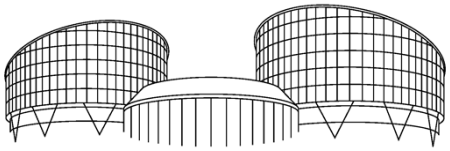

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF J.I. v. CROATIA

(Application no. 35898/16)

JUDGMENT

Art 3 (procedural) • Failure to effectively investigate alleged death threats against vulnerable rape victim by her abuser and father, in breach of domestic law

STRASBOURG

8 September 2022

FINAL

30/01/2023

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of J.I. v. Croatia,

The European Court of Human Rights (First Section), sitting as a Chamber composed of:

Marko Bošnjak, *President,*
Péter Paczolay,
Krzysztof Wojtyczek,
Alena Poláčková,
Erik Wennerström,
Ioannis Ktistakis,
Davor Derenčinović, *judges,*
and Renata Degener, *Section Registrar,*

Having regard to:

the application (no. 35898/16) 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 J.I. ("the applicant"), on 17 June 2016;

the decision to give notice of the application to the Croatian Government ("the Government");

the decision not to have the applicant's name disclosed;

the observations submitted by the respondent Government and the observations in reply submitted by the applicant;

the comments submitted by the European Roma Rights Centre, who were granted leave to intervene by the President of the Section;

Having deliberated in private on 7 June 2022 and 28 June 2022,

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

INTRODUCTION

1. The applicant's father was imprisoned on several counts of rape and incest against her. During his prison leave, he had allegedly threatened to kill the applicant through their relatives because he held her responsible for his imprisonment. The applicant complained about the inadequacy of the authorities' response to her allegations of serious threat by her father, maintaining that she had been discriminated against on the basis of her Roma origin.

THE FACTS

2. The applicant was born in 1988 and lives in Zagreb. She was represented by Mrs S. Bezbradica Jelavić, a lawyer practising in Zagreb.

3. The Government were represented by their Agent, Mrs Š. Stažnik.

4. The facts of the case, as submitted by the parties, may be summarised as follows.

I. BACKGROUND OF THE CASE

5. On 12 May 2009 the applicant's father, B.S., was convicted and sentenced to eight years' imprisonment on charges of multiple acts of rape and incest against the applicant. He was also found guilty in minor-offence proceedings for domestic violence. He was sent to serve his prison sentence in L. prison.

6. The applicant underwent comprehensive psychological treatment related to the trauma of the events. In 2014 she changed her name, hair style and appearance.

7. In January 2015 B.S. was granted a prison privilege in the form of leave to a nearby town. On 6 June 2015 he was granted leave to his habitual place of residence.

8. On an unspecified date, the applicant learned from her relatives that B.S. had been granted prison leave, was looking for her and had threatened to kill her because in his view she was responsible for his imprisonment. The relatives warned the applicant to stay away from the part of town where B.S. was staying during his prison leave.

II. THE APPLICANT'S CONTACTS WITH THE POLICE

9. On 11 August 2015 at 9.45 p.m. the applicant called the emergency help line and said that she was afraid to walk around town because her rapist, B.S., had allegedly escaped from prison and was allegedly threatening her through some relatives.

10. According to the Government, immediately after receiving the applicant's call, at 9.51 p.m. the police checked with the prison authorities whether B.S. had escaped. At 9.55 p.m. they were informed that he had not escaped but had used prison leave and had returned to prison earlier that day at 6.30 p.m. Also, no irregularities had been reported concerning his prison leave. The applicant was informed of the established facts and told to contact the nearest police station in case B.S. tried to contact her personally. According to the applicant, she had asked the police officer whether she needed to report the threats at a police station but was told that "it made no sense to file a report since nothing had actually happened".

11. The applicant subsequently moved to another part of town and stopped going for meetings at a social welfare centre located in the area where B.S. stayed when on prison leave.

12. On 3 September 2015 the applicant saw B.S. standing at a bus station. As soon as she saw him, she ran into a shop, from where she called the police, and two male police officers arrived 12 minutes later. The applicant told them that her rapist, B.S., was outside, that he had threatened to kill her through their relatives and that she was too scared to go out of the shop although she had a ticket for a 2.00 p.m. bus. The police officers then went to talk to B.S.,

who stated that he had not seen the applicant or threatened her and that she was probably making that up so that he would no longer be granted prison leave. Both B.S. and the applicant were then accompanied by the police officers to their respective buses, ensuring that there was no contact between them.

13. According to the applicant, the attitude of the intervening police officers towards her, as a person of Roma origin, was dismissive; they were brusque and arrogant and did not respond to her pleadings to give her a glass of water. They also made comments that they would have a lot of paperwork to do as a result of her call, whereas it had been the end of their shift. To her query whether it was necessary to report the threats to the competent police station, the police officers said it was not because she had just reported them.

14. According to the Government, the police officers found the applicant visibly disturbed and crying. They asked the shop employees for two glasses of water, which the applicant drank. They expressly told the applicant to report B.S.'s threats to the competent police station should she consider them to be serious.

15. The relevant part of the official police report on the intervention drawn up on 13 October 2015 by officers D.M., M.J. and M.B. reads as follows:

> "Arriving to ... [the Main Bus Station] at 1.05 p.m., I found [the applicant] who stated that ... she saw her father, B.S., who was serving his prison sentence because he had raped her, [and] that he had threatened, through some aunts, to kill her when he sees her, which is why she immediately ran to the basement of the bakery and called the police, because she was too afraid to go out.
>
> [Along with the meanwhile arrived colleagues], ... we found B.S. who stated that he was serving his prison sentence ... and was on two-day prison leave...
>
> As regards threats to his daughter, [B.S.] stated that he never had threatened anyone, that he had eight more months of prison term left and that she was doing that so that he would not be able to [continue benefitting from prison leave].
>
> [B.S.] was accompanied to his bus ..., as was [the applicant], and she was informed to report the threats to the police if she considered them serious...".

III. THE APPLICANT'S COMPLAINT ABOUT POLICE WORK

16. On 11 September 2015 the applicant complained in writing to the sentence-execution centre of the V. County Court and the Ministry of Justice's Prison Administration about the threats made by B.S. and the fact that he had been granted prison leave to his place of residence. She requested that his prison leave be suspended.

17. The sentence-execution judge replied that she was not competent to examine matters related to privileges granted to prisoners.

18. On 23 September 2015 the applicant submitted a request with the L. prison that B.S. not be granted prison leave. On 2 October 2015 the prison administration replied that, according to the information at their disposal, B.S.

had not been suspected of any criminal offence during his prison leave and there was no information that the applicant had lodged a criminal complaint against him. At the same time, the prison administration suspended B.S.'s previously granted, but not yet taken, leave to his place of residence.

19. Meanwhile, on 22 September 2015, the applicant complained to the Internal Department of the Ministry of the Interior about the conduct of the police officers on 11 August and 3 September 2015, claiming that it had been unlawful, and requesting that her complaint concerning B.S.'s serious threats be forwarded to the competent State Attorney's Office for further action.

20. On 28 September 2015 the applicant's complaint was forwarded to the Service for the Lawfulness of Conduct of the Z. Police Department, which obtained written statements from the police officers who had been involved in the interventions on the dates in question. Her complaint concerning B.S.'s serious threats was not forwarded to the competent State Attorney's Office.

21. On 23 October 2015 the police internal control unit replied to the applicant that there had been no omissions or misconduct in the work of the police officers.

22. On 26 October 2015 the Z. Police Department filed a full report on the police conduct in relation to the events of 11 August and 3 September 2015, which, insofar as relevant, reads as follows:

> "As per your request and bearing in mind [the applicant's] complaints, we inform you that the conducted inquires did not confirm the allegations of the complaint, which we therefore deem ill-founded. The conducted inquiries showed no omissions, unlawful acts or inappropriate behaviour on behalf of the police officers who had intervened in the events in question.
>
> Namely, as regards the actions taken on 11 August 2015, ... it has been established that on the day in question at 9.45 p.m.... a female made a call to the [Z. police] ... saying that she wanted advice related to events which had taken place six years ago, when she was raped by her father B.S., who according to her knowledge had escaped from L. Prison... [The applicant] continued that she had heard from her aunts that on this day (11 August 2015) her father had attended a barbecue at his sisters' in D., and that she was afraid of him although he did not threaten her in person.
>
> The police operator informed ... [her superior], who [checked with the competent authorities and established that B.S. had been released on prison leave ... and that he returned to L. Prison on 11 August 2015]. ...
>
> ...[The police operator informed the applicant] ... about the established fact that her father was in L. Prison, and advised her to call [the emergency help line] or the closest police station if her father was to contact her in any way...
>
> ...
>
> As regards the actions taken on 3 September 2015, ... at 12.53 p.m. the Z. Police station received a call from [the applicant] requesting police intervention, saying that she was at the Z. Main Bus Station where she was hiding from her father who was on [prison leave]. ...
>
> Arriving to the scene... at 1.05 p.m., officer D.M. found ... [the applicant]... who stated that ... she was in the bakery because she saw her father B.S., who was serving his

prison sentence in L. Prison for having raped her, and who had threatened her, via some aunts, that he would kill her when he finds her, which is why she immediately ran to the basement of the bakery and asked for police help, because she was scared. ...

[Two more police officers arrived at the scene and spoke to B.S.]..."

23. The applicant then lodged a constitutional complaint with the Constitutional Court (*Ustavni sud Republike Hrvatske*) complaining about the failure of the domestic authorities to protect her from intimidation and repeat victimisation by B.S., and about their failure to effectively investigate the serious threats against her life. She also complained that she had been discriminated against as a woman of Roma origin. The applicant relied, *inter alia*, on Articles 3, 8 and 14 of the Convention. The relevant parts of her constitutional complaint read as follows:

"...

