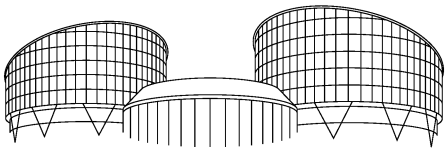

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF ISAKOVIĆ VIDOVIĆ v. SERBIA

(Application no. 41694/07)

JUDGMENT

STRASBOURG

1 July 2014

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Isaković Vidović v. Serbia,

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

Josep Casadevall, *President,*
Alvina Gyulumyan,
Ján Šikuta,
Dragoljub Popović,
Luis López Guerra,
Johannes Silvis,
Valeriu Griţco, *judges,*
and Santiago Quesada, *Section Registrar,*

Having deliberated in private on 10 June 2014,

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

PROCEDURE

1. The case originated in an application (no. 41694/07) against Serbia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Serbian national, Ms Suzana Isaković Vidović ("the applicant"), on 18 September 2007.

2. The applicant was represented by *Odvetniška družba Gregorovič & Pungartnik*, a law firm based in Šentjur, Slovenia. The Serbian Government ("the Government") were represented by their Agent, Mr S. Carić.

3. The application concerned a statute-barred prosecution for severe bodily harm allegedly caused to the applicant by her neighbour.

4. On 4 June 2012 the application was communicated to the Government. On 1 February 2014 the Court changed the composition of its Sections (Rule 25 § 1). This case was thus assigned to the newly composed Third Section (Rule 52 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant, a medical doctor by profession, was born in 1967. She currently lives in Celje, Slovenia, having lived in Šabac, Serbia, at the material time.

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

7. On 2 September 1997 the applicant and her neighbour P.V. confronted each other in front of their houses following a verbal conflict between P.V. and the applicant's mother. While the applicant allegedly shouted obscenities at him, P.V. allegedly punched her in the face, causing her to fall down and lose consciousness. The medical records from the emergency ward showed that the applicant had sustained a number of injuries to her head. She was released from hospital the next day upon her own request.

8. On an unspecified date, the applicant lodged a criminal complaint (*krivičnu prijavu*) in respect of this event.

9. On 16 September 1997 P.V. and his wife brought a private criminal action (*privatnu krivičnu tužbu*) against the applicant for insult and defamation (*zbog uvrede i klevete*) and against both the applicant and her mother for making serious threats (*zbog ugrožavanja sigurnosti*).

10. On 2 March 1998 the Šabac Public Prosecutor filed a bill of indictment (*optužnicu*) against P.V. with the Šabac Municipal Court for the crime of severe bodily injuries (*zbog nanošenja teških telesnih povreda*).

11. On 20 March 1998 the Municipal Court joined the two sets of proceedings.

12. At some point in 2000 the applicant lodged a civil compensation claim within the criminal proceedings (*istakla imovinsko-pravni zahtev*).

13. Between 14 April 1998 and 31 May 2000 a total of thirteen hearings were held or adjourned.

14. At the hearing of 11 January 2000 a medical expert stated that, based on the available documentation, on 2 September 1997 the applicant had sustained a concussion as well as a contusion. She had also continued receiving medical treatment for another two months.

15. On 15 June 2000 the Municipal Court convicted both the applicant and P.V. as charged and sentenced them to a fine and four months imprisonment, respectively, both sentences suspended for a period of one year. The court instructed the applicant to pursue her civil claim in a separate civil suit. The applicant's mother was acquitted.

16. On 20 June 2001 the Šabac District Court quashed the convictions and ordered a new trial, but upheld the acquittal.

17. On 12 January 2004 a new hearing was scheduled for 25 February 2004.

18. On 25 February 2004 the Municipal Court terminated the proceedings against the applicant as time-barred, while the proceedings against P.V. continued.

19. On 2 April 2004 the main hearing started anew due to changes to the composition of the bench. Following the applicant's testimony, the proceedings were adjourned for an indefinite period, as the Municipal Court had to obtain certain missing medical documentation.

20. At the next hearing of 18 May 2005, the Municipal Court heard P.V., as well as three witnesses. The court further decided to request the Belgrade Forensic Medicine Institute to give its opinion as regards the applicant's bodily injuries allegedly sustained at the material time. No new hearing was scheduled.

