

CASE LAW OF THE EUROPEAN COURT OF HUMAN RIGHTS OF HATE CRIMES^a

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Abstract

The author deals with the case law of the European Court of Human Rights with regard to hate crimes. The paper presents and analyzes the Court judgments entailing the obligation to examine the existence of prejudice in the committed offenses, envisaged in Articles 2, 3 and 8 in conjunction with Article 14 of the Convention. The Court's case-law initially pertained to hate crimes committed by state authorities, but it subsequently evolved to cover hate crimes committed by individuals. At the end of the paper, the author presents a normative framework of hate crimes in the Republic of Serbia and points out to the shortcomings in the mode of incrimination, as well as to the problem of not applying the standards established by the Court in investigating the existence of possible prejudice in the committed crimes.

Key words: hate crime, European Court of Human Rights, practice, Republic of Serbia.

ПРАКСА ЕВРОПСКОГ СУДА ЗА ЉУДСКА ПРАВА У ПОГЛЕДУ ЗЛОЧИНА МРЖЊЕ

Апстракт

Аутор се у раду бави праксом Европског суда за људска права у погледу злочина мржње. Његово излагање је структурирано на тај начин да наводи и анализира пресуде на основу којих је створена обавеза испитивања постојања предрасуде код извршених кривичних дела у погледу чланова 2, 3 и 8 у вези са чланом 14 Конвенције. Уједно, аутор истиче да се пракса Суда првобитно односила на злочине мржње почињене од стране државних органа, али да је она после еволуирала и обухватила злочине мржње извршене од стране појединаца. На крају рада аутор излаже нормативни оквир у погледу злочина мржње за

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Републике Србије, уз указивање на недостатке у начину инкриминације, али и на проблем непримене стандарда установљених од стране Суда у истраживању постојања могућих предрасуде код извршених кривичних дела.

Кључне речи: злочин мржње, Европски суд за људска права, пракса, Република Србија.

INTRODUCTION

Hate crimes fall into the category of violent crimes. They are part of general crime, but they differ from other criminal offences in terms of motivation, which is reflected in the existence of prejudice (bias). Hate crime is not a phenomenon peculiar only to the contemporary society because hate crimes have been part of human history since ancient times. Yet, this form of violent crime became the subject matter of interest of scientific thought only in the 1980s. Numerous criminal law and criminological studies on hate crimes have been published since then, but there is still room for further study of this phenomenon. Lately, the need to examine prejudices against people who are "different," as the essence of this form of crime, have been intensified with the outbreak of the migrant crisis, the war in Syria, the so-called the Arab Spring, and more.

In 2008, the European Union Fundamental Rights Agency (FRA) adopted the so-called Framework Decision on Racism and Xenophobia - with special attention to the rights of victims of crime, obliging the Member States to effectively investigate and punish the existence of prejudice in the commission of crimes. Over the last decade, the European Court of Human Rights (hereinafter: the Court) has argued on several occasions that victims of hate crimes have the right not only to be generally recognized as victims of crime but also to have been victimized as a result of the perpetrators' prejudices. Based on the Warsaw Declaration of the Council of Europe (2005), there is a commitment to ensure a greater complementarity between the legal texts of the European Union and the Council of Europe. In this regard, the European Union has undertaken to transpose the aspects of the Council of Europe Conventions into the normative framework of the European Union. In other words, the EU Member States have undertaken to align their legislation with the obligations arising from the European Convention on Human Rights and Fundamental Freedoms (hereinafter: the Convention). According to Article 52 (3) of the Charter of Fundamental Rights of the European Union (2000/C 364/01), the meaning and scope of the rights protected by the Charter (such as Article 21 on the right to non-discrimination) should be interpreted in the same way as the corresponding right provided by the Convention (EU FRA, 2018, 2). In order to observe what obligations are envisaged for the EU Member States and for the Council of Europe member states, the paper will present the relevant practice of the Court on hate crimes and discuss the relevance of the observed cases for further practice.

*THE COURT'S CASE LAW ON ARTICLE 2 OF THE CONVENTION
CONCERNING HATE CRIMES*

In terms of Article 2 of the ECHR (right to life), we will first observe the case *Menson and Others v. UK* (app.no. 47916/99). In this case, Michael Menson, an African-American, was attacked by a racist gang in January 1997, when he sustained severe bodily injuries. He died on 13 February 1997, as a result of the attack. The attackers were soon arrested and sentenced to prison terms. Although they were convicted, a later investigation revealed that the actions of the Metropolitan Police Service (MPS) were accompanied by numerous shortcomings, the most serious of which were reflected in their attitude that the victim set himself on fire. It was only two years later that the Metropolitan Police Service accepted that the victim had died as a result of an attack by a gang.