20.1.1. Violation of the substantive aspect of Article 3 of the Convention

The applicant is a victim of rapes committed by her own biological father, B.S. In addition, B.S. was also convicted of domestic violence in respect of the applicant.

Due to the suffered sexual abuse, the applicant spent some time in a [women's] shelter... During the criminal proceedings [against B.S.], the applicant was extremely traumatised, she was suicidal and prone to self-mutilation. However, as a result of her work and efforts, the applicant managed to recover from auto destructiveness and she put her life back on track by severing all ties with her previous life. She moved to another part of town, changed her name and surname...

In addition, the applicant actively worked on herself and the stabilisation of her psychological condition, so that she, despite being a sexual abuse victim, managed to get over the trauma and is currently in a stable intimate relationship.

Her change of name and address were done so as to prevent her father from finding and hurting her once he came out of prison. In order to make his recognising her even more difficult, she also changed her hair colour.

In view of the extremely serious and heinous crimes committed against her by her own father, it is not surprising that the applicant was very disturbed to learn that her father was looking for her and that he wanted to kill her.

Despite all of this, the police officer who answered her call on 11 August 2015, as well as the police officers who intervened on 3 September 2015 were extremely insensitive to the situation and the feelings of the applicant and their conduct was contrary to the Protocol on procedures in sexual abuse cases and the Protocol on procedures in domestic violence cases.

...

However, [despite the existing legislation], the police officer who answered her call on 11 August 2015, as well as the police officers who intervened on 3 September 2015 did not act towards the applicant with heightened sensitivity, but instead in a humiliating and discriminatory manner based on her sex and [Roma origin].

This transpires from the following facts: [the police officers] did not have a paper or a pen to note down the applicant's statement, one of the police officers arrogantly asked the applicant to use her cell phone to call his boss, because he 'did not have credit on his cell phone', they totally ignored the applicant's request for a glass of water, ... they

also ignored her request to walk next to her while accompanying her to the bus ... , and instead the police officers walked in front of her, that they rudely and arrogantly ... commented in front of the applicant 'Now we will have a lot of paperwork to do, and it is the end of our shift.' In addition, the entire time they were eyeing the applicant superficially and with despise, as if they were thinking... 'Gypsy business'...

The police officers' actions caused the applicant to feel even more ashamed and guilty. Instead of feeling protected, the applicant had the impression that the police officers were not going to do anything in relation to her complaint. Having asked the police officers whether she had to go to the S. police station in order to report what had just happened, they told her there was no need because she just reported everything. [The police officers did not check her allegations of threat with her relatives, but they only checked where B.S. was reported to be staying when he was on prison leave.] Due to the manner in which the police had treated her, the applicant was disappointed, distressed and traumatised and had to take tranquilisers in order to calm down.

Besides, due to her retraumatisation, the applicant began intensively remembering the violence suffered, which is why she could no longer be intimate or close to her [current] partner as before.

...

20.1.2.1. Omissions in relation to the applicant's complaints

Despite the fact that the applicant told the police in great detail the reasons for her great fear and unease, the police did not check her allegations...

As justification for their superficial ... performance of duties, the police stated the fact that B.S. had not threatened the applicant directly.

However, that police's explanation intentionally left out a crucial fact why this was so, which is the fact that, by changing her identity, appearance and address, the applicant was still successfully hiding from her father. So, the only reason why the threats have not been uttered directly to the applicant, and why they have not been fulfilled, lies in the fact that the applicant's father is unable to find her. However, that does not prevent him from actively looking for her while he is at large.

...

The applicant has been put in the position of having to wait for a physical and potentially lethal attack just in order to be able to seek protection of the State and judicial authorities, which means that the State consciously exposed the applicant to the danger emanating from her father....

20.1.2.2. Failure to investigate the applicant's allegations

The State's procedural obligation has also been violated by the fact that there has been no effective official investigation related to the applicant's complaint concerning the unlawful acts by the police. ...

[The police control unit's letter dated 23 October 2015] thus generally states that 'having received her calls, the police officers quickly took adequate measures prescribed by law, thereby informing the applicant on possible further actions...'.

However, it is not specified which actions and measures were undertaken and which law prescribed them, nor does it name the intervening police officers [on the dates concerned]... which leads to the conclusion that the applicant's complaints were not taken very seriously.

> Furthermore, contrary to what was stated in the letter, the applicant was never informed on any further actions which she could have undertaken, and when she asked herself whether she needed to report the events to ... [the police], she was told that she did not because she had just reported it. Despite that, no official proceedings were initiated following her complaint.
>
> ...
>
> Given that the criminal offence of threat under Article 139(2) of the Criminal Code is prosecuted *ex officio*, it was the obligation of the police to send her criminal complaint to the Z. State Attorney's Office, in particular since the police officers told the applicant that her statement of 3 September 2015 was considered as a complaint concerning threat to the Z. police station.
>
> **....**"

24. On 8 December 2015 the Constitutional Court declared the applicant's complaint inadmissible on the grounds that the response of the police internal control unit was not a decision amenable to constitutional review under section 62 of the Constitutional Court Act. The decision was served on the applicant's representative on 17 December 2015.

IV. SUBSEQUENT DEVELOPMENTS

25. On 29 April 2016 B.S. was released from prison on probation until 5 March 2017. On the same date the police issued an expulsion order against him, since he was a citizen of Bosnia and Herzegovina and had no regularised status in Croatia. He was escorted to the border from which he left for Bosnia and Herzegovina.

26. According to the Government, B.S. was denied entry to Croatia on two occasions in 2017. He died on an unspecified date thereafter.

27. According to the Government, after they had received notice of the present application, in 2018 the competent State Attorney's Office formed a case file for the purpose of conducting an inquiry and determining whether the applicant had filed criminal complaints against B.S. without them having been properly registered.

28. On 10 September 2019 the Z. Municipal State Attorney's Office received a special report from the Z. Police Department stating that they were unable to conduct an information interview with the applicant as ordered because she could not be found at her registered address. The applicant informed them by phone that day that she was away and that she would return in mid-October 2019.

29. The Z. Municipal State Attorney's Office then sent two further summonses to the applicant, which returned undelivered.

30. On 16 October 2019 the applicant received a call from the police and informed them that she did not wish to make a statement without her lawyer. The applicant's lawyer informed the police that the applicant was in a very

difficult mental state and that she was not capable of making any statements related to the events.

31. On 9 July 2020 the Z. Municipal State Attorney received a special report from the Z. Police Station stating that an information interview with the applicant could not take place, because she did not wish to respond to their calls.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. RELEVANT DOMESTIC LAW AND PRACTICE

32. The relevant provisions of the Criminal Code (*Kazneni zakon*, Official Gazette no. 125/11, with subsequent amendments), as in force at the material time, read as follows:

Threat
Article 139

"(2) Whoever makes a serious threat to kill or to inflict serious bodily injury on another ... shall be punished by a fine or by imprisonment not exceeding three years.

...

(4) ... [A] criminal offence punishable under paragraph (2) of this Article shall be prosecuted at the request [of the victim], save for an offence ... committed ... against... a close person [which shall be prosecuted *ex officio*]."

33. Relevant provisions of the Code of Criminal Procedure (*Zakon o kaznenom postupku*, Official Gazette no. 152/08, with subsequent amendments), as in force at the material time, read as follows:

Article 205

"(1) A [criminal] complaint is submitted to the competent State Attorney in writing, orally, or by other means.

(2) ... An oral [criminal] complaint shall be recorded in writing ...

(3) If the [criminal] complaint was filed by the victim, the filing thereof shall be confirmed to the victim in writing stating the basic contents of the complaint ...

(4) If a [criminal] complaint has been filed with the court, the police or a State Attorney's Office without jurisdiction, they will accept the complaint and immediately deliver it to the competent State Attorney.

..."

Article 206

"(1) Following the examination of the [criminal] complaint, the State Attorney shall dismiss it if it is established:

(a) that the reported offence is not prosecuted *ex officio*;

...

(d) that there is no reasonable suspicion that the suspect committed the reported offence..."

Article 207

"(1) If there are grounds to suspect that a criminal offence has been committed for which criminal proceedings are conducted *ex officio*, the police shall have the right and duty to take the necessary measures:

1) to find the perpetrator of the criminal offence, to ensure that the perpetrator or participant does not hide or escape,

2) to discover and secure traces of a criminal offence and objects that may serve in establishing the facts, and

3) to collect all information that could be useful for the successful conduct of criminal proceedings.

(2) The police shall notify the State Attorney about all inquiries into criminal offences immediately, and no later than 24 hours from the moment the action was conducted...

...

(4) On the basis of conducted inquiries, the police, in accordance with a special regulation, shall compose a criminal complaint or a report about the conducted inquiries, stating all the evidence which it gathered. The content of statements made by individual citizens in the collection of information shall not be entered in the criminal report ... The criminal report ... shall be accompanied by objects, sketches, pictures, documents on the measures and actions taken, official notes, statements and other material that may be useful for the successful conduct of the proceedings.

(5) Should the police subsequently learn about new facts, evidence or discover traces of a criminal offence, it shall collect the necessary information and inform the State Attorney about it immediately.

(6) When undertaking criminal inquiries, the police shall also act in accordance with the provisions of a special law and the rules adopted on the basis of that law."

34. Relevant provisions of the Police Duties and Powers Act (*Zakon o policijskim poslovima i ovlastima*, Official Gazette nos. 76/09 and 92/14), as in force at the material time, read as follows:

Section 11

"(1) If there are grounds for suspicion that a criminal offence has been committed for which criminal proceedings are initiated *ex officio* ..., the police shall conduct a criminal inquiry."

