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

SECOND SECTION

DECISION

Application no. 22092/21
Denis RADOČAJ
against Croatia

The European Court of Human Rights (Second Section), sitting on 20 May 2025 as a Chamber composed of:

Arnfinn Bårdsen*, President*,
Saadet Yüksel,
Jovan Ilievski,
Anja Seibert-Fohr,
Davor Derenčinović,
Gediminas Sagatys,
Juha Lavapuro*, judges*,

and Hasan Bakırcı, *Section Registrar,*

Having regard to the above application lodged on 19 April 2021,

Having regard to the observations submitted by the Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Denis Radočaj, is a Croatian national, who was born in 2003 and lives in Udbina. He was represented before the Court by Ms I. Zlatić, a lawyer practising in Karlovac.

2. The Croatian Government ("the Government") were represented by their Agent, Ms Š. Stažnik.

A. Background to the case

3. Between August 2010 and August 2013, and between January 2014 and August 2015, the applicant lived with his father, M.R., his stepmother, Ma.R., and her son, T.R. In August 2015 Ma.R. and T.R. moved out and in the spring

of 2018 Ma.R. initiated a divorce from M.R. and was expecting a child with another partner.

4. On an unspecified date in 2012 Ma.R. reported M.R. to the police for, among other things, abuse contrary to the rights of the child set out in Article 177 of the Criminal Code (see paragraph 25 below). In his statement given to the police on 24 December 2012 the applicant stated that his father sometimes hit him with his hand or with a belt when he did something wrong or got a bad grade in school.

5. On 17 January 2013 the Gospić Social Welfare Centre issued a warning to the applicant's father concerning errors and deficiencies in his care and education of the applicant after M.R. himself had admitted that he occasionally used corporal punishment against the applicant, who was a minor at the time. M.R. was warned that corporal punishment was an inappropriate measure not to be used in the upbringing of children.

B. First criminal complaint

6. On 9 October 2018 the applicant and his half-brother, represented by M.R., lodged a criminal complaint with the police that they had been abused by Ma.R., the applicant's stepmother and the applicant's father's former spouse.

7. In his statement given on the same day, the applicant stated that while they were living together between 2010 and 2015, Ma.R. physically and verbally abused him on several occasions by calling him "a jackass and an idiot", pulling him by his hair and slapping him. He explained that he had informed his father of these incidents only several days before lodging the criminal complaint because Ma.R. had threatened to beat him if he said anything to his father.

8. On 15 October 2018 Ma.R. was interviewed by the police and she denied committing the criminal offence in question. She stated that in June 2018 she had asked for a divorce from M.R., which he did not want, and that he had then started reporting her to the police.

9. On 17 October 2018 the applicant was interviewed at the Korenica Police Station. His statement was largely the same as the allegations he had put forward in his criminal complaint (see paragraph 7 above). He also stated that he had no medical documentation in support of his accusations.

10. On an unspecified date the Gospić Social Welfare Centre prepared a report on the family (*socijalna anamneza*), including psychological testing of the applicant, his half-brother and their parents. The testing showed that Ma.R. was a stable, balanced and reasonable person, who formed warm and friendly relationships. She had a tendency of feeling guilty, so she was not inclined to punish others but rather to blame herself. She was careful and cautious in her relations with others because she was worried about what others thought of her and needed social approval. She felt misunderstood and

wrongly accused. At the same time, the psychological testing showed that the applicant's father was dissatisfied with his current situation in life, lacked self-confidence and was not good around people. He was an immature, unstable, narcissistic and egocentric person who was focused on himself. He was prone to punishing and blaming others for his problems, while not recognising the sources or consequences of his own behaviour. The applicant was described as overly depressive for his age, worried about the future and of low self-esteem. On the basis of continuous monitoring of the family, on-site inspections, counselling sessions, psychological evaluation and cooperation from the school and the relevant health institutions, the Social Welfare Centre concluded that the allegations made by the applicant's father had not been confirmed, and that the abuse for which he had reported Ma.R. had previously been found in his own disciplinary actions towards the applicant, on account of which the Centre had issued him a warning (see paragraph 5 above).

