object. The stabs were of minor intensity. At the moment of stabbing the victim most probably had his back turned towards the assailant."

15. On 16 July 2001 the Velika Gorica State Attorney's Office decided not to institute criminal proceedings against B.B. on the ground that the medical analysis of the injuries sustained by the applicant indicated that the diagnosis of concussion could not be accepted forensically, given that all the other injuries were of a lesser nature. Under the relevant domestic law a prosecution for such injuries had to be brought privately by the victim, while a prosecution for grievous bodily injuries had to be initiated by the relevant State authorities. The applicant was thus instructed to proceed accordingly and to ask, within eight days, that a juvenile panel from a competent county court institute criminal proceedings against B.B.

16. In her submissions of 24 August 2001 to the Velika Gorica State Attorney's Office, the applicant's counsel asked for the criminal complaint of 12 June 2000 against the other suspects to be treated as a private prosecution for the offence under Article 98 of the Criminal Code of assault occasioning bodily harm.

17. On 27 August 2001 the applicant's counsel brought a private prosecution against B.B., then a minor, in the Juvenile Council of the Velika Gorica Municipal Court for the offence under Article 98 of the Criminal Code. On 10 October 2001 the Velika Gorica Municipal Court ordered the applicant's counsel to inform it of the date of birth of B.B. and to proceed in accordance with sections 45, 46 and 63 of the Juvenile Courts Act.

18. In her submissions to the Velika Gorica State Attorney's Office of 16 October 2001, the applicant's counsel argued that the decision of 16 July 2001 not to prosecute concerned only the criminal complaint lodged by the police on 4 July 2000, but not the criminal complaint lodged by the applicant on 12 June 2000, since the latter was broader in scope than the police complaint. She further emphasised that the offence against the applicant was racially motivated and asked the Office to act with reasonable expedition. She also argued that the failure to act by the State Attorney's Office had infringed the applicant's constitutional rights to equality and to life, and his rights not to be ill-treated, to have a competent court decide his rights and obligations, to respect for his private and family life and honour, and to protection from violence and hatred based on his nationality, race or

religion. She also relied on the Constitutional Act on the Rights and Freedoms of National and Ethnic Minorities in Croatia, the International Covenant on Civil and Political Rights, the International Convention on the Elimination of all Forms of Discrimination and the European Convention on Human Rights.

19. In her submission to the Velika Gorica Municipal Court of the same day the applicant's counsel stated that she was not in a position to find out B.B.'s date of birth and that such information had to be requested from the Ministry of the Interior. She also submitted that the order to proceed in accordance with sections 45, 46 and 63 of the Juvenile Courts Act had been unclear. She further argued that the applicant had been prevented from prosecuting his assailants and that it was the practice of the State Attorney's Office not to prosecute acts of violence against citizens of Roma origin. She repeated the contentions she had made to the Velika Gorica State Attorney concerning the infringement of the applicant's rights.

20. In a letter of 5 November 2001, the Velika Gorica Municipal Court invited the applicant's counsel to explain whether the private prosecution of B.B. was to be considered as an application to the juvenile panel of a competent county court under section 62 § 2 of the Juvenile Courts Act. In her reply of 7 November 2001, the applicant's counsel confirmed that this was the case. She further explained that on 16 July 2001 the Velika Gorica State Attorney's Office had given her an erroneous instruction to bring a private prosecution against B.B. since, under the Juvenile Courts Act, the prosecution of a minor could not be brought privately, but only by a competent State Attorney's Office. She further pointed out that she had consulted the case file and that no expert assessment had been conducted of the injuries sustained by the applicant, contrary to the statement by the Velika Gorica State Attorney's Office in its decision not to prosecute of 16 July 2001. She also argued that the offence in question had infringed the applicant's right to life and personal safety, and the prohibition of torture, inhuman and degrading treatment, and that he had had no effective remedy for the protection of those rights.

21. In a letter of 30 December 2001 addressed to the Velika Gorica State Attorney's Office, the Zagreb State Attorney's Office expressed its view that the former body's decision not to prosecute B.B. had been erroneous and contrary to section 45 of the Juvenile Courts Act, which required the competent State Attorney's Office to undertake an official prosecution against minors even in respect of criminal offences otherwise subject to private prosecution. The Zagreb State Attorney's Office indicated that it was necessary to obtain information about B.B. from a competent Social Welfare Centre and then to declare the criminal complaint against B.B. inadmissible, in accordance with section 64 of the Juvenile Courts Act, subject to the condition that B.B. be ordered to undertake one of the measures listed in that provision.

3. Criminal proceedings against B.B. before the Velika Gorica Municipal Court

22. On 4 February 2002 the Zagreb County Court Juvenile Council decided to bring charges of bodily injury under Article 99 of the Criminal Code against B.B. before a juvenile judge. The case file was forwarded to the Velika Gorica Municipal Court in order for it to conduct the proceedings.

23. On 5 July 2002 the Velika Gorica State Attorney's Office lodged a request with the juvenile judge of the Velika Gorica Municipal Court for preparatory proceedings to be instituted against B.B. They asked that B.B. and other participants be interviewed regarding the circumstances of the offence in question. They further requested a fresh report from the Zaprešić Welfare Centre, in order to decide whether there was a need for an educative measure in respect of B.B.

24. The hearing before the Velika Gorica Municipal Court, scheduled for 2 November 2002, was adjourned because counsel for the defendant failed to appear. At the hearing held on 13 January 2003 the applicant gave his evidence. He did not indicate in any way that any of the assailants had made reference to his Roma origin. He stated that on 23 April 2000 he had been in the company of five of his friends when the assailants approached him and then attacked him. None of his friends had been involved in the incident.

25. On 10 April 2003 the Velika Gorica Social Welfare Centre submitted their report on B.B., drawn up on 3 April 2003. The relevant part of the report reads:

> "... He completed vocational school ... acquiring a qualification as a machine technician. He was temporarily employed ... until he was conscripted to military service in November 2001.
>
> He completed his military service in May 2002. Since then he has been unemployed but is registered with the State Employment Office.
>
> ... there is no evidence that he has committed any further criminal offences.
>
> His cooperation and communication are adequate. He is polite and comes across as a serious young man.
>
> ...
>
> In view of his personality, the conditions of his upbringing and his current life, we consider that the criminal offence he has been charged with was a misdemeanour attributable to his youth and the consequence of a stressful situation.
>
> In view of the fact that this was the first time he had ever been reported as a criminal offender and that, in the meantime, he has committed no further criminal offences, we consider it justifiable to impose an educative measure in the form of a special

> obligation requiring him to participate in the activities of humanitarian organisations or activities of ecological or communal interest.”