Section 36

"(1) If there are grounds for suspicion that a criminal offence has been committed for which criminal proceedings are initiated *ex officio* ..., a police officer may collect information from a person who is likely to have knowledge of the circumstances related to that criminal offence ...

(2) A police officer may collect information from citizens at the [police] premises, at their workplace, in another suitable place, and with the prior consent of the person in his or her home.

(3) A police officer shall collect information from the victim of a criminal offence, acting with special precautions."

Section 62

"(1) A police officer is obliged to receive a complaint on a criminal offence for which criminal proceedings are initiated *ex officio*. If the complaint is communicated by telephone or other telecommunication device, its electronic record shall be provided, where possible, and an official note shall be made.

(2) If the complaint is submitted orally, the complainant shall be warned of the consequences of false reporting and, if necessary, clarifications and submission of documentation and other data referred to by the complainant shall be requested in order to assess the justification of the complaint. A record shall be made of the oral report in which the given warnings shall be entered.

(3) If, despite the explanations given, the police officer assesses that no criminal offence prosecuted *ex officio* has been committed, he shall warn the complainant that the filing of the complaint is not justified. At the express request of the complainant, the police officer will take the criminal complaint on record."

Section 63

"(1) If, when filing a criminal complaint or conducting inquiries, it is established that the complaint concerns a criminal offence prosecuted by private prosecution or that the event does not have the characteristics of a criminal offence, the police shall inform the complainant accordingly..."

Section 64

"(1) If there are grounds for suspicion that a criminal offence has been committed for which criminal proceedings are initiated *ex officio* ..., the police shall collect information on that criminal offence ..., [including the] perpetrator, participants, leads, evidence and other circumstances useful for detecting and clarifying that criminal offence ...

(2) Unless otherwise prescribed by law, when the police collect information and data on a criminal offence for which criminal proceedings are initiated *ex officio*, they shall compile a criminal report and submit it without delay to the competent State Attorney."

35. The relevant provisions of the Prevention of Discrimination Act (*Zakon o suzbijanju diskriminacije*, Official Gazette no. 85/2008) provide as follows:

Section 1

"(1) This Act ensures the protection and promotion of equality as the highest value of the constitutional order of the Republic of Croatia; creates conditions for equal opportunities and regulates protection against discrimination on the basis of race or ethnic origin or skin colour, gender, language, religion, political or other conviction, national or social origin, state of wealth, membership of a trade union, education, social

status, marital or family status, age, health, disability, genetic inheritance, gender identity, expression or sexual orientation.

(2) Discrimination within the meaning of this Act means putting any person in a disadvantageous position on any of the grounds under subsection (1) of this section, as well as his or her close relatives. ...”

Section 16(1)

“Anyone who considers that, owing to discrimination, any of his or her rights has been violated may seek protection of that right in proceedings in which the determination of that right is the main issue, and may also seek protection in separate proceedings under section 17 of this Act.”

Section 17

“(1) A person who claims that he or she has been a victim of discrimination in accordance with the provisions of this Act may bring a claim and seek:

1. a ruling that the defendant has violated the plaintiff’s right to equal treatment or that an act or omission by the defendant may lead to the violation of the plaintiff’s right to equal treatment (claim for an acknowledgment of discrimination);

2. a ban on [the defendant’s] undertaking acts which violate or may violate the plaintiff’s right to equal treatment or an order for measures aimed at removing discrimination or its consequences to be taken (claim for a ban or for removal of discrimination);

3. compensation for pecuniary and non-pecuniary damage caused by the violation of the rights protected by this Act (claim for damages);

4. an order for a judgment finding a violation of the right to equal treatment to be published in the media at the defendant’s expense.”

36. Relevant provisions of the Protection against Domestic Violence Act (*Zakon o zaštiti od nasilja u obitelji*, Official Gazette no. 137/2009, with subsequent amendments), as in force at the material, time provided as follows:

Protective measures
Section 11

“(1) The aim of protective measures is to prevent domestic violence, ensure the protection of health and safety of the victim and remove the circumstances which enable or are favourable to committal of a new offence; they are applied in order to put an end to endangerment of victims of domestic violence and other family members.

(2) In addition to protective measures prescribed by the Minor Offences Act, the court may apply the following protective measures:

- compulsory psychosocial treatments,
- barring order in respect of the victim of domestic violence,
- prohibition from harassment and stalking of persons victims of violence,

...”

Application of protective measures
Section 18

"(1) Protective measures under section 11 of this Act can be applied on their own, without imposing a sentence or another minor-offence sanction.

(2) Protective measures can be applied *ex officio*, at the request of the authorised prosecutor or the request of the victim of domestic violence."

37. Section 164 of the Enforcement of Prison Sentences Act (*Zakon o izvršavanju kazne zatvora*, Official Gazette no. 128/1999, with further amendments), as in force at the material time provided as follows:

"3. At the prison's request..., the probation office will perform the tasks necessary for the reception of the prisoner following release [from prison] in line with the law regulating probation.

4. Prior to releasing a prisoner who had been imprisoned for a criminal act against sexual freedom ..., the prison... shall inform the unit of the Ministry of Justice competent for support to victims and witnesses with a view to informing the victim, the injured person or their family."

38. The relevant part of the Rules on Privileges of Prisoners (*Pravilnik o pogodnostima zatvorenika*, Official Gazette no. 66/2010), read as follows:

Section 4

"(1) Privileges of more frequent contacts with the outside world are:

...

4. leave with a visitor to the place where the prison is located,

...

6. leave to the place of residence ..."

Section 13

"(6) In determining the possibility of granting privileges listed in ... section 4, paragraphs ... 4 [and] 6 of these Rules, in addition to other conditions set out in the Rules, the following will also be taken into account:

– the type and circumstances of the criminal offence committed,

– the prisoner's attitude towards the committed offence,

– the reaction of the victim and the victim's family to the possibility of granting such privileges ..."

39. Section 17 of the Probation Act (*Zakon o probaciji*, Official Gazette 143/12), as in force at the material time, provided as follows:

"1. When deciding on the privilege of a prisoner's leave to his or her place of residence, the penitentiary or the prison may request a report from the probation office.

2. The report to the penitentiary or the prison shall contain information about the prisoner's family, the circumstances in his community, circumstances relevant to the decision of the privilege and, when possible, about the relationship of the victim or the victim's family towards the criminal offence committed."

40. The Protocol on Procedures in Domestic Violence Cases (*Protokol o postupanju u slučaju nasilja u obitelji*) was adopted in 2008 by the Ministry of Family, Homeland War Veterans and Intergenerational Solidarity. As regards the duties of the police, it provides that when the police receive information in any way and from anyone about an instance of domestic violence, two police officers, preferably one male and one female, must intervene without delay and interview the victim in separate premises without the alleged perpetrator being present. They also have the obligation to obtain the necessary information concerning the violence suffered by the victim, interview and institute appropriate proceedings against the perpetrator and inform the victim of his or her rights.

41. In its decision no. U-IIIBi-2349/2013 of 10 January 2018 the Constitutional Court found a violation of Article 23 of the Constitution and Article 3 of the Convention on account of ineffective investigation by the police into a complaint made by a suspect during her questioning.

42. The relevant parts of the 2015 Annual Report of the Ombudswoman for Gender Eqaulity of the Republic of Croatia read as follows:

> "2.1.4. Failures of the police and the judiciary in dealing with victims of domestic violence
>
> In relation to the work and conduct of police officers in cases of domestic and partner violence, the Ombudswoman emphasises the good practice in principle as well as the established cooperation and communication with the Ministry of the Interior, which is reflected in the taking into account of her warnings and recommendations. However, in some cases, certain omissions were noticed, that is examples of poor practice in the actions of the police, as well as judicial bodies, the State Attorney's Office and the courts, which are described below.
>
> On the basis of her long experience in practice, the Ombudswoman has established the following principal omissions of the authorised bodies in their work of fighting against and prevention of domestic violence:
>
> In their handling of domestic violence, as well as in their further reporting to the court, the police often do not take into account, nor do they state in the report or the indictment the entire context and chronology of violence between the family members, between the victims and perpetrators, especially the so-called history of domestic violence or previous violence, whether previously reported or not, but they exclusively deal with the event for which they are intervening.
>
> ...
>
> In some cases, the police do not react to violence because it is not defined in the Protection from Domestic Violence Act...
>
> 2.1.5. Recommendations
>
> ...
>
> 5) Introduce special police departments with mixed police personnel (male-female) employed professionally and highly educated who will deal exclusively with domestic violence in a gender-sensitive manner.

6) Continuously educate police officers, State Attorneys and judges on sex and gender equality and on domestic violence, international standards, declarations and conventions related to the prevention of violence against women... Through education, ensure a unified understanding and application of the "zero tolerance" policy towards domestic violence and violence against women in general by State Attorneys and judges, and understanding that violence against women is gender-based violence."

43. The relevant parts of the 2021 Annual Report of the Ombudswoman for the Equality of Sexes of the Republic of Croatia read as follows:

"2.1.6. Act of the police and the judiciary towards victims of domestic violence

The Ombudswoman points out that the greatest progress in the area of processing and combating domestic violence and violence among close persons has been made by the police. During the reference period, the Ombudswoman has recorded how in anti-discrimination proceedings against the police [initiated following complaints to her office] ... in an increasing number of cases the Police Directorate already in the early stages of [her] involvement recognises sex discrimination in its ranks and takes swift and effective measures to combat it and punish those responsible. Accordingly, it can be concluded that the police continued in 2021 education of its officials, and continued to improve the system of early recognition of gender-based violence...

