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

*Criminal Law and Human Rights:*
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# J.I. v. Croatia *(35898/16)*

***Threats to a victim by a rapist on a prison leave***


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# I. v. Croatia *(35898/16)*

- **B.S.:** was sentenced to imprisonment on charges of acts of rape against the applicant and domestic violence.
- **The applicant:** changed her name, hair style and appearance + *psychological treatment*.
- January 2015: *a leave to a nearby town*.
- On 6 June 2015": *a leave to his place of residence.*
- **Relatives:** *"B.S. is looking for you and had threatened to kill you".*
- The relatives warned the applicant to stay away from the part of town where B.S. was staying during his prison leave.

- **11 August 2015, 9.45 p.m.:** the applicant called the emergency help line and said that she was afraid to walk around town because B.S. had *escaped* from prison and *was threatening* her.
- **9.51 p.m**.: the police checked with the prison authorities.
- **9.55 p.m.:** they were informed that he had used prison leave and had returned to prison earlier that day.
- The applicant was informed of the facts and told to contact the police in case B.S. tried to contact her personally.
- **The applicant:** the police officer told that *"it made no sense to file a report since nothing had actually happened".*
- The applicant subsequently moved to another part of town and stopped going for meetings at a social welfare centre.

- **3 September 2015: meeting at a bus station**
- Two male police officers arrived 12 minutes later.
- The police officers then went to talk to **B.S.,** who stated that he had not seen the applicant or threatened her and that she was probably making that up so that he would no longer be granted prison leave.
- **B.S.** and the applicant were then accompanied by the police officers to their buses, ensuring that there was no contact between them
- **The applicant:** the attitude of the intervening police officers towards her, as a person of Roma origin, was dismissive; they were brusque and arrogant.

- **The Government:** the police officers found the applicant visibly disturbed and crying. They expressly told the applicant to report B.S.'s threats to the police should she consider them to be serious.

- **11 September 2015:** the applicant complained in writing to the sentence-execution judge and the Prison Administration about the threats and the fact that B.C. had been granted prison leave to his place of residence

- She requested that his prison leave be suspended.

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

# PROTECTION AGAINST VIOLENCE BY PRIVATE INDIVIDUALS

- **In some cases, under Articles 2 or 3 of the Convention and in other instances under Article 8 taken alone or in combination with Article 3 – to:**
- (a) establish and apply in practice an adequate legal framework affording protection against violence by private individuals;
- (b) take the reasonable measures in order to avert a real and immediate risk of recurrent violence of which the authorities knew or ought to have known, and to
- (c) conduct an effective investigation into the acts of violence.

*X and Others v. Bulgaria* [GC], no. 22457/16, § 178, 2 February 2021;
*Kurt v. Austria* [GC], no. 62903/15, § 164, 15 June 2021;
*Volodina v. Russia (no. 2)*, no. 40419/19, § 49, 14 September 2021.

- Obligation to conduct an effective investigation into all acts of *domestic violence* is an essential element of the State's obligations under Article 3 (*Tunikova and Others v. Russia*, nos. 55974/16 and 3 others, § 114, 14 December 2021).
- To be effective, such an investigation must be *prompt* and thorough; these requirements apply to the proceedings as a whole, including the trial stage (*M.A. v. Slovenia*, no. 3400/07, § 48, 15 January 2015; *Kosteckas v. Lithuania*, no. 960/13, § 41, 13 June 2017).
- The authorities must take all reasonable steps to *secure evidence* concerning the incident, including forensic evidence.
- *Special diligence* is required in dealing with *domestic violence cases*, and *the specific nature of the domestic violence* must be taken into account.

- The State's obligation to investigate will not be satisfied if the protection afforded by domestic law exists only in theory; it must also operate *effectively* in practice, and that *requires a prompt examination* of the case without unnecessary delays (*Opuz*, §§ 145-151,168; *T.M. and C.M. v. the Republic of Moldova*, no. 26608/11, § 46, 28 January 2014; *Talpis v. Italy,* no. 41237/14, §§ 106 and 129, 2 March 2017).
- *The effectiveness principle* means that the domestic judicial authorities must on no account be prepared to let the physical or psychological suffering inflicted go unpunished.
- This is essential for maintaining the public's confidence in, and support for, the rule of law and for preventing any appearance of the authorities' tolerance of or collusion in acts of violence (*Okkalı v. Turkey*, no. 52067/99, § 65).

