

Serbian authorities failed to conduct effective investigation into assaults likely motivated by religious hatred

In today's Chamber judgment in the case [Milanović v. Serbia](#) (application no. 44614/07), which is not final¹, the European Court of Human Rights held, by a majority, that there had been:

A violation of Article 3 (prohibition of torture and inhuman treatment) of the European Convention on Human Rights and

A violation of Article 14 (prohibition of discrimination) of the Convention taken together with Article 3

The case concerned the authorities' failure to prevent the repeated attacks on a member of the Hare Krishna community and to investigate properly those incidents.

Principal facts

The applicant, Života Milanović, is a Serbian national who was born in 1961 and lives in Belica (Jagodina Municipality, Serbia). Since 1984, he has been a leading member of the Hare Krishna Hindu community in Serbia. In 2000, he began receiving telephone threats and in 2001 informed the police of his impression that they came from members of a local branch of a far-right organisation called *Obraz*.

He was physically assaulted a number of times by unidentified men who cut or stabbed him with a knife, starting in 2001, and then again in the summer of 2005, 2006 and 2007, each time in the evening or at nighttime in the proximity of a relative's flat in the town of Jagodina. On each occasion, Mr Milanović or the hospital where he was provided with urgent care reported the incident to the police. Mr Milanović also informed the police that his attackers probably belonged to the local branch of the far-right organisation. The police questioned him and a number of potential witnesses and took some investigative steps, but failed to identify the perpetrators. They informed the Ministry of Internal Affairs that they had found no evidence that the organisations in question had ever existed in the municipality of Jagodina.

Two months after the incident in 2005, the police filed a criminal complaint against unknown perpetrators. From 2006 on, Mr Milanović was supported by a human rights organisation with which he jointly filed criminal complaints in respect of the 2005 incident and the subsequent ones, alleging that he was the victim of a crime motivated by religious hatred. During the investigation, Mr Milanović asked the police to question the head of a regional political party, as to whether any of his party's members were

¹ Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution

skinheads, and to visit a local church where allegedly the organisation *Obraz* had its premises. These steps did not yield any results. Having repeatedly requested an update on the status of the criminal complaints, Mr Milanović was informed by the public prosecutor's office that the police had failed to provide it with any information in this respect. In 2008, Mr Milanović further informed the judge in a preliminary investigation that he believed to have seen one of his attackers in the street, wearing a shirt with a reference to another far-right organisation.

In September 2009, the Chief Public Prosecutor petitioned the Constitutional Court to ban the suspected organisations, in particular because of their incitement to racial and religious hatred throughout Serbia.

In its records, the police noted on a number of occasions that Mr Milanović was a member of a "religious sect" and had a "strange appearance". In a report of April 2010, the police further noted that most of the attacks had taken place around a major orthodox religious holiday and that Mr Milanović had subsequently publicised these incidents in the media and thus "emphasised" his religious affiliation.

Complaints, procedure and composition of the Court

Relying on Articles 2 (right to life), 3 (prohibition of torture and inhuman treatment) and 13 (right to an effective remedy), Mr Milanović complained about the authorities' failure to prevent the repeated attacks on him and to investigate them properly. Under Article 14 taken together with Article 3, he further alleged that this failure was due to his religious affiliation.

The application was lodged with the European Court of Human Rights on 2 October 2007.

Judgment was given by a Chamber of seven, composed as follows:

Françoise **Tulkens** (Belgium), *President*,
Danutė **Jočienė** (Lithuania),
Dragoljub **Popović** (Serbia),
András **Sajó** (Hungary),
Nona **Tsotsoria** (Georgia),
Kristina **Pardalos** (San Marino),
Guido **Raimondi** (Italy), *Judges*,

and also Stanley **Naismith**, *Section Registrar*.

Decision of the Court

The Court had jurisdiction to examine the complaints only in so far as they concerned events as of 3 March 2004, when Serbia ratified the Convention. For reasons of context and in order to examine the situation complained of as a whole, it decided to take into account all relevant events prior to that date.

Article 3

The Court considered that the injuries suffered by Mr Milanović, consisting mostly of numerous cuts, combined with his feelings of fear and helplessness, were sufficiently serious to amount to ill-treatment within the meaning of Article 3. Many years after the attacks, the perpetrators had not been identified and brought to justice and Mr Milanović appeared not to have been regularly updated of the course of the investigation or given

an opportunity to possibly identify his attackers from among a number of persons questioned as witnesses and/or suspects by the police.

There had been shortcomings in the cooperation between the police and the public prosecutor and the investigation seemed to have focused on Jagodina despite the fact that the suspected far-right organisations were known for operating throughout the country. Mr Milanović's statement that one of his attackers, whom he identified in the street, may have been a member of another particular organisation did not seem to have been followed up at all. As from the second attack, it must have been clear to the police that Mr Milanović, being a member of a vulnerable religious minority, was systematically targeted and that future attacks were likely to follow. However, nothing had been done to prevent such attacks.

While the authorities had taken many investigative steps and had encountered significant difficulties, such as the apparent lack of eyewitnesses, the Court considered that they had not taken all reasonable measures to conduct an adequate investigation and they had failed to take effective steps in order to prevent Mr Milanović's repeated ill-treatment. There had thus been a violation of Article 3.

Article 14 taken together with Article 3

The Court considered that treating religiously motivated violence on an equal footing with cases that had no such overtones meant turning a blind eye to the specific nature of acts that are particularly destructive of fundamental rights. It was unacceptable that, being aware that Mr Milanović's attackers likely belonged to one or several far-right organisations, the authorities had allowed the investigation to last for many years without taking adequate action to identify or prosecute the perpetrators. The statements made by the police in their reports, referring to Mr Milanović's beliefs, his appearance and the fact that he had publicised the incidents in the media, implied that they had doubts as to whether he was a genuine victim in respect of his religion. As a consequence, although the authorities had explored several leads proposed by Mr Milanović concerning the motivation of his attackers these steps amounted to little more than a *pro forma* investigation. The Court therefore held that there had been a violation of Article 14 taken together with Article 3.

Other articles

In view of its findings under Article 3, the Court considered that it was not necessary to examine separately the identical complaints under Articles 2 and 13.

Article 41

Under Article 41 (just satisfaction), the Court held that Serbia was to pay the applicant 10,000 euros (EUR) in respect of non-pecuniary damage and EUR 1,200 in respect of costs and expenses.

Separate opinion

Judge Raimondi expressed a partly dissenting opinion, which is annexed to the judgment.

The judgment is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.