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Meeting: 1362nd meeting (December 2019) (DH)

Item reference: Revised action report (13/11/2019)

Communication from Serbia concerning the case of MILANOVIC v. Serbia (Application No. 44614/07)

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Réunion : 1362^e réunion (décembre 2019) (DH)

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Communication de la Serbie concernant l'affaire MILANOVIC c. Serbie (requête n° 44614/07)
(anglais uniquement)

Belgrade, 13 November 2019

REVISED ACTION REPORT

MILANOVIĆ v. SERBIA

Application number 44614/07

Judgment of 14 December 2010, final on 20 June 2011

I CASE DESCRIPTION

1. This case concerns the authorities' failure to protect the applicant, a leading member of the Hare Krishna community in Serbia, from a number of assaults, ending in 2007, probably motivated by religious hatred, and their failure to carry out an effective investigation (a violation of Article 3).
2. This case also concerns the applicant's discrimination on this ground (a violation of Article 14 in conjunction with Article 3).
3. In particular, the European Court found that the investigation lasted too long without adequate steps taken to identify the perpetrators, including failure to follow-up on an alleged connection to a far-right organization (*Srpski narodni pokret 1389*) or to involve the applicant adequately or inform him of progress.

II INDIVIDUAL MEASURES

4. Following the Court's judgment in this case, the Serbian authorities have taken appropriate measures set out below aimed at remedying violations sustained to the extent possible in given circumstances and at providing redress to the applicant.

A. The applicant's current situation

5. The applicant lives in a village of Belica, Jagodina Municipality, Serbia. Occasionally he stays in a flat in Jagodina (§6, *Milanović*).

6. The authorities recall that the Court found that the applicant in the course of several attacks taking place in 2001, 2005-2007, the applicant was inflicted several cuts to his head and chest and was cut off his pigtail; was stabbed in his abdomen, chest, hands and legs; and, scratched a crucifix on his head.
7. To the best of the authorities' knowledge, the applicant is not currently suffering from medical consequences as a result of these attacks nor is he subject to any medical treatment on this account. Should the applicant manifest himself with any complaint under this head, the healthcare authorities will provide him any medical assistance required free of charge.

B. Measures to protecting the applicant

8. The Court held in its judgment that the Serbian authorities failed to take any reasonable and effective steps in order to prevent the applicant's repeated ill-treatment (§90, *Milanović*).
9. In response to European Court's judgment, the police have been making efforts to protect the applicant, including checking his house and the surrounding area to prevent any further attacks. No further attacks have been reported against the applicant since then.

C. Criminal investigation

10. The Court held in its judgment that the Serbian authorities did not take all reasonable measures to conduct an adequate investigation (§90, *Milanović*).

(i) Investigation concerning the applicant's light bodily injury

11. The Court held in its judgment that the authorities did not take all reasonable measures to conduct an adequate investigation into the facts of this case.
12. In response to the Court's findings, the police and prosecution authorities have maintained continuing efforts to investigate the facts of the charge of inflicting light bodily injury onto the applicant.

13. To this end, rapidly following the Court's judgment, in January 2011, the prosecution authorities requested the local police to collect specific information with a view to elucidating the impugned facts.

14. In response to the prosecution request, throughout 2011 the police carried out steps to identify attackers with particular focus on identifying the members of far-right skinhead organisations, such as *Srpski vitezovi*, *Obraz* and *Srpski narodni pokret 1389*. It is recalled that the Court found a shortcoming in this criminal investigation on the ground that the "applicant's statement indicating that one of his attackers may have been a member of an organisation called *Srpski narodni pokret 1389* does not seem to have been followed up at all" (§88, *Milanović*). To this end, the authorities rectified the shortcoming found by the Court and followed a thread allegedly leading to members of *Srpski narodni pokret 1389* as potential perpetrators of the attack against the applicant.

15. The members of the latter association allegedly attacked the applicant. The Police Directorate in Jagodina interviewed several persons known to have committed attacks in the applicant's area and known to belong to the above far-right organisations. These interviews have not led the police to a useful thread to elucidate these events.

16. The authorities point out that the applicant was heard in the investigation proceedings K. 86/08 before the Municipal Court in Jagodina. Giving his statement before the investigative judge, the applicant made his allegations concerning all attacks he had suffered since 2001 to 2007.

17. Following further threads, on 9 April 2013 the police arrested certain A.D. from Jagodina on the basis of the information provided by the Security and Information Agency. Pursuant to this information some activities conducive to inciting racial and ethnic hatred were taking place. A computer, a number of CDs and a magazine *Serbian Front*, as well as some other publications were found. Subsequently, A.D. was interrogated with the assistance of a lie detector regarding the attack on the applicant. The police established that he was not connected to the attacks. The facts concerned have however been subject to the statute of limitation in 2013.

18. On 23 March 2017 the prosecution authorities examined the status of the case-file. The Jagodina public prosecutor established that the alleged facts of the case took place more than ten years ago (2005, 2006 and 2007). On the basis of the domestic criminal procedure laws, the prosecutor established that the statute of limitation for prosecuting this particular offence of light bodily injury inflicted on the applicant expired on 29 June 2013. Pursuant to the domestic legislation, the prosecutor dismissed the criminal charge. The prosecutor serviced the notification of the dismissal to the applicant advising him on his right to object to this decision to the higher prosecutor. The applicant has not objected to the prosecutor's decision to dismiss the impugned criminal charge.

