

Analysis of hate crime cases before the European Court of Human Rights

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Judgments of the European Court of Human Rights (ECtHR) have a crucial role in respecting the rights of individuals when member states fail to meet their obligations under the European Convention on Human Rights (Convention). ECtHR judgements represent a relevant account of what constitutes a violation of human rights in order to prevent violations of other individuals in the future. Therefore, it is important not only to recognize a violation but to take all necessary steps to prevent such or similar violations in the future. In order to do so, every member state of the Council of Europe has a legal obligation to fully implement ECtHR judgments. Execution of judgements is a complex process that requires the respondent State to identify the cause of the violation, detect the measures necessary to eliminate the specific applicant's violation and prevent the same or similar violations in the future. For a particular country, this may mean changing legislation, practices and policies to prevent such future violations.

Ministers' Deputies recognised that Non-Governmental Organisations (NGOs) could have a crucial role in bringing to the attention the authorities' failure to comply with their reporting obligations and that "initiatives, ideas and suggestions emanating from civil society can be considered as a true expression of persons living in the member States of the Council of Europe"¹. Therefore, in 2006 the Rules of Procedure of the Committee of Ministers established the possibility for NGOs to submit Rule 9 communications to assist the execution process i.e., to contribute to the full and effective implementation of ECtHR judgments.

As recent figures show, the overall number of Croatian cases which remain pending before the Committee of Ministers stood at 84², 28 of which have been classified as 'leading' cases. 'Leading' cases indicate a wider problem requiring the adoption of general measures to avoid recurrence of the violation found by the Court. In other words: there are 28 human rights problems that the Committee of Ministers is examining in respect of Croatia and which give rise to new structural and systemic problems.

¹ Resolution CM/Res(2016)3, Participatory status for international non-governmental organisations with the Council of Europe (Adopted by the Committee of Ministers on 6 July 2016 at the 1262nd meeting of the Ministers' Deputies) link available at: https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=090000168068824c

² HUDOC.EXEC, Department for the Execution of Judgements of ECHR, Croatia, Pending cases, link available at: [https://hudoc.exec.coe.int/eng#{"EXECDocumentTypeCollection":\["CEC"\],"EXECLanguage":\["ENG"\],"EXECState":\["HRV"\],"EXECIsClosed":\["False"\]}](https://hudoc.exec.coe.int/eng#{)

In four cases related to hate crimes (Đorđević v. Croatia, Šečić v. Croatia, Škorjanec v. Croatia and Sabalić v. Croatia) ECtHR found that there has been a violation of the procedural aspect of Article 3 taken in conjunction with Article 14 of the Convention except in Đorđević case where there has been a violation of the procedural aspect of Article 3 and 8 of the Convention. Regarding the applicants' complaint in Đorđević case under Article 14 of the Convention, the applicant's complaint was rejected in this aspect because internal remedies available had not been exhausted. At the moment, out of a total of four cases against Croatia related to hate crime, two of them were classified as leading cases (Šečić and Đorđević), however the supervision in Đorđević case is closed. At the moment, three cases are still pending before ECtHR (Šečić, Škorjanec and Sabalić), whilst two (Beus v. Croatia, No. 16943/17, Viktor Zantila and Goran Koletic v. Croatia, No. 63344/17) are "in communication" before ECtHR.

In the following text, three most prominent cases related to hate crimes are analysed.

Sabalić case³

In 2010 the applicant was physically attacked in a nightclub after the attacker started flirting with her and after the applicant refused him saying that she had a girlfriend. He grabbed her with both of his hands, threw her against the wall and then hit her with his fists all over her body. Afterwards, he knocked her to the ground and kicked her at the same time shouting "You lesbian!", "All of you should be killed!", "I will f... you girl!". The applicant sustained a contusion on the head, a haematoma on the forehead, abrasions of the face, forehead and area around the lips, neck strain, contusion on the chest and abrasions of both palms and knees. The injuries were qualified as minor bodily injuries. The police instituted minor offences for breaching public peace and order and fined him with 300 HRK (approximately 40 EUR).

The applicant lodged a criminal complaint with the Zagreb Municipal State Attorney's Office alleging that she had been a victim of a violent hate crime. The authorities dismissed her applicant's complaint on the ground that the attacker had already been prosecuted in the minor offences proceedings and that his criminal prosecution would contravene the ne bis in idem principle.