The court found that there were very serious shortcomings in the investigation into Mr Manson's death, which was contrary to the requirement of an effective investigation. Despite declaring the application in this case manifestly ill-founded, as the perpetrators were convicted and punished, the Court emphasized that the respondent State's legal system had properly demonstrated, in its final analysis and with reasonable expedition, its ability to enforce criminal law against those who unlawfully took the life of another, regardless of the racial background of the victim. However, in spite of the Court decision, the significance of this case is reflected in the fact that the Court has once again emphasized that Article 2 of the Convention imposes a procedural obligation to conduct an effective official investigation which should be able to determine the causes of violations and identify the responsible persons in view of punishment. Where death occurs, as in the case of Michael Manson, the investigation becomes even more important, given the fact that the essential purpose of such an investigation is to ensure the effective application of domestic laws that protect the right to life (*Paul and Audrey Edwards v. the United Kingdom*, § 69). At the same time, the greatest significance of this case is reflected in the Court's view that, where the attack is racially motivated, it is particularly important that the investigation be conducted vigorously and impartially, taking into account the need to continuously confirm the condemnation of racism in society, and preserving the confidence of minorities in the government's ability to protect them from the threat of racist violence.

This Court stance created the basis for determining the new duties of state bodies in connection with criminal offenses committed out of prejudice. This duty derives from Article 14 of the Convention (prohibition of discrimination) and is reflected in the obligation to investigate and discover racial motives. In this regard, we will present a case in which such a duty was promoted by the Court (EU FRA, 2018, 3).

In the case *Nachova and others v. Bulgaria* (app. no.3577/98 and 43579/98), the Court found that there had been a violation of the negative obligation under Article 2 of the Convention because, on 19 July 1996, the military police forces killed two Bulgarian nationals of Roma origin, Mr Angelov and Mr Petkov, while attempting to arrest them. The two men were members of a military construction unit. Due to unjustified absence, they were arrested and sentenced to prison terms, but they soon managed to escape. Military police were soon sent to deprive them of their liberty. However, during the arrest, the military police opened fire and killed them. The Court emphasized that Article 2 not only protects human life from intentional deprivation but also covers situations where the use of force is permitted, and which may result in the deprivation of life of a person. It was also emphasized that, in examining the alleged violation of Article 2 of the Convention, the Court must take into account not only the state authorities conduct but also all the circumstances of the case. The use of force must be absolutely necessary to achieve one or more of the objectives set out in Article 2 of the Convention (Dimovski, Jovanović, 2019: 80).

At the same time, the Court examined the existence of a violation of Article 2 in conjunction with Article 14 of the Convention. In the present case, the Grand Chamber of the Court pointed out that it had not been established whether the killings were racially motivated, and no violation of Article 14 regarding the negative obligation envisaged in Article 2 of the Convention had been established. However, the Grand Chamber found that the domestic authorities had failed to conduct an adequate investigation into possible racist motives; the state failed to take all necessary measures and to investigate whether discrimination played a role in the critical event, thus violating Article 14 in relation to procedural obligations under Article 2 of the Convention. Thus, although it was not established before the Court that the members of the military police were racially motivated, it was the task of the respondent State authorities to investigate this matter, in accordance with its procedural obligation under Article 2.

When there is deprivation of a person's life, the Court emphasized that Articles 2 and 14 of the Convention impose a duty on public authorities to conduct an effective investigation, regardless of the racial or ethnic origin of the victim. At the same time, the authorities have an additional obligation to take all reasonable steps to detect the possible existence of a racist motive in an incident involving the use of force by civil servants. In the present case, notwithstanding the existence of the statement of witness M.M. on racist verbal abuse, which should have been a sufficient sign to domestic authorities of the need to investigate racist motives, such an investigation had not been conducted. Accordingly, the Court found a violation of the right to non-discrimination under Article 14, in conjunction with the procedural obligation, as one aspect of Article 2 of the Convention.

The Court considered that, when the domestic authorities did not conduct investigations to establish the existence of discrimination, thus neglecting the evidence on possible discrimination, strong conclusions and indications of a violation of Article 14 of the Convention could be drawn, which shifts the burden of proof to the respondent State. Concurrently, relying on the case facts, the Court emphasized that the domestic authorities failed to invoke a number of disturbing circumstances, such as excessive use of force and racist statements, and that it was justified to shift the burden of proof to the respondent State. In other words, it is up to the domestic authorities to prove, on the basis of additional evidence or a convincing explanation of the facts, that the specific events were not caused by discrimination by the state authorities.