19. It is highlighted that the prosecution authorities when dismissing the criminal charge for the applicant's light bodily injury examined in line with the Committee of Ministers' practice in similar cases (see, for instance, the notes for *Corsacov v. Moldova*, 1208th meeting (September 2014) (DH), the *Gharibashvili group v. Georgia*, 1222nd meeting (March 2015) and *Bati v. Turkey*, 1265th meeting (September 2016) (DH) whether there were other options available to establish the facts of the case and prosecute the offenders. To this end, the prosecution authorities established that there are:

- no other investigatory steps could still be taken in this case as there were no other available threads that would lead them to finding perpetrators;
- no other investigatory steps could be taken for legal reasons, notably expiration of the statute of limitation.

(ii) Investigation for the incitement to religious hatred

Over and above this investigation the authorities also carried out a separate investigation into the applicant's allegations of incitement to religious hatred.

20. In response to the Court's indications in 2011 the police and prosecution authorities reinforced their efforts to investigate also these allegations.

21. The authorities indicate that the criminal investigation against an unknown perpetrator following the applicant's two criminal complaints for the offence of

incitement to religious hatred set out in Article 317 of the Criminal Code is still ongoing before Higher Court in Jagodina.

22. Following the reform of the criminal procedure in Serbia in 2013, prosecution authorities were given a leading role in criminal investigation. With respect to the case at hand, the prosecution authorities examined the file thoroughly and issued some orders to the police.
23. After the initiation of the procedure, the criminal complaints were handed over to the Police Directorate in Jagodina for the conduct of necessary measures to identify the suspect for the criminal act. According to the reports of the Police Directorate in Jagodina, they have been undertaking all available investigative measures in order to identify the suspect following all available leads and interviewing the applicant and a number of individuals for whom the police believed could shed some light on the impugned events. The applicant, however, failed to give any information about the place and the time the impugned crime had been committed, which was not helpful for further progress in this matter and for complying with the Court's indications in this respect. The applicant's lawyer has been notified regularly of the measures undertaken in the investigation procedure.
24. At this juncture, the authorities note, first of all, that the police have followed up all the leads in the case in issue, updating the witness statements, looking for witnesses and identifying as far as possible those potential suspects. Naturally, given the lapse of more than twelve years since the events, some of the potential suspects and indeed witnesses have become unavailable to the authorities in the meantime or their memory of the impugned facts has faded out to the degree that they were not able to provide useful information and identify the perpetrators.
25. As noted in the police reports during a long period of time, the applicant could not be found in the place of his registered residence in order to gather from him relevant information in the investigation procedure. Impossibility to find the applicant to obtain further information frustrated the prospects of establishing the facts in this case and bringing the perpetrators to justice.

26. The authorities furthermore note that none of the potential witnesses mentioned could identify any potential perpetrators and that the police did not have any clear evidence about those responsible for the attack inflicted on the applicant. As the Court has held on numerous occasions, the procedural obligation under Article 3 is not an obligation as to result, but as to means. What is relevant is that the domestic authorities have done all that could reasonably be expected of them in the circumstances of this particular case.

27. The Police Directorate in Jagodina and the Higher Public Prosecutor's Office in Jagodina have in addition been holding joint meetings on a regular basis on the progress of the ongoing investigation in order to detect the suspect, as well as on tracking any possible formation and activity of the groups on which the applicant drew attention to. Pursuant to the report transmitted by the Higher Public Prosecutor's Office in Jagodina and the report by the Police Directorate in Jagodina, both dated 16 September 2019, no activities of these far-right extremist groups have been established in this area.

28. It is furthermore highlighted that the prosecution authorities made sure that the applicant's lawyer has been notified regularly of the progress made in this criminal investigation. Within this context, it is noted that pursuant to the currently applicable criminal procedure legislation, the applicant and his lawyer are entitled to participate in the investigation, to make proposals and otherwise cooperate with the prosecution authorities to help them find the culprits. To this date, no proposals have been made or other threads offered to the authorities.

29. The applicant's principal complaint was that the investigation has not resulted in any conviction. The authorities can understand that it must be frustrating for the applicant that no individual has been brought to justice for attacking him. However, Article 3 cannot be interpreted so as to impose a requirement on the authorities to prosecute irrespective of the evidence which is available. A prosecution, particularly on such a serious charge as involvement in discrimination and religious hatred, should never be embarked upon lightly. The authorities highlight that following the Court's judgment prosecuting authorities did not remain passive and that significant efforts have been made to prosecute the culprits.

30. Despite the problems encountered, the prosecution authorities remained committed to finding accountable individuals for inciting religious hatred by following any possible future available thread in this particular case. Within this context, the authorities highlight that this criminal investigation in the present case has not been closed and were any new leads to be discovered, the investigation could at any time be resumed.

31. Within this context, the authorities would like to recall [the Committee of Ministers' decision](#) adopted in June 2019 in the cases concerning ineffective investigation into the alleged war crimes in Croatia (*Skendžić and Krznarić group*), in particular concerning the individual measures (points 2-4, 6). It is recalled that the Committee of Ministers closed examination of individual measures in these cases despite the fact that none of the investigations has led to the identification, prosecution and punishment of the direct perpetrators of the alleged war crimes. The Committee relied on the fact that there appeared to be no any additional investigatory steps which the authorities could be required to take and on the fact that a State's duty to carry out effective investigations is an obligation of means rather than results.

(iii) Keeping the applicant abreast on the developments in the investigation

32. The Court found that the applicant was not kept properly abreast of the course of the investigation (§88, *Milanović*).

