



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

FIRST SECTION

CASE OF SANDRA JANKOVIĆ v. CROATIA

(Application no. 38478/05)

JUDGMENT

STRASBOURG

5 March 2009

FINAL

14/09/2009

This judgment may be subject to editorial revision.

In the case of Janković 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,

Dean Spielmann,

Sverre Erik Jebens,

Giorgio Malinverni, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 12 February 2009,

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

PROCEDURE

1. The case originated in an application (no. 38478/05) 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, Ms Sandra Janković (“the applicant”), on 18 September 2005.

2. The applicant, who was granted legal aid, was represented by Mrs I. Bojić, a lawyer practising in Zagreb. The Croatian Government (“the Government”) were represented by their Agent, Mrs Š. Stažnik.

3. The applicant alleged that the State had failed to protect her from an act of violence and that the civil proceedings she had instituted had breached the reasonable-time requirement.

4. On 24 January 2008 the Court declared the application partly inadmissible and decided to communicate to the Government the applicant’s complaints under Articles 3 and 8 of the Convention concerning her alleged lack of protection from an act of violence, as well as her complaint under Article 6 § 1 of the Convention about the length of civil proceedings instituted by her. It 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

5. The applicant was born in 1964 and lives in Split. She is unemployed and unwaged.

A. Civil proceedings instituted by the applicant

6. From October 1996 the applicant occupied a room and common premises of a privately owned flat in Split together with other tenants. On 2 August 1999 the applicant found that the lock of the entrance door to the flat had been changed and that her belongings had been removed from the flat. The applicant called the police, who drew up a report. On 3 August 1999 the applicant brought a civil action in the Split Municipal Court (*Općinski sud u Splitu*) against two individuals, M.P. and I.P., seeking protection against the disturbance of her occupation of a room and common premises in the flat.

7. After a first-instance judgment by default of 16 September 1999 had been quashed at a hearing held on 9 November 1999 before the Split Municipal Court, subsequent hearings were held on 21 December 1999, 22 February, 28 March, 3 May and 7 June 2000, when a fresh judgment, allowing the applicant's claim, was adopted. It was, however, quashed by the Split County Court (*Županijski sud u Splitu*) on 17 August 2000 and the case was remitted to the Municipal Court.

8. In the fresh proceedings the Municipal Court held hearings on 7 June, 5 September and 22 November 2001 and 22 January, 26 February, 3 April and 14 May 2002. On this latter date a judgment ordering that the applicant was to regain her co-occupation of the flat in question was adopted. A subsequent appeal by the defendants was declared inadmissible in a decision of the Split Municipal Court, adopted on 24 May 2002, which was upheld by the Split County Court on 7 March 2003.

9. Since the defendants in the civil proceedings had failed to comply with the judgment of 14 May 2002, the applicant applied to the Split Municipal Court on 31 March 2003, seeking an enforcement order. The order was issued on 10 April 2003. The defendants lodged an appeal. The execution of the order was scheduled for 5 June 2003. It was duly carried out. However, on 6 June 2003 the applicant was thrown out of the flat (see paragraph 13 below). Accordingly, on 2 July 2003 she requested the Split Municipal Court to resume the enforcement proceedings.

10. On 26 August 2004 the Split County Court allowed the defendants' appeal, quashed the enforcement order of 10 April 2003 and remitted the case to the Split Municipal Court. The latter, on 18 March 2005, invited the applicant to amend her request. The applicant submitted an amended request on 26 April 2005. On 29 March 2007 the Municipal Court again invited the applicant to amend her request. The applicant submitted the amended request on 13 April 2007. On 24 April 2007 the Municipal Court invited the applicant to adjust her request within eight days. On 8 January 2008 the Split Municipal Court dismissed the applicant's request for the enforcement proceedings to be resumed.

B. Remedies used by the applicant in respect of the length of the proceedings

11. On 9 August 2002 the applicant complained to the Constitutional Court (*Ustavni sud Republike Hrvatske*) about the length of the civil proceedings described above. In a decision of 18 March 2005 the Constitutional Court dismissed the complaint as ill-founded, finding that the proceedings had been concluded within a reasonable time.

12. On 10 April 2007 the applicant lodged a complaint about the length of the enforcement proceedings with the Split County Court. On 31 March 2008 the County Court allowed the complaint, found a violation of the applicant's right to a hearing within a reasonable time, awarded her 5,000 Croatian kunas (HRK) in compensation and ordered the Municipal Court to complete the enforcement proceedings within three months, although in fact those proceedings had already ended with the Split Municipal Court's decision of 8 January 2008. The County Court examined the length of the enforcement proceedings with reference to the period from 31 March 2003 until 31 March 2008.