The Court later found in its case-law that there had been a violation of Article 14 in conjunction with Article 2 in procedural terms in a number of other cases. Suffice it to mention, for example, *Ciorcan and others v. Romania* (app. no 29414/09 and 44841/09) or *Angelova and Iliev v. Bulgaria* (app. no 55523/00). In addition, we should mention the cases of *Ognyanova and Choban v. Bulgaria* (app. no 46317/00), *Vasil Sashov Petrov v. Bulgaria* (app. no 63106/00) and *Mižigárová v. Slovakia* (app. no 74832/01), in which the Roma were deprived of their lives by the police and the Court found a violation of the procedural obligation under Article 2 of the Convention, but it did not find a violation of Article 14 of the Convention, because in specific cases there were no circumstances showing that the authorities “had in front of them information sufficient to warn them of the need to investigate possible racist pretensions in specific events“. In other words, unlike the case of *Nachova and others v. Bulgaria*, the domestic authorities in these three cases did not have before them any concrete elements that could suggest that the applicants’ victimization was a consequence of racial prejudice. Although there were reports of prejudice against Roma in those countries, the Court did not consider that the domestic authorities in the particular circumstances had sufficient information before them to warn them of the need to investigate possible racist scenes in the events leading to death.

For the sake of correct understanding of the obligations of state authorities in determining the existence of prejudices, we will cite a separate opinion of Judge David Thór Björgvinsson from the case of *Mižigárová v. Slovakia* (app. no 74832/01). Judge Björgvinsson considered that numerous reports show that “police brutality against persons of Roma origin at the relevant time was systemic, widespread and a serious problem in Slovakia.“ On the other hand, most judges stressed that with regard to persons of Roma origin, this would not exclude the possibility that in a particular case the existence of independent evidence of a systemic problem, in the absence of any other evidence, would be sufficient to warn the authorities of a racist motive (*Mižigárová v. Slovakia*, §122). However,

although concerned about these reports, most judges were not convinced that the objective evidence itself was strong enough to suggest the existence of a racist motive. It should also be noted that dissenting opinions can be very important, as they indicate the direction of further change of the Court's practice, and it is not impossible for the Court to revise its understanding of this issue in the future.

In its practice, the Court has established the obligation to investigate the existence of discriminatory motives in criminal offences committed not only by state authorities but also by private persons. In this regard, we will return to the judgment of *Angelov and Iliev v. Bulgaria*, in which members of the Roma population were attacked by seven young men on 18 April 1996, when Angel Dimitrov Iliev was seriously injured. Reiterating the views taken in the cases of *Nachova and others v. Bulgaria* and *Ciorcan and others v. Romania*, the Court pointed out that it was completely unacceptable that the domestic authorities had not expeditiously conducted a preliminary investigation against the attackers, given the fact that the racist motives for the attack on the applicant's cousin were known to the domestic authorities at a very early stage of the investigation. As the investigation had been delayed for over 11 years, the statutory period of limitation had expired for a large number of attackers; the Court also noted that the perpetrators had not been charged with any racially motivated crime. Accordingly, the Court concluded that the domestic authorities did not make a clear distinction between this racially motivated crime and other non-racially motivated criminal offenses, which is incompatible with Article 14 of the Convention. Therefore, in the present case, the Court found that the applicants had infringed Article 14 in conjunction with Article 2 of the Convention in procedural terms.

THE COURT'S CASE LAW ON ARTICLE 3 OF THE CONVENTION CONCERNING HATE CRIMES

In its case-law, the Court has established an obligation to examine the existence of prejudice among other articles of the Convention. Thus, for example, the judgment in *Bekos and Koutropoulos v. Greece* (app. no 15250/02) reported that on 8 May 1998, at around 00:45, police officers responded to a telephone call concerning an attempt of two men of Roma origin, the applicants Bekos and Koutropoulos, to break into a kiosk. The incident was reported by Mr. Pavlikis, the grandson of the kiosk owner. The first applicant was trying to break into a kiosk with an iron bar, while the second applicant was guarding. Mr Pavlakis fought with the applicants, hitting the second applicant in the face (as alleged by the second applicant). At that moment, three police officers arrived at the scene. The first applicant first claimed to have been deprived of his liberty without being beaten. Then, one of the policemen took off his handcuffs and hit

him several times with a truncheon on his back and head. Following the arrest, the applicants were taken to the Mesolongi police station. During being taken to a cell, the first applicant was allegedly hit twice with a truncheon by one police officer, while another police officer hit him in the face. In the morning, he was taken to the interrogation hall, where he was allegedly beaten by three police officers in order to extract confessions for other criminal acts and information about who was involved in the sale of psychoactive substances in the given area. The second applicant stated that he had been abused throughout the hearing; he was first beaten with a stick, which was then pushed into his buttocks over his pants, and asked to smell the stench. Both applicants stated that could hear each other's screams during their interrogation.