33. In response, giving full effect to the Court's findings, the authorities rectified this shortcoming. In particular, in response to the applicant's request, on 15 August 2012 the police provided him relevant police reports concerning his case. The applicant has not sought further information from the authorities regarding his case-file.

34. It is furthermore highlighted that the prosecution authorities made sure that the applicant's lawyer has been notified regularly of the progress made in the criminal investigation. Within this context, it is noted that pursuant to the currently applicable criminal procedure legislation, the applicant and his lawyer are entitled to participate in the investigation, to make proposals and otherwise cooperate

with the prosecution authorities to help them find the culprits. To this date, no proposals have been made or other threads offered to the authorities.

D. The applicants' redress

35. The Court awarded the applicant EUR 10 000 in respect of the non-pecuniary damage (§109, *Milanović*). The applicant was therefore redressed under this head.

36. The applicant did not claim the pecuniary damage before the European Court. In this connection, the authorities highlights that domestic legislation (notably, provision of Article 172 of the Obligation Code) provides the applicant with a concrete and practical avenue to claim pecuniary damage should he considered to have suffered it. Pursuant to the domestic legislation, this claim could be raised within three years after a European Court's judgment finding a violation of the Convention becomes final. In this case, this timeframe expired on 20 June 2014. To the best of the authorities' knowledge, the applicant has not availed himself of the avenue available in the domestic legislation to this effect.

III GENERAL MEASURES

37. The authorities indicate that general measures have been taken to prevent similar violations as set out below.

A. Measures aimed at ensuring efficient criminal investigations (a violation of Article 3)

38. The authorities note that the Committee of Ministers examines the measures aimed at ensuring effective criminal investigations within the context of *Stanimirović group*.

39. For the purposes of this action report, the authorities are outlining the measures specifically targeting the inefficient investigations into crimes motivated by religious hatred. Their assessment will not preclude the Committee's examination of the measures aimed at ensuring efficient criminal investigations including

those into allegations of ill-treatment in hands of the police within the context of *Stanimirović group*.

(i) *Legislative measures aimed at ensuring efficient criminal investigation into hate crimes, including those motivated by religious hatred*

40. The authorities stress that the Serbian criminal procedure was subject to a major overhaul following the Court's judgment.

1. The introduction of the new Criminal Procedure Code ("CPC")

41. In September 2011, the Criminal Procedure Code ("CPC") was adopted (in force since 15 January 2013). This piece of legislation was introduced with the aim of increasing the efficiency of criminal proceedings and ensuring efficient cooperation between the police and public prosecutors. The key novelty introduced is that the role for conducting criminal investigation was transferred from the police to prosecutors. Prosecutors are now responsible for running the criminal investigations.

42. Pursuant to its provisions, a public prosecutor shall conduct preliminary investigation and may order the police to undertake certain actions to detect criminal acts and find suspects. The police have an obligation to carry out the order concerned and inform the public prosecutor on its implementation regularly. In that regard, the key novelty introduced is that prosecutors are now able to inform their superiors and request initiation of disciplinary proceedings against members of the police who had failed to comply with their orders to take investigation steps.

43. The authorities further indicate that the time limit for prosecutors to bring formal criminal proceedings is determined for criminal acts for which summary proceedings were prescribed (acts which are punishable by prison sentence up to eight years). It is recalled in this respect that the Court found that there was "no time-limit within which the public prosecutor, following the submission of a criminal complaint by the victim, must decide on whether to bring formal criminal

proceedings” (§71, *Milanović*). The new piece of legislation therefore fully took into account the Court's findings in this respect.

44. Provisions were introduced to provide an obligation to keep abreast victims of the course of investigation and afford them an opportunity to personally see and identify the attackers (provisions of Articles 50, 90 and 100 of the CPC). Victims are now entitled to make inquiries of the status of their cases. They also have the right to view the objects collected evidencing an offence.

45. In view of the above, the Serbian authorities consider that the provisions of the 2011 CPC will be capable of ensuring effective criminal investigations.

2. Specific measures to prevent hate crimes, including those motivated by religious hatred

46. In its [decision](#) adopted at 1280th meeting (7-9 March 2017), the Committee invited the authorities to provide information on the specific measures taken or envisaged to ensure that investigations are conducted with a view to uncovering and sanctioning religiously motivated crimes. In that regard, the authorities' attention was drawn to measures taken in the *Anghelescu Barbu No. 1* group.

47. In response, the authorities would like to draw the Committee's attention to the amendments introduced in 2012 to the Criminal Code. Pursuant to these amendments, if an offence is committed with motives based on hatred, including religious hatred, this fact shall constitute an aggravating circumstance (Article 54a). The current version of the Criminal Code set out an obligation for prosecution authorities when investigating violent attacks to take reasonable steps to unmask any hate related motives, and notably religious motives, and establish whether such hatred or prejudice may have played a role in the events. In amending their legislation in this way, the Serbian authorities fully complied with the Courts indications, in particular those in §87, while drawing the inspiration from the measures taken in *Anghelescu Barbu No. 1* group.

48. In their efforts to adequately respond to the findings of this case the authorities have also closely examined the relevant conclusions of ECRI. It is highlighted that in its most recent report on Serbia, ECRI echoed the above legislative

amendments ([CRI\(2017\)21](#) adopted on 22 March 2017). In particular, ECRI praised the progress made in this field noting that the authorities had improved the protection against hate crime through a new provision making hate motivation in crimes an aggravating circumstance (p. 9).