26. A qualified social worker conducted a further interview with B.B. on 10 April 2003 for the purposes of the criminal proceedings against him. The relevant part of the report on the interview reads:

> “ ... To date there has been no need for social services intervention in the family, including in respect of B., who has no record of crime or misdemeanours.
>
> He takes seriously the fact that he has been the subject of proceedings before a court of law, as does his mother, and he expresses concern about the outcome.
>
> The above observations lead to the conclusion that B.’s general functioning is adequate, being marked by pronounced social and emotional maturity and clear and mature opinions. He shows a responsible attitude towards his obligations.
>
> Therefore, should his criminal responsibility be established, the offence could be construed as a misdemeanour arising out of a specific situation, and the imposition of an educative measure in the form of a special obligation to participate in humanitarian activities seems justified.”

27. At the hearing held on 21 May 2003 Z.T., S.T., S.C., I.Š. and F.P. gave evidence as witnesses. None of them made any reference to the applicant’s Roma origin. They all stated that they had socialised with the applicant and belonged to the same circle of friends prior to the incident of 8 December 1999. In a decision of 26 May 2003 the Velika Gorica Municipal Court instituted preparatory proceedings against B.B., under section 68(2) of the Juvenile Courts Act. A hearing scheduled for 5 November 2003 was adjourned on the ground that D.E., who was studying in Germany and had been called as a witness, did not appear. He gave his evidence at the hearing held on 12 February 2004. On 12 January 2004 the applicant’s counsel submitted an application to expedite the proceedings.

28. On 26 February 2004 the Velika Gorica State Attorney’s Office made a proposal that B.B., under sections 6 and 9 of the Juvenile Courts Act, take part in the work of humanitarian organisations or activities of communal or ecological interest instead of having criminal sanctions imposed on him. The proposal was based on the family and personal circumstances of B.B., who had meanwhile become an adult, had successfully completed his schooling and military service and was looking for a job. There had been no further criminal complaints against him.

29. On 22 March and 6 May 2004 the applicant’s counsel submitted further applications to expedite the proceedings. On 2 July 2004 the Velika Gorica Municipal Court joined the two sets of proceedings. On 17 January 2005 the applicant’s counsel submitted a further application to expedite the proceedings. On 17 June 2005 the applicant’s counsel submitted a fresh application to expedite the proceedings to the President of the Velika Gorica

Municipal Court, stressing that the prosecution was about to become time-barred.

30. On 21 December 2005 the Velika Gorica Municipal Court discontinued the proceedings against B.B. on the ground that the prosecution for the offence with which he was charged had become time-barred on 23 April 2004. A subsequent appeal by the applicant was dismissed on 9 March 2006 by the Velika Gorica County Court.

4. Criminal proceedings against F.P., Z.T., S.T., S.C. and D.E. following the applicant's private subsidiary indictment

31. On 30 September 2002 the Velika Gorica State Attorney's Office declared the applicant's criminal complaint of 12 June 2000 inadmissible in respect of F.P., Z.T., S.C. and D.E. as, under the relevant domestic law, a prosecution for bodily harm had to be brought privately by the victim. As to the alleged threat, D.K., in a statement to the State Attorney's Office, denied telling the applicant that any such threat had been made. The applicant was informed of his right to take over the prosecution as a subsidiary prosecutor and to lodge a private subsidiary indictment with the Velika Gorica Municipal Court or to request an investigation through the Zagreb County Court.

32. On 11 November 2002 the applicant, represented by counsel, lodged a private subsidiary indictment against five suspects (all of the assailants but B.B. and the one unidentified assailant) with the Velika Gorica Municipal Court for the offences set out in Articles 98 and 99 of the Criminal Code, namely causing bodily harm and causing grievous bodily harm. He also asked for these proceedings to be joined with those already pending before the same court against B.B.

33. On 29 September 2003 the Municipal Court asked the Zaprešić Social Welfare Centre to prepare reports on the defendants.

34. The relevant part of the report on S.T., drawn up on 28 October 2003, reads:

> "... he dropped out of high school and in October this year enrolled in a training course for security guards ... which he plans to complete by June 2004.
>
> He has less time for leisure because he is attending classes and assisting in renovation work on the family home.
>
> S. greets others and communicates with them politely.
>
> His hygiene habits are appropriate to his age.
>
> He smokes and drinks alcoholic drinks occasionally.
>
> In a decision of the [Velika Gorica Municipal] Court ... of 22 November 2001 an educative measure was imposed on him in the form of close care and supervision and

a special obligation to undergo specialised medical treatment or treatment for drug and other addictions.

S. carried out the above special obligation in Zagreb City Centre for the Prevention of Addictions, although there were difficulties in respect of his frequency of ... attendance.

The educative measure consisting of close care and supervision was implemented, although there were difficulties related to regular communication and performance of the programme tasks.

S. lives with his parents and brother Z.

...

The parents cared for the children's basic needs according to their abilities. However, they lacked the capacity to face up to the developmental difficulties [of children]. Becoming aware of their helplessness in bringing up their children and their lack of authority, they became discouraged.

The family live in their own house ... where they moved six year ago after living in a flat ...

S. has not adapted well to rural life.

As regards the question of criminal proceedings, we propose that a special obligation be imposed in the form of participation in humanitarian activities."

35. The relevant part of the report on F.P., drawn up on 17 November 2003, reads:

" ... In June 1998, as the driver of a vehicle, [he had] a road accident in which he sustained multiple contusions to his head and lungs. He was hospitalised ... He was unconscious for twelve days. ... As a consequence ... he had a mild motor skills and speech disorder and frequent headaches. ... His current health is good.

He completed high school ... and obtained a qualification as a waiter ... he then also completed training as a lorry driver and a driver of vehicles for the transport of dangerous materials.

For a period of time he worked as a waiter and in the past seven months he has worked as a driver.

...

He did not perform military service. He lives with his parents and is not married.

He cooperates well and communicates adequately.

The records of this centre show that in 1998 preliminary proceedings were conducted against the then minor F. in the Zagreb Municipal Court in connection with the criminal offence of causing a road accident. The proceedings were terminated

[without a conviction] since the court applied the principle of appropriateness [of criminal punishment].

He has not committed any further criminal offences.

On the basis of the above we consider, should his criminal responsibility be established, that application of the Juvenile Courts Act is justified, and we propose that a special obligation be imposed in the form of participation in the activities of humanitarian organisations or activities of ecological or communal interest."