21. On 19 December 2005 the Municipal Court received the relevant medical opinion dated 16 September 2005. The opinion stated that the attack had caused the applicant severe bodily injuries (loss of consciousness, a concussion and a contusion of the zygomatic bone).

22. On an unspecified date the Municipal Court scheduled the next hearing for 22 May 2007. This hearing, however, was further adjourned on two separate occasions, because of P.V.'s or the trial judges' absence.

23. On 11 July 2007 the Municipal Court dismissed proposals for the examination of additional witnesses. On the same occasion the defendant requested that the entire trial bench be replaced by another. The case-file was subsequently forwarded to the President of the court for a decision.

24. On 5 September 2007 the Municipal Court terminated the proceedings against P.V. as time-barred.

25. The applicant never filed a separate civil compensation claim in respect of the underlying incident.

26. In 2008 the applicant and her family moved to Slovenia.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The Criminal Code 1977 (*Krivični zakon Republike Srbije*; published in the Official Gazette of the Socialist Republic of Serbia nos. 26/77, 28/77, 43/77, 20/79, 24/84, 39/86, 51/87, 6/89 and 42/89, as well as in the Official Gazette of the Republic of Serbia – OG RS – nos. 16/90, 21/90, 26/91, 75/91, 9/92, 49/92, 51/92, 23/93, 67/93, 47/94 and 17/95)

27. Articles 53, 67, 92 and 93 provided for the crimes of severe bodily injury, making threats, defamation and insult, respectively.

28. Article 53 § 1 provided that whoever perpetrated the crime of severe bodily injury could be sentenced to a prison term of between six months and five years.

B. The Criminal Code 2005 (*Krivični zakonik*, published in OG RS nos. 85/05, 88/05 and 107/05)

29. Articles 103 and 104 provide, inter alia, that a prosecution of the crime defined in Article 53 § 1 of the Criminal Code 1977 shall become time-barred when more than ten years elapse since its commission.

C. The Code of Criminal Procedure 2001 (*Zakonik o krivičnom postupku*, published in the Official Gazette of the Federal Republic of Yugoslavia – OG FRY – nos. 70/01 and 68/02, as well as in OG RS nos. 58/04, 85/05, 115/05 and 49/07)

30. Articles 19, 20, 46 and 235, read in conjunction, provide, inter alia, that formal criminal proceedings (krivični postupak) may be instituted at the request of an authorised prosecutor. In respect of crimes subject to prosecution ex officio the authorised prosecutor shall be the public prosecutor personally. His authority to decide whether to press charges, however, is bound by the principle of legality which requires that he must act whenever there is a reasonable suspicion that a crime subject to prosecution ex officio has been committed. It makes no difference whether the public prosecutor has learnt of the incident from a criminal complaint filed by the victim or another person, or indeed even if he has only heard rumours to that effect.

31. Article 53 provides that in respect of certain crimes subject to prosecution ex officio the public prosecutor may only press charges at the explicit request of the victim (po predlogu oštećenog). In respect of yet another group of crimes, of somewhat lesser gravity, the authorised prosecutor may only be the victim personally (privatni tužilac).

32. Article 61 provides that should the public prosecutor decide that there are no bases to press charges, he must inform the victim of this decision, who shall then have the right to take over the prosecution of the case on his own behalf, in the capacity of a "subsidiary prosecutor" (u svojstvu oštećenog kao tužioca), within eight days from the notification of that decision.

33. Unless specifically provided otherwise in the Criminal Code, all crimes are subject to prosecution ex officio (see Komentar Zakonika o krivičnom postupku, Prof. dr Tihomir Vasiljević and Prof. dr Momčilo Grubač, IDP Justinijan, Belgrade, 2005, p. 110, paragraph 4).

D. The Obligations Act (*Zakon o obligacionim odnosima*; published in the Official Gazette of the Socialist Federal Republic of Yugoslavia – OG SFRY – nos. 29/78, 39/85, 45/89, 57/89 and 31/93)

34. Articles 199 and 200 provide, inter alia, that anyone who has suffered fear, physical pain or mental anguish as a consequence of a breach of his "personal rights" (prava ličnosti) shall be entitled, depending on their duration and intensity, to sue for financial compensation in the civil courts and, in addition, to request other forms of redress "which may be capable" of affording adequate non-pecuniary satisfaction.