11. On 16 November 2018 the Social Welfare Centre imposed a measure of intensive expert assistance and supervision of parental care in respect of M.R., Ma.R. and the applicant's mother, with the aim of providing additional protection to the well-being of the applicant and T.R., Ma.R.'s son.

12. Following the above-mentioned criminal inquiries, on 2 January 2019 the Korenica Police Station forwarded to the Gospić Municipal State Attorney's Office a special report in which it informed it that no elements of the criminal offence of a violation of the rights of the child contrary to Article 177 of the Criminal Code had been established.

13. On 6 May 2019 the Gospić Municipal State Attorney's Office informed M.R. that the criminal inquiries conducted had not resulted in a reasonable suspicion that Ma.R. had committed a criminal offence.

14. Meanwhile, on 27 November 2018 Ma.R. was found guilty of a minor offence of domestic violence for banging on the door of M.R.'s flat and yelling at him on 29 June 2018. She was sentenced to 15 days' imprisonment, under section 10 of the Domestic Violence Act (see paragraph 27 below), suspended for six months.

C. Second criminal complaint

15. At M.R.'s initiative, on 14 May 2019, the multidisciplinary team of the Zagreb Child and Youth Protection Polyclinic examined the applicant and prepared a psychiatric and psychological report in which it concluded that the applicant had developed child abuse syndrome as a consequence of physical abuse by the stepmother and emotional abuse by both his father and his stepmother.

16. On 25 September 2019 the applicant, represented by his father, lodged another criminal complaint against Ma.R. for abuse of the applicant and T.R., submitting, *inter alia*, the above-mentioned multidisciplinary team's opinion

(see paragraph 15 above) and suicide notes allegedly written by Ma.R. He stated that the applicant had confided in him in 2018 that, while she had been living with them between 2010 and 2015, Ma.R. would slap him, pull him by his hair, shout at him and insult him numerous times, threatening him so that he would not tell his father. He also proposed that two witnesses be heard in support of his claims.

17. On an unspecified date, the Social Welfare Centre prepared a report on the manner of implementation of the measure of intensive expert assistance and supervision of parental care which had been imposed on both M.R. (the applicant's father) and Ma.R. (the applicant's stepmother) in respect of the applicant and T.R. (see paragraph 11 above).

The report noted that the measure had given positive results as regards Ma.R. in respect of T.R. and that she had been issued a milder measure of professional help and support. As regards M.R., the measure had not been successful as regarded T.R., as he had no personal contacts or emotional bond with the child and did not pay for his maintenance. In respect of the applicant, the measure had been successful in that his biological parents, M.R. and V.P., had maintained quality communication so that the measure was no longer applied.

18. On 6 March 2020 the police heard the witnesses proposed by M.R. Witness K.R., who was his neighbour, stated that some three years earlier she had seen Ma.R. beating the applicant and T.R. with a belt so that they would eat the food she had served them. Witness P.P., who was Ma.R.'s mother's former partner, stated that Ma.R. would often leave T.R. alone and go off with various men and that, in his view, she had been involved in prostitution. He also stated that she did not take good care of the children.

19. On 18 May 2020 the Gospić State Attorney's Office dismissed the applicant's criminal complaint, finding that there had been no reasonable suspicion that Ma.R. had abused the applicant or T.R. contrary to Article 179 (a) of the Criminal Code (see paragraph 25 below). The State Attorney examined the Social Welfare Centre's reports, the witness statements, the multidisciplinary team's report and the entire case file concerning the 2018 criminal complaint and concluded that there was no material or personal evidence to support the statements about the alleged abuse of the children. It also noted that the alleged abuse had occurred between 2010 and 2015 and that the criminal complaint had only been lodged in 2019. The applicant was instructed that he could take over the criminal prosecution in accordance with Article 55 § 5 of the Code of Criminal Procedure. He was also informed that, before an indictment could be filed, he had to request the first questioning of the suspect in accordance with Article 341 § 4 of the Code of Criminal Procedure.

