



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

SECOND SECTION

CASE OF BEUS v. CROATIA

(Application no. 16943/17)

JUDGMENT

STRASBOURG

21 March 2023

This judgment is final but it may be subject to editorial revision.

In the case of Beus v. Croatia,

The European Court of Human Rights (Second Section), sitting as a Committee composed of:

Pauliine Koskelo, *President*,

Lorraine Schembri Orland,

Davor Derenčinović, *judges*,

and Dorothee von Arnim, *Deputy Section Registrar*,

Having regard to:

the application (no. 16943/17) 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”) on 27 February 2017 by a Croatian national, Mr Ante Beus (“the applicant”), who was born in 1983 and lives in Split and who was represented by Ms S. Bezbradica Jelavić, a lawyer practising in Zagreb;

the decision to give notice of the complaints concerning the alleged lack of an appropriate procedural response by the domestic authorities in connection with homophobic violence against the applicant to the Croatian Government (“the Government”), represented by their Agent, Ms Š. Stažnik, and to declare the remainder of the application inadmissible;

the parties’ observations;

the decision to reject the Government’s objection to examination of the application by a Committee;

the decision of 22 February 2022 to reject the unilateral declaration presented by the Government;

Having deliberated in private on 28 February 2023,

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

SUBJECT MATTER OF THE CASE

1. The application concerns the alleged lack of an appropriate procedural response by the domestic authorities in connection with acts of homophobic violence against the applicant, who is a prominent figure in the local LGBTI community.

I. EVENTS PRIOR TO 10 MAY 2014

2. On 9 June 2013 the applicant complained to the police that a group of young men had shouted homophobic insults at him and his friend while they were passing by a school. The police interviewed the applicant, his friend, four minors who had been in the school playground, the school principal and the owner of a neighbouring bar. No suspects were identified.

3. On 13 June 2013 the applicant reported to the police that unknown persons were banging on his apartment door and insulting and threatening him. The police interviewed him and a friend who had been in his flat. They

stated that the perpetrators were probably from the same group which had insulted them a few days before near the school (see paragraph 2 above). The police then went to the school playground, where they found and established the identity of twelve persons including L.S., whom the applicant later identified as one of the attackers. L.S. denied any involvement in the incident. The police concluded that it would not be possible to identify any of the perpetrators.

4. On 26 February 2014 the applicant lodged a criminal complaint against two unknown persons who had followed, insulted and seriously threatened him on the street on several occasions. One of the men had thrown a plastic lighter at him. The police interviewed three people and tried unsuccessfully to obtain fingerprints from the lighter but were ultimately unable to identify any of the perpetrators.

II. EVENTS OF 10 MAY 2014

5. On 10 May 2014 the applicant and his friend were attacked on the street by several young men who made insulting remarks concerning LGBTI persons. The applicant was hit twice on his head and once on his body. The available medical documentation confirms that he had haematomas and swelling on his face.

6. The police, who were immediately informed, inspected the scene of the attack and interviewed a number of individuals who had been in the vicinity of the incident.

7. A police report indicated that an individual who wished to remain anonymous had stated that at the scene of the attack he had seen a group of young people from the neighbourhood, among whom he recognised F.Z., M.M. and T.B. The report did not indicate the name of the anonymous witness in question.

8. On 12 May 2014 in an identification parade, the applicant recognised F.Z. and M.M. as the attackers with 90% certainty and T.B. with 100% certainty. The applicant's friend recognised M.M. and T.B. with 100% certainty and F.Z. with 30% certainty.

9. On 24 July 2014 the police indicted M.M. and F.Z. in the Split Minor Offences Court under section 6 of the Minor Offences against Public Order and Peace Act for disturbing public order and peace.

10. At the same time, the police lodged a criminal complaint with the Split Municipal State Attorney's Office against M.M. and F.Z. for serious threats with a hate crime element.

11. No action was taken against T.B., as it was considered that he had a strong alibi for the time when the incident had occurred.

12. On 27 August 2014 the State Attorney's Office rejected the criminal complaint. It found that F.Z. had an alibi for the time when the incident had occurred and that the outcome of the identification parade, as the sole

evidence, had not been reliable since the victims had only recognised T.B. as one of the attackers with 100% certainty, and T.B. had a strong alibi.

