



Failure to properly investigate alleged anti-Roma hate crime

In June 2013, two men racially abused the applicant's partner on the basis of his Roma origin, before attacking both him and the applicant herself. The two assailants were prosecuted and convicted on charges that included a hate crime against the applicant's partner. However, the men were not charged for a racially motivated crime against the applicant herself. The authorities rejected her complaint of a hate crime, finding that there was no indication that the men had attacked her because of hatred towards Roma, as she is not of Roma origin. The applicant complained to the European Court of Human Rights of a lack of an effective procedural response of the Croatian authorities in relation to a racially motivated act of violence against her.

In today's **Chamber judgment**¹ in the case of **Škorjanec v. Croatia** (application no. 25536/14) the Court held, unanimously, that there had been a **violation of Article 3 (prohibition of inhuman or degrading treatment) in conjunction with Article 14 (prohibition of discrimination)** of the European Convention on Human Rights.

Under Convention case law, a person may be a victim of a violent hate crime not only when they have been attacked because they themselves have a certain characteristic - but also when they are attacked because they have an actual or presumed association with another person, who has (or is perceived to have) that characteristic. States have an obligation to recognise both types as hate crimes, and investigate them accordingly. However, in this case the Croatian authorities repeatedly failed to take the necessary care in identifying the violence against the applicant as a suspected hate crime. By rejecting the applicant's criminal complaint, the authorities failed in their obligations under the Convention.

Principal facts

The applicant, Maja Škorjanec, is a Croatian national who was born in 1988 and lives in Zagreb. In June 2013, she was walking with her partner in a market in Zagreb. Two men started uttering various racial insults against Ms Škorjanec's partner, on the grounds of his Roma origin. He was then chased by the two men, who caught him and beat him. Ms Škorjanec maintained that, when she went to her partner's aid, she was pushed to the floor and kicked in the head.

The two assailants were prosecuted and convicted on charges of making serious threats against Ms Škorjanec's partner and inflicting bodily harm on him, associated with a hate crime element. However, the men were not charged for committing a racially motivated crime against Ms Škorjanec. The couple lodged a criminal complaint, where Ms Škorjanec claimed that she had also been a victim of a hate crime. However, the Zagreb Municipal State Attorney's Office rejected it on the grounds that there was no indication that the men had attacked Ms Škorjanec because of hatred towards Roma, as she is not of Roma origin.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day. Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

Complaints, procedure and composition of the Court

Relying on Articles 3 (prohibition of inhuman or degrading treatment), 8 (right to private and family life) and 14 (prohibition of discrimination), Ms Škorjanec complained in particular of the failure to prosecute her attackers for a hate crime against her. She maintained that domestic law and practice was deficient, as it did not provide protection against discriminatory violence for individuals who were victims due to their association with another person.

The application was lodged with the European Court of Human Rights on 20 March 2014.

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

Işıl Karakaş (Turkey), *President*,
Julia Laffranque (Estonia),
Nebojša Vučinić (Montenegro),
Paul Lemmens (Belgium),
Ksenija Turković (Croatia),
Jon Fridrik Kjølbro (Denmark),
Stéphanie Mourou-Vikström (Monaco),

and also Stanley Naismith, *Section Registrar*.

Decision of the Court

[Article 3 \(prohibition of inhuman or degrading treatment\) in conjunction with Article 14 \(prohibition of discrimination\)](#)

Convention principles

When investigating violent incidents triggered by suspected racist attitudes, State authorities are required to take all reasonable action to ascertain whether there were racist motives and whether feelings of hatred or prejudice based on ethnicity played a role. Treating racially motivated violence on an equal footing with cases lacking any racist overtones would be tantamount to turning a blind eye to the specific nature of acts which are particularly destructive of fundamental human rights, and may constitute unjustified treatment irreconcilable with Article 14. In this connection, not only acts based solely on a victim's characteristics can be classified as hate crimes. Article 14 also covers cases in which the adverse treatment of an individual relates to another person's status or protected characteristics. Under Article 3 taken in conjunction with Article 14, the obligation on the authorities to seek a possible link between racist attitudes and a given act of violence concerns not only acts of violence based on a victim's actual or perceived personal status or characteristics, but also acts of violence based on a victim's actual or presumed association or affiliation with another person who actually or presumably possesses a particular status or protected characteristic.

Adequacy of domestic law

The Croatian Criminal Code explicitly describes hate crime as an aggravating circumstance, both in relation to the particular offence of causing bodily injury, and for criminal acts in general. Furthermore, it is sufficient under the Criminal Code for a hate crime to be committed on the grounds of or out of racial hatred, without requiring the victim to personally hold the protected characteristic or status. The Croatian legal system therefore provided the applicant with adequate legal mechanisms to afford an acceptable level of protection in the circumstances.

Adequacy of the authorities' actions in this case

Whilst the appropriate legal provisions were in place for the recognition of the attack against Ms Škorjanec as a suspected hate crime, the way in which the criminal-law mechanisms were

implemented in practice was defective to the point of constituting a violation of the Convention.

In the course of the initial investigation by police, Ms Škorjanec and her partner both gave statements suggesting that the former had fallen victim to a racially motivated attack due to the fact that she had been in the company of the latter. Nevertheless, the authorities failed to properly consider the possibility that Ms Škorjanec had been the victim of a hate crime. The authorities also refused to investigate whether a hate crime had been committed against her, after she had made specific allegations of racially motivated violence against her in her criminal complaint; and after further information came to light in the course of the criminal proceedings against the attackers, suggesting that she had been the victim of racially motivated violence.

The Court reiterated its subsidiary role to that of the national courts, and that it is mindful that it is prevented from substituting its own assessment of the facts for that of the national authorities. Nevertheless, the Court noted that the prosecuting authorities' insistence on the fact that Ms Škorjanec herself was not of Roma origin and their failure to identify whether she was perceived by the attackers as being of Roma origin herself, as well as their failure to take into account and establish the link between the racist motive for the attack and Ms Škorjanec's association with her partner, resulted in a deficient assessment of the circumstances of the case.

That impaired the adequacy of the domestic authorities' procedural response to Ms Škorjanec's allegations to an extent that is irreconcilable with the State's obligation of taking all reasonable steps to unmask the role of racist motives in the incident. The Court was forced to the conclusion that the domestic authorities failed in their obligations under the Convention when rejecting Ms Škorjanec's criminal complaint without conducting further investigation prior to their decision. There had therefore been a violation of Article 3 under its procedural aspect in conjunction with Article 14.

Just satisfaction (Article 41)

The Court held that Croatia was to pay the applicant 12,500 euros (EUR) in respect of non-pecuniary damage and EUR 2,200 in respect of costs and expenses.

The judgment is available only in English.

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