However, in order to really achieve change and reverse negative trends, all stakeholders, in particular all professional bodies dealing with the prevention of violence and re-socialisation of perpetrators, the State Attorney's Office, judiciary, but also the media, politicians and especially the education system, should adapt their actions and practice to international best practices in combating violence against women and domestic violence. As already mentioned, this primarily means ensuring effective preventive mechanisms, zero tolerance for violence, especially through penal policy and justice, ensuring continuous and systematic training at all levels of society, as well as the introduction of regular training and education, in particular for professionals in this field and the introduction of long-term and mandatory re-socialisation of perpetrators...

2.1.8. Final considerations and recommendations

Emphasising in particular the importance of comprehensive education, violence prevention and re-socialisation of perpetrators, which, according to the Ombudsperson, are the most important and significantly neglected aspects in the fight against violence against women in the Republic of Croatia, the Ombudswoman makes the following recommendations in order to improve the judicial and legislative framework for combating gender-based violence, and in particular femicide:

(1) Strengthen inter-ministerial cooperation of all stakeholders, especially departmental cooperation between the police and the State Attorney in cases of domestic violence and violence against women.

(2) Introduce systematic and regular training of judges and State Attorneys ...

(3) Pursue continuous education of the police and social welfare system officials, related to the application of the Protocol on Procedures in Domestic Violence Cases and other regulations in the field of protection against domestic violence...."

II. RELEVANT INTERNATIONAL LAW

A. Council of Europe

44. In its recommendation Rec(2002)5 of 30 April 2002 on the protection of women against violence, the Committee of Ministers of the Council of Europe stated, *inter alia*, that member States should introduce, develop and/or improve where necessary national policies against violence based on maximum safety and protection of victims, support and assistance, adjustment of the criminal and civil law, raising of public awareness, training for professionals confronted with violence against women, and prevention. With regard to domestic violence, the Committee of Ministers recommended that member States should classify all forms of violence within the family as criminal offences and envisage the possibility of taking measures in order, *inter alia*, to enable the judiciary to adopt interim measures aimed at protecting victims, to ban the perpetrator from contacting, communicating with or approaching the victim, or residing in or entering defined areas. They should also penalise all breaches of the measures imposed on the perpetrator and establish a compulsory protocol so that the police and medical and social services follow the same procedure.

45. The relevant provisions of the Convention on Preventing and Combating Violence against Women and Domestic Violence ("the Istanbul Convention"), which entered into force in respect of Croatia on 1 October 2018, have been cited in *Kurt v. Austria* ([GC], no. 62903/15, §§ 76-86, 15 June 2021). The Istanbul Convention further provides:

Article 56 – Measures of protection

"1. Parties shall take the necessary legislative or other measures to protect the rights and interests of victims, including their special needs as witnesses, at all stages of investigations and judicial proceedings, in particular by:

a) providing for their protection, as well as that of their families and witnesses, from intimidation, retaliation and repeat victimisation;

b) ensuring that victims are informed, at least in cases where the victims and the family might be in danger, when the perpetrator escapes or is released temporarily or definitively;

c) informing them, under the conditions provided for by internal law, of their rights and the services at their disposal and the follow-up given to their complaint, the charges, the general progress of the investigation or proceedings, and their role therein, as well as the outcome of their case..."

B. United Nations

46. The relevant part of the Report of the UN Special Rapporteur on violence against women, its causes and consequences, on her mission to Croatia, published on 3 June 2013, reads as follows:

"IV. Main areas of concern

A. Prevention and protection

1. Police

48. Police are often the first responders to domestic violence, and the manner in which they respond, their attitude toward the victim and the protection they provide are vital in promoting victim safety and offender accountability. In addition, the police serve as an important link between victims and the legal system and other services, as police officers play an important role in referring or transporting victims to service providers, such as shelters, NGOs and hospitals. Although there are now specialized police officers who have undergone training in domestic violence, they are not available at all stations and at all hours. The first respondents (duty officers) tend to be generalist police officers in most cases.

49. The police connect the victim and the courts, because in practice the police act as prosecutors in misdemeanour cases. Their prosecutorial role in the misdemeanour system can help the victim overcome evidentiary challenges she might face. While a victim could initiate misdemeanour proceedings on her own and obtain protective measures, she would still face the challenge of collecting evidence on her own. Despite this important role in preventing and protecting women from violence, the Special Rapporteur found significant gaps and weaknesses relating to their responses when faced with cases of domestic violence. Police officers tend to assume that domestic violence is a private matter or is a result of alcohol abuse. This can result in an ineffective police response, such as the failure to take domestic violence seriously, inform victims of their rights, refer them to services or charge the perpetrator. Furthermore, in some cases dual arrests are made, where both the perpetrator and the victim are arrested and sometimes charged with offences such as disturbing public order. Statistics showed that women constitute up to 35 per cent of the arrest in cases of domestic violence.

50. This situation may be explained by the absence of clear guidelines given to police officers in the Rules of Procedure in Cases of Family Violence and the Law on Protection against Domestic Violence. Apart from the definitions in the Law on Protection against Domestic Violence and in criminal law, which are vague, there are no official guidelines as to what level of domestic violence constitutes a criminal or a misdemeanour charge. The Special Rapporteur was informed that the police have developed some unofficial rules to decide whether to file a case as criminal or misdemeanour by relying on a "three strikes" approach: after two misdemeanours, the third offence becomes criminal. This results in first-time offences without heavy violence to be considered misdemeanours. Cases of violence in front of children are similarly inconsistently dealt with and sometimes lead to criminal charges, but in other cases, to misdemeanour charges."

III. RELEVANT EUROPEAN UNION LAW

47. Directive of the European Parliament and of the Council (2012/29/EU) of 25 October 2012 establishes minimum standards on the rights, support and protection of victims of crime. The relevant part of the Directive, which was to be implemented into the national laws of the European Union Member States by 16 November 2015, provides as follows:

Preamble

"(9) Crime is a wrong against society as well as a violation of the individual rights of victims. As such, victims of crime should be recognised and treated in a respectful, sensitive and professional manner without discrimination of any kind ... In all contacts with a competent authority operating within the context of criminal proceedings..., the personal situation and immediate needs, age, gender, possible disability and maturity of victims of crime should be taken into account while fully respecting their physical, mental and moral integrity. Victims of crime should be protected from secondary and repeat victimisation, from intimidation and from retaliation, should receive appropriate support to facilitate their recovery and should be provided with sufficient access to justice.

...

(52) Measures should be available to protect the safety and dignity of victims and their family members from secondary and repeat victimisation, from intimidation and from retaliation, such as interim injunctions or protection or restraining orders.

...

(63) In order to encourage and facilitate reporting of crimes and to allow victims to break the cycle of repeat victimisation, it is essential that reliable support services are available to victims and that competent authorities are prepared to respond to victims' reports in a respectful, sensitive, professional and non-discriminatory manner. This could increase victims' confidence in the criminal justice systems of Member States and reduce the number of unreported crimes. Practitioners who are likely to receive complaints from victims with regard to criminal offences should be appropriately trained to facilitate reporting of crimes, and measures should be put in place to enable third-party reporting, including by civil society organisations. It should be possible to make use of communication technology, such as e- mail, video recordings or online electronic forms for making complaints."

Article 5
Right of victims when making a complaint

"1. Member States shall ensure that victims receive written acknowledgement of their formal complaint made by them to the competent authority of a Member State, stating the basic elements of the criminal offence concerned."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

48. The applicant complained about the failure of the domestic authorities to protect her from intimidation and repeat victimisation, and about their failure to effectively respond to B.S.'s serious threats to her life. She relied on Articles 3 and 8 of the Convention.

49. Being 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), the Court considers that the applicant's

complaints should be examined under 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. Admissibility

1. The parties' submissions

(a) The Government

50. The Government submitted that the application was premature. After learning about the applicant's case before the Court, the State Attorney's Office of its own motion opened an investigation with a view to establishing whether there had been omissions in the conduct of the police in relation to the applicant's case. That case, concerning allegations of failure to register the applicant's criminal complaints and alleged disrespectful conduct towards her due to her Roma origin, was still ongoing.

51. The Government further argued that the applicant did not exhaust available domestic remedies. They explained that the domestic legal system provided two criminal-law mechanisms by which the applicant could have sought redress for the alleged violation of her Convention rights.

52. Firstly, she could have filed a criminal complaint against the police officers or prison staff who had allegedly jeopardised her physical integrity. In such an event, the competent State Attorney's Office could have conducted criminal proceedings in which the applicant would have had the status of a victim. In case of rejection to prosecute, the applicant could have taken over criminal prosecution and ultimately addressed her complaints to the Constitutional Court, which would then have meritoriously decided on the alleged violations of her rights. In support of the effectiveness of that legal avenue, the Government referred to a decision of the Constitutional Court no. U-IIIBi-2349/2013 of 10 January 2018 (see paragraph 41 above). However, instead of filing a criminal complaint with the competent State Attorney against the individual police officers, the applicant filed a complaint against the work of the police with the Ministry of the Interior.

53. Secondly, the applicant could have instituted private prosecution for threat against B.S., which would have established whether she had been subject to intimidation or repeat victimisation and, if so, punished the perpetrator. In accordance with domestic law, criminal proceedings for threat could solely be initiated by the victim.

(b) The applicant

54. The applicant maintained that she had submitted her complaint about the work of the police officers on 22 September 2015, whereas the State Attorney's Office opened an investigation only in 2018, after the present

application had been communicated to the respondent Government. It was thus evident that the sole purpose of that investigation was to show to the Court that the State was conducting a Convention-compliant investigation.

55. The applicant pointed out that in her letter of September 2015 she had also requested for all actions to be taken to ensure the protection of her rights. This included instituting criminal proceedings against B.S. by the State Attorney's Office for the criminal offence of serious threat as defined in Article 139 § 2 of the Criminal Code that was reported by the applicant as the victim.