C. Minor-offences proceedings

13. On 6 June 2003, the day after the applicant had regained possession of the flat in question, she was attacked by three individuals, two women and a man, upon her arrival in front of the flat. During the incident of 6 June 2003 the police were called and arrived on the scene. They interviewed the applicant and drew up a report. The relevant part of the report reads as follows:

“[The applicant] stated that at about 8 p.m. she had been verbally and physically attacked by three individuals when she had attempted to enter a flat ... The attackers had pulled her hair, hands and clothes and thrown her down the stairs from the first floor. They had also insulted her by shouting obscenities ... She further stated that they had threatened to kill her if she came back.

...

There were visible bruises and contusions on Sandra's right hand and her shirt was torn at the back. She asked for medical assistance after the interview.

...”

14. On 10 June 2003 the police lodged a complaint with the Split Minor-Offences Court against three individuals, including J.M., for disturbance of public peace and order, alleging that they had physically attacked the applicant, kicked her entire body, pulled her by the hair and pushed her down the stairs, all the while shouting obscenities at her. The first hearing in the proceedings was held on 4 February 2005.

15. In a decision of 11 May 2005 the Split Minor-Offences Court found all three defendants guilty of insulting the applicant with defamatory expressions and sentenced them to a fine in the amount of HRK 375. As to

allegations of the physical assault on the applicant they found that there were insufficient evidence in that respect.

16. However, this decision did not become final since the applicant lodged an appeal, complaining that the Minor-Offences Court had not addressed her allegations of physical assault. On 8 June 2005 the same Minor-Offences Court terminated the proceedings on the ground that the prosecution in respect of the offences with which the defendants were charged had meanwhile become time-barred. The applicant lodged an appeal. Both appeals lodged by the applicant were dismissed on 12 February 2007 by the High Minor-Offences Court.

D. Criminal proceedings instituted by the applicant

17. In a detailed criminal complaint of 2 October 2003 filed against seven individuals with the Split Municipality State Attorney's Office (*Općinsko državno odvjetništvo Split*) the applicant alleged, *inter alia*, that on 6 June 2003 at about 8 p.m., when she had arrived in front of the flat in question, three individuals, J.M., N.M and J.M.L., had come out of the flat, shouting at her and preventing her from entering the flat. They had attacked her physically, insulted her and threatened her, telling her not to come back or she would disappear and "be disposed of". The applicant also submitted medical evidence showing that she had sustained blows to her elbow and tailbone.

18. In a decision of 11 November 2003 the State Attorney's Office decided not to open an official investigation on the ground that the act in question qualified as a criminal offence of inflicting bodily injuries of a lesser nature and that a prosecution for that offence had to be brought privately by the victim. The decision, *inter alia*, stated:

"In her criminal complaints [the applicant] stated that on 6 June 2003 about 8 p.m. in front of a flat in Split ..., the suspects had verbally attacked her and insulted her, kicked her with their hands and legs all over her body, pulled her hair and pushed her down the stairs while J.M. had also threatened her not to come back to the flat or otherwise she would disappear.

..."

The applicant was also instructed to proceed accordingly and to lodge within eight days a request for an investigation with a Split County Court investigation judge.

19. The applicant complied with the said instruction on 3 December 2003 and submitted a request to a Split County Court investigation judge seeking to have an investigation opened in connection with the above event. She sought an investigation in respect of seven individuals, including J.M., N.M. and J.M.L., listing their names and addresses. She proceeded to describe the event in question in detail, specifying the acts carried out by her three attackers. She made a list of evidence in support of her allegations, including medical documentation about the injuries she had sustained and the police report issued on 6 June 2003. She further alleged that these acts

constituted, *inter alia*, the criminal offence of making threats under Article 129 of the Criminal Code and the criminal offence of violent behaviour under Article 331 of the same Code. She specified her allegations in respect of each of the individuals concerned.

20. On 5 January 2005 the Municipal Court invited the applicant to amend her request within eight days so as to include a description of the offence, the legal classification of the offence and circumstances showing that there was a well-founded suspicion that the individuals in question had committed criminal offences, as well as evidence supporting her allegations. On 26 January 2005 the applicant submitted an amended request, repeating in essence the same allegations as in her initial request. In her further submissions of 30 May 2005 the applicant submitted some documents from the minor-offences proceedings.

