

MILANOVIĆ v. SERBIA

(Application no. 44614/07)

1. Reference Details

Jurisdiction: European Court of Human Rights (Second Section)

Date of decision: 14 December 2010

Case Status: Not final

Link to full court judgment:

<http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=Serbia&sessionid=63878714&skin=hudoc-en>

2. Facts

The applicant, Mr. Života Milanović, was born in 1961 and lives in the village of Belica, Jagodina Municipality, Serbia. He has been a leading member of the Vaishnava Hindu religious community in Serbia, otherwise known as Hare Krishna, since 1984. Between September 2001 and June 2007, the applicant was subjected to a series of physical attacks by unknown assailants which on three occasions were so serious that his injuries required treatment in hospital. On each occasion, the applicant reported the attacks to the police, insisting that they had been religiously-motivated hate crimes which he suspected were carried out by members of an extremist organisation such as *Srpski vitezovi*, a branch of the far-right organisation *Obraz*.

On each occasion, the police carried out a cursory investigation into the attacks but made concluding statements that there was “no material evidence” or that “no useful information was obtained”. In 2005, the applicant complained to the Ministry of Internal Affairs that the police had not acted with the necessary diligence and, as a result, one of the officers involved in the investigation was disciplined with a 10% salary reduction. In 2007, the District Public Prosecutor’s Office provided further evidence in support of the applicant’s complaint regarding the police investigation, stating that the police had failed to provide it with any information relating to the attacks.

Despite there being official recognition of the extremist nature of organisations such as those which the applicant complained of in both December 2005, when the Ministry of Internal Affairs described *Obraz* as “clero-fascist”, and in September 2009, when the Chief Public Prosecutor requested that the Constitutional Court ban both *Obraz* and *Srpski narodni pokret 1389* because of their incitement to racial and religious hatred in Serbia, the Serbian police still found reason to doubt the claims of the applicant. In their report of 12 April 2010, inter alia, the police noted that:

“(a) most of the attacks against the applicant had been reported around Vidovdan, a major orthodox religious holiday; (b) the applicant had subsequently publicised these incidents through the mass media and, whilst

so doing, "emphasised" his own religious affiliation; (c) the nature of the applicant's injuries had been such that their self-infliction could not be excluded; and (d) the injuries had all been very shallow, which could be considered peculiar and would imply great skill on the part of the applicant's attackers who had never managed to hold him down but had "assailed him from a distance"."

3. Law

National Law

- Code of Criminal Procedure (Articles 19, 20, 46, 61, 223, 235, 241, 242, 433 and 437)
- Criminal Code (Article 317)

European Convention of Human Rights

- Article 2 (right to life)
- Article 3 (prohibition of torture and inhuman treatment)
- Article 13 (effective remedy)
- Article 14 (prohibition of discrimination) taken in conjunction with Article 3 (prohibition of torture and inhuman treatment)

4. Legal Arguments

Applicant

The applicant claimed a violation of Article 3 on the basis that the State had failed to carry out an efficient and effective investigation into the attacks which he had suffered and, as such, it had failed to prevent further attacks from taking place. The applicant further complained of a violation of Article 3 in conjunction with Article 14, on the basis that the failure to prevent and investigate was discriminatory on the grounds of his religious affiliation. He also complained that the attitude adopted by the police towards the investigation of his complaints resulted from their own prejudices against him and his religion. Finally, the applicant also complained that his rights under Articles 2 and 13 had also been violated for the same reasons set out in relation to Articles 3 and 14.

Government of Serbia

The Government stated that the applicant's complaints were inadmissible as, contrary to the Convention provisions relating to *ratione temporis*, the complaints related, in part, to events which took place prior to Serbia's ratification of the Convention on 3 March 2004.

With regards to the merits of the applicant's claims, the Government submitted that the attacks against the applicant had not reached the minimum level of severity required for the application of Article 3 and that in any event, the Serbian authorities had fully investigated the attacks in an attempt to identify the assailants, as demonstrated by the interviewing of witnesses, the obtaining of medical evidence and the sanctioning of one officer who was identified as not working diligently on the investigation. The Government further argued that the applicant had contributed to the failure of the investigation because he "seemed ambivalent" and his demeanour was "less than co-operative". The Government also provided evidence that the Serbian judiciary had been willing in other cases to convict individuals of hate crimes where the available evidence indicated that such crimes had indeed taken place.

5. **Decision**

Article 3

Admissibility

The Court found the applicant's claims to be admissible as, even though the incidents which occurred prior to 3 March 2004 took place before the court had jurisdiction in Serbia, they were still relevant for reasons of context and to enable the situation complained of to be examined as a whole.

Merits

The Court found unanimously that there had been a violation of Article 3 of the Convention. The Court held that the applicant's injuries, which consisted mostly of cuts combined with the non-physical emotional suffering, were sufficiently serious to meet the threshold of ill-treatment within the meaning of Article 3 of the Convention. The Court noted that many years after the attacks, the perpetrators had yet to be identified and charged, and as such, it concluded that the State authorities had not adequately investigated or indeed prevented the repeated ill-treatment of the applicant in violation of Article 3 of the Convention.

Article 14 taken in conjunction with Article 3

Admissibility

For the same reasons given in relation to the Article 3 complaint, the Court declared this complaint to be admissible.

Merits

The Court held by 6 votes to 1 that there had also been a violation of Article 14 taken in conjunction with Article 3 of the Convention. Following the approach previously adopted in *Nachova and Others v Bulgaria* and *Members (97) of the Gldani Congregation of Jehovah's Witnesses v Georgia*, the Court held that:

“[J]ust like in respect of racially motivated attacks, when investigating violent incidents State authorities have the additional duty to take all reasonable steps to unmask any religious motive and to establish whether or not religious hatred or prejudice may have played a role in the events.

(...)

Treating religiously motivated violence and brutality on an equal footing with cases that have no such overtones would be turning a blind eye to the specific nature of the acts that are particularly destructive of fundamental rights. A failure to make a distinction in the way in which situations that are essentially different are handled may constitute unjustified treatment irreconcilable with Article 14 of the Convention.”

The Court based its finding of a violation of Article 14 taken in conjunction with Article 3 of the Convention on the following:

- (i) It was unacceptable that several years after the attacks in question which were, most probably, religiously motivated hate crimes, the State had failed to identify and prosecute the perpetrators;
- (ii) The police had made their own prejudices towards the applicant’s religious beliefs clear by referencing his “strange appearance” and by their comments made in the April 2010 report which implied that they had serious doubts that he was a serious victim even though there was no evidence to support such conclusions; and
- (iii) Even though the authorities had explored several leads proposed by the applicant “these steps amounted to little more than a *pro forma* investigation”.

Judge Raimondi voted against the majority as he did not find there to be a separate violation of Article 14 taken in conjunction with Article 3 of the Convention. In his partially dissenting opinion, he stated that he did not agree that the steps taken by the Serbian police “amounted to little more than a *pro forma* investigation” given that the police did make “serious attempts” to investigate the applicant’s complaints. He also found that the suggestion by the police that the applicant’s injuries may have been self-inflicted was not an indication of a discriminatory attitude on the part of the authorities.

Article 2 and Article 13

Having regard to its findings under Articles 3 and 14, the Court considered that it was not necessary to examine separately the admissibility or the merits of the applicant's identical complaints made under Articles 2 and 13.