56. The applicant further maintained that under domestic law, serious threat towards a close person (including a family member) was amenable to *ex officio* prosecution and that she did not have to file a private prosecution for threat. The police had received information from the applicant about the existence of serious threats by B.S. on two occasions in August and September 2015. It was the police's responsibility and within the scope of their competence prescribed by law, to conduct criminal inquiries based on this information and to forward her criminal complaint to the competent State Attorney's Office.

57. The applicant considered that the Government sought to put a disproportionate burden on her in terms of exhaustion of domestic remedies. Since it had been evident that both the instigation and conduct of criminal proceedings were within the competence of the police and the State Attorney's Office, it was illegitimate to expect from a rape victim, who had been subject to repeat victimisation, to react on three different fronts, by filing a criminal complaint, private prosecution for threat and a civil action for discrimination.

58. The applicant reiterated that an arguable claim about serious unlawful ill-treatment did not have to be in a form of a criminal complaint but could be any (written or oral) action providing the competent authorities with indications of unlawful treatment or threats. The Government's comparison of the applicant's case with the decision of the Constitutional Court no. U-IIIBi-2349/2013 was irrelevant because that case concerned an ineffective investigation concerning illegal conduct of the police against a suspect of a criminal offence, and not of a highly traumatised victim like the applicant.

2. The Court's assessment

59. The Court refers to the general principles on the requirement to exhaust domestic remedies set out in the case of *Vučković and Others v. Serbia* ((preliminary objection) [GC], nos. 17153/11 and 29 others, §§ 69‑77, 25 March 2014).

60. In so far as the Government maintained that the application was premature, the Court reiterates that the assessment of whether domestic

remedies have been exhausted is normally carried out with reference to the date on which the application was lodged with the Court (see *Kušić v. Croatia* (dec.), no. 71667/17, § 101, 10 December 2019). The fact that, only after the present case was communicated to the respondent Government, the State Attorney's Office started an *ex post facto* investigation, which is to a large extent pointless because B.S. had meanwhile died, and which has now been pending for almost four years without any significant advancement, cannot mean that the Court is unable to consider the merits of the present case.

61. The Government further submitted that the applicant could have filed a criminal complaint against the individual police officers involved in her case, who had allegedly failed to protect her or failed to investigate her allegations of threat. The Court has already dismissed a similar preliminary objection raised by the Government in a comparable situation (see *Remetin v. Croatia*, no. 29525/10, § 74, 11 December 2012) and sees no reason to hold otherwise in the circumstances of the present case. In particular, the Court notes that the applicant complained before various domestic authorities about the fact that B.S. had been threatening her during his prison leave. These complaints should have been followed by the effective implementation of domestic criminal-law provisions in order to satisfy the requirements of the State's positive obligations under the Convention. In those circumstances, the Court does not see how filing a separate criminal complaint against individual police officers or prison officials could have satisfied the authorities' requirement under the Convention to protect the applicant from revictimisation or to effectively investigate her allegations of a serious threat. In addition, the applicant subsequently filed a complaint about the police officers' conduct with the Ministry of the Interior (see paragraph 19 above) and was ultimately informed that there had been no omissions, inappropriate conduct or unlawfulness in the actions of the police (see paragraph 22 above). Therefore, having in mind all the actions taken by the applicant, the Court considers that she was not required to lodge a criminal complaint against individual police officers as suggested by the Government.

62. Insofar as the Government claimed that the applicant could have raised her complaints before the Constitutional Court, the Court notes that she in fact did so. In a detailed constitutional complaint, which contained all Convention grievances subsequently raised before the Court, the applicant complained about the authorities' failure to protect her from intimidation and repeat victimisation, and to effectively investigate serious threats to her life (see paragraph 23 above). However, the Constitutional Court declared her complaint inadmissible on formal grounds, holding that the applicant had not filed it against a decision amenable to constitutional review under section 62 of the Constitutional Court Act (see paragraph 24 above). It can thus not be said that the applicant did not allow for her Convention complaints to be examined by the Constitutional Court before turning to the Court.

63. Finally, as regards the Government's argument that the applicant could have initiated private prosecution against B.S., the Court notes that, according to Article 139 of the Criminal Code as in force at the material time, a serious threat by a family member was a criminal act to be prosecuted *ex officio* (see paragraph 32 above). In any event the Convention would not require the applicant to engage in a private criminal prosecution in this context (see *Bevacqua and S. v. Bulgaria*, no. 71127/01, § 83, 12 June 2008; and, *mutatis mutandis*, *Matko v. Slovenia*, no. 43393/98, § 95, 2 November 2006).

64. In view of the above, the Government's non-exhaustion arguments must be dismissed.

65. The Court further notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant

66. The applicant maintained that ever since she learned that B.S. had been granted prison leave, she had lived in fear. She had requested protection from the police on two occasions, and it was their obligation to inform her of her rights as a victim. For the police, the information that her father during his weekend privileges had been looking for the applicant and threatening that he would kill her should have been sufficient evidence of her real endangerment. Instead, the police told her that she could not do anything unless B.S. came to her doorstep. The fact that the Government considered that on 11 August 2015 the police did all that was necessary to protect the applicant by checking and establishing that B.S. returned to prison after the granted weekend leave, without taking any action in relation to her allegations of threat, proved that the police had acted contrary to the Convention standards established under Article 3 and Article 8.

67. Since the Criminal Code prescribes that the criminal offence of threat towards a close person was to be prosecuted *ex officio*, there was no obligation for her to file a private prosecution herself. The applicant did not have any other choice but to ask for professional legal help in order to protect her rights which the police and the State Attorney's Office had been obliged to protect *ex officio*.

68. In relation to the event of 3 September 2015, the applicant pointed out that the conclusion of police officers that there was no immediate danger was a result only of the fact that B.S. had denied the threats. At the same time, the police did not sufficiently consider that the applicant was afraid of her father, that during the conversation with them she was shaking and crying and that

she justifiably believed that her father was following her. They also acted discriminatory due to her Roma origin. When the applicant asked the police officers whether it was necessary to report the threats to the police station, they responded that there was no need, because she "had just reported them".

(b) The Government

69. The Government argued that the police had acted promptly, professionally, responsibly and in accordance with their powers in relation to both events of which the applicant complained. As regards the event of 11 August 2015, the police took measures to establish the circumstances of the case within 10 minutes from the applicant's call and immediately informed her about the outcome. They also advised the applicant to call the police again if B.S. tried to contact her or threaten her again.

70. The applicant did not complain about the work of the police after that nor did she call or send a written complaint to the prison system to report B.S. for threatening her. Only a month and a half later did she address the prison system with a complaint about the privileges granted to B.S., which were thereafter immediately revoked.

71. The Government further pointed out that the police were a service that could intervene in the event of a real and immediate risk to a person's rights. In the applicant's case, they had established that the applicant was safe, and that B.S. was still in prison in another town. The applicant did not seek any additional intervention or treatment, nor claim that any of her rights were immediately or directly jeopardised. There was no fear that anyone would harm her. Also, under the domestic law the applicant was the only person authorised to institute criminal proceedings for the criminal offence of threat by private prosecution before the competent court, which she never did.

72. In relation to the event of 3 September 2015, the Government maintained that a police patrol unit arrived within 12 minutes following the applicant's call. They listened to the applicant and helped her calm down. They located B.S. and interviewed him. After it had been unequivocally established that there had been no immediate danger to the applicant, and since she did not seek further police intervention, she was escorted to her bus. The applicant did not complain about the conduct of the police on that day, and instead filed a complaint three weeks later.

73. Finally, the Government reiterated that the State Attorney's Office had meanwhile opened an investigation to determine whether there had been any omissions in the police actions towards the applicant during both events, which was ongoing.

2. The third party's comments

(a) The European Roma Rights Centre

74. The European Roma Rights Centre ("the ERRC") submitted that Roma girls and women in Europe fared worse on a number of measures than Roma men who, in turn, fared worse than society as a whole. Roma girls and women were also more likely than non-Roma girls and women to be victims of human trafficking, domestic violence, forced or childhood marriage. Ascribing abuse against girls and women to "Roma culture" or "Roma tradition" was common; indeed, this was a familiar form of antigypsyism. While in some Roma communities stereotypical views about women and violence against women were pervasive, just as they were in many non-Roma groups, the idea that gender-based violence was inherent to Roma culture or tradition was not a neutral observation, but a dangerous stereotype.

75. When it came to domestic violence against Roma women, police and prosecutors viewed gender-based violence as "natural" in Roma communities thereby failing to provide the same response they would if the victim were not Roma. Discrimination by police and police failure to act meant that Roma in general were often unlikely to report crimes against them. Because of dangerous stereotypes about Roma culture, the situation was even worse for Roma girls and women who were victims of gender-based violence. In this environment, Roma girls and women facing gender-based violence experienced a specific kind of "intersectional" harm.

76. The ERRC urged the Court to describe the harm that Roma girls and women faced as intersectional when, for example, police refused to protect them from gender-based violence and on the basis of their race or ethnicity. When Roma girls and women who were victims of gender-based violence received a poorer response from police and such poor response was related to their race or ethnicity, it was particularly destructive of fundamental rights because it made the harm those girls and women face invisible; it silenced them, and it made it particularly unlikely that they and others like them would seek protection in the future.

77. The ERRC further submitted that, according to the EU Fundamental Rights Agency ("the FRA"), there was a poor relationship between police forces in Europe and Roma communities. Roma and other minorities were likely not to report in-person crimes: 69% of minorities did not report assaults or threats they had experienced and 84% did not report serious harassment. According to the FRA, such underreporting was mainly due to the lack of trust Roma had in the police, resulting from excessive police stops of Roma and from disrespectful treatment. Moreover, in 2012, the Canadian authorities compiled a report detailing systemic incitement to racial hatred and violence against Roma in Croatia, mostly concerning comments made by public officials as well as slow and inefficient responses by authorities to discrimination, intimidation, and violence.