The applicants claimed a violation of Article 3 (prohibition of torture) as well as Article 14 (prohibition of discrimination) in conjunction with Article 3 of the Convention. Applying the criteria developed in its case-law to this case, the Court considered that the serious physical injuries suffered by the applicants by the police, as well as the feelings of fear, pain and inferiority resulting in the disputed treatment, must have led to the specific police conduct be cruel enough to be categorized as inhuman and degrading treatment within the meaning of Article 3 of the Convention. On the basis of the above, the Court concluded that there was a violation of Article 3 of the Convention in a negative light. At the same time, the Court assessed whether there had been a violation of the procedural obligation under Article 3 of the Convention. Although it was established that the applicants had been ill-treated while in custody, no police officer had ever been punished, either in criminal proceedings or in internal disciplinary proceedings for the applicants' ill-treatment. In these circumstances, given the lack of an effective investigation into the applicants' credible allegation' that they had been ill-treated in custody, the Court considered that there was a violation of the procedural obligation laid down in Article 3 of the Convention.

The Court ultimately examined whether there had been a violation of Article 3 in conjunction with Article 14 of the Convention. As the domestic authorities did not investigate the possible racist motives behind the incident, even though the authorities had credible information that the alleged attacks were racially motivated, the Court concluded that the authorities had failed to fulfill their duty under Article 14 in conjunction with Article 14 to take all possible steps to investigate whether discrimination may have played a role in the events. Thus, there was a violation of Article 3 in conjunction with Article 14 of the Convention.

Another interesting case is *Šečić v. Croatia* (app. no 40116/02). This case concerned Šems Šečić, the applicant of Roma origin, who was attacked in Zagreb on 29 April 1999 while collecting scrap metal together with several other individuals. The police were soon notified, spoke to

people at the crime scene and toured the neighborhood in order to find the attackers. The applicant was taken to hospital, where the doctors found that there were no broken bones and prescribed painkillers. However, during the night, Mr. Šečić went to another hospital due to severe pain, where doctors diagnosed him with multiple rib fractures. As a result of this attack, the applicant visited the Psychiatric Clinic until the beginning of June 1999, where he was treated for a post-traumatic stress disorder, characterized by depression, tension, panic attacks, fear for his own safety and the safety of his family, insomnia and nightmares. This judgment is significant because it was for the first time that the Court established an obligation for domestic authorities to effectively investigate possible motives for bias in criminal cases involving private individuals rather than public authorities. Thus, the Court emphasized (in paragraph 67) that in investigating violent incidents, the State authorities have an additional obligation to take all reasonable steps to expose any racist motive, and held that this obligation also exists in cases of acts contrary to Article 3 of the Convention. In addition, the Court found it “unacceptable that the police were aware that the disputed event was most likely caused by ethnic hatred, but still allowed the investigation to last longer than seven years without taking any serious action to identify or criminalize prosecution of the perpetrator” (*Šečić v. Croatia*, §70). Therefore, the Court concluded that there had been a violation of Article 14 in relation to the procedural obligation stemming from Article 3 of the Convention.

The court extended the obligation of the state to establish certain motives for the commission of a criminal offense by the judgment in *Milanović v. Serbia* (app. no. 44614/07). Zivota Milanovic, an applicant of Roma origin, from the village of Belica in the municipality of Jagodina, is the most prominent member of the religious community called Hare Krishna. During 2000 and 2001, the applicant began receiving anonymous telephone calls, including a threat to be burned “for spreading the gypsy religion.” In late 2001, the applicant reported the threats to the Jagodina Police Department, stating his suspicion that the threats were coming from members of a nationalist organization called “Obraz”. In addition to receiving telephone threats, the applicant was the victim of several physical attacks in the period from 2001 to 2007, involving the use of a cold weapon (a wooden stick and a knife).

