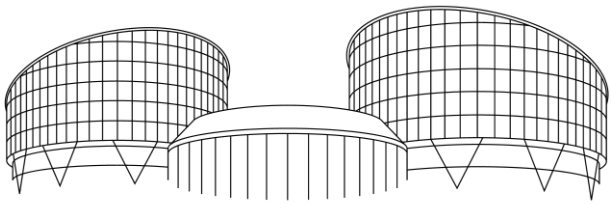

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF D.J. v. CROATIA

(Application no. 42418/10)

JUDGMENT

This version was rectified on 9 October 2012
under Rule 81 of the Rules of Court

STRASBOURG

24 July 2012

FINAL

24/10/2012

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of D.J. v. Croatia**,**

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

Anatoly Kovler, *President,*
Nina Vajić,
Peer Lorenzen,
Elisabeth Steiner,
Khanlar Hajiyev,
Linos-Alexandre Sicilianos,
Erik Møse, *judges,*

and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 3 July 2012,

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

PROCEDURE

1. The case originated in an application (no. 42418/10) against the Republic of Croatia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Croatian national, Ms D.J. ("the applicant"), on 19 July 2010.

2. The applicant, who was granted legal aid, was represented by Ms I. Bojić, a lawyer practising in Zagreb, and Ms Ivana Radačić, also a lawyer. The Croatian Government ("the Government") were represented by their Agent, Ms Š. Stažnik.

3. On 17 May 2011 the application was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

4. The applicants and the Government each filed observations on the admissibility and merits of the case. In addition, third-party comments were received from Interights, which had been given leave by the Acting President of the Chamber to intervene in the written procedure (Article 36 § 2 of the Convention and Rule 44 § 3 of the Rules of Court). The respondent Government replied to those comments (Rule 44 § 6).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1979 and lives in Croatia.

A. The criminal investigation

6. The applicant took a job working on the boat E. On the night of 22 August 2007, whilst the boat was berthed in M. harbour, the applicant called the police, telling them that she had been raped by D.Š. in the boat's lounge area.

7. A police officer soon arrived and found the applicant, D.Š., A.R. (the owner of the boat), and some other people on the boat. The applicant told him that she had been raped, while the others said that she had been disturbing public order. The police interviewed witnesses M.B., I.R. and A.R., and the suspect D.Š.

8. The relevant part of a police report drawn up by officer I.Z. indicates as follows:

> "Since D. was in a state of shock I could not conduct a detailed interview with her ...
>
> The waiter D.Š. said that it was true that he had put his fingers in D.'s private parts, but that he had not taken off her underwear ..."

9. The police drove the applicant and D.Š. in the same vehicle to the B. Police Station. At 6 a.m. on 23 August 2007 the applicant was taken to the S. Medical Centre, where she remained until 12.30 p.m. on the same day. She was seen by a gynaecologist, who established that she did not have injuries on her genitals but had a few lacerations on her body, without noting any further details.

10. On the same day the B. Police Station lodged a criminal complaint with the S. County State Attorney against D.Š. on the basis of the applicant's allegations of rape. The State Attorney's Office lodged a request with the S. County Court for an investigation in respect of D.Š. on the basis of the allegations of rape. D.Š. was arrested and brought before S.G, an investigating judge at the S. County Court.

11. Also on the same day, Judge S.G. heard evidence from D.Š., who denied raping the applicant. He explained that the applicant had become very drunk and he had taken her to her cabin on the boat. The judge then issued a decision expressing his disagreement with the request for an investigation. The relevant part of his decision reads:

> "...
>
> After the investigating judge had heard evidence from the suspect and consulted the case file, he established with certainty, on the basis of the documents enclosed with the criminal complaint, that before the event at issue the injured party had been in the company of several persons, including the suspect, in bar "F." in M., where she had consumed a large quantity of alcohol, which was recorded by the breathalyser, and then they had all gone to the ship E. berthed in the close vicinity, on which the suspect, the injured party and other persons were employed and where the guests were asleep in their cabins.
>
> After arriving on the ship, and while still in the bar, the injured party had disturbed public peace and order, saying that she was drunk, that somebody had drugged her,

and [asking] that the police be called. She said all this to a minor [child], I.R., ... but did not say that anyone had raped her or had committed any acts equal to sexual intercourse. Moreover, in her statement to the police I.R. stated that she had refused to call the police when she had seen that the injured party was drunk, and that the injured party had then slapped her in the face.

After arriving on the ship, and this was confirmed by the statement of the ship owner, A.R., the injured party had shouted, entered the guests' cabins and woken them up, to which A.R. had responded by asking her to stop shouting and disturbing the guests and she had then punched him in the stomach. After that, according to his statement, he had asked the captain of a ship berthed next to his to take D. off the ship, which they had done. The injured party had acted even more aggressively, shouting hysterically, especially when the owner of the ship, A.R., told her not to come back to his ship and that she had lost her employment. They had carried her away from the ship and made her sit on the seafront next to the ship until the police had come.

All of the above was confirmed by M.B., the owner of the bar "F.", but the injured party did not mention the word 'rape' or any other indecent act; she only said that somebody had made her drunk and drugged her, all of which transpires from the police report on page six of the case-file. Her allegations are confirmed by the statement [given to the police] by A.R., as well as other eyewitnesses. The injured party asked for the police to be called, saying that she had been drugged while in the bar. She asked the same of all the eyewitnesses, and repeated her request while she was on the ship and when she was physically thrown off the ship, but during all that time she never mentioned any criminal acts.

The criminal complaint and the enclosures in the case-file show with certainty that the injured party was not, at any moment, alone with the suspect, nor did she mention to anyone after the alleged event that there had been any acts which could qualify as the criminal offence of rape.

...

A medical report drawn up at the S. Hospital, enclosed with the criminal complaint, does not mention any injuries on the genitals of the injured party but only lacerations on her body which were obviously caused when she refused to leave the ship but was dragged and carried from it before the police arrived, when she sustained these injuries.