21. On 19 September 2005 the Split County Court investigation judge declared the applicant's request for an investigation (*istažni zahtjev oštećene kao tužiteljice*) inadmissible. The relevant part of this decision reads:

“The injured party, acting as subsidiary prosecutor (*oštećena kao tužitelj*), has lodged with this court a request for an investigation in respect of J.M. and others ...

Pursuant to Article 71, paragraph 3, of the Code of Criminal Procedure, this court invited the injured party acting as subsidiary prosecutor on 5 January 2005 and once again orally, to amend her request and warned her that it would be declared inadmissible if she did not comply with the instruction within the set time-limit. The injured party acting as subsidiary prosecutor answered both calls but has failed to amend her request for an investigation in accordance with the court's instruction. The court considers the injured party's submission incomprehensible and incomplete. Therefore, it has to be declared inadmissible pursuant to Article 71, paragraph 3, of the Code of Criminal Procedure.”

22. On 16 January 2006 the applicant lodged an appeal against the above decision with the Split County Court. She claimed that she had fully complied with the instructions given in the court's letter of 5 January 2005 amending her initial request for an investigation so that it contained all the necessary information. She further contended that she had never received an oral invitation. On 9 February 2006 the Split County Court dismissed the applicant's appeal, finding that “the submissions lodged by the subsidiary prosecutor are incomprehensible and incomplete”. The applicant lodged a further appeal against that decision.

23. On 23 April 2007 the applicant also complained to the Supreme Court (*Vrhovni sud Republike Hrvatske*) about the length of the criminal proceedings. On 20 September 2007 the applicant's complaint was dismissed and she was instructed to lodge such a complaint with the Constitutional Court. On 21 November 2007 the applicant lodged a complaint about the length of proceedings with the Constitutional Court, before which it is still pending.

24. The applicant's appeal was declared inadmissible by the Split County Court on 17 June 2008. On 23 June 2008 the applicant lodged a fresh appeal, which is still pending.

II. RELEVANT DOMESTIC LAW

25. The relevant parts of the Criminal Code (*Kazneni zakon*, Official Gazette no. 110/1997) read as follows:

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) It may be exceptionally provided by law that criminal proceedings in respect of certain criminal offences should be instituted upon a private prosecution or that the State Attorney’s Office should institute criminal proceedings upon [a private] application.”

BODILY INJURY

Article 98

“Whoever inflicts bodily injury to another person or impairs another person’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 private prosecution.”

THREAT

Article 129

“(1) Whoever threatens another person with harm in order to intimidate or disturb that person shall be fined up to one hundred and fifty monthly wages or sentenced to imprisonment for a term not exceeding six months.

(2) Whoever seriously threatens to kill another person ... shall be fined or sentenced to imprisonment for a term not exceeding one year.

...

(4) Criminal proceedings for the criminal offences defined in paragraphs 1 and 2 of this Article shall be instituted upon [a private] application.”

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 from one to eight years.”

VIOLENT BEHAVIOUR

Article 331

“Whoever for such purposes as violent abuse, ill-treatment or particularly insolent behaviour in public submits another person into a degrading position shall be sentenced to imprisonment for a term from three months to three years.”

26. 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 as follows:

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.”

Article 13 obliges the court conducting the criminal proceedings to instruct a participant in those proceedings who may be ignorant in such matters about his or her rights and the consequences of a failure to undertake a requisite procedural step.

Articles 47 to 61 regulate the rights and duties of a private prosecutor and of an injured party acting as a subsidiary prosecutor. The Criminal Code distinguishes between these two roles. A private prosecutor (*privatni tužitelj*) is the 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.

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 ... it shall be considered that he or she has also 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 upon a private prosecution, the criminal complaint or the request to prosecute shall be treated as a timely private prosecution if they have 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 the party’s right to take over the proceedings, as well as to instruct that party on the steps to be taken.

Article 60

“... ”

(2) Where the criminal proceedings are conducted upon a request by the injured party acting as a subsidiary prosecutor in respect of a criminal offence punishable with more than three years’ imprisonment, he or she may ask to have legal counsel appointed free of charge where this is in the interests of the proceedings and where the injured party lacks the means to bear the expenses of legal representation ...”

Article 71

“(1) Private prosecutions, bills of indictment, requests to prosecute, legal remedies and other statements and information shall be submitted in writing unless otherwise provided by law.

(2) The submissions referred to in paragraph 1 shall be comprehensible and contain the necessary information for the authorities to act upon them.

(3) Unless otherwise provided in this Act, the court conducting the proceedings shall invite a person who has made submissions which do not contain the necessary information or are incomprehensible to supplement them. Where the submissions have not been amended as required, the court shall declare them inadmissible.