13. On 29 February 2016 the Split Minor Offences Court found M.M., who was a minor at the time, guilty of a breach of public peace and order for shouting insults and physically attacking the applicant. The court also imposed an educational measure of thirty hours' community service and ordered M.M. to make an apology to the applicant. At the same time, the court acquitted F.Z., holding that he had an alibi.

14. At the applicant's request, the police appealed against the first-instance judgment, submitting that, considering his previous criminal record, M.M. had been punished too leniently.

15. On 2 May 2016 the High Minor Offences Court dismissed the appeal, finding that M.M., who was a minor at the time of the commission of the offence, had been adequately punished and noting that the police had submitted no evidence as regards his previous criminal record.

16. The applicant then lodged a constitutional complaint, relying on Articles 3, 8 and 14 of the Convention, arguing that the relevant authorities had failed to react appropriately to the homophobic violence to which he had been subjected.

17. On 19 October 2016 the Constitutional Court declared the applicant's complaint inadmissible on the grounds that the matter did not concern any of his rights or obligations or a criminal charge against him.

18. In order to facilitate an apology from M.M. to the applicant in person, it appears that several appointments were organised at the local social welfare centre which M.M. failed to attend. Instead, a written apology was delivered to the applicant. M.M. apparently performed his community service in the first half of 2018.

III. OTHER ACTS OF VIOLENCE

19. On 16 August 2014 the applicant reported that two men had threatened to kill him at a bus station. The police informed him that they were unable to identify the perpetrators.

20. On 11 June 2015 the applicant reported to the police that he had been subjected to two further attacks. On one occasion, he had been threatened in connection with his complaints against M.M.

IV. COMPLAINT TO THE OMBUDSPERSON

21. The applicant complained to the Ombudsperson for Gender Equality that the relevant authorities had failed to react appropriately to the acts of homophobic violence to which he had been subjected.

22. On 23 January 2017 the Ombudsperson sent a letter to the police criticising their conduct with regard to the incidents in which the applicant

had been the victim of homophobic violence. She identified a number of omissions in the relevant investigations which had impeded the possibility of any meaningful prosecution of the perpetrators. Specifically, as regards the incident of 13 June 2013, the Ombudsperson noted that no fingerprints had been taken and none of the neighbours had been interviewed. In respect of the incident of 10 May 2014, the Ombudsperson criticised the police for not having established the identity of an anonymous witness whose statement might have been decisive for the outcome of the case. She therefore recommended a number of actions which needed to be taken in order to address the issue more comprehensively in future.

V. COMPLAINTS BEFORE THE COURT

23. Relying on Articles 3, 8 and 14 of the Convention, the applicant complained of a lack of an appropriate procedural response by the domestic authorities to the acts of homophobic violence to which he had been subjected.

THE COURT'S ASSESSMENT

I. ADMISSIBILITY

24. The Court notes at the outset that the applicant was a victim of numerous verbal attacks and threats in connection with his sexual orientation and that one of the incidents also involved a physical attack on him by several men. The treatment described by the applicant, which was directed at his identity and undermined his integrity and dignity, must have thus aroused in him feelings of fear, anguish and insecurity reaching the requisite threshold of severity to fall under Article 3 of the Convention (compare *Sabalić v. Croatia*, no. 50231/13, § 70, 14 January 2021, and the cases cited therein).

25. The Court, being the master of the characterisation to be given in law to the facts of the case (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 114, 20 March 2018), considers that the present case falls to be examined under Article 14 taken in conjunction with Article 3 of the Convention (compare *Sabalić*, cited above, § 92).

26. Furthermore, the Court cannot accept the Government's contention that the complaint is inadmissible for non-exhaustion of domestic remedies in that the applicant should have requested information on the actions taken under Article 206 (a) of the Code of Criminal Procedure or that he should have taken over the criminal prosecution after the State Attorney's Office had decided not to bring criminal charges against the suspects, since a criminal investigation into a violent hate crime should have been conducted as a matter of course (compare *Škorjanec v. Croatia*, no. 25536/14, § 46, 28 March 2017; see also *V.D. v. Croatia (no. 2)*, no. 19421/15, §§ 55-61, 15 November 2018,

and *Tadić v. Croatia*, no. 10633/15, § 43, 23 November 2017, concerning allegations of ill-treatment by State agents).