49. The authorities would also like to point that pursuant to the Committee of Ministers' well established practice, similar legislative amendments have already been considered adequate to ensure efficient investigation of possible racist motives in the cases concerned within the context of the *Angelova and Iliev group* (Final Resolution [CM/ResDH\(2017\)383](#)).

50. Against this backdrop, the authorities observe that ECRI also voiced concerns about efficiency of the above legislative framework indicating that "since the introduction in 2012, Article 54a on aggravating circumstances has not been applied" ([CRI\(2017\)21, §62](#)).

51. The authorities are now pleased to report to the Committee a major progress achieved following the above ECRI report and giving also clear effect to the findings of the European Court in this case. In particular, as a result of striving for eradication of hate crimes in Serbia, the First Basic Court in Belgrade rendered the first judgment No. K. 1435/17 of 17 October 2018 holding in criminal proceedings that a crime motivated on hatred was an aggravating circumstance. The said judgment became final and marked a clear development in the domestic case-law. The domestic courts therefore gave full effect to the Court's indications and ECRI recommendations in this respect.

52. Along the lines, it is noted that the civil society, notably the leading human rights NGO in Serbia in its [press release](#), commended this judgment indicating that "this judgment is thus of particular significance for safeguarding the rights of LGBT persons but also those affiliated to other minority groups" expressing the hope that it will mark the case-law in similar cases. The NGO group also published the full text of this judgment contributing therefore to its visibility and accessibility.

53. It is also pointed out that ECRI recommended that the prosecution services ensure that investigations are opened in all cases of hate crimes, in particular when there is evidence pointing to the possible application of Article 54a of the

Criminal Code in aggravating circumstance ([CRI\(2017\)21, §64](#)). To this end, the authorities are pleased to report that according to the information provided by the Public Prosecutor's Office, four other criminal proceedings concerning the offences based on bias motives are still pending before domestic courts with reference to Article 54a of the Criminal Code. It is expected that the domestic courts will continue to adhere to the jurisprudence established by the decision of 17 October 2018 and confirmed by higher courts.

54. Being committed to zero tolerance to religious hatred, and with a view to ensuring efficient criminal investigations in these cases, the Chief Public Prosecutor took steps to ensure their efficient tracking. To this end, on 22 December 2015, the Chief Public Prosecutor issued a binding instruction (A.802/15) to set up special records of hate offences, including religious hatred. The hate crimes records must contain the following data: perpetrator(s), victim(s), crime, prosecutorial action(s) taken, prosecutorial and court decision(s) taken and hate crime motive(s). This measure would be conducive to better monitoring and rapid response to similar incidents.

55. In 2017, the Chief Public Prosecutor furthermore issued the Guidelines for Prosecution of Hate Crimes. Representatives of the Chief Public Prosecutor's senior staff (notably, two Deputies to the Chief Public Prosecutor), the civil sector (the leading NGO Yucom CEO Milan Antonijević) and the OSCE Mission in Serbia pooled their efforts to develop this document. The Guidelines have been issued in an effort to raise awareness among public prosecutors on the importance of prosecuting hate crimes, including those motivated by religious hatred, in line with Convention standards. The document has already proved to be conducive of assisting the public prosecutors in better understanding their obligation to carry out an efficient and effective investigation into allegations of hate crimes.

56. The above Guidelines highlighted that the purpose of Article 54a of the Criminal Code (see above) is to secure stringent sanctioning of hate crimes perpetrators and to enhance criminal law protection of vulnerable groups. This provision is the sole provision of the entire Criminal Code providing for compulsory aggravating circumstance that must be taken into account by prosecutors when investigating hate crimes. It is indicated that the criminal law protection should extend not only

to victims but also to associated persons, which put an obligation on prosecutors to apply Convention standards before the European Court's first judgment on hate crimes by association ([Škorjanec](#), appl.no. 25536/14, judgment of 28 March 2017, final on 28 June 2017).

57. The Guidelines furthermore set out detailed instructions how to make difference between the hate crimes as embodied in two specific counts in Criminal Code and general crimes perpetrated with possible hate motives. In the latter case, the prosecutors are instructed to apply in mandatory fashion provision of Article 54a of the Criminal Code providing for aggravating circumstances to be taken into account in investigation and criminal proceedings. The prosecutors are advised to establish always whether hatred is a motive or a consequence of a crime.

58. The Guidelines highlighted that efficient criminal prosecution of crimes perpetrated with hate motives is conditioned upon detection of the hate motive at the earliest stage possible of criminal investigation. It further indicated that prosecutors are under an obligation to adduce all evidence possible to demonstrate that a particular crime was motivated by hatred. Prosecutors must take onboard motives for perpetrating a crime to be able to identify timely whether hate motives were present when perpetrating a given crime.

59. The Guidelines concluded that prosecutors must include in their indictments circumstances pointing to the fact that the given crime was motivated by hatred and to refer to Article 54a of the Criminal Code in classifying the crime. Particular value and usefulness of the Guide is also confirmed by a practical hate crime case and description of specific actions that prosecutors must take in order to meet Convention requirements of efficient investigation into hate crimes.

60. It is also pointed out that the above Guidelines placed particular importance to protecting victims of hate crimes. The Guidelines advised prosecutors that hate crimes victims must be provided special protection and included in the victim protection programs. When providing protection, prosecutors are advised to refer a particular hate crime victim to various counselling and support services set up by the prosecution offices. These services also cooperate with civil sector, in particular organisations that might give major contribution to providing psychological, sociology, medical and legal assistance to victims.