In this case the Court, found a violation of the positive obligation under Article 3 of the Convention because the police authorities had not taken justified and effective steps to prevent the applicant's ill-treatment again, despite the fact that there was a real risk of such an outcome. However, the significance of this judgment is reflected in the fact that the Court has considered the existence of a violation of Article 14 in conjunction with Article 3 of the Convention in procedural terms. The Court emphasized (in paragraph 96) that, when investigating violent incidents such

as racially motivated attacks, state authorities have an additional obligation to take all reasonable steps to expose any religious motive and to determine whether religious hatred or prejudice may have played a role in the events. Admittedly, proving such motivation can be difficult in practice. The obligation of the respondent State to investigate possible religious scenes of the violent act is not absolute but it implies an obligation of the state authorities to exert their best efforts and do what is reasonable in the circumstances of the case. In paragraph 97, it was pointed out that “the Court considers that the above is also true in cases where private individuals act contrary to Article 3 of the Convention. Equally treating religiously motivated violence and brutality with cases that do not have this kind of oversight would interfere with the specific nature of acts that are particularly destructive of fundamental rights. Failure to differentiate between the way in which substantially different situations are handled may constitute unjustified conduct incompatible with Article 14 of the Convention. On the basis of all the foregoing, the Court concluded that there had been a violation of Article 14 in respect of the procedural aspect of Article 3 of the Convention (Temperman, 2015: 157-158).

In the case of *Virabyan v. Armenia* (app. no 40094/05), the Court extended the grounds of prejudice to ideology. The applicant Grisha Virabyan was a member of the opposition People's Party of Armenia. During the February and March 2003 presidential elections, the applicant was an authorized election assistant to an opposition candidate. Following the elections, the International Election Observation Mission ruled that the election process was not conducted in accordance with international standards. The opposition candidate addressed the Constitutional Court, which recommended that a referendum on confidence in the re-elected president be held within a year. As the one-year deadline approached, the opposition began organizing protests across the country to challenge the legitimacy of the re-elected president. The applicant took part in the protests, which resulted in his arrest. During his detention, according to the applicant, he had been subjected to treatment contrary to Article 3 of the Convention. At the same time, the Court considered whether the ill-treatment could be linked to the applicant's political views and, therefore, considered discriminatory. In this regard, the Court concluded that it could not be ruled out that the violent behavior of the police may have been motivated by other reasons. With regard to the existence of a procedural violation of Article 14 in conjunction with Article 3, the Court was of the view that the authorities had before them credible information sufficient to alert them to the need for initial verification and, depending on the outcome, investigation of possible political motives for abuse. The domestic authorities did not attempt to investigate the circumstances of the applicant's arrest, including a number of inconsistencies and other elements indicating the possible politically motivated nature of the meas-

ure, and no conclusions were drawn from the available materials. Therefore, the Court concluded that the authorities had failed to fulfill their duty under Article 14 of the Convention in conjunction with Article 3 to take all possible steps to investigate whether or not discrimination may have played a role in the applicant's ill-treatment.

In its practice, the Court has also established that disability can also be a basis for prejudice. In the case of *Djordjevic c. Croatia* (app. no 41526/10), applicant Dalibor Đorđević (a person with a disability) and his mother Radmila Đorđević were victims of abuse by pupils for the period of four years. As most of the abusers were children in the criminal law sense (persons under the age of 14), which made it impossible to impose criminal sanctions against them, the Court could not consider a violation of the procedural obligation under Article 3 of the Convention. Notably, in that particular case, it is probable that none of the offenses complained of by the applicants constitute a criminal offense, and that the incidents of harassment are entirely incompatible with Article 3 of the Convention. This case refers to the issue of positive obligations of the state in quite a different situation, outside the sphere of criminal law, when the competent state authorities are aware of the situation of serious harassment and even violence against a person with a physical and mental disability.

On the basis of all the above, the Court was satisfied that the domestic authorities were aware of the constant harassment of the first applicant by children from his neighborhood and children attending a nearby school. The Court found that the competent authorities had not taken sufficient steps to determine the extent of the problem and to prevent further abuse. Accordingly, here was a violation of Article 3 of the Convention in respect of the first applicant. Although the Court did not find a violation of Article 14 of the Convention because the applicants had not exhausted domestic remedies, the Court emphasized that disability constituted grounds for discriminatory treatment.