78. In an individual case where a Roma girl or woman threatened with gender-based violence was ignored by the police and that failure was related to her ethnicity, the Court could make a broad finding, as in *Opuz v. Turkey*, (no. 33401/02, §§ 192-98, 9 June 2009). But such evidence will be rare; because stereotypes meant that gender-based violence against Roma girls and women was largely ignored, comprehensive data about police failures to protect them would be even harder to produce.

79. The ERRC further stressed that for a Roma victim of gender-based violence, the violence she experienced was a form of sex discrimination and perhaps race discrimination, depending on the circumstances. When the police refused to protect her, and that refusal was contaminated by considerations of her Roma ethnicity, that harm was compounded by race discrimination; it was intersectional harm that left the victim "particularly vulnerable". It was important for the Court to use the term "intersectionality" to describe the particular kind of harm that occurred in these cases because of its well-hidden form and its destructive character for the fundamental rights of the people caught in the intersection.

(b) The Government's reply to the third-party observations

80. The Government submitted that Croatia did not tolerate violence, especially violence against Roma or Roma women. A number of measures and activities were taken on national and local level in order to combat all forms of discrimination and violence against Roma minority. The Police Academy provided several curricula aimed at familiarising future police officers with the combat against discrimination and hate crimes. Furthermore, the Ministry of Interior carried out a number of preventive projects aimed at fighting violence against all minorities and against women.

81. Within the framework of the National Strategy for Roma, the Ministry of the Interior held a specific record of all violence against persons of Roma origin. Available data showed that in 2015 there were a total of 106 violent criminal acts against Roma women which accounted for 2,29% of all recorded female victims of criminal acts in Croatia in that year. In 2016 there were 121 female Roma victims of violent criminal acts which amounted to 2,53% of all recorded female victims of the same acts in that year. In 2017 there were 108 female Roma victims of violent criminal acts which amounted to 1,97% of all recorded female victims of the same acts in that year.

82. The Government argued that the third party's submission were very general. It did not contain a statistical or any other data which could undisputedly relate to the Republic of Croatia or the status of Roma women in the Republic of Croatia. Also, the third party's submission did not refer to the specific time or period of time in which these issues were detected in respect of Croatia.

3. The Court's assessment

(a) General principles

83. The Court has previously held that the authorities have positive obligations – in some cases under Articles 2 or 3 of the Convention and in other instances under Article 8 taken alone or in combination with Article 3 – to: (a) establish and apply in practice an adequate legal framework affording protection against violence by private individuals; (b) take the reasonable measures in order to avert a real and immediate risk of recurrent violence of which the authorities knew or ought to have known, and to (c) conduct an effective investigation into the acts of violence (see, most recently, *X and Others v. Bulgaria* [GC], no. 22457/16, § 178, 2 February 2021; *Kurt v. Austria* [GC], no. 62903/15, § 164, 15 June 2021; and also *Volodina v. Russia (no. 2)*, no. 40419/19, § 49, 14 September 2021, and the cases cited therein).

84. The Court reiterates that the obligation to conduct an effective investigation into all acts of domestic violence is an essential element of the State's obligations under Article 3 of the Convention (see, as a recent authority, *Tunikova and Others v. Russia*, nos. 55974/16 and 3 others, § 114, 14 December 2021). To be effective, such an investigation must be prompt and thorough; these requirements apply to the proceedings as a whole, including the trial stage (see *M.A. v. Slovenia*, no. 3400/07, § 48, 15 January 2015, and *Kosteckas v. Lithuania*, no. 960/13, § 41, 13 June 2017). The authorities must take all reasonable steps to secure evidence concerning the incident, including forensic evidence. Special diligence is required in dealing with domestic violence cases, and the specific nature of the domestic violence must be taken into account in the course of the domestic proceedings. The State's obligation to investigate will not be satisfied if the protection afforded by domestic law exists only in theory; above all, it must also operate effectively in practice, and that requires a prompt examination of the case without unnecessary delays (see *Opuz*, cited above, §§ 145-51 and 168; *T.M. and C.M. v. the Republic of Moldova*, no. 26608/11, § 46, 28 January 2014; and *Talpis v. Italy,* no. 41237/14, §§ 106 and 129, 2 March 2017). The effectiveness principle means that the domestic judicial authorities must on no account be prepared to let the physical or psychological suffering inflicted go unpunished. This is essential for maintaining the public's confidence in, and support for, the rule of law and for preventing any appearance of the authorities' tolerance of or collusion in acts of violence (see *Okkalı v. Turkey*, no. 52067/99, § 65, ECHR 2006-XII (extracts)).

(b) Application of the general principles to the present case

(i) Whether the applicant was subjected to treatment contravening Article 3

85. Ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. An assessment of whether this minimum has

been attained depends on many factors, including the nature and context of the treatment, its duration, and its physical and mental effects, but also the sex of the victim and the relationship between the victim and the author of the treatment. Even in the absence of actual bodily harm or intense physical or mental suffering, treatment which humiliates or debases an individual, showing a lack of respect for or diminishing his or her human dignity, or which arouses feelings of fear, anguish or inferiority capable of breaking an individual's moral and physical resistance, may be characterised as degrading and also fall within the prohibition set forth in Article 3. It should also be pointed out that it may well suffice that the victim is humiliated in his or her own eyes, even if not in the eyes of others (see *Bouyid v. Belgium* [GC], no. 23380/09, §§ 86-87, ECHR 2015).

86. The Court will begin by noting that the applicant in the present case is a highly traumatised young woman of Roma origin, who had been the victim of appalling sexual abuse by a close family member at a very early age. Following B.S.'s conviction, she changed her name, hairstyle and place of residence, underwent extensive therapy and started a new life.

87. The applicant's complaints to the Court concern the alleged failure by the authorities to protect her from intimidation and repeat victimisation by B.S. given his alleged serious threats to her life (see paragraph 48 above), and their failure to effectively investigate these alleged threats.

88. The Court has already acknowledged that threats are a form of psychological violence, and that a vulnerable victim may experience fear regardless of the objective nature of such intimidating conduct (see *Volodina v. Russia*, no. 41261/17, § 98, 9 July 2019; and *Tunikova and Others*, cited above, § 119). The United Nations Committee on the Elimination of Discrimination against Women has also indicated that, to be treated as such, gender-based violence does not need to involve a "direct and immediate threat to the life or health of the victim" (see *Volodina*, cited above, § 56). In the present case, the applicant maintained that she had been afraid of further abuse and retaliation by B.S. stemming from the indirect threat to her life she had received (see paragraph 66 above).

89. In view of her previous physical suffering and excessive psychological trauma, the Court does not doubt that the applicant's fear had been both genuine and intense (see also the detailed description of her mental state in her constitutional complaint cited in paragraph 23 above). Coupled with the anxiety and feelings of powerlessness that the applicant experienced in the circumstances, the foregoing, in the Court's view, amounted to inhuman treatment within the meaning of Article 3 of the Convention (compare *Mudric v. the Republic of Moldova*, no. 74839/10, § 45, 16 July 2013; *Eremia v. the Republic of Moldova*, no. 3564/11, § 54, 28 May 2013; and *Volodina*, cited above, § 75).

(ii) Whether the authorities discharged their obligations under Article 3

90. What the Court is called upon to examine in the present case is the adequacy of the protection of the applicant's physical and psychological integrity following alleged serious threats she had received from B.S. during his prison leave.

91. In that connection, the Court notes that the applicant contacted the police on three separate occasions informing them about a serious threat by B.S. Given the circumstances of the present case, and bearing in mind that the prohibition of ill-treatment under Article 3 of the Convention covers all forms of domestic violence, including death threats, and that every such act triggers the obligation to investigate, the authorities had the duty to investigate the allegations of serious threat to the applicant's life (see *Volodina*, § 98, and *Tunikova and Others*, § 119, both cited above). However, at none of those occasions did the police start a proper criminal investigation, as they were under the obligation to do under domestic law (see paragraphs 33 and 34 above).

92. The first time, on 11 August 2015, the applicant called the emergency helpline stating that she was afraid because she thought that B.S. had escaped from prison and was threatening her through some relatives. She was reassured that B.S. had not escaped and was told that nothing could be done unless he came to her doorstep (see paragraph 10 above). From the materials in the case file, the Court cannot conclude whether during that conversation the applicant clearly stated that B.S. had uttered serious threats against her life.

93. The second time the police were made aware of the situation was on 3 September 2015, when they intervened at the bus station following the applicant's call. When they arrived at the scene, the two male police officers found the applicant, a young Roma woman, extremely upset, shaking and crying (see paragraph 14 above). They also learned that she had been the victim of heinous sexual crimes by a close family member. At that occasion, as clearly recorded in the police report concerning the intervention drawn up on 13 October 2015, the applicant told the police that B.S. had threatened to kill her through her relatives (see paragraph 15 above).

94. The Court notes that under Croatian law no particular form is required for a criminal complaint; it can be submitted orally or in writing (see paragraph 33 above). Under the relevant legislation, the police are obliged to conduct a criminal inquiry whenever they learn of allegations that a criminal offence may have been committed for which prosecution is conducted *ex officio* (see paragraphs 33 and 34 above). A serious threat by a family member being a criminal act to be prosecuted *ex officio*, as noted above (see paragraphs 32 and 63 above), the police should have at least at that point begun criminal inquiries concerning the applicant's allegations, not least by conducting interviews with the relatives mentioned by the applicant.

95. The police were further required to inform the competent State Attorney's Office of the results of their criminal inquiries on the matter (see paragraphs 33 and 34 above; see also *Remetin v. Croatia (no. 2)*, no. 7446/12, §§ 105 and 115, 24 July 2014). Even if the authorities eventually had concluded that the applicant's allegations concerned a criminal offence prosecuted by private prosecution or that the acts complained of did not have the characteristics of a criminal offence, the police should have informed her accordingly (see paragraph 34 above) but they never did so.