The Court stressed out that domestic authorities were confronted with prima facie indications of violence motivated or at least influenced by the applicant's sexual orientation which mandated for an effective application of domestic criminal-law mechanisms capable of elucidating the possible hate motive (§105). However, the minor offences proceedings did not in any manner address the hate crime element to the physical attack against the applicant nor was attacker indicted or convicted of any charges

³ Sabalić v. Croatia, European Court of Human Rights, App.No.: 50231/13, 14 January 2017, link available at: <http://hudoc.echr.coe.int/eng/?i=001-207360>

related to violence motivated by discrimination (§108). Therefore, the Court concluded that by instituting the ineffective minor offences proceedings, and as a result erroneously discontinuing the criminal proceedings on formal grounds, the domestic authorities failed to discharge adequately and effectively their procedural obligation under the Convention concerning the violent attack against the applicant motivated by her sexual orientation (§115). Accordingly, there had been a violation of Article 3 under its procedural aspect in conjunction with Article 14 of the Convention.

For the Sabalić case, it is still awaiting to be marked as “leading” or “repetitive” case before the Department for the Execution of Judgements of ECtHR.

Šečić case⁴

In 1999, Mr. Šemso Šečić, together with several other individuals, was collecting old metal in a street in Zagreb. Two unidentified men approached the group and attacked the applicant with wooden planks while shouting racial abuse. The applicant was taken to a nearby hospital where the doctors found that no bones had been broken, sending the applicant home with painkillers. However, during the night, the applicant experienced severe pain and the next day went to another hospital where it was found that he had sustained multiple rib fractures. As a result of the incident, Mr. Šečić suffered from post-traumatic stress syndrome, characterized by depression, anxiety, panic attacks, fears for his own safety and that of his family, nightmares, and underwent psychiatric treatment.

The police had concluded that the attack had been committed by members of a ‘skinhead’ group, which had been known to participate in similar incidents in the past. However, the police failed to question members of the group or investigate any other credible leads. Moreover, Croatian Radio Television (HRT) had broadcast a programme in which a young skinhead was interviewed, explaining his reasons for engaging in attacks on the Roma population in Zagreb in which he implicitly mentioned the incident involving the applicant. The police failed to pursue appropriate legal measures that would require the journalist to identify the interviewed party.

On that basis, the European Court of Human Rights identified several shortcomings in the action of the police and state attorney’s office regarding the investigation of the attack. Namely, the investigation lasted for more than seven years without any charges being brought. Furthermore, the police had failed to interview any individuals belonging to the skinheads whilst the person identified by an eyewitness had been excluded as a suspect

⁴ Šečić v. Croatia, App.no: 40116/02, European Court of Human Rights, 31 May 2007, link available at: <http://hudoc.echr.coe.int/eng/?i=001-80711>

without ever being questioned. Finally, the police had not sought a court order to compel the journalist to reveal his source despite such possibility existing under national law⁵.

The Court in its judgment emphasised that State authorities have the additional duty to take all reasonable steps to unmask any racist motive and to establish whether or not ethnic hatred or prejudice may have played a role in the event (§66). They failed to do so although they suspected that the applicant's attackers belonged to a skinhead group, which is by its nature governed by extremist and racist ideology. The Court considers it unacceptable that, being aware that the event at issue was most probably induced by ethnic hatred, the police allowed the investigation to last for more than seven years without taking any serious action with a view to identifying or prosecuting the perpetrators (§68-69). Therefore, the state had failed in its obligation to take reasonable steps to investigate the racist motivation in the case and found violations of Article 14 in conjunction with Article 3 of the Convention.

Škorjanec case⁶

In 2013, the applicant, Ms Škorjanec, was at a flea market with her partner who is of Roma origin when some passers-by had started uttering various racial insults against the applicant's partner on the grounds of his Roma origin such as “You should all be exterminated, I f*** your Gypsy mother”. The applicant's partner was then chased by these two men who caught him and beat him up. Ms Škorjanec tried to approach her partner and help him, however she was pushed to the ground and kicked in the head by one of the attackers.

The two men were prosecuted and convicted for the hate crime committed towards the applicant's partner on charges of making serious threats against her partner and inflicting bodily harm on him. However, the men were not charged for committing a racially motivated crime against Ms Škorjanec. In that procedure, the applicant was only considered as a witness and not as a victim. She and her partner lodged a criminal complaint arguing that she was also a victim of a hate crime. However, the applicant's criminal complaint was rejected by the State Attorney's office stating that there is no indication that attackers inflicted injuries on Ms Škorjanec because of hatred towards Roma, as she is not of Roma origin.