61. In 2018, the State Public Prosecutor adopted another binding instruction number O. 4/2018 for the appellate, higher and basic public prosecutor's offices to determine their contact persons for hate crimes, in order to achieve the legality, effectiveness, and uniformity of the conduct of public prosecutors in criminal cases for hate crimes.

62. Pursuant to the above binding instruction, the contact persons for hate crimes have the following obligations within the context of hate crimes investigations:

- to monitor recording of hate crimes in line with the binding instruction A.802/15 of 22 December 2015;
- to monitor handling of hate crime cases by prosecutors;
- to carry out consultations with the prosecutors in charge of a particular hate crime case;
- to maintain contact with victims;
- to maintain contact with the members of the police handling these cases;
- to maintain contact and dialogue with civil sector, in particular NGO providing support and counselling to victims of hate crimes.

63. Having recognised the need to improve the situation of all victims of hate crimes, Information Offices for injured parties and witnesses in the higher public prosecutor's offices have also been established in Belgrade, Novi Sad, Nis and Kragujevac, as well as the First Municipal Public Prosecutor's Office in Belgrade, while the establishment of these services in all other high public prosecutor's offices in Serbia is underway.

64. Within the Information office, the injured parties and witnesses receive basic information about their rights in the process, available services, specialised assistance from the State and NGO sector, ability to receive protection provided by the law and other rights. The authorities consider that establishment of these services will further improve the situation of all victims of crime, particularly of vulnerable categories, which include victims of hate crimes.

65. ECRI also recommended that the Serbian police designate contact persons for vulnerable groups targeted by hate speech and hate crime (CRI(2017)21, §50).

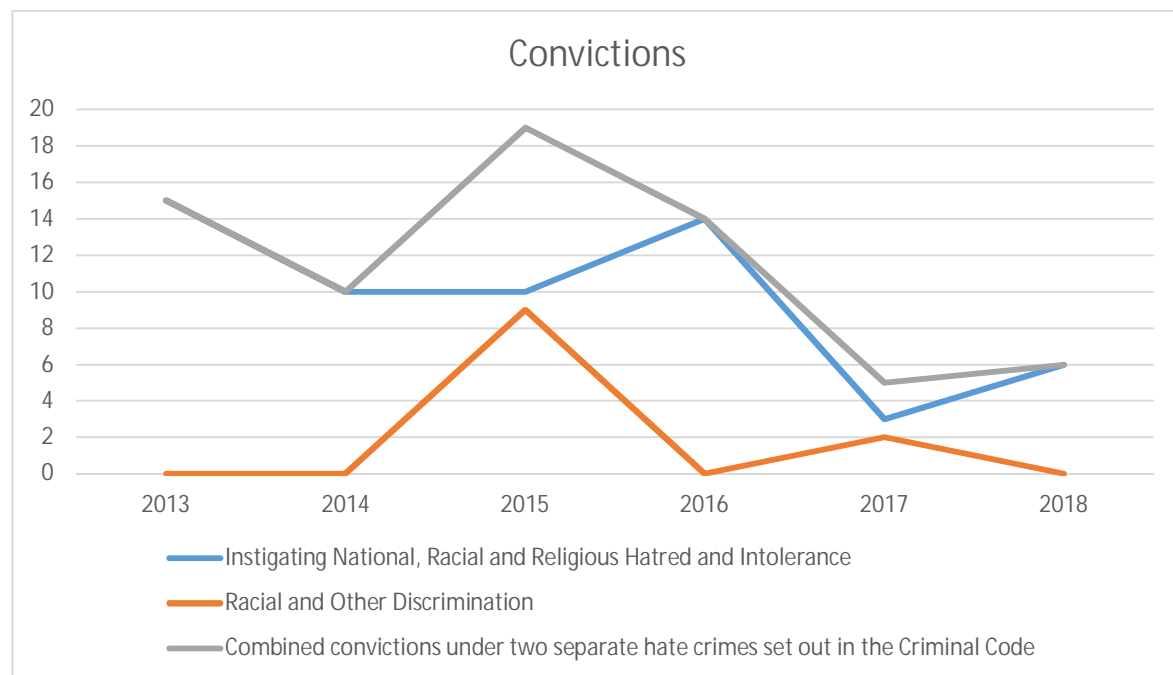
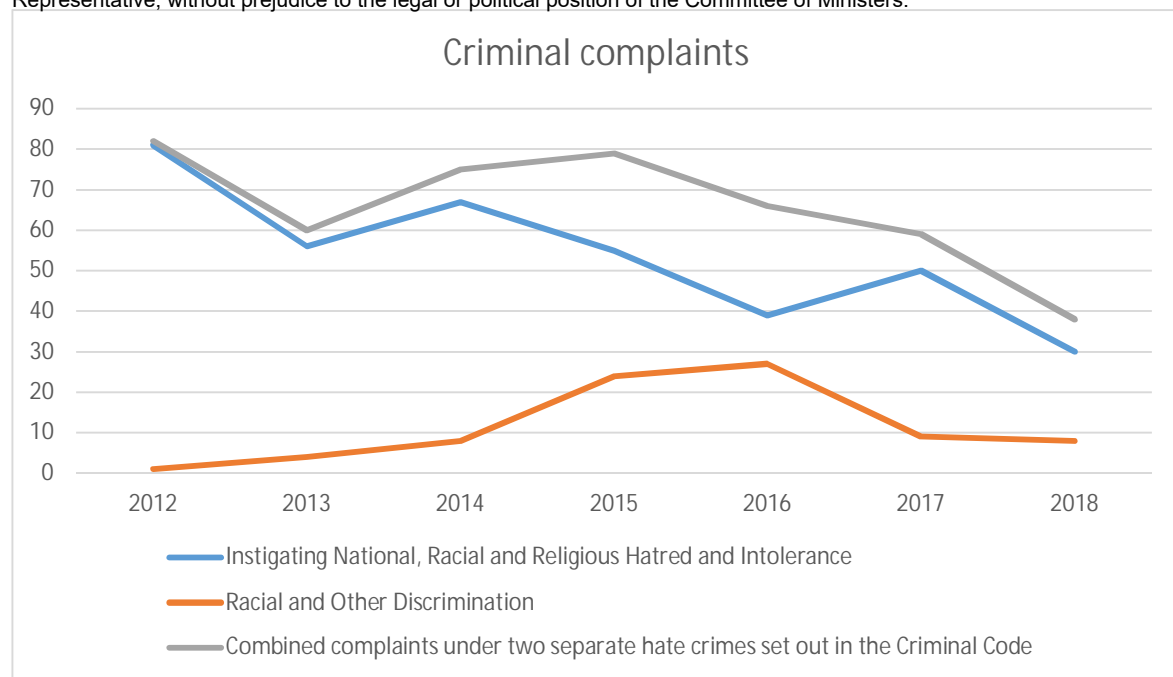
In response, the Ministry of the Interior appointed eight liaison officers with the LGBTI community (this group of vulnerable persons is not concerned with the present judgments; however, this information is important for provide a wider perspective of the comprehensive measures taken to tackle hate crimes) in four cities in Serbia. Liaison officer for the LGBTI community Aleksandar Stojmenov was awarded in 2016 “Rainbow” award for the fight against homophobia and transphobia that is awarded by the Gay-Straight Alliance. In addition, the national contact person for the fight against hate crime is in place since 2009 i.e. following the facts of the impugned case. The authorities therefore consider that special structures have been put in place to prevent hate crimes and ensure their efficient prosecution.