35. Article 376 §§ 1 and 2 provide that a claim based on the above-mentioned provisions may be brought within three years of the date on which the injured party learnt of the damage in question and identified the person responsible, but that such a claim must in any event be lodged within a maximum of five years as of the event itself.

36. Article 377 § 1 further provides that if the damage at issue has been caused as a result of the commission of a criminal offence, the civil limitation period may be extended so as to correspond to the applicable criminal statute of limitations.

E. The relevant civil procedures rules and case-law

37. The Civil Procedure Act 2004 (Zakon o parničnom postupku, published in OG RS nos. 125/04 and 111/09) was in force from 22 February 2005 until 1 February 2012. Article 13 of the Act provided that if a victim of a criminal offence had brought a civil action for damages against the offender, the civil court was bound by a final decision, if any, of the criminal court finding the offender guilty. The civil courts have, however, also consistently interpreted that provision in such a way that a criminal conviction was not a precondition for a damages award in a separate civil compensation suit (see, for instance, judgment Gž. 1739/06 of the Kragujevac District Court of 29 September 2006; judgment Gž. 1257/11 of the Novi Sad Appeals Court of 2 June 2011; judgment Gž. 3273/11 of the Novi Sad Appeals Court of 16 November 2011; judgment Gž. 146/12 of the Novi Sad Appeals Court of 5 April 2012; judgment Gž. 5676/11 of the Belgrade Appeals Court of 2 August 2012; and judgment Gž. 4357/12 of the Novi Sad Appeals Court of 26 October 2012; in which civil courts awarded non-pecuniary damages for injuries sustained during an arrest operation and/or in police custody in the absence of a criminal conviction against any police officer).

38. The Civil Procedure Act 1977 (Zakon o parničnom postupku, published in the OG SFRY nos. 4/77, 36/77, 6/80, 36/80, 43/82, 72/82, 69/82, 58/84, 74/87, 57/89, 20/90, 27/90 and 35/91, as well as in OG FRY nos. 27/92, 31/93, 24/94, 12/98, 15/98 and 3/02), which was in force until 22 February 2005, contained the same provision (see Article 12 § 3 thereof).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

39. The applicant complained, without reference to Article 8 of the Convention, about the manner in which the criminal proceedings against

P.V. were conducted, resulting, effectively, in his impunity, as well as the respondent State's consequent failure to provide her with any redress.

40. The Court, being the master of the characterisation to be given in law to the facts of any case before it (see *Akdeniz v. Turkey*, no. 25165/94, § 88, 31 May 2005), considers that this complaint falls to be examined under Article 8 of the Convention, which, in so far as relevant, reads as follows:

> "1. Everyone has the right to respect for his private ... life ...
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

A. Admissibility

1. Compatibility ratione temporis

41. The Government recalled that the incident giving rise to the present application happened before the entry into force of the Convention in respect of Serbia on 3 March 2004. Moreover, most of the investigation undertaken in this regard also took place prior to that date. It followed, according to the Government, that the applicant's entire complaint was outside of the Court's competence *ratione temporis*.

42. The applicant submitted that the violation in question was of an ongoing character and, further, that the impugned criminal proceedings ended more than three and a half years following the Serbian ratification of the Convention.

43. The Court reiterates that its jurisdiction *ratione temporis* covers only the period after the ratification of the Convention by the respondent State. From the ratification date onwards, however, the State's alleged acts and omissions must conform to the Convention, meaning that all subsequent facts fall within the Court's jurisdiction even where they are merely extensions of an already existing situation (see, for example, *Yağcı and Sargın v. Turkey*, 8 June 1995, § 40, Series A no. 319-A, and *Almeida Garrett, Mascarenhas Falcão and Others v. Portugal*, nos. 29813/96 and 30229/96, § 43, ECHR 2000-I). Accordingly, the Government's objection must be dismissed, the Court being competent to examine the applicant's complaint in so far as it relates to the respondent State's alleged failure to fulfil its procedural obligations under the Convention as of 3 March 2004. The Court may, however, also have regard to the facts prior to the ratification inasmuch as they could be considered to have created a continuous situation extending beyond that date or may be relevant for the understanding of facts occurring thereafter (see, *Salontaji-Drobnjak v. Serbia*, no. 36500/05, § 110, 13 October 2009; see also, *mutatis mutandis*,

Zorica Jovanović v. Serbia, no. 21794/08, § 49, ECHR 2013; *Šilih v. Slovenia* [GC], no. 71463/01, § 159, 9 April 2009; and *P.M. v. Bulgaria*, no. 49669/07, §§ 56-58, 24 January 2012).