In view of the statements given by the eyewitnesses, which were enclosed with the criminal complaint, the eyewitnesses all having been present throughout the events, the investigating judge is convinced that there was no reason for arresting D.Š., and after his questioning ... I have not established that there is a reasonable suspicion [on account of which] to open an investigation, ... and I do not agree with the request for opening an investigation ..."

12. The case file was then forwarded to a three-judge panel of the S. County Court, which on 24 August 2007 ordered an investigation in respect of D.Š. on the basis of the applicant's allegations of rape. The investigation was conducted by Judge S.G.

13. A medical report drawn up by a doctor at the C. Hospital on 25 August 2007 records that the applicant had bruises on her genitals, a rash on the back of her upper legs and two smaller bruises on her buttocks.

14. A medical report drawn up by a doctor at the Rijeka Hospital on 30 August 2007 noted that the applicant was suffering from an acute reaction to stress.

15. On 30 August 2007 the applicant, on her own initiative, gave the skirt she had been wearing on the night in question to the police in C. as a piece of evidence. It was not given for forensic examination.

16. On 14 and 15 September 2007 the police interviewed M.V., I.R. T.Š., Ve.M.[1] and F.B. Ve.M.[2] said that M.V. had told him that she had found the applicant's underwear on the boat and thrown it in the garbage. He further stated that D.Š. had commented that he would like to have sex with the applicant. F.B. also said that D.Š. had commented that he would like to have sex with the applicant.

17. At the request of the B. Police Station the applicant was interviewed at the C. Police Station, which was closer to her place of residence, on 19 September 2007.

18. On the same day the S. State Attorney's Office asked that witnesses M.V., Z.B., T.Š., I.R., Ve.M.[3] and F.B. be heard. They also asked for the forensic examination of possible biological traces on the clothes the applicant had been wearing during the critical event.

19. On 19 September 2007 the same Office asked that an examination of the applicant's clothes be carried out in order to establish whether they had any traces of biological material on them.

20. On the same day Judge S.G. heard evidence from witnesses A.R., M.V. and M.B., and on 21 September 2007 from F.B.

21. On 2 October 2007 he heard evidence from the applicant. She said that D.Š. had raped her in the lounge of the boat where they had both been employed. She also said that the police officer who had arrived after her call had asked the men why they hadn't thrown her into the sea. She alleged that her skirt had been torn and had had traces of blood on it, and she had told the officer that she had not being wearing any underwear because D.Š. had torn it and thrown it away in the boat's lounge and told her that she had been drunk and not raped. The applicant had asked the officer to secure the evidence at the scene, such as her clothes, including her underwear, but he had replied that there was no need for that because she had been drunk and had not been raped. She had also heard the officer telling D.Š. not to worry and that "everything would be taken care of". When the police had arrived D.Š. had already taken a shower.

She also said that some time after the incident Ve.M.[4], had telephoned her to tell her that her underwear had been found and that one of the boat's

[1] Rectified on 9 October 2012: the text was "V.M.".
[2] Rectified on 9 October 2012: the text was "V.M.".
[3] Rectified on 9 October 2012: the text was "V.M.".
[4] Rectified on 9 October 2012: the text was: "the boat's captain, V.M.".

employees, M.V., had thrown it in the garbage. She had telephoned the police to inform them about this but they had hung up on her.

22. On 28 November 2007 the applicant's lawyer asked the S. County State Attorney's Office to lodge a request for the withdrawal of Judge S.G. on account of his bias against the applicant. She received no reply.

23. On 3 December 2007 Judge S.G. heard evidence from Z.B., the gynaecologist who had seen the applicant on 23 August 2007, after the incident. He said that he had not noticed any injuries on the applicant's genitals but that she had had few scratches elsewhere on her body, which he had not recorded because they did not fall into the gynaecological sphere.

24. On 5 December 2007 the S. County State Attorney's Office asked Judge S.G. to ask for the results of all the forensic examinations of biological traces available in respect of the applicant, as well as those concerning her injuries, and to hear evidence from a further witness, Ve.M.[5]

25. On 7 January 2008 Judge S.G. commissioned a psychiatric report on the applicant in order to establish her ability to correctly interpret events. He also ordered that the applicant's previous psychiatric records be provided. The psychiatric report of 25 January 2008 relied on the applicant's previous records concerning the period between 29 September and 26 October 2001 and a telephone conversation with the applicant, without having met her.

26. On 8 January 2008, at the request of the B. Police Station, officers at the M.L. Police Station interviewed the applicant's father about the applicant's relationship with her family.

27. On 19 February 2008 Judge S.G. received the forensic report on the biological traces, which did not establish any connection between the biological traces taken from the applicant and D.Š. The skirt the applicant had worn on the critical event was not examined.

28. On 29 February 2008 Judge S.G. obtained the forensic report concerning the applicant's injuries, which established that the medical report concerning the applicant drawn up on 23 August 2008 by the gynaecologist at the S. Hospital had mentioned a few scratch marks on her body but no injuries on her genitals. The medical report drawn up on 25 August 2007 by a physician at the C. Hospital established that she had three scratch marks on her genitals, a rash on the back of her thighs and three haematomas. Judge S.G. concluded that the injuries established by the physician at the C. Hospital had been recorded two days after the alleged rape and had not been established by the gynaecologist who had seen the applicant on the morning after the alleged rape; they could not therefore be connected with certainty with the event.

29. On 10 March 2008 Judge S.G. commissioned a medical report on the injuries sustained by the applicant. On 11 March 2008 a medical report drawn up by an expert in forensic medicine established that the applicant's

[5] Rectified on 9 October 2012: the text was: "V.M.".

injuries had first been recorded on 25 August 2007 by a doctor at the C. hospital, while the gynaecologist who had seen the applicant on 23 August 2007 had not recorded any injuries. Therefore, the doctor concluded that the injuries recorded on 25 August 2007 could not be directly connected with the event of 23 August 2007.

30. On 11 March 2008 Judge S.G. issued a decision expressing his disagreement with the request by the S. County State Attorney's Office of 19 September 2007 to hear evidence from witness Ve.M.[6] on the ground that he was not available since he had not answered the summons of the investigating judge to appear and the police could not find him. The S. County State Attorney's Office lodged an appeal. On 20 March 2008 a three-judge panel of the S. County Court upheld the decision of the investigating judge on the ground that the information in the case file showed that witness Ve.M.[7] had no direct knowledge of the criminal offence allegedly committed against the applicant.