(ii) *Assessment on the impact of the measures taken on the efficiency of investigations into crimes motivated by religious hatred*

66. In its decision adopted at 1280th meeting (7-9 March 2017), the Committee invited the authorities to provide detailed and concrete information on the practical impact of the measures taken, in particular following the adoption of the new CPC, and the additional measure envisaged.

67. In response to the Committee’s decision, the authorities would like to share the relevant statistics demonstrating the efficiency of the current legislation. From 2015 to 2018, the criminal complaints for national, racial and religious *hatred* were filed against 174 individuals, resulting in 33 convictions. Similarly, from 2015 to 2018, the criminal complaint for racial and other *discrimination* was filed against 68 individuals, resulting in 11 convictions.

68. For a better overview of positive results in combatting hate crimes in general, the authorities are providing the following charts setting out the positive statistics on criminal complaints and convictions for hate crimes (punishable under two counts in the Criminal Code) over the years relevant for assessment of the measures taken in the present case.



69. In an effort to present a fair picture, the authorities also consider it appropriate to provide the publicly available positive statistics concerning Serbia demonstrating that the measures taken have yielded tangible positive results published by an independent international organisation, notably the OSCE.

Year	Hate crimes recorded by police	Prosecuted	Sentenced
2017	5	0	0
2016	9	1	2
2015	79	7	19
2014	87	21	14
2013	64	24	16

Source: OSCE

70. It is furthermore highlighted that in its most recent 2018 Progress Report on Serbia, the European Commission highlighted that religiously motivated incidents have continued to decrease (p. 24, [SWD\(2018\)152](#)). These findings also testify to the efficiency of the measures taken to combat discrimination on religious ground and ensure their proper investigation. Given the steadily decreasing number of hate crimes as recognised by the relevant report, it cannot be expected that the number of hate crimes handled by prosecution and judiciary authorities will rise. The authorities consider that it is most important that the measures have been taken to eradicate the root cause of the violations found in the present case, notably the hate crimes incidents.

B. Measures aimed at preventing discrimination in investigations of hate crimes, including those motivated by religious hatred (violations of Article 14 in conjunction with Article 3)

71. The authorities considered necessary to adopt specific measures aimed at preventing discrimination in investigations of hate related crimes possibly motivated by religious hatred.

72. At the outset, the authorities ensured that a number of strategic documents were adopted to prevent discrimination on any ground whatsoever, including based on religious hatred. To this end, the authorities refer the Committee to the latest report [CERD/C/SRG/CO/2-5](#) of the United Nations Committee on the Elimination of Racial Discrimination (CERD) issued on 3 January 2018 in respect of Serbia. CERD in particular welcomed Serbia's efforts to amend its policies, programs and

administrative measures to ensure better implementation of the Convention, including the development of, *inter alia*, the following strategies:

- (a) The Anti-Discrimination Strategy (2013-2018) and the Action Plan;
- (b) The Strategy for the Social Inclusion of Roma in the Republic of Serbia (2016-2020);
- (c) The National Judicial Reform Strategy (2013-2018).

73. ECRI echoed CERD findings in its report highlighting that the “Anti-Discrimination Strategy for 2013-2018 aim to ensure the observance of the constitutional principle of non-discrimination and to curb the high level of prejudice. They contain measures to combat discriminatory practice and promote culture of tolerance among the general public ([CRI\(2017\)21, §97](#)).

74. To the end of preventing discrimination in investigations of hate crimes, following the facts of this case, in March 2009 Parliament adopted the Law on Prohibition of Discrimination (“LPD”). It was designed to become a key instrument in ensuring efficient protection against discrimination, including based on religious affiliation.