36. The relevant part of the report on D.E., drawn up on 17 November 2003, reads:

"We have not been able to contact the above-mentioned young adult directly. Instead, we conducted a telephone conversation with D., who indicated that he is currently resident in Germany with his mother and studying computer science.

...

The records of this Centre show that D. has not committed any further criminal offence nor is there any record of any other asocial behaviour.

On the basis of the above we consider, should his criminal responsibility be established, that application of the Juvenile Courts Act is justified, and we propose that a special obligation be imposed in the form of participation in the activities of humanitarian organisations or activities of ecological or communal interest."

37. The relevant part of the report on Z.T., drawn up on 26 November 2003, reads:

"... he dropped out of a [vocational] high school he had attended until the third grade.

...

In 2001 he completed his military service, and after returning to his family decided to continue his education and enrolled in evening classes in the same [vocational] school, in order to obtain a qualification in electronics.

Currently he is about to complete his education, and needs only to pass the final exams. Meanwhile, Z. has been working part-time and since last May has been employed in the Croatian Institute for Construction Works ...

He is unmarried and lives with his parents.

According to the records of this Centre he has not committed any further criminal offences.

He cooperates well and communicates adequately. He comes across as a serious young man.

...

On the basis of the above, we consider, should his criminal responsibility be established, that application of the Juvenile Courts Act is justified, and we propose that a special obligation be imposed in the form of participation in the activities of humanitarian organisations or activities of ecological or communal interest."

38. The relevant part of the report on S.C., drawn up on 2 December 2003, reads:

"... he completed vocational school on schedule and graduated in 1999.

After graduation he was unemployed since he could not find a job, but he helped his parents [on their] agricultural [land].

In 2001 he completed his military service.

Currently, he is employed in a construction firm ...

He states that, owning to his work, he does not have much leisure time, which he then spends resting or helping his parents.

According to the information of this Centre he has not committed any further criminal offences in the meantime.

He cooperates well and comes across as a serious young man.

...

On the basis of the above, we consider, should his criminal responsibility be established, that application of the Juvenile Courts Act is justified, and we propose that a special obligation be imposed in the form of participation in the activities of humanitarian organisations or activities of ecological or communal interest."

39. The first hearing, scheduled for 9 March 2004, was adjourned since only one of the five defendants appeared. On 22 March and 6 May 2004 the applicant's counsel submitted further applications to expedite the proceedings.

40. On 2 July 2004 the Velika Gorica Municipal Court joined the two sets of proceedings. At a hearing on 28 October 2005 the presiding judge served a copy of the applicant's subsidiary private indictment on the defendants and scheduled the next hearing for 8 March 2006. On 21 December 2005 the Velika Gorica Municipal Court severed the proceedings. On 11 May 2006 the Velika Gorica Municipal Court discontinued the proceedings against the remaining defendants, on the ground that the prosecution of the offences with which they were charged had become time-barred on 23 April 2004.

5. Civil proceedings

41. On 9 April 2002 the applicant, represented by legal counsel, brought a civil action against nine defendants (the five identified perpetrators of the acts of violence against the applicant and the parents of two of the assailants

who had been minors at the time of the attack) in the Zagreb Municipal Court (*Općinski sud u Zagrebu*), seeking damages for the injuries he had sustained.

42. On 11 September 2003 the applicant's counsel submitted an application to expedite the proceedings. At a hearing on 17 September 2003 the Zagreb Municipal Court decided to stay the proceedings pending the outcome of the criminal proceedings against the defendants.

43. In submissions of 28 June 2005, the applicant's counsel complained that the above decision had not been served on her and asked for it to be set aside since the conduct of the criminal proceedings had been ineffective. On 24 February 2006 her submissions were returned to her. When she enquired about the case she was told that on 26 January 2004 it had been transferred to the Zaprešić Municipal Court (*Općinski sud u Zaprešiću*). However, when on 21 July and 20 December 2006 she made enquiries about the case at the latter court she received no reply.

44. On 29 January 2007 the applicant's counsel lodged a complaint about the length of the civil proceedings with the Velika Gorica County Court. This complaint was upheld on 23 August 2007; the County Court awarded the applicant 7,771.20 Croatian kuna (HRK) in compensation and ordered the Municipal Court to adopt a decision within six months.

45. At the hearing held on 19 September 2007 the Municipal Court ordered that a medical report be drawn up. On 17 January 2008 the experts submitted their report of 23 December 2007. The relevant part of the report reads:

> "The plaintiff received initial medical assistance in the surgical department of the 'Sveti Duh' General Hospital in Zagreb on 24 April 2000. He received treatment and was discharged from hospital on 29 April 2000, following an improvement [in his condition]. [He was] advised to rest and take painkillers and to [return for] a neurological check-up in ten days, with the results of an EEG examination.
>
> When examined by the experts the plaintiff complained of continuing headaches.
>
> A clinical examination did not reveal pathological substrates.
>
> The medical documentation consists of a discharge letter, without any further check-ups.
>
> OPINION: The medical documentation and the patient's condition can be linked to the harmful act in question and the injuries sustained by the plaintiff on that occasion.
>
> Pain of significant intensity lasted two days, of medium intensity three days and of minor intensity one week.
>
> The remaining minor, occasional pains are caused by increased physical effort.

The initial fear was intense and short in duration. Secondary fear (in respect of the injuries and their consequences) of significant intensity lasted a day, of medium intensity three days and of minor intensity a week.

The medical documentation and examination of the victim did not reveal any lasting consequences from the harmful act.

The plaintiff did not require assistance from other persons.”

The civil proceedings before the Zaprešić Municipal Court are still pending.

II. RELEVANT DOMESTIC LAW

Criminal Code

46. The relevant parts of the Criminal Code (*Kazneni zakon*, Official Gazette no. 110/1997) provide:

Article 8

“(1) Criminal proceedings in respect of criminal offences shall be instituted by the State Attorney’s Office in the interest of the Republic of Croatia and its citizens.

(2) In exceptional circumstances the law may provide for criminal proceedings in respect of certain criminal offences to be instituted on the basis of a private prosecution or for the State Attorney’s Office to institute criminal proceedings following [a private] application.”

BODILY INJURY

Article 98

“Anyone who inflicts bodily injury on another or impairs another’s health shall be fined or sentenced to imprisonment for a term not exceeding one year.”

Article 102

“Criminal proceedings for the offence of inflicting bodily injury (Article 98) shall be instituted by means of a private prosecution.”

TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT

Article 176

“A public official, or another person acting at the instigation or with the explicit or tacit acquiescence of a public official, who inflicts on another person pain or grave suffering, whether physical or mental, for such purposes as obtaining from him or a

third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, shall be sentenced to imprisonment for a term of one to eight years.”

Code of Criminal Procedure

47. The relevant provisions of the Code of Criminal Procedure (*Zakon o kaznenom postupku*, Official Gazette nos. 110/1997, 27/1998, 58/1999, 112/1999, 58/2002 and 62/2003) provide:

Article 2

“(1) Criminal proceedings shall be instituted and conducted at the request of a qualified prosecutor only. ...

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

(3) Unless otherwise provided by law, the State Attorney shall undertake a criminal prosecution where there is a reasonable suspicion that an identified person has committed a criminal offence subject to public prosecution and where there are no legal impediments to the prosecution of that person.

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

Articles 47 to 61 regulate the rights and duties of private prosecutors and of injured parties acting as subsidiary prosecutors. The Criminal Code distinguishes between these two roles. A private prosecutor (*privatni tužitelj*) is an injured party who brings a private prosecution in respect of criminal offences for which such prosecution is expressly prescribed by the Criminal Code (these are offences of a lesser degree). The injured party as a subsidiary prosecutor (*oštećeni kao tužitelj*) takes over criminal proceedings in respect of criminal offences subject to public prosecution where the relevant prosecuting authorities, for whatever reason, have decided not to prosecute. Pursuant to Article 47, where the prosecution is brought privately, the charge must be lodged with the relevant authority within three months after the qualified prosecutor has learnt of the offence and the identity of the perpetrator.

Article 48

“(1) A request to prosecute shall be lodged with the competent State Attorney’s Office and a private prosecution with the competent court.

(2) Where the injured party has lodged a criminal complaint ... he or she shall be considered to have thereby lodged a request to prosecute.

(3) Where the injured party has lodged a criminal complaint or a request to prosecute but the [competent authorities] establish that the criminal offence in question should be prosecuted on the basis of a private prosecution, the criminal complaint or the request to prosecute shall be treated as a timely private prosecution if it has been submitted within the time-limit prescribed for [bringing] a private prosecution...”

Pursuant to Article 55(1), the State Attorney is under a duty to inform the injured party within eight days of a decision not to prosecute and of that party’s right to take over the proceedings, as well as to instruct that party on the steps to be taken.

Juvenile Courts Act

48. The relevant provisions of the Juvenile Courts Act (*Zakon o sudovima za mladež*, Official Gazette nos. 111/1997, 27/1998 and 12/2002) read as follows:

Section 2

“A minor is a person who, at the time of the offence, was at least fourteen but not older than eighteen. A young adult is a person who, at the time of the offence, was at least eighteen but not older than twenty-one.”

Section 4

“(1) Sanctions in respect of minors who have committed criminal offences are educative measures, imprisonment of a minor and security measures.

...”

Section 6

“(1) Educative measures are:

...

(2) special obligations

...”

Section 9

“(1) A court may order a minor to fulfil one or more special obligations where it finds that appropriate orders or injunctions are needed to influence the minor and his or her conduct.

(2) A court may impose the following obligations:

...

7. to participate in the activities of humanitarian organisations or activities of communal or ecological interest.

...

(7) In connection with the obligation under paragraph 2, point 7 of this section a court may impose a maximum of one hundred and twenty working hours within a period of six months, so as not to hinder the minor's education or regular employment;

(8) A competent Social Welfare Centre shall supervise the enforcement of the obligation..."

Section 45

"(1) Criminal proceedings against minors shall be instituted at the request of the State Attorney in respect of all criminal offences.

(2) Prosecution [of minors] in respect of criminal offences generally subject to private prosecution may be instituted if a person authorised [to initiate a private prosecution] has lodged an application for proceedings to be instituted with the competent State Attorney's Office within three months of learning of the offence and the identity of the perpetrator."

Section 46

"In criminal proceedings against a minor [the] victim cannot take the role of prosecutor."

Section 62

"(1) Where the State Attorney has decided under section 45 of this Act that there is no ground to request that criminal proceedings be instituted against a minor (Article 174 of the Code of Criminal Procedure), he or she shall notify the victim of this and state the reasons for his or her decision ...

(2) Within eight days after notification [under paragraph 1] has been served on the victim, he or she may request a competent juvenile council of a higher court to decide whether proceedings should be instituted. The division shall decide after it has obtained the opinion of the State Attorney. The division may decide that the proceedings should not be instituted at all or that they should be instituted before a juvenile judge.

(3) Where the division has decided that proceedings should be instituted, the competent State Attorney's Office shall take over the proceedings against a minor."

Section 63

"(1) In respect of criminal offences which carry a sentence of imprisonment not exceeding five years or a fine, the State Attorney may decide not to request that

criminal proceedings be instituted, despite the existence of a reasonable suspicion that a minor has committed such an offence, where the State Attorney considers that the proceedings against the minor would not fulfil any purpose in view of the nature of the offence and the circumstances under which it was committed, as well as the previous life and personality of the minor in question. In order to establish these facts, the State Attorney may request information from the [minor's] parents ... other persons and institutions ... or interview the minor in question ...

(2) The State Attorney shall inform the competent Social Welfare Centre and the victim about his or her decision under paragraph 1 of this section and shall inform the latter of his or her right to bring any compensatory claim he or she might have in civil proceedings..."

Section 65

"(1) The State Attorney may make his or her decision not to institute proceedings (section 63) subject to the minor's willingness to:

...

(b) participate in the activities of humanitarian organisations or activities of communal or ecological interest (within the limits of section 9(2).22).

..."

Section 68

"(1) A request that preparatory proceedings be instituted shall be lodged with a competent juvenile judge by the State Attorney.

(2) Where the juvenile judge agrees with the request she or he shall issue a decision that preparatory proceedings are to be instituted. ..."

Rules on the State Attorney's Offices

49. The relevant part of the Rules on the State Attorney's Offices (*Pravilnik o unutarnjem poslovanju u državnim odvjetništvima*, Official Gazette no. 106/02) reads:

Section 49

"A victim, a party represented by a State Attorney's Office ... or an interested person, other than a suspect, an accused or an opposing party in the proceedings, may consult a criminal, civil or other case file held by the State Attorney. Such persons may also be allowed to copy the case file in whole or in part.

Permission to consult or copy the case file shall be given by the State Attorney or the official in charge of a particular case file."