31. The applicant alleges that the police interviewed her father about her relationship with her family.

32. On 31 March 2008 the S. County State Attorney's Office ceased to pursue the criminal prosecution of D.Š. for lack of evidence.

33. On 9 April 2008 the investigating judge terminated the criminal proceedings against D.Š.

B. Proceedings instituted by the applicant

34. On 28 April 2008 the applicant took over the prosecution and lodged a bill of indictment against D.Š. in the S. County Court on charges of rape. On 9 September 2009 the bill of indictment was sent to D.Š. for reply.

35. On 17 January 2011 the S. County Court scheduled a hearing for 25 February 2011. On 15 February 2011 the lawyer representing the applicant informed the S. County Court that she was on maternity leave and was no longer able to represent the applicant in the proceedings at issue. She also informed the S. County Court that the applicant had instituted proceedings before the M.L. City Administration and was seeking legal aid.

36. On 24 February 2011 S. County Court scheduled a hearing for 14 April 2011, stating that it was expected that by that time a legal aid lawyer would have been allocated to the applicant.

37. On the same day the M.L. City Administration refused the applicant's request for legal aid on the grounds that the purpose of legal aid was not to institute criminal proceedings and that the proceedings in question were not of essential importance for the applicant since she had not lodged a compensation claim in connection with them. This decision was

[6] Rectified on 9 October 2012: the text was "V.M.".
[7] Rectified on 9 October 2012: the text was "V.M.".

upheld on 12 April 2011 by the Ministry of Justice and the applicant was instructed that she could institute proceedings in the Administrative Court within thirty days in order to challenge the administrative bodies' decisions. She did not do so.

38. On 16 May 2011 the applicant informed S. County Court that she had not obtained legal aid and that, owing to lack of means, she could not continue the proceedings against D.Š.

39. On 27 May 2011 the S. County Court terminated the proceedings.

C. Disciplinary proceedings against the police officers

40. On 10 September 2007 the applicant lodged a complaint with the police by telephone, complaining about the police officers from the B. Police Station in connection with the event at issue. On 12 October 2007 the lawyer representing the applicant reiterated her complaint in writing.

41. On 5 November 2007 the Head of the B. Police Station instituted disciplinary proceedings against officers F.C. and I.Z. from the S.-D. Police Department.

42. On 9 November 2007 the Head of the S.-D. Police Department informed the lawyer representing the applicant about the disciplinary proceedings against the police officers.

43. On 21 December 2007 the First Instance Disciplinary Court of the S. Office of the Ministry of the Interior adopted a decision establishing the disciplinary responsibility of officers F.C. and I.Z. and fined them each ten per cent of one month's salary. The relevant part of the decision reads as follows:

> "Police officer F.C. ...
>
> is responsible for failing to supervise and instruct officer I.Z., whom he had assigned to conduct the criminal enquiry in the case concerning the criminal offence of rape ... against D.J. ... by D.Š. ..., and for not informing the Head of the police station of the errors he had established when signing the criminal complaint (such as: the failure to carry out an *in situ* inspection and a detailed informative interview with the injured party, which resulted in a failure to draw up adequate reports; failure to collect clothes from the participants in the event at issue; and incomplete filling in of the required forms); also for not ordering the immediate rectification of the errors he had noted in the criminal complaint so as to order the conducting of a detailed interview with the injured party and the drawing up of adequate reports, and the seizure of her clothes and the clothes of the suspect ...
>
> by which he committed a grave breach of his official duty ... defined as 'failure to act or untimely or reckless conduct or conduct lacking diligence in the carrying out of his official duties' ...
>
> ...
>
> Police officer I.Z. ...

is responsible for ... failures in his official conduct when he was assigned to carry out the criminal inquiry in connection with the criminal offence of rape against D.J., because he did not order an *in situ* inspection; nor did he take a statement from the injured party or conduct a detailed informative interview with her ... nor did he take the clothes that the injured party and the suspect were wearing in order to give them for forensic examination ...

by which he committed a grave breach of his official duty defined as 'failure to act or untimely or reckless conduct or conduct lacking diligence in the carrying out of his official duties' ...

..."

II. RELEVANT DOMESTIC LAW AND PRACTICE

44. The relevant articles of the Croatian Constitution (*Ustav Republike Hrvatske*) provide:

Article 23

"No one shall be subjected to any form of ill-treatment ..."

Article 35

"Respect for and legal protection of everyone's private and family life, dignity, reputation and honour is guaranteed."

45. Section 62(1) of the Constitutional Act on the Constitutional Court (*Ustavni zakon o Ustavnom sudu*, Official Gazette no. 29/2002) reads:

"1. Everyone may lodge a constitutional complaint with the Constitutional Court if he or she deems that a decision *(pojedinačni akt*) of a State body, a body of local or regional self-government, or a legal person with public authority, which has decided on his or her rights and obligations, or on a suspicion or accusation in respect of a criminal act, has violated his or her human rights or fundamental freedoms, ... guaranteed by the Constitution (hereinafter: 'constitutional right') ..."

46. Article 188 of the Criminal Code (Official gazette nos. 110/1997, 27/1998, 50/2000, 129/2000, 51/2001, 111/2003, 190/2003, 105/2004, 84/2005, 71/2006) reads:

Rape

"Whoever forces another person into sexual intercourse or another sexual act of equal nature by using force or threatening that he or she will directly attack her life or body or the life or body of a person close to her shall be sentenced to imprisonment for a term of three to ten years."

47. The relevant provisions of the Code of Criminal Procedure (*Zakon o kaznenom postupku*, Official Gazette nos. 110/1997, 27/1998, 58/1999, 112/1999, 58/2002 and 62/2003) provide as follows:

Article 2

"(1) Criminal proceedings shall be instituted and conducted at the request of a qualified prosecutor only. ...