75. The authorities highlight that according to Article 18 of the LPD religious-based discrimination is expressly prohibited.

76. The LPD introduced right of victims to seek protection from discrimination from civil courts. Victims may in particular seek to obtain redress in the form of: ordering a halt of or prohibition to repeat a discriminatory act; ordering an individual to take certain steps to eliminate consequences of discrimination; ordering a payment of just satisfaction in respect of pecuniary and non-pecuniary damage sustained; publishing the judgment in media outlets.

77. Pursuant to this law a new institution tasked with protection against discrimination was set up. In particular, the Commissioner for Equality was introduced as an independent body vested with competence to investigate cases of discrimination and to propose solutions. The Serbian authorities highlight that in its last report

on Serbia, ECRI noted that the Commissioner for Equality “rests upon a solid legal framework” ([CRI\(2017\)21](#), §16).

78. The Commissioner for Equality is entrusted with authority to consider complaints filed by individuals or legal entities indicating alleged acts of discrimination. After the receipt of complaint, Commissioner for Equality must conduct procedure to establish all relevant facts in particular case. Procedure is concluded with the opinion by which it establishes if there was a violation of LPD. In a situation where the acts of discrimination occurred the Commissioner for equality issues a recommendation containing appropriate mode for rectifying the violation of rights. It is clarified that this mechanism is not exclusive of the criminal law mechanism.

79. As it is prescribed in LPD, and also according to the statistics kept by the Commissioner for Equality, religious and political beliefs figure as personal characteristics that may become reason for discrimination alongside with a number of other characteristics. The number of complaints in this regard is available in annual reports of the Commissioner for Equality. In order to present accurately its work, Commissioner for Equality collects and processes important data to present in annual reports using different indicators. Within these statistics, Commissioner for Equality presents data concerning lodged complaints in which the complainants explicitly stated the reason of discrimination.

80. Therefore, the authorities point out to the significant decrease of complaints indicating alleged discrimination on ground of religious and political beliefs in period between 2015 and 2018. Namely, on the basis of the [annual reports](#) of the Commissioner for Equality, it is clear that percentage of complaints in which the reason (personal characteristics) for discrimination were religious and political beliefs is getting lower. Complaints alleging discrimination on the grounds of religious and political beliefs constituted 5.4% in 2015, 4.6% in 2016, 3.6% in 2017 and 1.4% in 2018 out of all hate crimes complaints filed.

81. Attaching a particular importance to preventing discrimination in hands of public authorities, in 2016 the Commissioner for Equality published a [Manual for Recognising Discrimination before Public Authorities](#). The manual is setting out a useful checklist for identifying discrimination in hands of the police and other authorities.

82. The LPD provides that discriminatory treatment on the part of the public official, including members of the police, shall be considered a severe breach of duty which might eventually constitute a reason for dismissal. It furthermore set out that discrimination perpetrated by government authorities, including on the grounds of religious affiliation, constitutes a grave discrimination.

83. It is recalled in this respect that the Court noted that the police themselves referred to the applicant's well-known religious beliefs as well as his "strange appearance". The Court considered that "such views alone imply that the police had serious doubts, related to the applicant's religion, as to whether he was a genuine victim, notwithstanding that there was no evidence to warrant doubts of this sort" (§100, *Milanović*). The LPD will therefore be capable of preventing inappropriate handling of this type of situation by the police and other holders of public duty.

C. Banning far-right organisations

84. The authorities indicate that the fight against violent extremist organisation remained a priority in the period following the Court's judgment. Within this context, it is recalled that the Court found that pursuant to the applicant's statement, one of his attackers might have been a member of a far right organisation (§88, *Milanović*).

85. With a view to demonstrating the zero tolerance to extremist organisation deploying violence including with respect to vulnerable religious minorities, the authorities note that the Constitutional Court banned a number of extremist far-right organisations, such as *Obraz*.

86. Following the Court's judgment, the Constitutional Court examined the motion filed by prosecution authorities to ban four extremist groups (no. 279/2009, VIIU-171/2008, 249/2009 and VIIU-482/2011). In two cases the Constitutional Court banned those groups finding that they were inciting religious hatred by violent means.

87. In its last decision, the Committee of Ministers noted with interest that the Constitutional Court has banned a number of far-right organisations, including “*Obraz*”, members of which were allegedly involved in the attacks on the applicant.

D. Trainings and awareness raising measures

88. The Serbian authorities attached particular importance to awareness-raising measures capable of preventing similar violations.

89. To that end, the Ministry of the Interior prepared the 2013-2018 Strategy for Prevention and Protection from Discrimination setting out measures to eradicate discrimination in Serbian society. On 27 June 2013, the Government adopted this document together with an action plan for its implementation. The implementation of measures was monitored through the work of the Government’s Council which held four sessions. Six reports on the implementation of the action plan were drafted. Contact persons and their deputies were appointed to all institutions charged with implementing measures (§69, UN Human Rights Council Report of 13 November 2017, [A/HRC/WG.6/29/SRB/1](#); see also [The Sixth Report on monitoring AP](#)). Training courses have been organised for contact persons and their deputies, representatives of civil society organisations and local self-government unites for the purpose of capacity building and more efficient monitoring of the implementation of the action plan.