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 3 AND 13 OF THE CONVENTION

50. The applicant complained that the domestic authorities had not afforded him adequate protection against a serious act of violence and that he had had no effective remedy in respect thereof. The applicant relied on Article 3 of the Convention, taken alone and together with Article 13 of the Convention. The relevant Articles provide:

Article 3

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

Article 13

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

51. The Government contested that argument.

A. Admissibility

52. The Government requested the Court to declare this part of the application inadmissible for failure to exhaust domestic remedies. Relying on the Court's decision in the case of *Duchonova v. the Czech Republic* ((dec.), no. 29858/03, 2 October 2006), they submitted that the applicant's civil action for damages in respect of the injuries and fears he had suffered was still pending.

53. The applicant argued that he had exhausted all remedies and that the only remedy capable of providing adequate redress for the ill-treatment sustained in violation of Article 3 of the Convention was of a criminal-law nature.

54. The Court reiterates that the rule of exhaustion of domestic remedies referred to in Article 35 § 1 of the Convention obliges applicants to use first the remedies that are normally available and sufficient in the domestic legal system to enable them to obtain redress for the breaches alleged. The existence of the remedies must be sufficiently certain, in practice as well as in theory, failing which they will lack the requisite accessibility and effectiveness. However, Article 35 § 1 does not require that recourse should be had to remedies which are inadequate or ineffective (see *Aksoy v. Turkey*,

18 December 1996, §§ 51-52, *Reports of Judgments and Decisions* 1996-VI, and *Barta v. Hungary*, no. 26137/04, § 45, 10 April 2007).

55. As to the Government's reference to the case of *Duchonova*, the Court notes that the criminal offences complained of by the applicant in that case were those of defamation and blackmail and that the application in that case concerned Article 8 of the Convention. Therefore, the case of *Duchonova* is not comparable to the present case, which concerns physical violence against the applicant.

56. The Court notes further that the applicant did indeed bring a civil action for damages against his assailants which is still pending. However, the Court is inclined to believe that effective deterrence against grave acts such as attacks on the physical integrity of a person, where fundamental values and essential aspects of private life are at stake, requires efficient criminal-law provisions (see, *mutatis mutandis*, *X and Y v. the Netherlands*, 26 March 1985, § 27, Series A no. 91; *August v. the United Kingdom* (dec.), no. 36505/02, 21 January 2003; and *M.C. v. Bulgaria*, no. 39272/98, § 150, ECHR 2003-XII). The civil remedies relied on by the Government cannot be regarded as sufficient for the fulfilment of a Contracting State's obligations under Article 3 of the Convention in cases such as the present one, as they are aimed at awarding damages rather than identifying and punishing those responsible (see *Assenov and Others v. Bulgaria*, 28 October 1998, § 85, *Reports* 1998-VIII). In this connection the Court reiterates that an obligation for the State to apply adequate criminal-law mechanisms cannot be considered in principle to be limited solely to cases of ill-treatment by State agents (see *M.C.*, cited above, § 151, and *Šečić v. Croatia*, no. 40116/02, § 53, 31 May 2007).

57. The Court finds that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further finds that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant

58. The applicant argued that in view of the severity of the attack against him and the injuries he had sustained, Article 3 was applicable to the present case. As to the compliance of the State with its positive obligations under Article 3 of the Convention, the applicant argued that real and effective protection from the act of ill-treatment required effective investigation and prosecution. In this connection he stressed that the State's positive

obligation could not be limited to merely conducting an investigation. An investigation did not serve any purpose on its own, nor, alone, did it provide any protection against and redress for ill-treatment where it was not accompanied by effective follow-up. He maintained that the State authorities had failed to conduct an effective investigation into his case and that they had also failed to apply the relevant criminal-law mechanisms in an adequate manner. The investigating authorities had failed to act effectively and numerous mistakes and delays had occurred, causing the prosecution to become time-barred. In the applicant's view, the time-barring itself amounted to a violation of Article 3 of the Convention. Although the assailants had admitted in their interviews with the police that they had hit the applicant, the State Attorney's Office had brought a criminal prosecution against only one of them, B.B.

59. He also contended that he had not been allowed to take an active part in the proceedings because he had never been informed of the steps taken in the pre-trial proceedings, including the decision of 26 May 2003. The authorities had also failed to inform him of the medical report drawn up during the investigation stage. Thus, he had had no opportunity to challenge the medical reports.

60. In the applicant's view the fact that the assailants had been charged on an individual basis rather than with participation in a group attack was in itself a violation of the State's positive obligations under Article 3 of the Convention. He also referred to the erroneous instructions from the State Attorney's Office in respect of the prosecution of B.B. He further argued that S.T. and D.E. had also been minors at the time of the offence and that therefore they too should have been prosecuted by the competent State Attorney's Office, irrespective of the gravity of the applicant's injuries.

61. The applicant also alleged that, contrary to Article 13, he had had no effective remedy in practice for his complaint under Article 3. He stressed that only a criminal-law remedy, that is, an official investigation, would have been appropriate in the circumstances of the present case.

(b) The Government

62. The Government argued that Article 3 was not applicable to the present case since the applicant had suffered only bodily injuries of a lesser nature. Should the Court nonetheless find Article 3 applicable, the Government maintained that the procedural obligation under Article 3 of the Convention did not require a judgment convicting the perpetrators of a crime. Therefore, the Court's assessment should be limited to the effectiveness of the investigation. In that connection the Government stressed that there had been an investigation into the applicant's allegations of an attack against him and that the State Attorney's Office and the police had established all the relevant facts. They had heard evidence from the applicant, the alleged assailants and two independent witnesses. These

authorities had not found any indication that the attack on the applicant had been racially motivated. Since the alleged perpetrators had been either minors or young adults, special provisions were to be applied. The Government admitted that the criminal proceedings had been terminated owing to expiry of the statutory limitation period, but argued that that in itself could not amount to a violation of Article 3 of the Convention.

63. As regards the complaint under Article 13, the Government argued firstly that since Article 3 was not applicable, there could be no violation of Article 13. Furthermore, the applicant could have lodged a civil claim for damages and had been informed of the results of the investigation.

2. *The Court's assessment*

(a) Severity of the treatment

64. 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*, 23 September 1998, § 20, *Reports* 1998-VI).

65. 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).