20. On 29 May 2020 the applicant and T.R., represented by M.R., applied to the Karlovac County Court (*Županijski sud u Karlovcu*) to have the first questioning of Ma.R. conducted.

21. On 29 June 2020 the investigating judge of the Karlovac County Court dismissed their motion as ill-founded, concluding that there had been no indications that Ma.R. had committed the reported abuse, nor were there any witnesses or other indication to confirm the applicant's father's allegations.

22. On 13 July 2020 a three-judge panel of the County Court dismissed a subsequent appeal, concluding that the investigating judge had correctly concluded that there had been no reasonable suspicion that Ma.R. had committed the reported criminal offence. It also explained that the multidisciplinary team's report alone, in which the applicant had made allegations in the continuous presence of M.R., giving completely different information than that appearing in other relevant evidence and reports of the Social Welfare Centre, had been insufficient to confirm the applicant's allegations of abuse.

D. The applicant's constitutional complaint

23. On 21 August 2020 the applicant and T.R., represented by M.R., lodged a constitutional complaint against the above-mentioned ruling of the County Court. They alleged, *inter alia*, a violation of Article 3 of the Convention, arguing that there had been reasonable suspicion that Ma.R. had committed the criminal offence in question and that she should have at least been questioned in that connection.

24. On 6 October 2020 the Constitutional Court declared their constitutional complaint inadmissible because the County Court's ruling did not constitute an act amenable to constitutional review.

RELEVANT LEGAL FRAMEWORK

25. The relevant provisions of the Criminal Code (*Kazneni zakon* – Official Gazette o. 125/11 with subsequent amendments) provide as follows:

Article 177
Abuse of the rights of the child

"1. Parent ... or any other person who grossly violates the dignity of a child or causes the child to feel insecure, shall be punished by imprisonment for a term from one to three years.

2. Who abuses a child ... shall be punished by imprisonment for a term from one to three years."

Article 179a
Domestic violence

"Whoever seriously breaches the provisions on protection from domestic violence and thereby instils fear in his or her family member or a person close to him or her, or causes fear for that person's safety or the safety of another person close to him or her, or places

the person in a humiliating position, which does not amount to a more serious criminal offence, shall be punished by imprisonment for a term of up to three years."

26. The relevant provisions of the Code of Criminal Procedure (*Zakon o kaznenom postupku* – Official Gazette no. 152/08 with subsequent amendments) provide as follows:

Article 16

"1. In criminal proceedings, the victim and the injured person have the rights enshrined in this Act."

2. The police, the investigator, the State Attorney' Office and the court shall act with special consideration towards a victim of a criminal offence.

3. The authorities referred to in paragraph 2 of this Article shall inform the victim and the injured person of their rights in the proceedings in accordance with this Act, and, when taking actions, duly bear in mind their rights."

Article 206

"1. Upon the examination of a complaint ... the State Attorney shall reject a complaint by issuing a reasoned decision if it follows from the complaint itself that:

1) the reported offence is not a criminal act subject to public prosecution

...

4) there is no probable cause that the suspect committed the reported criminal offence;

5) the information in the complaint points to the conclusion that the report is not credible..."

27. The relevant provision of the Protection against Domestic Violence Act (*Zakon o zaštiti od nasilja u obitelji*, Official Gazette no. 70/17, with further amendments) provides as follows:

Section 10

"Domestic violence is:

1. physical violence

2. corporal punishment or other humiliating acts towards children

3. psychological violence which caused the victim a violation of dignity or disturbance

4. sexual abuse

5. economic abuse ..."

COMPLAINT

28. The applicant complained that the authorities had failed to effectively investigate his allegations of domestic abuse by his stepmother, in particular

by refusing to question the suspect and to take into account the multidisciplinary team's report confirming his abuse.