(4) In its invitation to amend the submissions, [the court conducting the proceedings] shall warn the person concerned about the consequences of not complying with the instruction.”

Article 172

“(1) Citizens shall report criminal offences subject to public prosecution.

...”

Article 173

“(1) A [criminal] complaint shall be lodged with the competent State Attorney’s [Office] in writing or orally.

...”

Article 174

“Where the allegations set out in the criminal complaint do not concern a criminal offence subject to public prosecution, the competent State Attorney shall declare it inadmissible in a reasoned decision ...”

Article 188 governs, *inter alia*, the required contents of a request for an investigation, namely: identification of the person in respect of whom the request is submitted, a description and the legal classification of the offence at issue, the circumstances confirming a reasonable suspicion that the person concerned has committed the offence at issue, and the existing evidence.

Article 205, paragraph 1, allows a private prosecutor and the injured party acting as a subsidiary prosecutor to lodge with an investigation judge of a competent court a request for prosecution and other submissions.

THE LAW**I. ALLEGED VIOLATION OF ARTICLES 3 AND 8 OF THE CONVENTION**

27. Relying on Articles 3 and 8 of the Convention, the applicant complained about the failure of the domestic authorities to afford her adequate protection from an act of violence. The Court considers that in the particular circumstances of the present case these complaints fall to be examined under Article 8 of the Convention, which reads, in so far as relevant:

“1. Everyone has the right to respect for his private ... life ...

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

28. The Government contested that argument.

A. Admissibility

1. *Compatibility* *ratione materiae*

29. The Government firstly submitted that Article 8 was not applicable in the present case. They argued that the relationship between the act of violence in question and the applicant's private and family life was too remote to fall within the scope of that Article since the event complained of had not created any continuous situation which would have affected the applicant's private or family life. In the Government's view, the applicant did not belong to any of the vulnerable categories which required special protection. The alleged attack on the applicant had not lasted for a prolonged period of time and the State authorities could not have been aware that the applicant was a victim of violence. Furthermore, the Government argued that the facts as submitted by the applicant could not be accepted as established since the national courts had found that the applicant had been subjected only to verbal violence.

30. The applicant had no doubts that Article 8 was applicable in the present case. She argued that she belonged to a vulnerable category as being a single woman in patriarchal surroundings. She stressed particular circumstances of the present case: that she had been attacked in the building where she had lived; that when attacked she had been alone, while there had been several attackers; that she had been pushed down the stairs, which had been very dangerous; that one of her attackers had spat at her, which showed loathing and hatred; that she had been hit and insulted verbally.

31. The Court must determine whether the right asserted by the applicant falls within the scope of the concept of "respect" for "private life" set forth in Article 8 of the Convention. In the Court's view there is no doubt that the events giving rise to the present application pertain to the sphere of private life within the meaning of Article 8 of the Convention. Indeed, the physical and moral integrity of an individual is covered by the concept of private life. The concept of private life extends also to the sphere of the relations of individuals between themselves. There appears, furthermore, to be no reason of principle why the notion of "private life" should be taken to exclude attacks on one's physical integrity (see *X and Y v. the Netherlands*, 26 March 1985, § 23, Series A no. 91).

The facts of the case accordingly fall within the ambit of Article 8.

2. *Exhaustion of domestic remedies*

32. The Government further 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 could have brought a civil action for damages in respect of the injuries and fears she had suffered. They further argued that the applicant could have brought a private prosecution against the attackers.

33. The applicant argued that the case of *Duchonova* (cited above) was not comparable to the present case in view of the gravity of the offences at issue. Furthermore, a civil claim for damages was not an adequate remedy for the violation alleged. The only adequate forms of redress in respect of an act of violence were criminal-law sanctions. As regards criminal proceedings, she argued that she had taken all the necessary steps to have the attackers criminally prosecuted.

34. 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).

35. The Court notes firstly that from the Government's submissions concerning a civil action for damages it is not clear against whom such an action is to be brought. As to their referral 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 therefore, the case of *Duchonova* is not comparable to the present case, which concerns physical violence against the applicant.

36. The Court notes further that it would be very difficult for the applicant to prove her case in the event of her bringing civil proceedings against the alleged attackers, seeking damages for the injuries sustained, without their prior criminal conviction. However, even assuming that the applicant could have obtained damages in civil proceedings, the Court is inclined to believe that effective deterrence against attacks on the physical integrity of a person requires efficient criminal-law mechanisms that would ensure adequate protection in that respect (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, § 50, ECHR 2003-XII).