- Ill-treatment must attain **a minimum level of severity** if it is to fall within the scope of Article 3.
- An assessment of whether this minimum has been attained depends on **many factors**, including the nature and context of the treatment, its duration, and its physical and mental effects, but also the sex of the victim and the relationship between the victim and the author of the treatment.
- Even in the absence of actual bodily harm or intense physical or mental suffering, treatment which humiliates or debases an individual, showing a lack of respect for or diminishing his or her human dignity, or which arouses feelings of fear, anguish or inferiority capable of breaking an individual's moral and physical resistance, may be characterised as degrading.
- It may well suffice that the victim is humiliated in his or her own eyes, even if not in the eyes of others (*Bouyid v. Belgium* [GC], §§ 86-87).

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- The applicant in the present case is a highly traumatised young woman of Roma origin, who had been the victim of appalling sexual abuse by a close family member at a very early age

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- *New name, hairstyle and place of residence; extensive therapy; a new life.*

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- The applicant's complaints concern the failure by the authorities to protect her from intimidation and repeat victimisation by B.S., and their failure to effectively investigate these alleged threats.

- Threats are a form of psychological violence (*Volodina v. Russia*, no. 41261/17, § 98; *Tunikova and Others*, § 119).
- Gender-based violence does not need to involve a direct and immediate threat to the life or health of the victim (*Volodina*, § 56).
- There is no doubt that the applicant's fear had been both genuine and intense.
- Coupled with the anxiety and feelings of powerlessness that the applicant experienced in the circumstances, the foregoing amounted to inhuman treatment.
- Issue of adequacy of the protection of the applicant's physical and psychological integrity following alleged serious threats she had received from B.S. during his prison leave.

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- The applicant contacted the police on **three** separate occasions on serious threats by B.S.
- The prohibition of ill-treatment under Article 3 covers all forms of domestic violence, including death threats, and that every such act triggers the obligation to investigate.
- The authorities had the duty to investigate the allegations of serious threat to the applicant's life (*Volodina*, § 98; *Tunikova and Others*, § 119).

- **However, the police did not start a proper criminal investigation.**

- **The first time,** the applicant called the emergency helpline stating that she was afraid because she thought that B.S. had escaped from prison and was threatening her through some relatives.
- She was reassured that B.S. had not escaped and was told that nothing could be done *unless he came to her doorstep*.
- **The second time** the police were made aware of the situation, when they intervened at the bus station following the applicant's call.
- The two male police officers found the applicant, a young Roma woman, *extremely* upset, shaking and crying.
  - They learned that she had been the victim of sexual crimes by a family member.
  - The applicant told the police that B.S. had threatened to kill her through her relatives.

- **No particular form** is required for a criminal complaint.
- The police are obliged to conduct a criminal inquiry whenever they learn of allegations that an offence may have been committed for which prosecution is conducted *ex officio*.
- The police should have *at least* at that point begun inquiries, not least by conducting interviews with the relatives of the applicant.
- The police were further required to inform the prosecutor of the results of their criminal inquiries (*Remetin v. Croatia (no. 2)*, no. 7446/12, §§ 105, 115, 24 July 2014).
- Even if the authorities eventually had concluded that the applicant's allegations concerned an offence prosecuted by private prosecution or that the acts complained of did not have the characteristics of a criminal offence, the police should have informed her *accordingly* but they never did so.

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

- The applicant claimed that the foregoing *dismissive behaviour* by the police officers had been the result of her *Roma ethnic origin*.
- The allegations of discrimination on grounds of the *Roma ethnic origin* were not found.
- Nevertheless, the above failure of the police to perceive the seriousness of the applicant's allegations were not only in disregard of the law but must have also exposed the applicant to constant fear and caused her to live in uncertainty for a prolonged period of time.
- The authorities were well aware of the applicant's particular vulnerability on account of her sex, ethnic origin and past traumas
- They should have reacted promptly and efficiently to her criminal complaints in order to protect her from the realisation of that threat as well as from intimidation, retaliation and repeat victimisation.


- It is true that B.S.'s prison leave was ultimately discontinued and that he was expelled from Croatia immediately upon his release from prison


- The police never even commenced criminal inquiries, let alone a serious investigation into the applicant's allegations, prior to the communication of the present application to the respondent Government.


- The authorities never made a serious attempt to take a comprehensive view of the applicant's case *as a whole*.


- **The authorities failed to effectively investigate a particularly vulnerable rape victim's allegation of a serious threat to her life, in violation of Article 3.**

# THANK YOU


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