The next case which will be analyzed is *Identoba and Others v. Georgia* (app. no 73235/12). The significance of this judgment is reflected in the fact that the Court has established homophobia as the basis of prejudice. The applicant in this case was the non-governmental organization Identoba, whose goal is to promote and protect the rights of members of sexual minorities. At the same time, 14 other Georgian citizens applied as applicants. The controversial event was related to the celebration of the International Day against Homophobia on May 17. In this regard, on 8 May 2012, Identoba asked the state authorities to provide sufficient protection in terms of possible violence against the participants in the event, having in mind the hostile attitude towards sexual minorities in Georgia. Counter-demonstrations were organized on the day of the event. On that occasion, counter-demonstrators shouted derogatory slogans at the expense of sexual minorities, and physically attacked the participants, which

resulted in injuries to several applicants. Although members of the internal affairs were present, they did not react adequately, despite the fact that the participants in the march demanded to be provided with protection. Also, several participants were arrested with the explanation that the police wanted to provide them with protection from counter-demonstrators. In that case, the Court held that there had been a violation of Article 3 of the Convention.

In that case, the Court also considered that there was a violation of Article 14 in conjunction with Article 3 of the Convention. As the organizers warned the police of the possibility of violence, and considering the existing reports on the negative attitude towards sexual minorities in some parts of society, the local authorities had a positive obligation to protect the protesters. At the same time, domestic authorities violated a procedural obligation to investigate developments during the demonstrations, with particular emphasis on identifying motives for bias and identifying those responsible for committing homophobic violence. Thus, the Court concluded that there had been a violation of the respondent State's positive obligations under Article 3 taken in conjunction with Article 14 of the Convention.

In the case *B.S. v. Spain* (app. no 47159/08), the Court broadened the scope of prejudice based on gender. The applicant was a woman of Nigerian descent, working as a prostitute at the time. In July 2005, she was stopped for questioning by police on three occasions, during which she claimed she was beaten and racially abused each time. After the third such incident, she filed a criminal complaint, and she had to go to the hospital. After being interrogated for the fourth time, she filed a new criminal complaint in which, among other things, she claimed that women with a "European phenotype" were not stopped and interrogated by the police.

The Court found that the investigation was inadequate in many respects: the authorities refused to organize the identification of the suspects using two-way mirrors, and the medical reports were not taken into account. Consequently, the investigation was not sufficiently thorough and effective to meet the procedural requirements of Article 3 of the Convention. It is important to note that the Court did not find a violation of the negative obligation under Article 3 of the Convention, as the medical reports were inaccurate and unclear. The Court also dealt with the existence of a violation of Article 14 in conjunction with Article 3 in respect of a procedural aspect. In this regard, the Court reiterated the obligation of local authorities to investigate whether there is any link between racist attitudes and an act of violence in the context of the procedural obligations under Article 3 of the Convention, and stated that the implicit part of Article 14 of the Convention is to ensure respect for fundamental values set out in Article 3 of the Convention without discrimination. The applicant's arguments were not examined by the domestic courts, which also failed to take into account her particular vulnerability inherent in her situ-

ation as an African woman working as a prostitute. The authorities thus failed to fulfill their obligation to take all possible measures to determine whether a discriminatory attitude could play a role in the events. Although the Court did not use the term intersectionality (gender) in the reasoning of its decision, it is clear that it referred to discrimination based on gender.

Mudric v. the Republic of Moldova (app. no 74839/10) is another gender-based case. After the divorce from her husband, the applicant Lidia Mudric continued to live in a house in the immediate vicinity of her ex-husband's house. On 31 December 2009, her ex-husband broke into her house and beat her. A few months later, he beat her again, but this time he remained to live in the applicant's house, and she had to seek accommodation in her neighbors' houses.

The Court concluded that the manner in which the state authorities acted in this case, in particular the long and unexplained delays in the execution of the domestic court's eviction order and the submission of A.M. to compulsory medical treatment, constituted a failure to fulfill their positive obligations under Article 3 of the Convention. Accordingly, the Court held that there had been a violation of that provision. In this case, the Court also dealt with a violation of Article 14 in conjunction with Article 3, as the applicant considered that the authorities had not applied domestic legislation intended to provide protection against domestic violence, as a result of preconceived notions of the role of women in the family. According to the Court, there were clear facts indicating that the actions of the authorities were not a simple failure or delay in action, because they repeatedly approved of such violence and reflected a discriminatory attitude towards her as a woman. Thus, in the circumstances of the case, the Court found that there had been a violation of Article 14 in conjunction with Article 3 of the Convention.