2. Exhaustion of domestic remedies

44. The Government averred that the applicant had not brought a separate civil suit based on the Obligations Act (see paragraph 34 above), even though a criminal conviction was not a prerequisite in this regard (see paragraphs 37 and 38 above), nor had made use of the available and effective constitutional redress.

45. The applicant maintained that a constitutional appeal was not an effective remedy at the relevant time and/or in view of the particular circumstances of the present case. As regards civil redress, it would have been very difficult for the applicant to obtain a judgment in her favour given the lack of a prior criminal conviction. In any event, these proceedings would have probably lasted for another ten years and any civil redress could not have substituted for the Government's failure to provide the applicant with an effective criminal remedy.

46. The Court reiterates that the rule of exhaustion of domestic remedies referred to in Article 35 § 1 of the Convention obliges applicants to use first the remedies that are normally available and sufficient in the domestic legal system to enable them to obtain redress for the breaches alleged. The existence of the remedies must be sufficiently certain, in practice as well as in theory, failing which they will lack the requisite accessibility and effectiveness. However, Article 35 § 1 does not require that recourse should be had to remedies which are inadequate or ineffective (see *Aksoy v. Turkey*, 18 December 1996, §§ 51-52, *Reports of Judgments and Decisions* 1996-VI, and *Barta v. Hungary*, no. 26137/04, § 45, 10 April 2007).

47. Turning to the present case, the Court notes that from the Government's submissions it is not clear against whom a civil action for damages should have been brought (see *Sandra Janković v. Croatia*, no. 38478/05, § 35, 5 March 2009). Further, even assuming that the applicant could have obtained damages in civil proceedings from the respondent State itself and have done so in the absence of a prior criminal conviction of P.V. (see paragraphs 34, 37 and 38 above), the Court is of the opinion that effective deterrence against attacks on the physical integrity of a person requires efficient criminal law mechanisms capable of ensuring adequate protection (see, mutatis mutandis, *X and Y v. the Netherlands*, 26 March 1985, § 27, Series A no. 91; *August v. the United Kingdom* (dec.), no. 36505/02, 21 January 2003; *M.C. v. Bulgaria*, no. 39272/98, § 50, ECHR 2003-XII; and *Sandra Janković*, cited above, § 36, where the applicant suffered similar or arguably even lesser injuries compared to the applicant in the present case).

48. Finally, the Court has consistently held that a constitutional appeal should, in principle, be deemed effective within the meaning of Article 35 § 1 of the Convention in respect of all applications introduced against Serbia as of 7 August 2008 (see *Vinčić and Others v. Serbia*, no. 44698/06 and others, § 51, 1 December 2009; see also *Rakić and Others v. Serbia*, no. 47460/07 and others, § 39, 5 October 2010, and *Hajnal v. Serbia*, no. 36937/06, §§ 122 and 123, 19 June 2012). Since the applicant in the present case had lodged her application before that date, the Court sees no reason to depart from its earlier conclusions on the issue.

49. In view of the foregoing, the Government's two-pronged objection regarding the exhaustion requirement must be dismissed.

3. Article 35 § 3 (b) of the Convention

50. The Government argued that the applicant's complaint should be declared inadmissible since "she had not suffered a significant disadvantage" within the meaning of Article 35 § 3 (b) of the Convention. In particular, they noted that the applicant had spent only one day in hospital, that a concussion allegedly suffered by her had been established by merely one of the doctors involved and that, in any event, there had been no lasting medical consequences. Also, the applicant continued living in the same neighbourhood and never complained of any further harassment or filed a separate civil claim for moral damages in respect of the original incident. Lastly, the Government maintained that there was nothing "systemic" in the case, that the applicant was not a member of a vulnerable minority group or an individual in a particularly vulnerable position. The entire matter had also been duly considered by the domestic judicial authorities. Any delay was due to the domestic courts' attempt to fully establish all relevant facts concerning the incident in question.