27. Lastly, the Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. It must therefore be declared admissible.

II. MERITS

28. The relevant principles concerning the adequacy of the State's procedural response to violent homophobic attacks have been summarised in *Sabalić* (cited above, §§ 63-70 and 90-98).

29. In the present case, following the verbal and physical attack on the applicant on 10 May 2014, the police, who had immediately responded at the scene, established that the applicant had been subjected to threats and had sustained physical injuries as a result of a violent attack by several men uttering homophobic insults (see paragraph 5 above). These initial findings sufficed as prima facie indications of violence motivated or at least influenced by the applicant's sexual orientation (compare *Sabalić*, cited above, § 105, and the cases cited therein). According to the Court's case-law, this required the effective application of domestic criminal-law mechanisms capable of elucidating the possible hate motive with homophobic overtones behind the violent incident and of identifying and, if appropriate, adequately punishing those responsible (*ibid.*).

30. The police then filed a complaint against the two suspects with the State Attorney's Office for threatening the applicant, and another complaint with the Minor Offences Court for disturbing public order and peace. The State Attorney decided not to prosecute the suspects because T.B. and F.Z. had had alibis and the latter had been recognised with only 90% certainty by the applicant. Despite the fact that M.M. had no alibi and had been recognised with 90% certainty by the applicant and 100% certainty by his friend, the State Attorney considered the identification parade to be unreliable evidence and dismissed the criminal complaint against M.M., without explaining why no criminal proceedings had ever been instituted against him.

31. On the other hand, the Minor Offences Court found M.M. guilty on the basis of the same evidence. It sentenced him to community service and ordered him to make an apology, while at the same time acquitting F.Z.

32. Although it is not for the Court to address issues of domestic law concerning individual responsibility, the Court observes that the minor-offence proceedings did not in any manner address the hate crime element to the physical attack against the applicant, nor was M.M. indicted or convicted of any charges related to violence motivated by discrimination (compare *Sabalić*, cited above, § 108, and the cases cited therein).

33. Moreover, the Court notes that in the minor-offence proceedings M.M. was ordered to perform community service and to make an apology, a

sentence which, it appears, was not enforced until more than two years after his conviction. In the Court's view, such a sentence, despite M.M. being a minor at the relevant time, was manifestly disproportionate to the gravity of the ill-treatment suffered by the applicant (compare *Identoba and Others v. Georgia*, no. 73235/12, § 75, 12 May 2015, and *Stoyanova v. Bulgaria*, no. 56070/18, § 68, 14 June 2022).

34. The Court further notes that M.M.'s conviction and his very lenient punishment in minor-offence proceedings was the only concrete result of the authorities' efforts to identify the perpetrators of a number of attacks on the applicant over a period of two years. As regards the remaining incidents, the police were never able to identify any of the perpetrators. Although the State's investigative obligation is one of means and not of result, the Court cannot but note the numerous flaws in their investigations, as identified in the Ombudsperson's report (see paragraph 22 above), including the failure to take fingerprints, interview neighbours and obtain the personal information of the witness who wished to remain anonymous. As a consequence, the police responses to the applicant's numerous complaints could be regarded as responses fostering a sense of impunity for the acts of harassment and violent hate crime to which the applicant was subjected at the hands of private individuals, rather than as a procedural mechanism showing that such acts could in no way be tolerated (compare *Sabalić*, cited above, § 111, and the cases cited therein).

35. The foregoing is sufficient for the Court to conclude that there has been a violation of Article 14 in conjunction with Article 3 of the Convention under its procedural aspect in the present case.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

36. The applicant claimed 30,000 euros (EUR) in respect of non-pecuniary damage and approximately EUR 5,400 in respect of costs and expenses incurred before the domestic courts and those incurred before the Court.

37. The Government contested those claims.

38. The Court awards the applicant EUR 10,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

39. Having regard to the documents in its possession, the Court considers it reasonable to award EUR 3,000 covering costs under all heads, plus any tax that may be chargeable to the applicant.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 14 taken in conjunction with Article 3 of the Convention;
3. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months, the following amounts:
 - (i) EUR 10,000 (ten thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 3,000 (three thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
 - (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;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 21 March 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Dorothee von Arnim
Deputy Registrar

Pauliine Koskelo
President