66. The Court notes that the applicant alleged that seven individuals had confronted him. They had attacked him by kicking him and hitting him all over his body. One of them had hit him in the head with a wooden plank, after which he had lost consciousness. The medical documentation shows that the applicant sustained numerous blows which caused contusions and lacerations on his head and body. The Court considers that acts of violence such as those alleged by the applicant in principle fall within the scope of Article 3 of the Convention. In this connection it stresses that the Convention is a living instrument which must be interpreted in the light of present-day conditions and that the increasingly high standard being required in the area of the protection of human rights and fundamental liberties correspondingly and inevitably requires greater firmness in

assessing breaches of the fundamental values of democratic societies (see, *mutatis mutandis*, *Selmouni v. France*, [GC], no. 25803/94, § 101, ECHR 1999-V, and *Mayeka and Mitunga v. Belgium*, no. 13178/03, § 48, ECHR 2006-XI). Furthermore, Article 3 of the Convention also requires the authorities to investigate allegations of ill-treatment when they are "arguable" and "raise a reasonable suspicion", even if such treatment is administered by private individuals (see, *Ay v. Turkey*, no. 30951/96, §§ 59-60, 22 March 2005, and *Mehmet Ümit Erdem v. Turkey*, no. 42234/02, § 26, 17 July 2008).

67. The Court has had special regard to the distinctive circumstances surrounding the attack on the applicant. It attaches particular importance to the fact that the applicant was physically attacked by seven individuals, in the evening and in an isolated place where any calls for help would appear to have been futile. Furthermore, the attack was premeditated, since the findings of the national authorities, including the statements made by the assailants, reveal that they had planned to find and attack the applicant in retaliation for his previous attack against three of them. The act of violence in question was an assault on the applicant's physical integrity. Such behaviour must have caused the applicant anxiety and fear to a significant degree, and was obviously aimed at intimidating and injuring him.

68. In addition, the injuries sustained by the applicant cannot be said to have been of a merely trivial nature. In conclusion, having regard to the circumstances of the present case, the Court considers that the applicant's allegations of ill-treatment were "arguable" and capable of "raising a reasonable suspicion" so as to attract the applicability of Article 3 of the Convention. It remains to be determined whether the authorities' response to the situation in respect of which the applicant sought their assistance was in line with their positive obligations flowing from Article 3 in conjunction with Article 1 of the Convention.

(b) Compliance with the State's positive obligations

69. Once the Court has found that the level of severity of violence inflicted by private individuals attracts protection under Article 3 of the Convention, its case-law is consistent and clear to the effect that this Article requires the implementation of adequate criminal-law mechanisms (see *A. v. the United Kingdom*; *M.C.*; and *Šečić*, all cited above). However, the scope of the State's positive obligations might differ between cases where treatment contrary to Article 3 of the Convention has been inflicted through the involvement of State agents and cases where violence is inflicted by private individuals. The Court observes in the first place that no direct responsibility can attach to Croatia under the Convention for the acts of the private individuals in question.

70. The Court observes, however, that even in the absence of any direct responsibility for the acts of a private individual under Article 3 of the

Convention, State responsibility may nevertheless be engaged through the obligation imposed by Article 1 of the Convention. In this connection the Court reiterates that 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 *A. v. the United Kingdom*, cited above, § 22).

71. Furthermore, 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*, cited above, § 22, 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*, cited above, § 30, and *A. v. the United Kingdom*, cited above, opinion of the Commission, § 48).

72. As to the criminal-law mechanisms provided in the Croatian legal system in connection with the State's obligations under Article 3 of the Convention, the Court notes at the outset that the only criminal offence that expressly prohibits torture or other cruel, inhuman and degrading treatment relates solely to the acts of a State official or another person acting with the acquiescence of such an official, whereas violent acts committed by private individuals are prohibited in a number of separate provisions of the Criminal Code. The Court observes further that Croatian criminal law distinguishes between criminal offences to be prosecuted by the State Attorney's Office, either of its own motion or on a private application, and criminal offences to be prosecuted by means of a private prosecution. The latter category concerns criminal offences of a lesser nature.

73. The Court further observes that the Croatian legal system also allows the injured party to act as a subsidiary prosecutor. In respect of criminal offences for which the prosecution is to be undertaken by the State Attorney's Office, either of its own motion or on a private application,

where the Office declines to prosecute on whatever ground, the injured party may take over the prosecution as a subsidiary prosecutor. In contrast, a private prosecution is undertaken from the beginning by a private prosecutor. However, the prosecution of minors must always be undertaken by the State.

74. The Court will now examine whether or not the impugned regulations and practices, and in particular the domestic authorities' compliance with the relevant procedural rules, as well as the manner in which the criminal-law mechanisms were implemented in the instant case, were defective to the point of constituting a violation of the respondent State's positive obligations under Article 3 of the Convention.

75. In respect of the duty to investigate, the minimum standards applicable, as defined by the Court's case-law, include the requirements that the investigation be independent, impartial and subject to public scrutiny, and that the competent authorities act with diligence and promptness (see, for example, *Çelik and İmret v. Turkey*, no. 44093/98, § 55, 26 October 2004). In addition, for an investigation to be considered effective, the authorities must take whatever reasonable steps they can to secure the evidence concerning the incident, including, *inter alia*, a detailed statement concerning the allegations from the alleged victim, eyewitness testimony, forensic evidence and, where appropriate, additional medical reports (see, in particular, *Batı and Others v. Turkey* (nos. 33097/96 and 57834/00, § 134, ECHR 2004-IV (extracts)).

76. As regards the steps taken by the national authorities, the Court notes that the police promptly conducted interviews with all of the assailants, the applicant and two neutral witnesses. They also obtained a medical report on the applicant's injuries and filed a criminal complaint against the assailants with the competent State Attorney's Office. However, the further steps taken by the prosecuting authorities and the courts cannot be seen as satisfying the requirement of effectiveness of the criminal-law mechanisms for the purposes of Article 3 of the Convention.

77. The Court's case-law shows that the requirements of Article 3 of the Convention may go beyond the stage of the investigation. So far the Court has addressed this issue in situations where the alleged ill-treatment was perpetrated by State officials. The relevant principles were stated as follows in its judgment in *Ali and Ayşe Duran v. Turkey* (no. 42942/02, 8 April 2008):

> "61. The requirements of Articles 2 and 3 go beyond the stage of the official investigation, where this has led to the institution of proceedings in the national courts: the proceedings as a whole, including the trial stage, must satisfy the requirements of the positive obligation to protect lives through the law and the prohibition of ill-treatment. While there is no absolute obligation for all prosecutions to result in conviction or in a particular sentence, the national courts should not under any circumstances be prepared to allow life-endangering offences and grave attacks on physical and moral integrity to go unpunished (see *Öneryıldız*, cited above, §§ 95

and 96; *Salman v. Turkey* [GC], no. 21986/93, § 104-109, ECHR 2000-VII; and *Okkalı*, cited above, § 65).