37. As to the Government's arguments concerning the possibility of a private prosecution, the Court observes that the applicant complained to the public prosecutor of the treatment to which she claimed to have been subjected. Furthermore, acting as a subsidiary prosecutor, she lodged with a court a request for an investigation in respect of her attackers. In the Court's view, these remedies could have resulted in the identification and the punishment of those responsible. The applicant must therefore be regarded as having brought the substance of her complaint to the notice of the national authorities and as having sought redress through the national channels for her complaint.

38. The Court finds that this part of the application 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' arguments

39. The applicant argued that the national authorities had failed to afford her adequate protection against violence inflicted by private individuals. In that connection she maintained that Croatian criminal law was insufficient when it came to privately inflicted violence. It denied her adequate protection since the attackers had not been prosecuted by the State Attorney's Office of its own motion and her attempts for pursuing her criminal complaint against her attackers remained futile. She further argued that her request for an investigation had been comprehensible and contained all the required information. The competent investigation judge had failed to instruct her about the precise alleged insufficiencies of her request.

40. As regards the minor-offences proceedings, the applicant argued that these proceedings had not at all concerned the physical assault on her, but only verbal abuse, and that they had been terminated because the prosecution had become time-barred. In this connection she pointed out that the statutory limitation for a minor offence was two years and that the Split Minor-Offences Court had scheduled the first hearing for 4 February 2005, about a year and a half after the event in question had taken place, thus causing the prosecution to become time-barred after a short period.

41. The Government argued that the Convention did not guarantee the right to have criminal proceedings instituted against third persons. They argued that in the present case the police had reacted promptly and submitted a request for minor-offences proceedings to be instituted against the attackers. In those proceedings all the relevant facts had been established and it had been concluded that the individuals in question had only verbally abused the applicant. They further maintained that the State's positive obligations could not require the criminal prosecution of the attackers or their conviction. Therefore, the fact that the police had requested the institution of minor-offences proceedings had been sufficient.

42. The competent State Attorney's Office had concluded that the applicant had sustained bodily injuries of a lesser nature and that there had been no need for it to institute criminal proceedings against the offenders of its own motion. Furthermore, the applicant had had the possibility of bringing a private prosecution, which she had failed to do. Instead, she had submitted an incomprehensible request for an investigation, which had been declared inadmissible.

43. The Government admitted that the applicant could have had difficulties in complying with the strict formal requirements of the rules of criminal procedure. However, she could have sought legal aid from the

Croatian Bar Association or the State authorities, which she had failed to do.

2. *The Court's assessment*

44. While the essential object of Article 8 is to protect the individual against arbitrary action by the public authorities, there may in addition be positive obligations inherent in effective “respect” for private and family life and these obligations may involve the adoption of measures in the sphere of the relations of individuals between themselves (see, *mutatis mutandis*, *X and Y v. the Netherlands*, cited above, §§ 23-24, and *Mikulić v. Croatia*, no. 53176/99, § 57, ECHR 2002-I and 27).

45. As regards respect for private life, the Court has previously held, in various contexts, that the concept of private life includes a person's physical and psychological integrity. Under Article 8 the States have a duty to protect physical and moral integrity of an individual from other persons. To that end they are to maintain and apply in practice an adequate legal framework affording protection against acts of violence by private individuals (see *X and Y v. the Netherlands*, cited above, §§ 22 and 23; *Costello-Roberts v. the United Kingdom*, 25 March 1993, § 36, Series A no. 247-C; *D.P. and J.C. v. the United Kingdom*, no. 38719/97, § 118, 10 October 2002; *M.C. v. Bulgaria*, cited above, §§ 150 and 152; and *Bevacqua and S. v. Bulgaria*, cited above, § 65).

46. The Court reiterates that its task is not to substitute itself for the competent Croatian authorities in determining the most appropriate methods for protecting the individuals from the attacks on their personal integrity, but rather to review under the Convention the decisions that those authorities have taken in the exercise of their power of appreciation. The Court will therefore examine whether Croatia, in handling the applicant's case, has been in breach of its positive obligation under Article 8 of the Convention (see, *mutatis mutandis*, *Handyside v. the United Kingdom*, 7 December 1976, § 49, Series A no. 24).

47. As to the present case, the Court notes that the applicant alleged that three individuals had confronted her in front of the flat in question and shouted obscenities at her, and one of them had kicked her several times, pulled her by her clothes and hair and thrown her down the stairs. The medical documentation shows that the applicant sustained blows to her elbow and tailbone. The Court attaches importance to the fact that the attack occurred in connection with the applicant's attempt to enter a flat in respect of which she had obtained a court decision allowing her to occupy it. That decision was enforced with the assistance of the court's officials only a day before the event in question. The attackers also threatened to kill her if she returned. The Court considers that acts of violence such as those alleged by the applicant require the States to adopt adequate positive measures in the sphere of criminal-law protection. 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).