90. Secondly, at the end of 2015, in cooperation between the Judicial Academy and the Office for Human and Minority Rights, with the support of the Department for Democratisation of the OSCE Mission of Serbia, the pilot program “*Hate Crimes – Training for Representatives of the Judiciary*” was launched. Training on hate crime legislation was held during 2015 and 2016 with the participation of the Deputy Chief Public Prosecutor, a judge of the Supreme Court of Cassation, a representative of the Office for Human and Minority Rights who is the national contact person for the fight against hate crimes and a representative of the OSCE Mission in Serbia, as a lecturer, and included 8 one-day seminars. The main objective of the training was for the participants to acquire specific knowledge related to the concept of hate crime, which included, *inter alia*, relevant

international provisions as well as the practice of the European Court and the UN Committee.

91. Thirdly, representatives of the prosecution authorities took part in the seminar *Hate Crimes* which with the support of the US Embassy in Belgrade was held from 3 to 7 October 2016 at the International Police Academy in Budapest.

92. Fourthly, on 15 September 2017 in Belgrade an international conference on hate crime was held in Belgrade, where representatives of the Chief Public Prosecutor's staff took part.

93. Fifthly, the regional OSCE Mission to Western Balkans and the OSCE Office for Democratic Institutions and Human Rights (ODIHR) jointly carried out regional conferences, notably *Inter-ministerial cooperation and prosecution of hate crimes in South-Eastern Europe* held in 2012 in Skopje, 2013 in Sarajevo, 2014 in Belgrade, 2015 in Sarajevo and 2016 in Budva. The purpose of these conferences was to provide competent public authorities and national contact persons for the fight against hate crimes with the possibility of regular exchange of experiences, examples of good practice and effective implementation of legislative solutions in the fight against hate crimes in the region. These conferences proved to be very helpful for the Serbian authorities in devising their response capable of eradicating discrimination and ensuring its efficient prosecution.

94. Sixthly, in 2017 a body formed of representatives of the Republic Prosecutor's Office and nongovernmental organization YUCOM – Committee of Lawyers for Human Rights, with professional help from the Mission OEBS in Serbia, issued „Guidelines for Criminal Prosecution of Hate Crimes in the Republic of Serbia“, printed at the end of 2018. The aim of the Guidelines is to help the public prosecutors to detect and to improve their understanding of hate crimes, and to instruct them of their duty to conduct an effective investigation in uncovering and prosecution of these crimes, in accordance with international standards.

95. On this note, in 2017, Judicial Academy carried out 4 one-day seminars on topic "Hate Crimes" in Belgrade, Novi Pazar, Niš and Novi Sad, attended by 133 staff in prosecution authorities.

96. The Guidelines issued for prosecuting hate crimes were presented in 2018 at six seminars in Belgrade, Kragujevac, Novi Pazar, Novi Sad and Niš to 229 participants, as well as in 2019 at four seminars in Požarevac, Čačak, Vranje and Subotica to 75 participants from Public Prosecutors Offices. These seminars were carried out by Judicial Academy.
97. Seventhly, as an example of good practice and cooperation, Judicial Academy has been invited to present results of evaluation of training and training programme on topic "Hate Crimes" on 25 September 2019 at the ODIHR meeting in Warsaw.
98. Eighthly, beside the trainings and other education programmes launched by the Judicial Academy for the members of judiciary and of Public Prosecutor Offices particularly, the authorities highlight the continuing and comprehensive training of police officers on antidiscrimination and their obligation to observe the principle of equality. Within the scope of the Programme of Professional Training for Police Officers within Ministry of the Interior, from 2014 to 2016 seminar on "Police Work with Marginalized, Minority and Socially Vulnerable Groups" had been organized and attended by nearly 6 000 police officers. In the same period (2014-2016), seminar on "Application of Anti-discriminatory policies" had been offered to 114 police officers.
99. Lastly, over the course of 2016, as part of separate educational programme for police officers, two training course were carried out - "Respect for Equality" and "Police Work with Minority and Vulnerable Groups". These trainings were attended by 12 630 police officers, which constitute a massive number. In addition, during 2017 and 2018, in scope of the process of compulsory education for police officers, training courses on "Police Work with Marginalized, Minority and Socially Vulnerable Groups" had been attended by 16 918 police officers, while training course on the topic "Emergence, Recognition and Response of the Police to Forms of Discrimination" had had 16 686 police officers.
100. Taking into account facts mentioned in preceding two paragraphs, the authorities conclude that significant improvement has been achieved in area of training of police officers to combat discrimination.

E. Publication and dissemination measures

101. The Serbian authorities ensured publication and dissemination of this judgment in order to make sure that the police and prosecution authorities comply with the findings of the European Court in the case at hand.

102. The judgment has been published in the in the Official Gazette no. 1/11 of 14 January 2011. It is also available on the [webpage](#) of the Serbian Government Agent and the Supreme Court of Cassation.

IV CONCLUSIONS

103. The Serbian authorities consider that the individual measures taken so far have eliminated some of the main causes for the ineffectiveness of the criminal investigation in this case and ensured that the applicant was redressed.

104. The authorities consider that the general measures taken will be capable of ensuring efficient prosecution of hate crimes, notably those motivated by hatred and preventing discrimination on this account. To corroborate this, the authorities highlight that to the best of their knowledge no other application alleging hate crimes or their ineffective investigation or discrimination within this context has been communicated or pending before the European Court.

105. In stating this, the Serbian authorities acknowledge that the measures aimed at ensuring efficient investigations into the ill-treatment in hands of the police will continue to be examined by the Committee of Ministers within the context of the *Stanimirović* group.

106. The authorities consider that Serbia thus complied with its obligations under Article 46 (1) of the Convention in this case.