62. The important point for the Court to review, therefore, is whether and to what extent the courts, in reaching their conclusion, may be deemed to have submitted the case to the careful scrutiny required by Articles 2 and 3 of the Convention, so that the deterrent effect of the judicial system in place and the significance of the role it is required to play in preventing violations of the right to life and the prohibition of ill-treatment are not undermined (see *Okkalı*, cited above, § 66).”

78. It must be stated at this juncture that it is not the Court’s task to verify whether the domestic courts correctly applied domestic criminal law; what is in issue in the present proceedings is not individual criminal-law liability, but the State’s responsibility under the Convention. The Court must grant substantial deference to the national courts in the choice of appropriate measures, while also maintaining a certain power of review and the power to intervene in cases of manifest disproportion between the gravity of the act and the results obtained at domestic level (see, *mutatis mutandis*, *Nikolova and Velichkova v. Bulgaria*, no. 7888/03, § 62, 20 December 2007, and *Atalay v. Turkey*, no. 1249/03, § 40, 18 September 2008).

79. In this connection the Court notes that the obligation on the State to bring to justice perpetrators of acts contrary to Article 3 of the Convention serves mainly to ensure that acts of ill-treatment do not remain ignored by the relevant authorities and to provide effective protection against acts of ill-treatment.

80. The Court notes that in the present case, the State authorities filed an indictment only against B.B., although the interviews conducted during the investigation clearly showed that the other six assailants were also actively involved in the attack on the applicant. In this connection and as regards the applicant’s arguments that his Convention rights could be secured only if the assailants were prosecuted by the State and that the Convention requires State-assisted prosecution, the Court firstly reiterates that its role is not to replace the national authorities and choose in their stead from among the wide range of possible measures that could suffice to secure adequate protection of the applicant from acts of violence. Within the limits of the Convention, the choice of the means to secure compliance with Article 3 in the sphere of the relations of individuals between themselves is in principle a matter that falls within the domestic authorities’ margin of appreciation, provided that criminal-law mechanisms are available to the victim. However, the Court also notes that under the relevant domestic laws the prosecution of minors must always be undertaken by the State. In the present case only the criminal proceedings against B.B., in his capacity as a minor, were undertaken by the competent State Attorney’s Office. In this connection the Court notes that four other assailants, namely S.C., I.Š., F.P. and S.T. were also minors at the time of the attack on the applicant.

However, the State Attorney's Office failed to undertake a prosecution against them.

81. As regards the proceedings instituted by the State authorities, the Court notes that on 4 July 2000 the Zagreb Police Department lodged a criminal complaint against B.B. with the Zagreb State Attorney's Juvenile Office. However, initially no further steps were taken by that Office.

82. On 12 June 2000 the applicant lodged a criminal complaint with the Zagreb State Attorney's Office against six identified assailants, including B.B., and a seventh unknown individual. The Office remained inactive for eight months, until 12 March 2001, when it forwarded the complaint to the Velika Gorica State Attorney's Office. The latter, however, decided not to institute criminal proceedings against B.B. on the ground that the injury he had allegedly inflicted on the applicant was only of a lesser nature and thus subject to private prosecution. This decision was in contravention of section 45 of the Juvenile Courts Act, which provides that criminal proceedings against minors are to be instituted at the request of the State Attorney in respect of all criminal offences. This error was eventually rectified only when the applicant brought a private prosecution against B.B. in the Juvenile Division of the Velika Gorica Municipal Court. Thus, the criminal proceedings against B.B. were properly instituted by the Zagreb County Court Juvenile Council only on 4 February 2002, almost two years after the incident, although the interviews conducted at the investigation stage had ended on 8 June 2000.

83. Even when the criminal proceedings against B.B. were eventually instituted before the competent court, the first hearing was scheduled only for 2 November 2002, only to be adjourned because counsel for the defendant failed to appear. Another significant period of inactivity occurred between 26 May 2003 and 12 February 2004, and two months later, on 23 April 2004, the prosecution for the offence with which B.B. had been charged became time-barred, although a decision to that effect was adopted only on 21 December 2005.

84. As to the criminal proceedings concerning the remaining six assailants, the Court notes that the applicant lodged a criminal complaint against them with the Velika Gorica State Attorney's Office on 12 June 2000. However, this Office declared the complaint inadmissible only on 30 September 2002, again on the ground that a prosecution in respect of the criminal offence of inflicting bodily harm had to be brought privately by the victim. As stated above, this conclusion was contrary to section 45 of the Juvenile Courts Act in respect of four assailants, S.C., I.Š., F.P. and S.T., who were also minors at the time of the incident at issue. This error was actually never rectified and in the end it was the applicant who lodged a private subsidiary indictment against the five suspects (all the assailants but B.B. and the one unidentified assailant) with the Velika Gorica Municipal Court, on 11 November 2002. During these proceedings reports were

prepared by the competent Social Welfare Centre, but no hearing was held prior to 23 April 2004, when the prosecution became time-barred. The first hearing was held after that date, on 28 October 2005, and on 11 May 2006 the proceedings were discontinued.

85. Thus, the facts of the case were never established by a competent court of law. In this connection the Court notes that the main purpose of imposing criminal sanctions is to restrain and deter the offender from causing further harm. However, these aims can hardly be obtained without having the facts of the case established by a competent criminal court. While the Court is satisfied that criminal sanctions against minors may in certain circumstances be replaced by such measures as community service, it cannot accept that the purpose of effective protection against acts of ill-treatment is achieved in any manner where the criminal proceedings are discontinued owing to the fact that the prosecution has become time-barred and where this occurred, as is shown above, as a result of the inactivity of the relevant State authorities.

86. In the Court's view, the outcome of the criminal proceedings in the present case cannot be said to have had a sufficient deterrent effect on the individuals concerned, or to have been capable of ensuring the effective prevention of unlawful acts such as those complained of by the applicant. In conclusion, the Court considers that the above elements demonstrate that, in the particular circumstances of this case, the relevant State authorities did not fulfil their positive obligations under Article 3 of the Convention.

87. In the Court's view, the impugned practices, in the circumstances of the present case, did not provide adequate protection to the applicant against an act of serious violence and, together with the manner in which the criminal-law mechanisms were implemented in the instant case, were defective to the point of constituting a violation of the respondent State's procedural obligations under Article 3 of the Convention.

88. Having regard to the above the Court finds that there is no separate issue to be examined under Article 13 of the Convention.