96. Finally, the third time the applicant contacted the police was through a letter written by her lawyer complaining about the failure of the police to react to her concerns and requesting them to take adequate measures to protect her physical integrity. There again, the applicant expressly requested that her complaint about alleged serious threat by B.S. be forwarded to the competent State Attorney's Office (see paragraph 19 above). However, this was never done, and instead her letter was perceived as a mere complaint about police work, resulting in an internal inquiry at the Ministry of the Interior. It was again not considered to constitute sufficient grounds for the police to start criminal inquiries with a view to establishing whether her allegations concerning serious threat to her life had been well-founded.

97. The applicant, supported by the third-party intervenor, claimed that the foregoing dismissive behaviour by the police officers had been the result of her Roma ethnic origin. However, neither the circumstances as submitted, nor any relevant evidence such as statistical data, substantiate the allegation of discrimination on grounds of the applicant's Roma origin. Nevertheless, the Court notes that the above failure of the police to perceive the seriousness of the applicant's allegations were not only in blatant disregard of the domestic law (see paragraph 93 above), but must have also exposed the applicant to constant fear and caused her to live in uncertainty for a prolonged period of time. In a case such as the present one, where the authorities were well aware of the applicant's particular vulnerability on account of her sex, ethnic origin and past traumas, the Court considers that they should have reacted promptly and efficiently to her criminal complaints in order to protect her from the realisation of that threat as well as from intimidation, retaliation and repeat victimisation (see paragraph 45 above).

98. In sum, while it is true that B.S.'s prison leave was ultimately discontinued and that he was expelled from Croatia immediately upon his release from prison, the Court cannot disregard the fact that the police never even commenced criminal inquiries, let alone a serious investigation into the applicant's allegations of serious threat, a criminal offence prosecuted *ex officio* under domestic law (see paragraphs 32 and 94 above), prior to the communication of the present application to the respondent Government.

99. What is more, in the Court's view, the authorities never made a serious attempt to take a comprehensive view of the applicant's case as a whole, including the domestic violence she had been exposed to previously, which

is required in this type of cases (compare *Tunikova and Others*, cited above, § 116).

100. The foregoing considerations are sufficient to enable the Court to conclude that the Croatian authorities failed to effectively investigate a particularly vulnerable rape victim's allegation of a serious threat to her life, in violation of Article 3 of the Convention.

101. Having regard to the facts of the case, the submissions of the parties, and its findings above (see paragraph 100), the Court considers that it has examined the main legal question raised in the present application. It thus considers that the applicant's remaining complaint under Article 3 concerning the authorities' further failure to protect her from repeat victimisation and intimidation is admissible but that there is no need to give a separate ruling on it (see *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 156, ECHR 2014).

II. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION

102. The applicant also complained that, owing to her Roma origin, the domestic authorities adopted a dismissive attitude towards her allegations of threats by B.S., contrary to Article 14 of the Convention, which reads as follows:

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

A. The parties' submissions

103. The Government maintained that the applicant failed to exhaust domestic remedies because she never lodged a civil action against discrimination under the Prevention of Discrimination Act. They argued that the applicant had not been discriminated against by any state authority. The police reacted in a timely, prompt and professional manner to each of her calls and the applicant did not prove that the police had in any way treated her in a discriminatory manner or that they would have acted differently to any other non-Roma person in the same situation.

104. The applicant disagreed. She maintained that the police officers had acted unlawfully and unprofessionally, in a way that caused her emotional pain and suffering. Violations of her rights committed by the police through their acts and omissions had been directly related to the fact that she was of Roma origin. She stressed that such practice in Croatia had not been uncommon.

B. The Court's assessment

1. Admissibility

105. The Court has already established that the Prevention of Discrimination Act provided two alternative avenues through which an individual can seek protection from discrimination: either raise his or her discrimination complaint in the proceedings concerning the main subject matter of a dispute, or opt for separate civil proceedings, as provided for under section 17 of that Act (see paragraph 35 above).

106. Given that the applicant in the present case explicitly complained of discrimination both before the Ministry of the Interior and the Constitutional Court (see paragraphs 19 and 23 above), the Court considers that she was not required to pursue another remedy under the Prevention of Discrimination Act with essentially the same objective in order to meet the requirements of Article 35 § 1 of the Convention (see *Guberina v. Croatia*, no. 23682/13, § 50, 22 March 2016, and *Jurčić v. Croatia*, no. 54711/15, § 52, 4 February 2021). Accordingly, the Government's objection must be dismissed.

107. The Court further notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

2. Merits

108. The Court notes that in its examination of the applicant's complaints under Article 3 of the Convention it has already had regard to the applicant's particular vulnerability as a Roma woman and a victim of serious sexual offences (see paragraphs 86, 93 and 97 above). In view of the foregoing, it considers that no separate issue under Article 14 of the Convention arises in the present case (compare *Mile Novaković v. Croatia*, no. 73544/14, §§ 75-76, 17 December 2020).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

109. 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."

C. Damage

110. The applicant claimed 40,000 euros (EUR) in respect of non-pecuniary damage.

111. The Government contested that claim.

112. The Court considers that the applicant must have suffered non-pecuniary damage which cannot be compensated by the mere finding of a violation in the present case. Ruling on an equitable basis, it awards the applicant EUR 12,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

D. Costs and expenses

113. The applicant also claimed 35,790 Croatian kunas (HRK; approximately EUR 4,770) in respect of costs and expenses. In particular, she claimed HRK 10,790 in respect of costs and expenses incurred before the domestic courts and HRK 25,000 for those incurred before the Court.

114. The Government contested that claim.

115. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 4,500 covering costs under all heads, plus any tax that may be chargeable to the applicant.

E. Default interest

116. The Court considers it appropriate that the default interest rate 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,

1. *Declares,* unanimously, the application admissible;

2. *Holds,* by six votes to one, that there has been a violation of Article 3 of the Convention in respect of the lack of an effective investigation;

3. *Holds,* by six votes to one, that there is no need to examine the complaint under Article 3 of the Convention as regards the alleged State's further failure to protect the applicant from intimidation and repeat victimisation;

4. *Holds,* unanimously, that no separate issue arises under Article 14 in conjunction with Articles 3 or 8 of the Convention;

5. *Holds,* by six votes to one,
   (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, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
(i) EUR 12,000 (twelve thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
(ii) EUR 4,500 (four thousand five hundred 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;

6. *Dismisses,* unanimously, the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 8 September 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Renata Degener	Marko Bošnjak
Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following separate opinions are annexed to this judgment:

(a) Partly dissenting opinion of Judge Wojtyczek;
(b) Partly dissenting opinion of Judge Derenčinović.

M.B.
R.D.

PARTLY DISSENTING OPINION OF JUDGE WOJTYCZEK

1. I fully agree with my colleagues that death threats should be thoroughly investigated, prosecuted and punished.

At the same time, criminal procedure law has to balance conflicting interests and to protect not only the alleged victims but also other persons against unfounded accusations of committing criminal offences. Therefore, a complaint addressed to the authorities by a private party alleging that someone has committed a criminal offence has to meet certain minimum requirements of substantiation and seriousness. Moreover, a person lodging a criminal complaint has to be duly informed about criminal responsibility for false accusation. Achieving the proper balance between all the conflicting interests in a specific case may be a very difficult exercise; therefore it is necessary to leave some margin of appreciation in this respect to the domestic authorities.

2. In the instant case, the applicant alleged that her father had conveyed death threats to her via her aunts. The applicant mentioned these indirect threats three times in her contact with the authorities (see paragraphs 9, 12-15 and 19 of the judgment). The available material shows that the authorities considered that this information about the alleged criminal offence, as submitted at the relevant time by the applicant, had not been sufficiently substantiated and that, therefore, the allegations did not fulfil the minimum requirements for triggering an investigation.

I do not exclude the possibility that this assessment by the domestic authorities might have been unjustified; however, in the proceedings before the Court there is insufficient evidence to demonstrate that the assessment in question was incorrect, let alone that the domestic authorities acted in bad faith. Moreover, the latter had the benefit of being in direct contact with the different persons concerned and were better placed to assess the whole situation, including, *inter alia*, the non-verbal communication coming from the persons involved. I note furthermore that the authorities took several measures to protect the applicant (see, in particular, paragraphs 10, 12, 18, 25 and 26 of the judgment) and to establish the precise circumstances of the case (see paragraphs 27-31).

Be that as it may, once it became clear to the applicant that the police did not consider her allegations sufficiently substantiated, there was nothing to prevent her from formally filing a written criminal complaint to the police substantiating her allegations that a criminal offence had been committed with a sufficiently detailed account of the relevant events. There are no reasons to consider that such a substantiated written report would have not been duly examined and investigated by the authorities.

3. For the reasons set out above, I consider that it has not been established that the Croatian authorities have violated their obligations under Article 3 of the Convention.

PARTLY DISSENTING OPINION OF JUDGE DERENČINOVIĆ

I. INTRODUCTION

1. I agree with the majority's decision to find a violation of Article 3 of the Convention due to the failure of the authorities to conduct an effective investigation into the victim's allegations. The applicant in this case is a particularly vulnerable young Roma woman whose father, previously convicted of rape and other serious criminal offences (incest) and misdemeanours (domestic violence) committed against her, threatened her with death through their relatives while he was temporarily released from the prison where he was serving his sentence (prison leave). The facts of the case indicate that the authorities did not take measures to investigate the applicant's complaints effectively.