Ms Škorjanec complained about the failure to prosecute her attackers for a hate crime against her. She relied on Articles 3, 8 and 14 of the Convention. In particular, she

⁵ Government of the Republic of Croatia, Office of the Representative of the Republic of Croatia before the European Court of Human Rights, Action Report, *Šečić group v. Croatia*, App no: 40116/02, 29 December 2017, para 3-4, link available at: [http://hudoc.exec.coe.int/eng?i=DH-DD\(2018\)16E](http://hudoc.exec.coe.int/eng?i=DH-DD(2018)16E)

⁶ *Škorjanec v. Croatia*, European Court of Human Rights, App. No.: 25536/14, 28 March 2017, link available at: <http://hudoc.echr.coe.int/eng?i=001-172327>

complained that domestic law and practice was deficient, as it did not provide protection against discriminatory violence for individuals who were victims due to their association with another person. The Government on the other hand argued that the applicant had been a collateral victim and had been attacked only after she had tried to help her partner.

In judgment in question the Court referred to its previous case law reiterating that when investigating violent incidents triggered by suspected racist attitudes, the State authorities are required to take all reasonable action to ascertain whether there were racist motives and to establish whether feelings of hatred or prejudices based on a person's ethnic origin played a role in the events (§53). The Court emphasised that not only acts based solely on a victim's characteristics can be classified as hate crimes. For the Court, perpetrators may have mixed motives, being influenced as much or more by situational factors as by their biased attitude towards the group to which the victim belongs (§ 55). Having in mind that it is often extremely difficult to prove a racist motive, the obligation of the respondent State is to take all reasonable measures in order to uncover any possible racist motives. Moreover, this obligation concerns not only acts of violence based on a victim's actual or perceived personal status or characteristics but also acts of violence based on a victim's actual or presumed association or affiliation with another person who actually or presumably possesses a particular status or protected characteristic (§56).

The Court pointed out that the Croatian legal system offers sufficient protection for victims of hate crimes without requiring the victim to personally possess the protected characteristics (§61-62). However, the prosecuting authorities had concentrated their investigation only to the hate-crime element of the violent attack against the applicant's partner. They failed to carry out a thorough investigation on the link between the applicant's partner origin and the racist motive for the attack on them (§67). The court further points that the prosecuting authorities' insistence on the fact that the applicant herself was not of Roma origin and their failure to identify whether she was perceived by the attackers as being of Roma origin herself, as well as their failure to take into account and establish the link between the racist motive for the attack and the applicant's association with her partner, resulted in a deficient assessment of the circumstances of the case. Therefore, the Court concluded that there has been a violation of Article 3 under its procedural aspect in conjunction with Article 14 of the Convention.

The Government in its Action Report from the 29 December 2017 for both Šečić and Škorjanec case introduced a series of legislative institutional and awareness raising measures. In particular, the Criminal Code was amended in 2006 and hate crime was introduced as a separate criminal offence (when the attacks on the Šečić took place, hate crimes were processed within the general context of criminal investigation). Furthermore, the Criminal Procedure Act was amended in order to improve the effectiveness of criminal proceedings, in particular the effectiveness of pre-trial stages as well as the status of victims of criminal offences throughout criminal proceedings (victims' access to information, victims' right to compensation, victims' right to complain and to take over the prosecution from the State Attorney). Additionally, the new Law on the Police was

introduced prescribing a remedy against police actions and omissions in the performance of service. Specialized units for dealing with hate crime cases have been established⁷. In 2011 the Protocol for Procedure in Hate Crime Cases entered into force to set clear guidelines for the procedure to be followed in such cases. The Protocol governs the recording of hate crime cases by the police, state attorney's office and judiciary and requires authorities to collect official records on hate crime incidents. The Office for Human Rights and Rights of National Minorities has been set up as a focal point for collection, integration and dissemination of data on hate crimes.

Although there were numerous legislative changes to the Croatian legal system and despite the progress achieved, there are still some issues of concern which is why Human Rights House Zagreb together with the Centre for Peace Studies in October 2019, submitted Rule 9.2. Communication to the Department for the Execution of Judgements of the European Court of Human Rights (DEJ).

CSOs in their Rule 9.2. Communication urged the Government to draw up and implement a new comprehensive plan aimed at ensuring that all elements of the criminal justice system recognize, properly classify and treat with appropriate seriousness bias motivated crimes. In particular they stressed that police, State Attorney's Offices, and courts continue to experience problems in identifying hate crimes and applying the legislation. The main problem is that aforementioned bodies do not identify the motive of hate as the basis for the effective investigation which was also stated in the fifth monitoring cycle report for Croatia by the European Commission against Racism and Intolerance (ECRI). Another problem is inadequate prosecutions; hate-motivated violence is prosecuted as a misdemeanour instead of as a criminal offense, probably with the intention of achieving faster prosecution⁸. According to the empirical study conducted in Croatia of hate crime cases committed from 2013-2018, non-recognizing bias motivated crimes primarily by the police but also by the state attorney's office and the misdemeanour court, resulted in prosecution for a misdemeanour instead of a criminal offense. The most glaring example is the application of the principle of ne bis in idem that led to the rejection of the criminal complaints⁹.