THE LAW

29. The applicant complained that the authorities had failed to effectively investigate his allegations of abuse, in breach of Article 3 of the Convention, which reads as follows:

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

A. The parties' submissions

1. The Government

30. The Government firstly submitted that the application had been lodged outside the six-month time limit, in that the applicant should have been aware that his constitutional complaint had not been an effective remedy in the circumstances and would be declared inadmissible. The decision of the Karlovac County Court had not concerned the merits of the case and had therefore not been amenable to constitutional review, a fact confirmed by the list of such acts available at the Constitutional Court's website.

31. Alternatively, the Government submitted that the applicant had failed to properly exhaust domestic remedies in that he had not lodged a constitutional complaint regarding ineffectiveness of the investigation against the decision of the State Attorney rejecting his criminal complaint.

32. As to the merits, the Government maintained that the investigation into the applicant's allegations of abuse by Ma.R. had been effective. The State Attorney's Office had taken into account all available materials, including the multidisciplinary team's report, as well as the fact that the abuse had been reported some four years after it had allegedly occurred. In the absence of any material or personal evidence confirming the applicant's allegations, the decision to reject the criminal complaint had been correct.

33. In the Government's view, it appeared from the case file that it had been the applicant's father, and not Ma.R., who had physically abused him, a fact which the applicant himself had confirmed in a statement given to the police in 2012 and which had also been admitted to by M.R., who had, as a result of those actions, been issued a warning by the relevant social welfare authorities.

34. The foregoing was further supported by the psychological testing of those involved, which showed that Ma.R. had been a stable, reasonable and warm person, whereas M.R. had been emotionally unstable, narcissistic and egocentric. Having continuously monitored the changes in the family, conducted on-site inspections, counselling sessions and psychological evaluations, and maintained contact with the school and doctors, the Social

Welfare Centre concluded that the allegations of abuse could not be confirmed and that the abuse for which Ma.R. had been reported had previously been found in M.R.'s disciplinary actions. Furthermore, T.R. had never expressed any misgivings about his mother.

35. The Government further pointed to the timing of the criminal complaint. On the one hand, it might have been linked to M.R.'s damaged relationship with his former spouse and the fact that she had asked to divorce him and had formed a new relationship with another man, with whom she was expecting a child. At the same time, it had not been plausible that the applicant had only confided in his father years after Ma.R. had moved out and that he had never had any visible signs of physical violence, even though he claimed that Ma.R. had slapped him on several occasions.

36. As to the questioning of Ma.R., the Government pointed out that she had been interviewed following M.R.'s first criminal complaint, lodged in 2018, when she had denied all accusations, and that the State Attorney had had access to that case file. Furthermore, there was no obligation in the domestic legislation to question a suspect before rejecting a criminal complaint.

37. The Government further maintained that the investigation had been independent, thorough and prompt. In particular, the statement of witness K.R. could not have been deemed relevant or to require further checks since it had referred to an event she had allegedly witnessed sometime in 2017, long after Ma.R. and T.R. had left the applicant's family home in 2015.

38. Lastly, the Government stressed that the State Attorney's conclusions on the absence of reasonable suspicion in relation to Ma.R. had been further upheld by the Karlovac County Court in twice refusing the applicant's motion to conduct the first questioning of the suspect.

2. The applicant

39. The applicant maintained that he had lodged his constitutional complaint at the earliest possible opportunity. He had not been required to file such a complaint against the State Attorney's decision to reject his criminal complaint, since the violation complained of had arisen from the fact that he, as the injured party, had been refused from taking over the criminal prosecution owing to the fact that the first questioning of the suspect had not been conducted.

40. The applicant maintained that the authorities had failed to prevent the consequences of his abuse by failing to take into account the multidisciplinary team's report and its findings, despite clear evidence that the abuse had taken place.

41. The applicant further complained that the investigation had been insufficient and incomplete, since the police had failed to question Ma.R. as a suspect, in accordance with the Code of Criminal Procedure, and had merely held an informal interview with her. This, in turn, had rendered the applicant

unable to take over the criminal prosecution as the injured party by filing an indictment, the precondition for which had been the first questioning of the suspect.