(2) In respect of criminal offences subject to public prosecution the qualified prosecutor shall be the State Attorney and in respect of criminal offences to be prosecuted privately the qualified prosecutor shall be a private prosecutor.

(3) Unless otherwise provided by law, the State Attorney shall undertake a criminal prosecution where there is a reasonable suspicion that an identified person has committed a criminal offence subject to public prosecution and where there are no legal impediments to the prosecution of that person.

(4) Where the State Attorney finds that there are no grounds to institute or conduct criminal proceedings, the injured party may take his place under the conditions prescribed by this Act as a subsidiary prosecutor."

Articles 47 to 61 of the Code of Criminal Procedure regulate the rights and duties of a private prosecutor and of an injured party acting as a subsidiary prosecutor. The Criminal Code distinguishes between these two roles. A private prosecutor (*privatni tužitelj*) is an injured party who brings a private prosecution in respect of criminal offences for which such prosecution is expressly prescribed by the Criminal Code (these are offences of a lesser degree). The injured party as a subsidiary prosecutor (*oštećeni kao tužitelj*) takes over criminal proceedings in respect of criminal offences subject to public prosecution where the relevant prosecuting authorities, for whatever reason, have decided not to prosecute.

Pursuant to Article 55(1) of the Code of Criminal Procedure, the State Attorney is under a duty to inform an injured party within eight days of a decision not to prosecute and of that party's right to take over the proceedings, as well as to instruct that party on the steps to be taken in order to proceed with the prosecution.

Article 60

"...

(2) Where the criminal proceedings are conducted upon a request by the injured party acting as a subsidiary prosecutor in respect of a criminal offence punishable by more than three years' imprisonment, he or she may ask to have legal counsel appointed free of charge where this is in the interests of the proceedings and where the injured party lacks the means to bear the expenses of legal representation ..."

Article 173

"(1) A [criminal] complaint shall be lodged with the competent State Attorney['s Office] in writing or orally.

..."

Article 189

"(1) When the investigating judge receives a request for an investigation he or she shall examine the case-file and hear the person in respect of whom the investigation is

requested, without delay ... If he or she agrees with the request he or she shall issue a decision on the opening of the investigation ...

..."

Article 190

"...

(2) If the investigating judge does not agree with the request for the opening of an investigation, he or she shall ask a [three-judge] panel of the competent county court to decide upon it ...

..."

48. The relevant provisions of the Civil Obligations Act (*Zakon o obveznim odnosima*, Official Gazette nos. 35/2005 and 42/2008) read as follows:

Section 19

"(1) Every legal entity and every natural person has the right to respect for their personal integrity under the conditions prescribed by this Act.

(2) The right to respect for one's personal integrity within the meaning of this Act includes the right to life, physical and mental health, good reputation and honour, the right to be respected, and the right to respect for one's name and the privacy of one's personal and family life, freedom *et alia*.

..."

Section 1046

"Damage is ... infringement of the right to respect for one's personal dignity (non-pecuniary damage)."

49. The relevant part of section 186(a) of the Civil Procedure Act (*Zakon o parničnom postupku*, Official Gazette nos. 53/91, 91/92, 58/93, 112/99, 88/01 and 117/03) reads as follows:

"A person intending to bring a civil suit against the Republic of Croatia shall first submit a request for a settlement to the competent State Attorney's Office.

...

Where the request has been refused or no decision has been taken within three months of its submission, the person concerned may file an action with the competent court.

..."

50. The relevant part of section 186(a) of the Civil Procedure Act (*Zakon o parničnom postupku*, Official Gazette nos. 53/91, 91/92, 58/93, 112/99, 88/01 and 117/03 reads as follows:

"A person intending to bring a civil suit against the Republic of Croatia shall beforehand submit a request for a settlement to the competent State Attorney's office.

...

Where the request has been refused or no decision has been taken within three months of its submission, the person concerned may file an action with the competent court.

..."

51. Section 13 of the State Administration Act (*Zakon o ustrojstvu državne uprave*, Official Gazette nos. 75/1993, 48/1999, 15/2000 and 59/2001) reads as follows:

"The Republic of Croatia shall compensate damage caused to a citizen, legal entity or other party by the unlawful or wrongful conduct of a State administrative body, or a body of local self-government or administration ..."

52. In decision no. U-III-1437/2007 of 23 April 2008 the Constitutional Court found that the conditions of detention of a prisoner, P.M., in Lepoglava State Prison amounted to inhuman treatment. It also addressed the question of P.M.'s claim for just satisfaction. The relevant parts of the decision read:

"In particular, the Constitutional Court finds the [lower] courts' opinion that in this case an award for non-pecuniary damage cannot be made under section 200 of the Civil Obligations Act on the ground that such compensation claim is unfounded in law, unacceptable.

...

Section 1046 of the Civil Obligations Act defines non-pecuniary damage as infringement of the right to respect for one's personal integrity. In other words, every infringement of the right to personal integrity amounts to non-pecuniary damage.

Section 19(2) of the Civil Obligations Act defines the right to personal integrity for the purposes of that Act as: the right to life, physical and mental health, reputation, honour, dignity, name, privacy of personal and family life, freedom and other rights.

... it must be concluded that in this case there has been a violation of human, constitutional and personal rights because the applicant was placed in prison in conditions incompatible with the standards prescribed by the Enforcement of Prison Sentences Act, conditions also incompatible with the legal standards under Article 25(1) of the Constitution. For that reason the courts are obliged to award compensation for the infringement of the applicant's dignity.

..."

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 3, 8 AND 13 OF THE CONVENTION

53. The applicant complained that the investigation into her allegations of rape had not been thorough, effective and independent and that she had

no effective remedy in that respect. She relied on Articles 3, 8 and 13 of the Convention, which read:

Article 3

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

Article 8

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

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."

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."

A. Admissibility

1. Compliance with the six-month rule

54. The Government argued that the part of the applicant's complaints under Articles 3 and 8 of the Convention concerning the conduct of the police and the gynaecologist who had examined her on 23 August 2007 fell outside the six-month time-limit since the alleged failures were to be regarded as instantaneous acts which had not produced any permanent consequences or a continuous situation.