48. As to the criminal-law mechanisms provided in the Croatian legal system the Court notes that violent acts committed by private individuals are prohibited in a number of separate provisions of the Criminal Code. The Court observes further that the Croatian criminal law distinguishes between criminal offences to be prosecuted by the State Attorney's Office, either of its own motion or upon 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. The Court also notes that the applicant alleged that the acts of violence committed against her constituted, *inter alia*, the criminal offences of violent behaviour and making threats. Prosecution in respect of both these offences is to be undertaken by the State Attorney's Office, of its own motion in the case of the former offence and on a private application in the case of the latter.

49. The Court further observes that the Croatian legal system also envisages the injured party acting 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 upon 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. Furthermore, a criminal complaint lodged in due time in respect of a criminal offence subject to private prosecution is to be treated as a private prosecution (see Article 48(3) of the Code of Criminal Procedure).

50. In the specific circumstances of the present case, without overlooking the importance of protection from attacks on one's physical integrity, the Court cannot accept the applicant's arguments that her Convention rights could be secured only if the attackers were prosecuted by the State and that the Convention requires State-assisted prosecution. In this connection the Court is satisfied that in the present case domestic law afforded the applicant a possibility to pursue the prosecution of her attackers, either as a private prosecutor or as the injured party in the role of a subsidiary prosecutor, and that the Convention does not require State-assisted prosecution in all cases.

51. The Court will next 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 8 of the Convention.

52. The Court notes that in her criminal complaint of 2 October 2003, filed with the Split Municipality State Attorney's Office, the applicant had

already submitted a very detailed description of the events in question, alleging that they entailed a number of offences. When she was informed that the State Attorney's Office had declined to prosecute of its own motion, the applicant, pursuant to the relevant provisions of the Code of Criminal Procedure, lodged a request for an investigation with the competent investigation judge of the Split County Court. As to the Government's contention that the applicant should have brought a private prosecution against the three attackers on charges of causing bodily injury of a lesser nature, the Court notes that the act of violence in question could have been differently classified under domestic law. In her initial criminal complaint, as well as in her subsequent request for an investigation, the applicant, *inter alia*, alleged that the acts against her constituted the criminal offences of violent behaviour and making serious threats. These allegations were corroborated with a detailed description of the acts in question, which consisted in her being kicked and pushed by three individuals, who shouted insults and obscenities at her and threatened her, saying that she would disappear and be disposed of if she were to come back. In the Court's view, the applicant's opinion that these acts went beyond the criminal offence of causing bodily injury of a lesser nature might not have been seen as unfounded. Therefore, the applicant's decision not to bring a private prosecution on the charges of causing bodily injury of a lesser nature but instead to request an investigation against her attackers on charges of violent behaviour and making serious threats was in compliance with the rules of the Code of Criminal Procedure concerning the role of the injured party as a subsidiary prosecutor.

53. The Court observes next that in her initial request for an investigation the applicant had already made it clear that she sought an investigation, *inter alia*, into her allegations that on 6 June 2003 three individuals had attacked her. She named the individuals concerned and listed their addresses. She alleged that the acts of violence against her constituted, *inter alia*, the criminal offences of making threats and violent behaviour. She submitted relevant medical documentation in support of her allegations. However, the domestic authorities declared her request inadmissible as being incomplete, without specifying exactly what formal requirements were not met.

54. It might be true that the applicant's submission did not strictly follow the exact form required for requests lodged with the State Attorney's Office in criminal proceedings. In this connection the Court notes that the applicant was not legally represented in the proceedings at issue. She is unemployed and obviously lacking the means for legal representation at her own expense. Furthermore, under the relevant provisions of the Code of Criminal Procedure (Article 60), the applicant had no right to legal aid since the alleged criminal offences did not carry a sentence of imprisonment exceeding three years.

55. The Court also notes that there had already been a police report on the incident, which also described the acts of violence against the applicant, and that the Split Municipality State Attorney's Office had also produced an

account of the event in question. Therefore, it is difficult to accept the conclusion of the Split County Court investigation judge that the applicant's request for an investigation was to be dismissed on the grounds that it was incomprehensible and incomplete. On the contrary, the Court finds that the applicant had made it clear that she was seeking an investigation into an act of violence against her. She showed great interest in her case and made serious attempts to have the attackers prosecuted. Her submissions were sufficient to enable the competent investigation judge to proceed upon her request. They contained all the information required under Article 188(3) of the Code of Criminal Procedure, namely the identification of the person against whom the request was submitted, a description and the legal classification of the offence at issue, the circumstances confirming a reasonable suspicion that the person concerned had committed the offence at issue, and the existing evidence.