42. Moreover, the applicant, who had meanwhile become an adult, could now personally confirm how he had felt when he had been involved as a child in proceedings where none of the competent authorities had taken his allegations seriously, and had rather only focussed on the conflicted relationship between his father and his former spouse.

3. The Court's assessment

(a) General principles

43. The Court reiterates that where an individual claims on arguable grounds to have suffered acts contrary to Article 3 of the Convention, that Article requires the national authorities to conduct an effective official investigation to establish the facts of the case and identify and, if appropriate, punish those responsible. Such an obligation cannot be considered to be limited solely to cases of ill-treatment by State agents (see *S.Z. v. Bulgaria*, no. 29263/12, § 44, 3 March 2015, and *B.V. v. Belgium*, no. 61030/08, § 56, 2 May 2017).

44. The characteristics which an investigation into such matters must display to be seen as effective – including promptness, reasonable expedition, adequacy, thoroughness, objectivity and sufficient involvement of the victim – are set out in a number of cases relating to such issues (see, for example, *X and Others v. Bulgaria* [GC], no. 22457/16, §§ 185-190, 2 February 2021).

45. The Court has also outlined the considerations for its assessment of whether an investigation, when one is required, meets the requirements of adequacy and thoroughness (see, for a recapitulation, *Y v. Bulgaria*, no. 41990/18, § 82, 20 February 2020). In particular, it has stressed that that the variety of situations which might occur cannot be reduced to a bare checklist of investigative steps or other simplified criteria (see *Velikova v. Bulgaria*, no. 41488/98, § 80, ECHR 2000-VI; *Velcea and Mazăre v. Romania*, no. 64301/01, § 105, 1 December 2009; and *Mustafa Tunç and Fecire Tunç v. Turkey* [GC], no. 24014/05, § 176, 14 April 2015), since in this specific context each case turns on its own facts.

46. Lastly, the Court has also acknowledged the particular vulnerability of victims of domestic violence and the need for active State involvement in their protection (see *Bevacqua and S. v. Bulgaria*, no. 71127/01, § 65, 12 June 2008, and *Opuz v. Turkey*, no. 33401/02, § 132, ECHR 2009) and stressed that children and other vulnerable individuals were entitled to State protection, in the form of effective deterrence against serious breaches of personal integrity (see, for example, *M. and M. v. Croatia*, no. 10161/13, § 136, ECHR 2015 (extracts)). In cases where children might have been victims of abuse, compliance with the positive obligations arising out of

Article 3 of the Convention requires, in the context of the domestic proceedings, the effective implementation of children's right to have their best interests as a primary consideration and to have the child's particular vulnerability and corresponding needs adequately addressed (see *A and B v. Croatia*, no. 7144/15, § 111, 20 June 2019, and *M.M.B. v. Slovakia*, no. 6318/17, § 61, 26 November 2019; see also *M.G.C. v. Romania*, no. 61495/11, §§ 70 and 73, 15 March 2016).

(b) Application in the present case

47. The Court considers that it is not necessary to examine the admissibility objections raised by the Government, as the application is in any event inadmissible for the following reasons.

48. In the present case, the Court notes at the outset that the applicant, represented by his father, lodged a criminal complaint alleging that he had suffered abuse at the hands of his stepmother Ma.R. He had described the alleged abuse in detail, submitting a psychological and psychiatric report of the multidisciplinary team and proposing witnesses in support of his allegations.

49. In such circumstances, the Court considers that the Croatian authorities were faced with an "arguable" claim, within the meaning of the Court's case-law, of domestic abuse of a child by a private person, and that they had a duty under Article 3 of the Convention to take the necessary measures without delay to assess the credibility of those claims, and clarify the circumstances of the case (see *M.M.B. v. Slovakia*, cited above, § 66, and *B.V. v. Belgium*, cited above, § 66).