2. However, I believe that the approach taken by the majority is too narrow. Focusing exclusively on the lack of an effective criminal investigation and neglecting the context of the prolonged and repeated victimisation of the applicant by her father, the majority missed the opportunity to rule on the complaints about the failure of the authorities to take appropriate measures to protect the victim. The government's positive obligations in countering domestic violence are not restricted to an effective investigation. They also include the obligation to protect victims of domestic violence (see *Volodina v. Russia*, no. 41261/17, § 86, 9 July 2019, with further references). This particularly applies in cases of repeat victimisation, such as the present one (see, for instance, another case against the respondent State concerning repeated acts of domestic violence, *A v. Croatia*, no. 55164/08, 14 October 2010). Given that not a single measure of victim protection was taken in this case, I have to disagree with the majority's decision that "there is no need to give a separate ruling" on "the applicant's remaining complaint under Article 3 concerning the authorities' further failure to protect her from repeat victimisation and intimidation" (see paragraph 101 of the judgment).

3. I firmly believe that the failure to protect the applicant in this case was just as important as the lack of an effective investigation. It also resulted in severe adverse consequences for the victim. Failure to protect a particularly vulnerable victim from prolonged and repeated victimisation resulted in deep psychological trauma, intense suffering and fears for her future. Indeed, as the Court has already stressed, general and discriminatory passivity on the part of the law-enforcement authorities in the face of allegations of domestic violence can create a climate conducive to a further proliferation of violence committed against victims (see *A and B v. Georgia*, no. 73975/16, § 49, 10 February 2022). Therefore, I consider that the positive obligations in this case were violated not only because of the lack of an effective investigation but also because of the failure to protect a victim of severe domestic violence

offences inflicted on her on multiple occasions, including a threat to her life, by her father before and after his conviction.

II. OBLIGATION TO PROTECT THE VICTIM

4. I cannot but agree with the finding of the majority that "the authorities never made a serious attempt to take a comprehensive view of the applicant's case as a whole, including the domestic violence she had been exposed to previously, which is required in this type of cases" (see paragraph 99 of the judgment). In this regard, it is even more unclear to me why the majority, after finding that the complaint that refers to the obligation to protect the victim was admissible, refused to carry out an analysis and decide on the merits of the applicant's remaining allegations regarding the failure of the authorities to protect her from repeat victimisation and intimidation.

5. The fact that the applicant was a vulnerable victim who changed her name, residence and physical appearance after being raped and abused by her father and who was again threatened by him during his prison leave gives rise in my opinion, without any doubt whatsoever, to positive obligations in terms of victim protection.

6. The standards established in the case-law of the Court are apparent. For a positive obligation to arise under Article 3 of the Convention, "it must be established that the authorities knew or ought to have known at the time of the existence of a real and immediate risk of ill-treatment of an identified individual from the criminal acts of a third party and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk" (see *Đorđević v. Croatia*, no. 41526/10, § 139, 24 July 2012). Moreover, in the context of domestic violence, the Court has explained that the risk of a real and immediate threat must be assessed taking due account of the particular context of domestic violence. In such a situation, there is not only a question of an obligation to afford general protection to society, but above all to take account of the recurrence of successive episodes of violence within a family. The Court has therefore found in many cases that, even when the authorities did not remain totally passive, they still failed to discharge their obligations under Article 3 of the Convention because the measures they had taken had not stopped the abuser from perpetrating further violence against the victim (see *Volodina*, cited above, § 86).

7. These standards have been developed in cases of domestic violence in which the Court has established that the authorities have "positive obligations ... to: (a) establish and apply in practice an adequate legal framework affording protection against violence by private individuals; (b) take the reasonable measures in order to avert a real and immediate risk of recurrent violence of which the authorities knew or ought to have known, and to (c) conduct an effective investigation into the acts of violence (see, most

recently, *X and Others v. Bulgaria* [GC], no. 22457/16, § 178, 2 February 2021; *Kurt v. Austria* [GC], no. 62903/15, § 164, 15 June 2021; and also *Volodina v. Russia* (no. 2), no. 40419/19, § 49, 14 September 2021, and the cases cited therein)" (see paragraph 83 of the judgment).

8. In this regard, I would like to highlight that an inappropriate reaction to domestic violence is seldom restricted to an ineffective investigation. Failure to investigate domestic violence is often coupled with a failure to protect the victim (compare *A v. Croatia*, cited above). The lack of a victim-centred approach in applying the protective mechanisms results in a violation of the positive obligation to protect and assist the victims of domestic violence. Thus, in this case, apart from the failure to investigate allegations of serious threats, the police and other competent authorities did not conduct any risk assessment, not even a very rudimentary one, to protect the victim from repeat victimisation (compare *Talpis v. Italy*, no. 41237/14, § 116, 2 March 2017).

III. ABSENCE OF A RISK ASSESSMENT

9. It is evident from the applicant's contact with the police (see paragraphs 9-15 of the judgment) and her complaint about the police's work (see paragraphs 16-24 of the judgment) that the authorities did not conduct a proper risk assessment to protect her from repeat victimisation.

10. The obligation to protect victims means that all competent authorities (not just the police) must respond effectively and on a case-by-case basis by conducting a risk assessment and implementing risk management to eliminate the threat to the safety of domestic violence victims. Preconditions for such activities include standard operating procedures and cooperation between the competent authorities. In addition, the risk assessment must take into account repeated violence towards the victim, including death threats. The Court has elaborated on these standards in *Kurt* (cited above, §§ 167-74), requiring the authorities to undertake an "autonomous", "proactive" and "comprehensive" risk assessment of treatment contrary to Article 3.

11. In the present case, after multiple complaints had been received from the applicant, not a single risk assessment measure was conducted. There was also not even a minimal degree of proactivity on the part of the competent authorities, or any cooperation on their part in protecting the victim. It has to be noted that all measures taken by the authorities were reactive (*ex post facto*) and were carried out in response to complaints by the applicant. It appears that she was somehow lost in the system, becoming completely invisible. This certainly resulted in the deepening of her feelings of insecurity, frustration and deep trauma, particularly in the light of her earlier victimisation and fears for the future. The applicant's serious allegations of death threats were not effectively investigated, and she was not provided with appropriate protection or assistance. For instance, when the applicant called the emergency helpline on 11 August 2015 stating that her rapist had escaped

from prison and that she was scared, she was reassured that B.S. had not escaped from prison and told to contact the nearest police station in the event that B.S. tried to contact her personally (see paragraph 10 of the judgment). Although it remains unclear whether during that conversation the applicant clearly stated that B.S. had uttered serious threats against her life, one cannot but notice the dismissive attitude of the helpline operator, who should have been professionally trained to deal with all types of situations, including one where a seriously traumatised individual expressed fears of repeat victimisation. A similar attitude could be seen in the police officers' conduct on 3 September 2015, when they simply spoke to the suspect, who denied all accusations, and escorted both the applicant and B.S. to their respective buses, despite having been made aware that B.S. had threatened to kill the applicant through her relatives (see paragraph 13 of the judgment)

12. The profile of the perpetrator (with multiple convictions in Croatia and abroad for serious criminal offences and misdemeanours) and the victim (a young Roma woman, the daughter of the perpetrator, who was repeatedly raped and abused and changed her physical appearance, name and residence) were mainly ignored by the authorities. The police failed to conduct inquiries and to duly inform the public prosecutor about the victim's allegations of being subjected to death threats. In parallel, they also failed to initiate a proper risk assessment. In domestic violence cases, a risk assessment should be conducted synergistically with an effective investigation. The same facts should be taken into account until some specific circumstances at a later stage justify bifurcation between these two procedures, both of which fall within the ambit of positive obligations under Article 3 of the Convention.

13. In this case, the failure of the police to conduct inquiries and to examine the applicant's relatives to whom her father had allegedly expressed his intentions (threat to the life of the applicant) was not only detrimental from the perspective of the ineffective (in this case non-existent) investigation but also from the perspective of the risk assessment for the safety of the victim. The same goes for not taking any measures to check whether the applicant's father had firearms outside the prison. Likewise, no additional interviews with the applicant were conducted to assess her situation and provide her with the assistance she might need after being subjected to the alleged repeat victimisation.

14. In this regard, it is worth noting the part of the Annual Report of the Ombudswoman for Gender Equality for 2015 cited in the judgment (relevant to the period relating to the present case), which states, among other things, that in dealing with cases of domestic violence the authorities "often do not take into account, nor do they state in the report or the indictment the entire context and chronology of violence between the family members, between the victims and perpetrators, especially the so-called history of domestic violence or previous violence, whether previously reported or not, but they

exclusively deal with the event for which they are intervening" (see paragraph 42 of the judgment).

15. While it is true that the applicant's father returned to prison soon after the threats to life directed at his daughter through their relatives and was not granted prison leave for some time (after the applicant, and not the police, had informed the prison authorities about the incident), it is evident from the case file that the ban on prison leave was merely temporary. Furthermore, the documents in the case file suggest that in deciding on his release from prison on probation, the competent authorities did not consider the applicant's complaints about the death threats but only the prisoner's health condition. Likewise, the expulsion order against the applicant's father and the other measures taken by the authorities in this case were also issued outside the context of a risk assessment. The applicant's father was expelled to Bosnia and Herzegovina, obviously not to protect the applicant from repeat victimisation but simply because he was a foreign citizen without any regularised status in Croatia. Nothing in the case file suggests that the applicant was informed of his release from prison on probation or of his expulsion.

IV. CONCLUSION

16. In the present case, there was no risk assessment, let alone an "autonomous" "proactive" and "comprehensive" one as required by the Court's case-law. The authorities knew of the existence of a real and immediate risk of ill-treatment of an identified individual from the criminal offences of a third party, and they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk. Furthermore, they did not take into account the recurrence of successive episodes of violence within the family and consequently failed to discharge their obligation under Article 3 of the Convention to protect the victim from violence.