55. The applicant disagreed with that viewpoint and argued that the conduct of the police and lack of compliance with the professional rules by the gynaecologist were integral parts of the investigation as a whole and could not be analysed separately from the other aspects of the case.

56. The Court observes that the applicant's complaints under Articles 3 and 8 of the Convention concerning failures and errors on the part of the national authorities concern the investigation as such and cannot be regarded as isolated events; they have to be seen as a whole.

57. The Court further observes that the Croatian legal system provides for a possibility for the injured party to act as a subsidiary prosecutor. In respect of criminal offences for which the prosecution is to be undertaken by the State Attorney's Office, either of its own motion or upon a private application, where the Office declines to prosecute on whatever ground, the injured party may take over the prosecution as a subsidiary prosecutor.

58. The Court reserves its position on the question whether injured parties are required to pursue the prosecution on their own by lodging a bill of indictment in connection with allegations of such serious criminal offences as rape. However, it considers that where the national system allows for such a possibility and the injured party makes use of it these proceedings shall also be taken into account (see, *mutatis mutandis*, *V.D. v. Croatia*, no. 15526/10, § 53, 8 November 2011).

59. Since the applicant in the present case did pursue the prosecution of D.Š.,[8] the Court notes that those proceedings ended on 27 May 2011. The present application was lodged with the Court on 19 July 2010. It follows that the Government's objection as to compliance with the six-month rule has to be dismissed.

2. Exhaustion of domestic remedies

60. The Government argued that the applicant had failed to exhaust all available domestic remedies. Although she had lodged a complaint about the conduct of the police officers with the Ministry of the Interior, she had not lodged a regular criminal complaint with the competent State Attorney's Office.

61. As regards the conduct of the gynaecologist who had examined the applicant on 23 August 2007, the applicant failed to lodge a complaint with the inspection body of the Croatian Medical Association.

62. In reply to the Government's observations, the applicant submitted that she had not had a duty to lodge a criminal complaint against the police officers because the State Attorney's Office had been aware of all the facts and circumstances of the case, including the conduct of both the police officer and the gynaecologist.

63. The Court notes that the applicant's complaints as to the conduct of the police and the gynaecologist are part of her overall complaints about a lack of thoroughness and efficiency in the investigation into her allegations of rape and should not be seen in isolation as separate factors. Furthermore, by lodging a complaint with the Ministry of the Interior the applicant made adequate use of the available remedies as regards the conduct of the police and there was no need for her to lodge a criminal complaint about it since she did not argue that the conduct of the police officers amounted to a criminal offence.

64. As regards the alleged failures of the gynaecologist, the Court notes that the obligation to conduct a thorough, effective and independent inquiry into allegations of rape is an obligation which concerns the State authorities responsible for conducting an investigation, and that a gynaecologist is not in such a position. Therefore, any possible failures on the part of the

[8] Rectified on 9 October 2012: the text was "the two officers in question".

gynaecologist have to be seen in the context of the conduct of the State bodies conducting the investigation.

65. Against the above background, it follows that the Government's objection must be dismissed.

3. The applicant's victim status

66. The Government argued that the applicant had lost her victim status because the relevant bodies of the Ministry of the Interior had found that the police officers involved had not taken all the required steps during the initial police inquiry into the applicant's allegations of rape, which had amounted to a grave breach of their official duty and for which they had been fined ten per cent of their monthly salary.

67. The applicant replied that she was still a victim of the violations claimed because it was the positive obligation of the State under Articles 3 and 8 of the Convention in cases of allegations of rape to conduct an effective and through investigation and thus secure effective protection to victims of sexual violence. Internal proceedings within the Ministry of the Interior against the police officers and the symbolic fine applied could in no way excuse the State from that duty.

68. The Court considers that the question of whether the applicant may still be considered a victim of the violation claimed should be joined to the merits, since it is closely linked to the substance of the applicant's complaint about the State's alleged failure to conduct a thorough and effective investigation into her allegations of rape.

4. Conclusion

69. The Court further considers that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. Moreover, it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' arguments

(a) The applicant's submissions

70. The applicant maintained that the case should be examined under Articles 3 and 8 of the Convention. Relying on the Court's judgment in the case of *M.C. v. Bulgaria* (no. 39272/98, ECHR 2003-XII), and *Aydin v. Turkey* (25 September 1997, *Reports of Judgments and Decisions* 1997-VI,) she argued that the act of rape reached the level of cruelty necessary for the application of Article 3. She further argued that such an act violated the right to personal integrity protected under Article 8 of the

Convention. In the applicant's view, States were under an obligation to ensure effective protection against acts of rape, even in relations between private individuals, through the adoption of criminal-law provisions which would ensure adequate punishment for acts of rape and the obligation to conduct a thorough, independent and effective investigation and criminal prosecution.

71. The applicant argued that the legal framework as regards the criminal offence of rape in the Croatian legal system was insufficient because Article 188 of the Criminal Code required the use of force or threats by the perpetrator. Legal practice also required resistance from the victim. She maintained that such a definition of the criminal offence of rape was too narrow since it did not cover all unwilling sexual intercourse. As regards the rules of criminal procedure, those in force at the time of the event in issue, namely in 2007, did not ensure the right of the victim to legal aid.

72. In practice the victim was often victimised and traumatised in the proceedings, in particular through the theory of the so-called "victim's contribution". The judges often analysed aspects of the victim's behaviour, such as wearing a short skirt, visiting disco clubs, hitchhiking and so on, and on the basis of such facts applied decreased sentences to the perpetrators.

73. As regards her case, the applicant submitted that there had been certain failures during the police inquiry and investigation. The police had not carried out an *in situ* inspection; they had not secured all the evidence, such as biological and other traces at the scene of the crime, and had not taken her clothes for forensic analysis. The skirt she had been wearing on the critical occasion which she had given to the police on 30 August 2007 had never been given for forensic examination. The police officers had treated her with disrespect and asked the men present at the scene why they had not thrown her into the sea. An officer had also said that she had been drunk and not raped. She had not immediately been interviewed or instructed to seek psychological aid and had given her statement for the first time three weeks after the event at issue.