50. The Court further notes that the applicant did not complain that the authorities had failed to protect him from ill-treatment, as he had only reported the alleged abuse several years after it had purportedly taken place. His complaint, as formulated, concerned primarily the ineffectiveness of the criminal investigation following the criminal complaint lodged by his father on his behalf in 2019 and, in particular, the failure of the authorities to perform the first questioning of the suspect (see paragraph 39 above).

51. In that connection, the Court notes that, following the criminal complaint lodged by the applicant, the competent authorities immediately undertook a number of investigative steps with a view to verifying the allegations made. In particular, they obtained information and the results of psychological tests from the relevant social welfare authorities, who had followed the family for a number of years. They also interviewed witnesses and examined other material in the case file. Despite these efforts, however, the prosecuting authorities were unable to find any material or personal evidence that the alleged abuse had actually occurred. The Court reiterates in that connection that an obligation to investigate "is not an obligation of result, but of means": not every investigation should necessarily be successful or

lead to a conclusion which coincides with the claimant's account of events (see *M.P. and Others v. Bulgaria*, no. 22457/08, § 111, 15 November 2011).

52. In particular, it appears from the case file in the present case that the acts of which the applicant, represented by his father, had accused Ma.R., such as occasional physical violence, had in fact been committed by his father in the past, as admitted by the latter and documented by the relevant social welfare authorities (see paragraphs 4 and 5 above). Although the lodging of the complaint several years after the alleged incident had taken place did not release the authorities from their obligation under Article 3 to conduct a sufficiently thorough investigation (compare *A.P. v. the Republic of Moldova*, no. 41086/12, § 34, 26 October 2021), the Court considers that the prosecutor cannot be criticised for giving due weight to the fact that the criminal complaint had been lodged some four years after the alleged abuse had ceased and approximately one year after the applicant had allegedly disclosed the events to his father (see paragraph 19 above).

53. As to the applicant's specific argument that the authorities had never interviewed the suspect, Ma.R., the Court notes that, although such a step is indeed a common investigative measure, it is not mandatory under domestic law (see paragraph 26 above). Moreover, as the Court has frequently reiterated in its case-law, the requirements of adequacy and thoroughness of the investigation cannot be reduced to a mere checklist of investigative steps to be taken in order to meet the standards of Article 3 of the Convention (see the case-law cited in paragraph 45 above). In the present case, the Court is satisfied that, taken as a whole, the investigation met the standards of adequacy and thoroughness required by Article 3 of the Convention, despite the absence of a formal questioning of Ma.R., who had previously been interviewed in connection with an earlier criminal complaint lodged by the applicant (see paragraph 8 above).

54. Furthermore, the Court cannot agree with the applicant that the domestic authorities had failed to take into account the multidisciplinary team's report of 14 May 2019 (see paragraph 15 above). On the contrary, the three-judge panel of the Karlovac County Court provided detailed reasons, which the Court does not consider either arbitrary or inadequate, explaining why that report alone was insufficient to show a reasonable suspicion that the alleged abuse had actually occurred in the manner complained of (see paragraph 22 above).

55. The applicant did not raise any specific complaint about other aspects of the investigation, such as its promptness or timeliness and the Court identifies no deficiencies in that regard. To the extent that the applicant may be understood to complain of a failure of the prosecuting authorities to sufficiently include him in the proceedings, the Court notes that the applicant had the opportunity to present his account of the facts in his criminal complaint, before the multidisciplinary team and in his two oral statements to

the police in relation to his first criminal complaint (see paragraphs 7, 9, 15 and 16 above).

56. In the light of the foregoing, the Court, having carefully examined whether the particular investigation into the alleged child abuse satisfied all the guarantees required by the Convention, finds no lack of will on the part of the prosecuting authorities in fulfilling their duty to establish the facts and ensure accountability under domestic law. In particular, the Court considers that the steps taken by the authorities demonstrate a genuine effort to clarify the circumstances of the case and, where appropriate, to hold perpetrators of serious criminal offences to account.

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

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 12 June 2025.

Hasan Bakırcı Section Registrar	Arnfinn Bårdsen President