The next case concerning the violation of Article 14 of the Convention in conjunction with Article 3 of the Convention is *Škorjanec v. Croatia* (app. no 25536/14). The applicant was born in 1988 and lives in Zagreb. On 9 June 2013, the Zagreb police received an emergency call on the attack of two men against a Roma man and a Croat woman. At the crime scene, the police found the applicant Maja Škorjanec, her partner Š.Š. and another individual (I.M.), with whom the victims of the attack had an oral and physical conflict. Everyone present had visible injuries. Police soon arrested another attacker (S.K.). The initial police report showed that the applicant and her Roma partner had an argument with I.M. and SK, where the second attacker said, "all Gypsies should be killed, we will exterminate you." At that point, the applicant's partner was attacked by I.M. and S.K. Although Maja Škorjanec and her partner tried to escape, the attackers caught up with them. Then, S.K. threw the applicant on the ground and struck her in the head. The attackers then kept beating Maja's partner, and injured his hands/arms with a knife.

Although the applicant had also been beaten and inflicted with bodily injuries, the perpetrators were not charged with a racially motivated crime against her; as she was not a Roma woman herself, the prosecution claimed that there was no indication that she had been attacked for racial hatred. The Court reiterated that, when evidence of racist verbal abuse is discovered in an investigation, this must be proven and, if confirmed, a detailed examination of all matters should be undertaken in order to discover possible racist motives. Thus, the context of the attack must be taken into account. In real life, some people become victims of hate crimes not because they possess a certain trait but because of their connection to another person who actually or probably possesses the given trait. This connection may take the form of the victim's association with a particular group, or the victim's actual or perceived affiliation with a member of a particular group (e.g. a personal relationship, friendship or marriage). In the specific case, the competent prosecutor's office limited the investigation into the potential hate crime only to Maja's partner (Mr. Š.Š). This led to an inadequate investigation by the domestic authorities into the applicant's allegations of a racially motivated act of violence against her to an extent incompatible with the State's obligation to take all reasonable steps to detect possible racist motives behind the incident. Given the failure of the senior public prosecutor to carry out the necessary supervision of a particular case as required by the Convention, the Court concluded that the domestic authorities had failed to fulfill their obligations under the Convention when dismissing the applicant's racially motivated violence against her without prior investigation before taking their decision. On the basis of all the above, the Court concluded that there had been a violation of Article 3 in its procedural aspect in conjunction with Article 14 of the Convention.

THE COURT'S CASE LAW ON ARTICLE 8 OF THE CONVENTION CONCERNING HATE CRIMES

R.B. v. Hungary (app. no 64602/12) was the first case where the Court found the existence of racist motives as a ground for a violation of Article 8 of the Convention (right to respect for private and family life). The facts of the case relate to a series of protests against members of the Roma population during 2001 in Göngyöspata, organized by right-wing parties and organizations. The applicant and her child were victims of racist outcries and threats. In addition to being a victim of a violation of Article 3 of the Convention, the applicant alleged that the domestic authorities had failed to take relevant criminal measures against the participants in the anti-Roma rallies in order to deter them from the racist harassment that had ultimately occurred, and failed to properly investigate

the occurrences of racist verbal abuse, thus disregarding the positive obligation under Article 8 of the Convention.

Finding the existence of a minimum level of severity as a ground for a possible violation of Article 3 of the Convention, the Court found that the event in question did not reach that level and rejected the application as manifestly ill-founded in respect of Article 3 and Article 3 in conjunction with Article 14 of the Convention. The Court then analyzed whether there had been a violation of Article 8 of the Convention, as the applicant had been the victim of a racist attack, which necessarily affected her private, in terms of ethnic identity. In this regard, the Court emphasized that, "when an individual makes credible allegations that she has been subjected to harassment by motivated racism, including verbal attacks and physical threats, domestic authorities have a similar obligation to take all reasonable steps to expose any racist motive and determine whether ethnic hatred or prejudice may or may not play a role in the disputed events."

In the Court's view, these positive obligations require an even higher standard of state response to alleged incidents motivated by bias in situations where there is evidence of patterns of violence and intolerance towards ethnic minorities. The Court held that the respondent State had failed to provide the applicant with adequate protection against attacks on her integrity and had shown that the manner in which the criminal law mechanisms had been enforced in this case was incorrect to the point of violating the respondent State's positive obligations under Article 8 of the Convention.

CONCLUSION

In general, the presented case law of the Court illustrates the obligation of the state authorities to do everything reasonable in the given circumstances to gather evidence if the motive indicates the existence of a possible prejudice. It can be concluded from the presented practice that the obligation to investigate prejudice is related to various articles of the Convention, and it also illustrates how the Court has expanded the legal grounds of prejudice. In this way, the Court has created standards which need to be met in order to conduct an effective investigation in case of a suspected hate crime.