74. The gynaecologist who had examined her at the S. Hospital had made no comments about the lacerations on her body, considering that these were not in his domain. The medical report drawn up at the C. Medical centre two days after the event at issue had been in contradiction to the findings of the gynaecologist.

75. The psychiatric report concerning the applicant had been drawn up without her participation, on the basis of a telephone conversation. The report had relied on previous medical reports from 2001 which had been asked for by the investigating judge of his own motion, allegedly in order to establish whether the applicant used any medication, which had no relevance for the event at issue. The applicant argued that the medical

record from 2001, when she had been treated by a psychiatrist, had been obtained and kept in the case file only so as to cover the failures in the investigation and to show her in a negative light and thus stress her own role and not that of the suspect.

76. The applicant had asked that Judge S.G. withdraw from the investigation of the case on account of his lack of impartiality, but she had not received any reply. She argued that he had acted with prejudice against her when he expressed his disagreement with the request for an investigation. In that decision he had "labelled" her by saying that she had disturbed public peace and order, caused disturbances, shouted, woken up the guests, and consumed large quantities of alcoholic beverages, whereas he had not commented at all on the behaviour of the suspect, who had also been under the influence of alcohol. The judge had also stated that he had consulted the entire case file and concluded that "the injured party and the suspect had not been alone at any time", which was in contradiction to the statement of the suspect given in his first interview with the police. Even in the evidence he gave to the investigating judge the suspect had said that he and the applicant had gone to the ship and started kissing. The fact that the judge had not paid attention to these crucial circumstances, but instead concentrated exclusively on the behaviour of the applicant showed his lack of impartiality.

77. On 8 January 2008 the police officers had visited her parents in M.L. and interviewed her father about his relationship with the applicant, which was completely unnecessary for the purposes of the investigation.

78. After she had taken over the prosecution no steps had been taken between 28 April 2008 and 17 January 2011, for more than two years and eight months.

(b) The Government's submissions

79. The Government argued that all the State bodies involved in the investigation of the applicant's allegations of rape had taken all possible steps in order to establish the facts of the case and adopted correct, lawful and reasoned decisions. They analysed in detail the evidence collected during the investigation and asserted that the national authorities had correctly concluded that there had not been sufficient evidence for the further criminal prosecution of D.Š.

80. In their opinion the applicant had given several contradictory statements during the police enquiry and the investigation, which had warranted that a psychiatric report in respect of her be commissioned in order to establish her ability to correctly interpret and reconstruct the event at issue.

(c) The third-party intervention

81. Interights argued that because of the particular susceptibility of victims of rape to being re-traumatised through interaction with the criminal justice system, a distinct approach should be taken to the interpretation of the State's positive obligations in the context of crimes of sexual violence. They defined secondary victimisation as victimisation that occurred not as a direct result of the criminal act but through the response of institutions and individuals to the victim. It might occur at any stage of a victim's involvement with the criminal justice system.

82. They argued that States have a duty to prevent secondary victimisation by putting in place specific measures such as specialised training of law-enforcement personnel, adopting specialist techniques for protection against the traumatising effects of police and court questioning and examination, restrictions on the admissibility of certain evidence, and providing multidisciplinary professional assistance for victims, as well as establishing special victim support centres.

2. The Court's assessment

(a) General Principles

83. The Court has already held that rape amounts to treatment contrary to Article 3 of the Convention (see *Aydın v. Turkey* and *M.C. v. Bulgaria*, cited above).

84. The relevant principles as to the existence of a positive obligation to punish rape and to investigate rape cases have been enunciated in the case of *M.C. v. Bulgaria* as follows:

> "149. The Court reiterates that the obligation of the High Contracting Parties under Article 1 of the Convention to secure to everyone within their jurisdiction the rights and freedoms defined in the Convention, taken together with Article 3, requires States to take measures designed to ensure that individuals within their jurisdiction are not subjected to ill-treatment, including ill-treatment administered by private individuals (see *A. v. the United Kingdom*, judgment of 23 September 1998, *Reports of Judgments and Decisions* 1998-VI, p. 2699, § 22; *Z and Others v. the United Kingdom* [GC], no. 29392/95, §§ 73-75, ECHR 2001-V; and *E. and Others v. the United Kingdom*, no. 33218/96, 26 November 2002).
>
> 150. Positive obligations on the State are inherent in the right to effective respect for private life under Article 8; these obligations may involve the adoption of measures even in the sphere of the relations of individuals between themselves. While the choice of the means to secure compliance with Article 8 in the sphere of protection against acts of individuals is in principle within the State's margin of appreciation, effective deterrence against grave acts such as rape, where fundamental values and essential aspects of private life are at stake, requires efficient criminal-law provisions. Children and other vulnerable individuals, in particular, are entitled to effective protection (see *X and Y v. the Netherlands*, judgment of 26 March 1985, Series A no. 91, pp. 11-13, §§ 23-24 and 27, and *August v. the United Kingdom* (dec.), no. 36505/02, 21 January 2003).

> 151. In a number of cases, Article 3 of the Convention gives rise to a positive obligation to conduct an official investigation (see *Assenov and Others v. Bulgaria*, judgment of 28 October 1998, *Reports* 1998-VIII, p. 3290, § 102). Such a positive obligation cannot be considered in principle to be limited solely to cases of ill-treatment by State agents (see, *mutatis mutandis*, *Calvelli and Ciglio v. Italy* [GC], no. 32967/96, ECHR 2002-I).
>
> 152. Further, the Court has not excluded the possibility that the State's positive obligation under Article 8 to safeguard the individual's physical integrity may extend to questions relating to the effectiveness of a criminal investigation (see *Osman v. the United Kingdom*, judgment of 28 October 1998, *Reports* 1998-VIII, p. 3164, § 128,).
>
> 153. On that basis, the Court considers that States have a positive obligation inherent in Articles 3 and 8 of the Convention to enact criminal-law provisions effectively punishing rape and to apply them in practice through effective investigation and prosecution."

