



## Croatian authorities' response to violent homophobic attack was ineffective

In today's Chamber judgment<sup>1</sup> in the case of [Sabalić v. Croatia](#) (application no. 50231/13) the European Court of Human Rights held, unanimously, that there had been:

**a violation of Article 3 (prohibition of inhuman or degrading treatment) in conjunction with Article 14 (prohibition of discrimination) of the European Convention on Human Rights.**

The case concerned Ms Sabalić's allegation that the authorities' response to a violent homophobic attack against her had been inadequate. She had been attacked in a nightclub when she had refused a man's advances, disclosing to him that she was a lesbian.

The Court found in particular that the minor-offence proceedings against the applicant's aggressor had not addressed the hate-crime element of the offence and had resulted in a derisory fine. Those shortcomings had amounted to a fundamental defect in the proceedings. It would therefore have been justified for the authorities to terminate or annul the minor-offence proceedings and to re-examine the case, instead of them rejecting the applicant's criminal complaint on grounds of double jeopardy.

### Principal facts

The applicant, Pavla Sabalić, is a Croatian national who was born in 1982 and lives in Zagreb.

On 13 January 2010 Ms Sabalić was attacked in a Zagreb nightclub by a man, M.M., when she refused his advances, adding that she was a lesbian. He severely beat and kicked her, while shouting 'All of you should be killed!' and 'I will f... you, lesbian!'. She sustained multiple injuries all over her body for which she was treated in hospital.

The aggressor was convicted in minor-offence proceedings of breach of public peace and order and given a fine of 300 Croatian kunas (approximately 40 euros (EUR)).

Ms Sabalić, who had not been informed of those proceedings, lodged a criminal complaint against M.M. before the State Attorney's Office, alleging that she had been the victim of a violent hate crime and discrimination.

The State Attorney's Office instituted a criminal investigation, but eventually rejected the criminal complaint in July 2011 because M.M. had already been prosecuted in the minor-offence proceedings and his criminal prosecution would therefore amount to double jeopardy. The domestic courts upheld this decision.

### Complaints, procedure and composition of the Court

Relying on Article 3 (prohibition of inhuman or degrading treatment) in conjunction with Article 14 (prohibition of discrimination), Ms Sabalić complained that the official response to the attack on her,

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](http://www.coe.int/t/dghl/monitoring/execution).

namely minor-offence proceedings, had not addressed the hate-crime element and had led to impunity for her aggressor. She also relied on Article 13 (right to an effective remedy).

The application was lodged with the European Court of Human Rights on 26 July 2013.

Third-party comments were received from the non-governmental organisation “Zagreb Pride”, and jointly from the non-governmental organisations the European Region of the International Lesbian, Gay, Bisexual, Trans and Intersex Association, the Advice on International Rights in Europe Centre and the International Commission of Jurists, who were granted leave to intervene in the case.

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

Krzysztof **Wojtyczek** (Poland), *President*,  
Ksenija **Turković** (Croatia),  
Linus-Alexandre **Sicilianos** (Greece),  
Alena **Poláčková** (Slovakia),  
Erik **Wennerström** (Sweden),  
Raffaele **Sabato** (Italy),  
Lorraine **Schembri Orland** (Malta),

and also Renata **Degener**, *Deputy Section Registrar*.

## Decision of the Court

### Articles 3 and 14

The Court reiterated that States had a duty under the Convention to take all reasonable steps when investigating violent incidents to ascertain whether discrimination had played a role. That duty also involved identifying, and if appropriate, adequately punishing those responsible for the violence.

Those Convention requirements had not been met in the applicant’s case, as the minor-offence proceedings against her aggressor had not addressed the hate-crime element of the offence.

Moreover, the aggressor had been sentenced to a derisory fine of approximately EUR 40, a sum manifestly disproportionate to the seriousness of the attack.

Even in terms of domestic law, the police, who had been aware from the start that M.M. had attacked the applicant when she had disclosed her sexual orientation to him, had had a duty to inform the competent State Attorney’s Office, but had failed to do so.

Overall, the Court found that responding to the attack through minor-offence proceedings had demonstrated that the State was not committed under the Convention to ensuring that homophobic violence was in no way tolerated; indeed, such a response had fostered a sense of impunity for acts of violent hate crime.

The Court noted the domestic authorities’ position that M.M.’s final conviction in the minor-offence proceedings had created a formal impediment to his criminal prosecution on the grounds of double jeopardy, and the Government’s argument that, on that basis, not implementing the effective criminal-law mechanisms in the case had been justified.

However, the domestic authorities had themselves brought about such a situation by unnecessarily instituting the ineffective minor-offence proceedings, thereby undermining the possibility of putting properly into practice the relevant provisions and requirements of domestic criminal law.

The Court reiterated that the principle of legal certainty in criminal matters was not absolute. Article 4 § 2 of Protocol No. 7 (right not to be tried or punished twice) of the Convention expressly permitted Contracting States to reopen a case to the detriment of an accused where, among other things, a fundamental defect had been detected in the proceedings.

In the applicant's case, the Court found that both the failure to investigate the hate motives behind the violent attack or to take into consideration such motives in determining the aggressor's punishment had amounted to "fundamental defects" in the proceedings within the meaning of Article 4 § 2 of Protocol No. 7.

The Court also noted that the domestic authorities could have put the situation right, for instance, by terminating or annulling the unwarranted set of minor-offence proceedings, voiding their effects, then re-examining the case.

In sum, the Court found that by instituting the ineffective minor-offence proceedings and erroneously discontinuing the criminal proceedings on formal grounds, the domestic authorities had failed to adequately and effectively comply with their procedural obligation under Article 3 in conjunction with Article 14 of the Convention.

Given those findings, the Court held that no separate issue arose under Article 13 of the Convention.

#### [Just satisfaction \(Article 41\)](#)

The Court held that Croatia was to pay the applicant 10,000 euros (EUR) in respect of non-pecuniary damage, and EUR 5,200 in respect of costs and expenses.

#### Separate opinion

Judge Wojtyczek expressed a partly concurring 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.