56. As to the Government's assertion that the applicant had failed to bring a private prosecution, the Court notes that the applicant did lodge a timely criminal complaint with the Split Municipality State Attorney's Office (see paragraph 17 above). On 11 November 2003 that office decided not to open an official investigation on the ground that the act in question qualified as a criminal offence for which a prosecution had to be brought privately by the victim (see paragraph 18 above). Under Article 48(3) of the Code of Criminal Procedure, in these circumstances the applicant's criminal complaint had to be treated as a private prosecution (see paragraph 25 above). However, the competent authorities completely ignored that rule and failed to proceed with the applicant's criminal complaint.

57. The above analysis shows firstly that the relevant State authorities decided not to prosecute the alleged perpetrators of an act of violence against the applicant. Furthermore, the relevant authorities did not allow the applicant's attempts at a private prosecution. Lastly, as to the Government's contention that adequate protection was given to the applicant in the minor-offences proceedings, the Court notes that those proceedings were terminated owing to statutory limitation and were thus concluded without any final decision on the attackers' guilt. In view of these findings, the Court holds the view that the decisions of the national authorities in this case reveal inefficiency and a failure to act on the part of the Croatian judicial authorities.

58. 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 attack on her physical integrity and showed that 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 8 of the Convention.

59. In view of that finding, the Court considers that no separate issue remains to be examined under Article 3 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

60. The applicant also complained about the length of the civil and enforcement proceedings she had instituted in the Split Municipal Court. She relied on Article 6 § 1 of the Convention, the relevant part of which reads as follows:

“In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ...”

61. The Government contested that argument.

A. Admissibility

62. The Court notes at the outset that the applicant complained about the length of the proceedings in question, firstly to the Constitutional Court about the length of the civil proceedings and then to the Split County Court about the length of the enforcement proceedings. While the former dismissed the applicant's complaint, the latter on 31 March 2008 allowed her complaint, awarded her HRK 5,000 in compensation and ordered the Split Municipal Court to complete the enforcement proceedings within six months. In view of these findings, the question arises whether the applicant can still be regarded as a victim of the violation alleged.

63. The Court notes firstly that the Split County Court examined only the length of the enforcement proceedings. At that time the enforcement proceedings had been pending for five years at two levels of jurisdiction. The compensation awarded by the County Court does not correspond to what the Court would have been likely to award under Article 41 of the Convention in respect of the same period. It therefore cannot be regarded as adequate in the circumstances of the case (for the principles established in the Court's case-law, see *Cocchiarella v. Italy* [GC], no. 64886/01, §§ 65-107, ECHR 2006-V, and *Scordino v. Italy (no. 1)* [GC], no. 36813/97, §§ 178-213, ECHR 2006-V). In these circumstances the applicant has not lost her status as a victim within the meaning of Article 34 of the Convention.

64. Having regard to the above facts, the Court considers that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It also notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

65. The applicant argued that the length of the proceedings which had commenced in August 1999 had been excessive. She maintained that the civil and enforcement proceedings were to be regarded as a whole.

66. The Government submitted that there were two separate sets of proceedings: the civil proceedings, which had ended in March 2003, and the enforcement proceedings, which had commenced in May 2003. In the

Government's view the Court should examine only the length of the latter set of proceedings. They admitted that the applicant had not contributed to the length of these proceedings and that they had not been complex. However, the relevant authorities had shown due diligence and complied with the reasonable-time requirement.

67. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicants and the relevant authorities and what was at stake for the applicants in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

68. The Court considers that the period to be taken into consideration began on 2 August 1999, when the applicant brought her civil action in the Split Municipal Court. It notes that the civil proceedings ended on 7 March 2003. The Court further notes that on 31 March 2003 the applicant sought an enforcement order in the Split Municipal Court. In this connection the Court reiterates that the execution of a judgment given by any court must be regarded as an integral part of the "hearing" for the purposes of Article 6 (see *Hornsby v. Greece*, 19 March 1997, § 40, *Reports* 1997-II, and *Plazonić v. Croatia*, no. 26455/04, § 47, 6 March 2008). Accordingly, the Government's argument that there were two different sets of proceedings cannot be accepted.