85. Even though the scope of the State's positive obligations might differ between cases where treatment contrary to Article 3 has been inflicted through the involvement of State agents and cases where violence has been inflicted by private individuals, the requirements as to an official investigation are similar. For the investigation to be regarded as "effective", it should in principle be capable of leading to the establishment of the facts of the case and to the identification and punishment of those responsible. This is not an obligation of result, but one of means. The authorities must have taken the reasonable steps available to them to secure the evidence concerning the incident, including, *inter alia,* eyewitness testimony, forensic evidence, and so on. Any deficiency in the investigation which undermines its ability to establish the cause of injuries or the identity of the persons responsible will risk falling foul of this standard, and a requirement of promptness and reasonable expedition is implicit in this context. In cases under Article 3 of the Convention where the effectiveness of the official investigation has been at issue, the Court has often assessed whether the authorities reacted promptly to the complaints at the relevant time. Consideration has been given to the opening of investigations, delays in taking statements, and to the length of time taken for the initial investigation (see *Denis Vasilyev v. Russia*, no. 32704/04, § 100, 17 December 2009 with further references, and *Stoica v. Romania*, no. 42722/02, § 67, 4 March 2008).

86. The Court further emphasises the primary duty of the State to secure the right not to be exposed to treatment contrary to Articles 3 and 8 of the Convention or, in the context of the present case, to attacks on one's personal integrity, by putting in place an appropriate legal and administrative framework to deter the commission of offences against the person, backed up by law-enforcement machinery for the prevention, suppression and punishment of breaches of such provisions (see *Sandra Janković v. Croatia*, no. 38478/05, § 47, 5 March 2009; and *Beganović v. Croatia*, no. 46423/06, §§ 69-71, 25 June 2009).

(b) Application of these principles to the circumstances of the present case

87. As to the criminal-law mechanisms provided in the Croatian legal system, the Court notes that rape is a criminal offence under the Criminal Code and includes not only forced sexual intercourse but other sexual acts as well. The Court observes further that the Croatian criminal law distinguishes between criminal offences to be prosecuted by the State Attorney's Office, either of its 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 Court also notes that the applicant alleged that she had been raped. Prosecution in respect of that offence is to be undertaken by the State Attorney's Office of its own motion.

88. The Court further observes that the Croatian legal system also provides for the injured party to act as a subsidiary prosecutor. In respect of criminal offences for which the prosecution is to be undertaken by the State Attorney's Office, either of its own motion or upon a private application, where that Office declines to prosecute, on whatever ground, the injured party may take over the prosecution as a subsidiary prosecutor.

89. The Court will next examine whether or not the impugned regulations and practices, and in particular the domestic authorities' compliance with the relevant procedural rules, as well as the manner in which the criminal-law mechanisms were implemented in the instant case, were defective to the point of constituting a violation of the respondent State's positive obligations under Articles 3 and 8 of the Convention.

90. In this connection, the Court firstly observes that the national authorities established that I.Z., the police officer assigned to the case, had not undertaken all necessary steps in the initial phase of the police enquiry. Thus, their findings were that he "did not order an *in situ* inspection; nor did he take a statement from the injured party or conduct a detailed informative interview with her ... nor did he take the clothes that the injured party and the suspect were wearing in order to give them for forensic examination ..." (see paragraph 43 above).

91. At this juncture the Court considers it appropriate to reiterate the principles concerning the victim status of an applicant. In this regard the Court observes that under Article 34 of the Convention it "may receive applications from any person ... claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto". It falls first to the national authorities to redress any alleged violation of the Convention. In this connection, the question whether an applicant can claim to be a victim of the violation alleged is relevant at all stages of the proceedings under the Convention (see *Burdov v. Russia*, no. 59498/00, § 30, ECHR 2002-III, and *Trepashkin v. Russia*, no. 36898/03, § 67, 19 July 2007).

92. The Court also reiterates that a decision or measure favourable to an applicant is not in principle sufficient to deprive him or her of his or her status as a "victim" unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention (see *Amuur v. France*, 25 June 1996, § 36, *Reports* 1996-III, and *Dalban v. Romania* [GC], no. 28114/95, § 44, ECHR 1999-VI). Such acknowledgment and redress are usually the result of the process of exhaustion of domestic remedies (see *Koç and Tambaş v. Turkey* (dec.), no. 46947/99, 24 February 2005).

93. The Court further reiterates that the machinery for the protection of fundamental rights established by the Convention is subsidiary to the national systems safeguarding human rights. The Convention does not lay down for the Contracting States any given manner for ensuring within their internal law the effective implementation of the Convention. The choice as to the most appropriate means of achieving this is in principle a matter for the domestic authorities, who are in continuous contact with the vital forces of their countries and are better placed to assess the possibilities and resources afforded by their respective domestic legal systems (see *Swedish Engine Drivers' Union v. Sweden*, 6 February 1976, § 50, Series A no. 20; *Chapman v. the United Kingdom* [GC], no. 27238/95, § 91, ECHR 2001-I; and *Sisojeva and Others v. Latvia* [GC], no. 60654/00, § 90, ECHR 2007-II).

94. In the Court's view, the finding that police officers F.C. and I.Z. had failed to conduct the initial police enquiry into the applicant's allegations of rape in a satisfactory manner, and that officer I.Z. did not collect all the relevant evidence amounts to an acknowledgment that at the initial stage the investigation into the applicant's allegations of rape was flawed and lacked the required thoroughness.

95. The Court also notes that section 13 of the State Administration Act provides for the possibility of seeking compensation from the State in respect of omissions by State officials. In the Court's, view, the finding that officer I.Z. had committed a grave breach of his official duty, defined as a "failure to act or untimely or reckless conduct or conduct lacking diligence in the carrying out of his official duties" gave good grounds to the applicant for lodging a compensation claim against the State. While the above-mentioned flaws at the initial stage of the police enquiry, when evidence had to be secured, certainly undermined the possibility of establishing the facts of the case with more certainty in any further investigation, the fact that they were acknowledged by the national authorities leads the Court to conclude that the issue of the conduct of the police during the initial stages of the enquiry into the applicant's allegations of rape has been adequately addressed by the national bodies. Such an assessment, coupled with the possibility for the applicant to seek compensation from the State in that

regard, shows that there exists a system of redress in the national law for the breach of official duty.