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

89. The applicant also complained that both his ill-treatment and the subsequent proceedings conducted by the authorities showed that he had been discriminated against on account of his ethnic origin. He relied on Article 14 of the Convention, taken in conjunction with Article 3 of the Convention. Article 14 reads as follows:

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

A. The parties' submissions

90. The applicant maintained that the attack on him and the lack of action by the authorities had resulted from the fact that he was of Roma origin. He relied on the *Nachova* case and on the principle that a complaint of racist violence should be accorded utmost priority, as racist violence was particularly destructive of fundamental rights. In this respect the applicant pointed to the broader situation of the Roma population in Croatia as well as the recently published report of the European Commission against Racism and Intolerance (Third Report on Croatia, CRI (2005) 24, 14 June 2005).

91. The Government considered the applicant's Article 14 complaint wholly unsubstantiated. They maintained that nothing in the conduct of the domestic authorities had indicated a difference in the treatment of the applicant on the basis of his Roma origin or a tendency to cover up events or encourage an attack to his detriment. The course of events had no connection with the ethnic origin of the applicant, but was the result of objective problems experienced by the prosecuting authorities during the proceedings.

92. In this connection the Government enumerated several cases in which the police had been successful in identifying and prosecuting persons who had committed crimes against individuals of Roma origin. They claimed that no systemic problems were encountered by the Roma population in Croatia other than their difficulties of integration into society, which were common also to other States signatory to the Convention.

B. The Court's assessment

93. The Court reiterates that when investigating violent incidents, State authorities have the additional duty to take all reasonable steps to unmask any racist motive and to establish whether or not ethnic hatred or prejudice may have played a role in the events. Admittedly, proving racial motivation will often be extremely difficult in practice. The respondent State's obligation to investigate possible racist overtones to a violent act is an obligation to use best endeavours and is not absolute; the authorities must do what is reasonable in the circumstances of the case (see *Nachova and Others,* cited above, § 160).

94. The Court considers the foregoing to be necessarily true also in cases where the treatment contrary to Article 3 of the Convention is inflicted by private individuals. Treating racially induced violence and brutality on an equal footing with cases that have no racist overtones would be to turn a blind eye to the specific nature of acts that are particularly destructive of fundamental rights. A failure to make a distinction in the way in which situations that are essentially different are handled may constitute

unjustified treatment irreconcilable with Article 14 of the Convention (see *Nachova and Others,* cited above, with further references).

95. In the present case, the Court observes that the police interviewed all the alleged assailants and well as the applicant in order to establish the relevant facts surrounding the attack on the applicant. Their statements revealed that the applicant and the assailants had belonged to the same group of friends until 8 December 1999, when the applicant and two other individuals had physically attacked three minors, D.E., S.C. and I.Š., and had also damaged a car owned by the mother of D.E. A few months later, the victims of that attack and their four friends decided to confront and attack the applicant. In the Court's view these circumstances show that the attack on the applicant was rather an act of revenge for his previous attack, and provide no indication that the attack on the applicant was racially motivated.

96. As to the applicant's contention that one of his assailant, I.Š., had referred to the applicant's Roma origin in his interview with the police, the Court notes that while it is true that I.Š. did so, there is nothing in his statement to indicate that the applicant's Roma origin had played any role in the attack on him. In this connection the Court notes that I.Š. gave no indication that the assailants had attacked the applicant on account of his ethnic origin. The Court also notes that none of the other assailants mentioned the applicant's origin in any way.

97. Lastly, the Court notes that neither in his interview with the police conducted soon after the attack, on 8 June 2000, nor in his evidence given before the Velika Gorica Municipal Court on 13 January 2003 did the applicant himself indicate that any of his assailants had made reference to his Roma origin. The facts of the case reveal that the applicant and his assailants had actually belonged to the same circle of friends, and there is no indication that the applicant's race or ethnic origin played a role in any of the incidents.

98. In conclusion, the Court considers that there is no evidence that the attack on the applicant was racially motivated. Therefore, in the circumstances of the present case there has been no violation of Article14 of the Convention read in conjunction with Article 3 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

99. 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

100. The applicant claimed 10,000 euros (EUR) in respect of non-pecuniary damage.

101. The Government argued that the applicant had submitted the same claim in the civil proceedings pending against his assailants and that his claim for non-pecuniary damage should therefore be rejected. In any event, they deemed the claim excessive.

102. Having regard to all the circumstances of the present case, the Court accepts that the applicant has suffered non-pecuniary damage which cannot be compensated solely by the finding of a violation. Making its assessment on an equitable basis, the Court awards the applicant EUR 1,000 in respect of non-pecuniary damage, plus any tax that may be chargeable to him.

B. Costs and expenses

103. The applicant also claimed EUR 12,975 for the costs and expenses incurred before the domestic courts and before the Court and attached detailed documentation in support of his claim. This included the costs of the lawyer representing the applicant in the domestic proceedings (EUR 1,250), counsel's fees and secretarial expenses. The hourly rates charged by the lawyers were as follows: EUR 70 in respect of the European Roma Rights Centre staff lawyer and EUR 80 in respect of Mrs Kušan.

104. The Government opposed the reimbursement of the applicant's costs and expenses in the domestic proceedings. Furthermore, they argued that he had not submitted any proof of payment of any costs.

105. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. As to the criminal proceedings instituted by the applicant against his assailants before the national authorities, the Court agrees that, as they were essentially aimed at remedying the violation of the Convention alleged before the Court, these domestic legal costs may be taken into account in assessing the claim for costs (see *Scordino v. Italy (no. 1)* [GC], no. 36813/97, § 284, ECHR 2006-...). In the present case, regard being had

to the information in its possession and the above criteria, the Court awards the applicant a sum of EUR 1,250 for costs and expenses in the proceedings before the national authorities. As to the Convention proceedings, making its assessment on an equitable basis and in the light of its practice in comparable cases, the Court considers it reasonable to award the applicant, who was legally represented, the sum of EUR 5,000, plus any tax that may be chargeable to the applicant on these amounts.

C. Default interest

106. 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 application admissible;

2. *Holds* that there has been a violation of Article 3 of the Convention;

3. *Holds* that there is no need to examine separately the complaint under Article 13 of the Convention;

4. *Holds* that there has been no violation of Article 14 of the Convention read in conjunction with Article 3 of the Convention;

5. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, which are to be converted into the national currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 1,000 (one thousand euros) in respect of non-pecuniary damage, plus any tax that may be chargeable to the applicant;
      (ii) EUR 6,250 (six thousand two hundred and fifty euros) in respect of costs and expenses, plus any tax that may be chargeable to the applicant;
   (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;

6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 25 June 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen	Christos Rozakis
Registrar	President