Also, underreporting of hate crime remains a serious concern. There is no unequivocal condemnation from the government and other high officials who trivialize such violence.

⁷ Government of the Republic of Croatia, Office of the Representative of the Republic of Croatia before the European Court of Human Rights, Action Report, Šečić group v. Croatia, App no: 40116/02, 29 December 2017, link available at: [http://hudoc.exec.coe.int/eng?i=DH-DD\(2018\)16E](http://hudoc.exec.coe.int/eng?i=DH-DD(2018)16E)

⁸ Rule 9.2. Communication concerning Šečić group of cases v. Croatia No. 40116/02, Human Rights House Zagreb and Centre For Peace Studies, 11 October 2019, link available at: [http://hudoc.exec.coe.int/eng?i=DH-DD\(2019\)1230E](http://hudoc.exec.coe.int/eng?i=DH-DD(2019)1230E)

⁹ Maja Munivrana Vajda, Ines Sučić, Ivana Eterović, Aleksandar Maršavelski, Empirical study - Hate Crime in Croatia - Empirical research of cases from 2013-2018, page 86, link available at: http://www.hpc.hr/wp-content/uploads/2020/10/ZiM_izvjesce.pdf

Even though Croatia has the Working Group for Monitoring Hate Crime Cases, the statistics on hate crimes, including misdemeanours of hate crime are not published in an adequate form that can serve for further meaningful analysis of this type of violence. Only the bare figures are available on the official website. There is no disaggregated data showing hate crimes by the different bias grounds¹⁰. According to data there were 90 cases of hate-motivated criminal offences and misdemeanours in 2020, which is a significant increase compared to 48 cases from 2019. Since official statistics report only the total number of cases, it is not possible to discern the social groups to which the victims of these hate crimes belong. Due to this flaw, i.e., primarily to the non-disclosure of segregated data on hate crimes, it is not possible to monitor whether there has been an increase in hate-motivated violence or criminal and misdemeanour offences on national or ethnic grounds, which in turn makes it difficult to adopt policies to combat such acts¹¹.

The education of police officers in the field of hate crime is mostly carried out as a result of long-term cooperation between civil society organizations and the Policy Academy. Although this is an example of good inter sectoral cooperation, the prevalence of discriminatory attitudes and prejudice indicates the need for continuous and systematic implementation of education, involving all stakeholders that come into contact with victims of hate crimes¹².

The Working Group for Monitoring Hate Crime cases has proposed changes to the Rules of Procedure in Processing Hate Crimes¹³ that entered into force in April 2021. Changes brought new and detailed indicators for investigating bias motivation.

With respect to these three judgements, the Court has made it clear of the positive obligations member states have in assessing hate crimes and that not only acts based solely on a victim's characteristics can be classified as hate crimes. Moreover, perpetrators may have mixed motives, so it is not the background of the victim that is essential. Victim's actual or perceived characteristics or association or affiliation with another person who actually or presumably possesses a particular status or protected characteristic raises the duty to effectively investigate and prosecute possible bias motivations.

¹⁰ Rule 9.2. Communication concerning Šečić group of cases v. Croatia No. 40116/02, Human Rights House Zagreb and Centre For Peace Studies, 11 October 2019, link available at: [http://hudoc.exec.coe.int/eng?i=DH-DD\(2019\)1230E](http://hudoc.exec.coe.int/eng?i=DH-DD(2019)1230E)

¹¹ Human Rights House Zagreb, Overview for 2020, para 377, link available at: https://www.kucaljudskihprava.hr/wp-content/uploads/2021/04/KLJP_GI2020_PRIP_web_26.4..pdf

¹² Rule 9.2. Communication concerning Šečić group of cases v. Croatia No. 40116/02, Human Rights House Zagreb and Centre For Peace Studies, 11 October 2019, link available at: [http://hudoc.exec.coe.int/eng?i=DH-DD\(2019\)1230E](http://hudoc.exec.coe.int/eng?i=DH-DD(2019)1230E)

¹³ Rules of Procedure in Processing Hate Crimes, OG 43/21, 23 April 2021, link available at: https://narodne-novine.nn.hr/clanci/sluzbeni/full/2021_04_43_841.html