51. The applicant strongly contested the Government's "unfair and inappropriate" comments. In particular, she submitted that it was due to the respondent State's procedural inefficiency that there was no final judicial decision on the merits of what had happened on 2 September 1997. In any event, the criminal proceedings brought against P.V. concerned severe bodily injuries, which crime could never be considered insignificant. The applicant was hospitalised following the incident and was released only upon her own request and due to her concerns about the safety of her child. The applicant was also in a state of shock for a period of ten days following the incident and continued with her medical treatment for another two months. In the meantime, she suffered from memory lapses, fatigue, reduced concentration, headaches and anxiety. The disputes with P.V. likewise continued, albeit verbally. The applicant nevertheless continued having serious concerns for her own safety, as well as the safety of her family members, and therefore ultimately decided to move to Slovenia in 2008.

52. The Court recalls that Article 35 of the Convention, as amended by Protocol No. 14, which entered into force on 1 June 2010, provides as follows:

> "3. The Court shall declare inadmissible any individual application submitted under Article 34 if it considers that:
>
> ...
>
> b. the applicant has not suffered a significant disadvantage, unless respect for human rights as defined in the Convention and the Protocols thereto requires an examination of the application on the merits and provided that no case may be rejected on this ground which has not been duly considered by a domestic tribunal."

53. As indicated in paragraph 79 of the Explanatory Report to Protocol No. 14: "The new criterion may lead to certain cases being declared inadmissible which might have resulted in a judgment without it. Its main effect, however, is likely to be that it will in the longer term enable more rapid disposal of unmeritorious cases".

54. Turning to the present case, quite apart from the exact severity of the injuries allegedly sustained by the applicant and the requirement for her complaint to have been duly considered by a tribunal (see, mutatis mutandis, *Juhas Đurić v. Serbia*, no. 48155/06, § 56, 7 June 2011), the Court is of the opinion that the issue of whether the Government have complied with their positive obligation to afford adequate redress to the applicant in the very specific circumstances of the present case cannot be considered trivial. Accordingly, the Government's objection must be dismissed, respect for human rights, as defined in the Convention, requiring the examination of the applicant's complaint on its merits.

4. Conclusion

55. The Court notes that the applicant's complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

56. The applicant reaffirmed her complaint and restated her arguments described at paragraphs 45 and 51 above. She further recalled that the concept of "private life" included one's physical and psychological integrity and noted that she had been attacked by P.V. in the presence of her mother and her child in front of her own home. Ultimately, the respondent State offered no redress since the criminal proceeding brought against P.V. were terminated based on the applicable statute of limitations and further made obtaining any civil damages very difficult.

57. The Government described the entire incident as a property-related quarrel among neighbours insufficiently serious to amount to a violation of Article 8 of the Convention (see paragraph 50 above). There were no long-lasting psychological effects on the applicant. The applicant had also "probably ... verbally provoked ..." P.V. Lastly, the Government recalled that the applicant had never filed a separate civil suit for damages whilst the respondent State, for its part, had instituted criminal proceedings *ex officio*.

2. The relevant principles

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

59. As regards respect for private life, the Court has previously held, in various contexts, that the concept of private life includes a person's physical and psychological integrity. Under Article 8 the States have a duty to protect physical and moral integrity of an individual from other persons. To that end they are to maintain and apply in practice an adequate legal framework affording protection against acts of violence by private individuals (see *X and Y v. the Netherlands*, cited above, §§ 22 and 23; *Costello-Roberts v. the United Kingdom*, 25 March 1993, § 36, Series A no. 247-C; D.P. and *J.C. v. the United Kingdom*, no. 38719/97, § 118, 10 October 2002; *M.C. v. Bulgaria*, cited above, §§ 150 and 152; and *Sandra Janković*, cited above, § 45, 5 March 2009).

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

3. The application of these principles to the present case

61. Turning to the present case, the Court notes that the applicant alleged that on the day in question she had been punched in the face by her neighbour, causing her to fall down and lose consciousness. The medical

records from the emergency ward also showed that the applicant had sustained a number of injuries to her head requiring hospitalisation, which injuries were subsequently classified as serious bodily harm by the Municipal Court (see paragraphs 7, 14 and 15 above). The Court considers that alleged acts of violence such as those require the States to adopt adequate positive measures in the sphere of criminal law protection (see *Sandra Janković*, cited above, § 47).