69. The proceedings ended on 8 January 2008. Thus, in total, they lasted eight years, five months and six days. Both the civil and the enforcement proceedings were examined at two levels of jurisdiction. As to the civil proceedings, the Court notes firstly that under the relevant national law, proceedings concerning disturbance of possession are of an urgent nature. Despite that, it took the national courts more than three years and seven months to conclude the case. In this connection the Court emphasises the Government's submission that the applicant herself did not contribute at all to the length of those proceedings. The Court notes further that the enforcement proceedings lasted fifty-seven months. Even the Split County Court admitted that the length of the enforcement proceedings was excessive.

70. Having examined all the material submitted to it, the Court finds that in the instant case the length of the proceedings was excessive and failed to meet the "reasonable time" requirement. In view of the above considerations, the Court concludes that there has been a breach of Article 6 § 1 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

71. 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

72. The applicant claimed 30,000 euros (EUR) in respect of non-pecuniary damage.

73. The Government deemed the applicant's claim for just satisfaction unfounded and excessive.

74. 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 3,000 in respect of non-pecuniary damage, plus any tax that may be chargeable to her.

B. Costs and expenses

75. The applicant also claimed HRK 19,300 for her legal representation before the Court and HRK 745.95 for other costs and expenses incurred before the Court.

76. The Government made no comments.

77. The Court considers that the amount claimed is not excessive in light of the nature of the dispute, particularly given the complexity of the case. It therefore considers that the applicant's costs and expenses should be met in full and thus awards her EUR 2,820, less EUR 850 already received in legal aid from the Council of Europe, plus any tax that may be chargeable to her.

C. Default interest

78. 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 remainder of the application admissible;
2. *Holds* that there has been a violation of Article 8 of the Convention;
3. *Holds* that there is no need to examine the complaint under Article 3 of the Convention;
4. *Holds* that there has been a violation of Article 6 § 1 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 3,000 (three thousand euros) in respect of non-pecuniary damage, plus any tax that may be chargeable to the applicant;
 - (ii) EUR 2,820 (two thousand eight hundred and twenty euros) in respect of costs and expenses less EUR 850 (eight hundred and fifty euros), 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 5 March 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the concurring opinion of Judge Spielmann is annexed to this judgment.

C.L.R.
S.N.

CONCURRING OPINION OF JUDGE SPIELMANN

1. I cannot agree with the reasoning expressed in paragraph 50 of the judgment that:

“[i]n the specific circumstances of the present case, without overlooking the importance of protection from attacks on one’s physical integrity, the Court cannot accept the applicant’s arguments that her Convention rights could be secured only if the attackers were prosecuted by the State and that the Convention requires State-assisted prosecution. In this respect the Court is satisfied that in the present case domestic law afforded the applicant a possibility to pursue the prosecution of her attackers, either as a private prosecutor or as the injured party in the role of a subsidiary prosecutor, and that the Convention does not require in all cases State-assisted prosecution.”

2. The attack by the three individuals in the present case was handled by the State authorities under the problematic so-called “minor-offences proceedings”.

3. It should, however, be recalled that the applicant’s interview reads as follows (see paragraph 13 of the judgment):

“[The applicant] stated that at about 8 p.m. she had been verbally and physically attacked by three individuals when she had attempted to enter a flat ... The attackers had pulled her hair, hands and clothes and thrown her down the stairs from the first floor. They had also insulted her by shouting obscenities ... She further stated that they had threatened to kill her if she came back.

...

There were visible bruises and contusions on Sandra’s right hand and her shirt was torn at the back. She asked for medical assistance after the interview.”

4. Her grave allegations are also summed up in paragraph 47 of the judgment:

“As to the present case, the Court notes that the applicant alleged that three individuals had confronted her in front of the flat in question and shouted obscenities at her, and one of them had kicked her several times, pulled her by her clothes and hair and thrown her down the stairs. The medical documentation shows that the applicant sustained blows to her elbow and tailbone. The Court attaches importance to the fact that the attack occurred in connection with the applicant’s attempt to enter a flat in respect of which she had obtained a court decision allowing her to occupy it. That decision was enforced with the assistance of the court’s officials only a day before the event in question. The attackers also threatened to kill her if she returned.”

5. In the context of the particular circumstances of the case, I fail to understand how the Court could reject the applicant’s arguments that her Convention rights could be secured only if the attackers were prosecuted by the State. Indeed, the unacceptable behaviour of the three individuals involved not only verbal attacks including threats to life, but also very serious attacks on the physical integrity of the applicant as evidenced through medical documentation. Therefore, in my view, the positive obligations under the Convention do require State-assisted prosecution as an effective and robust response to the alleged attacks.