In the Republic of Serbia, the amended Criminal Code of 2012 (Krivični zakonik Republike Srbije, 2005) includes Article 54a, which prescribes a special circumstance for sentencing the criminal offender of a hate crime. Namely, Article 54a of the Criminal Code stipulates that if the criminal offense is committed out of hatred based on race and religion, national or ethnic origin, gender, sexual orientation or gender identity of another person, the court will assess this circumstance as an aggravating circumstance, unless it is prescribed as a feature of a specific crim-

inal offence. In this way, the Serbian legislator has expanded the range of criminal offences (in addition to criminal acts of inciting national, racial and religious hatred and intolerance and racial and other discrimination) where hatred is a motive for committing criminal acts. This has intensified state repression against hate crimes.

A careful analysis of the legal text shows that Article 54 of the Criminal Code prescribes general rules on sentencing, emphasizing that the incentive for the commission of a criminal offense will be taken into account in the sentencing process. In that way, hatred could be taken as an incentive for criminal conduct when sentencing offenders. However, by explicitly prescribing hatred as an aggravating circumstance, the legislator intended to raise criminal protection to a higher level in relation to particularly vulnerable social groups whose members have been victims of various hate crimes as a result of belonging to such social groups. At the same time, it should be emphasized that the legislator should not have been guided by the exhaustive enumeration of the legal grounds for the existence of hatred, without stating in sufficient detail the grounds of hatred (hate crimes). Namely, the question justifiably arises as to whether this provision could be applied if the hatred was aimed against persons with certain mental or physical disabilities. The linguistic interpretation of provision 54a of the Criminal Code yields a conclusion that there is no place for the application of a more stringent punishment if the criminal offense is committed out of hatred against persons with disabilities. However, even in such cases, it is possible, without changing the provision of Article 54a of the Criminal Code, to strengthen the criminal protection of persons with disabilities by applying the provisions on general sentencing rules.

In order to overcome this shortcoming, in addition to listing the specific characteristics that are protected by law, the legislator should envisage that some other characteristics may also appear as a basis for qualifying a certain act, which would ultimately provide for the imposition of a more stringent punishment for hate crimes. Another option is to expand the grounds of hatred, which has been done in defining the terms “discrimination” and “discriminatory conduct” in Article 2 of the Act on the Prohibition of Discrimination (Anti-Discrimination Act).

In addition to the fact that the normative framework of the Republic of Serbia has certain shortcomings regarding the grounds of hate crimes, and despite the existence of the General Mandatory Instruction to the Republic Public Prosecutor on Hate Crimes, it should be noted that only one hate crime verdict was passed in Serbia in November 2018, even though there are numerous crimes where there is a reasonable suspicion that prejudice is the basis for the commission of these criminal offences. This clearly indicates that the prosecutor's offices in the Republic of Serbia should not only declaratively adopt but finally start implementing the standards created by the Court.

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ПРАКСА ЕВРОПСКОГ СУДА ЗА ЉУДСКА ПРАВА У ПОГЛЕДУ ЗЛОЧИНА МРЖЊЕ

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Резиме

Злочин мржње, иако је као феномен почео да се јавља још у античко доба, тек су у другој средини XX века државе почеле да правно препознају. Поред држава широм света, и међународне организације почеле су да доносе акта којима се нормира начин реакције државе на кривична дела извршена услед постојања мржње (предрасуде). Тако је, на пример, Агенција Европске уније за основна права 2008. године обавезала државе чланице доношењем Framework Decision on Racism and Xenophobia – with special attention to the rights of victims of crime да ефикасно истражују и казне постојање предрасуда приликом извршења кривичних дела. С тим у вези, Европски суд за људска права је у својој пракси почео да препознаје предрасуде везане за различите карактеристике жртава када је разматрао постојање повреда одређених чланова Конвенције.

Аутор је у раду представио прве пресуде из богате судске праксе Европског суда за људска права које се односе постојање мржње (предрасуде) у вези са повредом чланова 2, 3 и 8 Конвенције. Из наведених пресуда проистекле су одређене обавеза држава чланица Савета Европе. На крају рада аутор наводи позитивна нормативна решења у Републици Србији у погледу злочина мржње. Уједно, аутор истиче мане постојећег решења, изражавајући бригу да је већи проблем то што држава не примењује сопствене законе у погледу реакције на вршење кривичних дела мотивисана мржњом (предрасудом).