62. As to the criminal law mechanisms provided in the Serbian legal system, the Court notes that violent acts committed by private individuals are prohibited in a number of provisions of the Criminal Code, including the crime of severe bodily injury. The Court further observes that Serbian criminal law distinguishes between criminal offences to be prosecuted by the public prosecutor, either of his own motion or upon a private application, and criminal offences to be prosecuted by means of a private prosecution. The latter category concerns criminal offences of a lesser nature. The Serbian legal system also envisages the injured party acting as a subsidiary prosecutor. In respect of criminal offences for which the prosecution is to be undertaken by the public prosecutor, where the said official declines to prosecute on whatever ground, the injured party may take over the prosecution as a subsidiary prosecutor. In contrast, a private prosecution is undertaken from the beginning by a private prosecutor (see paragraphs 30-33 above). In these circumstances, the Court is satisfied that in the present case domestic law afforded the applicant adequate protection.

63. As regards the manner in which the criminal law mechanisms were implemented in the instant case, the Court notes that on an unspecified date, following the incident, the applicant lodged a criminal complaint. On 2 March 1998 the Šabac Public Prosecutor indicted P.V. on suspicion of having committed the crime of severe bodily injury. At the hearing of 11 January 2000 a medical expert stated that the available documentation indicated that on 2 September 1997 the applicant had sustained a concussion as well as a contusion. She had also continued receiving medical treatment for another two months. On 15 June 2000 the Municipal Court convicted P.V. as charged and sentenced him to four months imprisonment, suspended for a period of one year. On 20 June 2001 the Šabac District Court quashed the conviction and ordered a new trial. Between 3 March 2004, that being the date of entry into force of the Convention in respect of Serbia, and 11 July 2007 the Municipal Court appears to have held or adjourned a total of six hearings, the latter for reasons which cannot be imputed to the applicant's conduct (see paragraphs 19-23 above). Ultimately, having in the meantime obtained an additional medical opinion to the effect that the attack had caused the applicant severe bodily injuries (i.e. a concussion and a contusion of the zygomatic bone), on 5 September 2007 the Municipal Court terminated the proceedings against P.V. as time-barred (see paragraphs 21 and 24 above).

64. The above analysis shows that even though the public prosecutor had pressed charges against P.V. the criminal proceedings against him were terminated owing to statutory limitation and were thus concluded without a final decision on the attacker's guilt (see Sandra Janković, cited above, § 57). In view of this finding, as well as the fact that the applicant personally had not contributed to the delay at issue, some three and half years after ratification, the Court considers that the impugned practices in the specific circumstances of the present case did not provide adequate protection to the applicant against an attack on her physical integrity and showed that the manner in which the criminal law mechanisms were implemented were defective to the point of constituting a violation of the respondent State's positive obligations under Article 8 of the Convention.

II. ALLEGED VIOLATIONS OF ARTICLES 3 AND 13 OF THE CONVENTION

65. The applicant's complaint was also communicated to the Government under Articles 3 and 13 of the Convention, which read as follows:

Article 3

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

Article 13

"Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

66. Given that the applicant's complaint communicated under Articles 3 and 13 is effectively the same as her complaint already considered under Article 8, and having regard to its finding in respect of the latter (see, in particular, paragraph 64 above), the Court declares the former complaint admissible but considers that it need not be examined separately on its merits (see *Zorica Jovanović*, cited above, § 80; and *Sandra Janković*, §§ 58 and 59).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

67. Article 41 of the Convention provides:

"If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

68. The applicant claimed a total of 22,000 euros (EUR) in respect of the physical pain and mental anguished suffered. She further claimed EUR 4,000 in view of the "violation of Article 8 of the Convention".

69. The Government contested this claim.

70. The Court considers that the applicant has certainly suffered some non-pecuniary damage. Having regard to the nature of the violation found in the present case and making its assessment on an equitable basis, the Court therefore awards her EUR 3,000 under this head.

B. Costs and expenses

71. The applicant also claimed a total of EUR 6,120 for the costs and expenses incurred before the domestic courts, as well as for those incurred before the Court.

72. The Government contested this claim.

73. 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 have been actually and necessarily incurred and were reasonable as to their 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 3.000 covering costs under all heads.

C. Default interest

74. 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, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 8 of the Convention;

3. *Holds* that there is no need to examine separately the complaint under Articles 3 and 13 of the Convention;

4. *Holds*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Serbian dinars at the rate applicable at the date of settlement:

(i) EUR 3,000 (three thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 3,000 (three thousand 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;

5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 1 July 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President