96. However, this cannot satisfy the requirement of an effective investigation. These initial flaws necessarily had an impact on the effectiveness of the entire investigation. The applicant made further complaints as regards the effectiveness of the investigation, such as the fact that the skirt she had been wearing on the occasion at issue had never been sent for forensic examination; that witness Ve.M., who allegedly had some knowledge about her underwear being found on the boat (see above, §§ 24 and 30),[9] had not been heard; and those concerning the position of Judge S.G., who acted as the investigating judge in the case at issue. Thus, the applicant may still claim to be a victim of the violation claimed.

97. In this respect the role of Judge S.G. in the investigation of the applicant's allegations of rape should be addressed. In this regard, the Court notes that when an investigating judge receives a request for opening an investigation from the State Attorney's Office, he or she has to hear the suspect and then decide, on the basis of the evidence contained in the request, whether he or she agrees with such a request. In the case of his or her consent, the investigating judge issues a decision on the opening of the investigation. In the case to the contrary the investigating judge issues a decision expressing his or her disagreement with the request for the opening of the investigation (Articles 189 and 190 of the Code on Criminal Procedure).

98. In the present case Judge S.G., acting as the investigating judge, disagreed with the request to open an investigation into the applicant's allegations of rape in respect of D.Š. He based his disagreement on the written police records of the interviews carried out with the persons present at the scene at the time when the police arrived, the medical report drawn up by the gynaecologist who examined the applicant on the same day, and the oral evidence given by D.Š. to the investigating judge.

99. The Court does not consider that in every instance where an investigating judge who has initially expressed his or her disagreement with the request for an investigation later conducts the investigation in the same case lacks impartiality. Each case warrants an assessment of the judge's impartiality in view of all the circumstances.

100. In the present case the investigating judge disagreed with the request by the S. County State Attorney's Office to open an investigation in respect of D.Š. in connection with the applicant's allegations of rape. He voiced quite a strong opinion of the applicant and largely based his disagreement on the applicant's conduct (see paragraph 11 above).

[9] Rectified on 9 October 2012: the text was "witness V.M., who had later on found her underwear on the boat".

101. In this connection, it is to be reiterated that the Court attaches significant importance to appearances in matters of criminal justice, since justice must not just be done but must be seen to be done. What is at stake is the confidence which the courts in a democratic society must inspire in the public (see, *mutatis mutandis*, *Borgers v. Belgium*, 30 October 1991, § 24, Series A no. 214-B, and *Mirilashvili v. Russia*, no. 6293/04, § 228, 11 December 2008). Such considerations equally concern the accused and the injured parties in criminal proceedings. Thus, the Court stresses that the allegation that a rape victim was under the influence of alcohol or other circumstances concerning the victim's behaviour or personality cannot dispense the authorities from the obligation to effectively investigate.

102. The Court also notes that the investigating judge concluded as follows: "The criminal complaint and the enclosures in the case-file show with certainty that the injured party was not, at any moment, alone with the suspect ...". This choice of words leaves little doubt as to the judge's view as regards one of the crucial aspects of the case, namely the question whether the applicant and D.Š. were left alone at any time. This strongly worded statement combined with the emphasis on the applicant's own conduct could raise a question of appearances as to the judge's objectivity and impartiality in respect of his continued conduct of the investigation.

103. In this context, the Court notes that the applicant made further complaints as to the effectiveness of the investigation, arguing that the authorities had not complied with their obligation to take all reasonable steps available to them to secure the evidence concerning the incident at issue. The skirt the applicant was wearing on the critical occasion and which she gave to the police of her own accord was never sent for forensic examination. It was also argued that insufficient efforts were made to ensure that witness Ve.M.,[10] who appeared to have some relevant knowledge, was heard by the investigating judge. No *in situ* inspection was carried out at the time when the police arrived at the scene. Furthermore, the authorities never answered the applicant's allegations of bias of the investigation judge. These objective flaws in the investigation show a passive attitude as to the efforts made to properly probe applicant's allegations of rape.

104. The Court thus finds that in the present case there has been a violation of the procedural aspect of both Article 3 and Article 8 of the Convention and dismisses the Government's objections as to the applicant's victim status. It also holds that no separate issue arises under Article 13 of the Convention.

[10] Rectified on 9 October 2012: the text was "V.M.".

II. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION

105. The applicant complained that the national authorities involved in the investigation of her allegations of rape had discriminated against her on the basis of her gender. She relied on Article 14 of the Convention, the relevant part of which reads:

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

106. The applicant argued that the victims of sexual violence were mostly women. In Croatia the level of sensitivity and specific knowledge of law-enforcement personnel in this area was quite low and there was no protocol on the procedure to be followed in cases of sexual violence. As regards the present case, the investigating judge had acted with prejudice against the applicant when he expressed his disagreement with the request for an investigation and labelled the applicant as merely a person having disturbed public peace and order and consumed a large quantity of alcohol, and ignored the crucial facts of the case.

107. The Court considers that this complaint is closely linked to the one concerning the procedural aspect of Articles 3 and 8 of the Convention and must also therefore be declared admissible.

108. The Court finds, however, that this complaint essentially overlaps with the issues which have been examined under Articles 3 and 8 of the Convention. Having found a violation of those provisions, the Court holds that no separate issue arises under Article 14 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

109. 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

110. The applicant claimed 15,000 euros (EUR) in respect of non-pecuniary damage.

111. The Government deemed the sums claimed to be excessive and unsubstantiated.

112. Having regard to all the circumstances of the present case, the Court accepts that the applicant has suffered non-pecuniary damage which cannot be compensated solely by the finding of a violation. Making its

assessment on an equitable basis, the Court awards the applicant EUR 12,500 in respect of non-pecuniary damage, plus any tax that may be chargeable to her.

B. Costs and expenses

113. The applicant also claimed EUR 16,342 Croatian kuna (HRK) for the costs and expenses incurred before the national authorities, and a further HRK 37,900 for those incurred before the Court.

114. The Government contested the claim.

115. 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 are reasonable as to quantum. As to the domestic proceedings concerning the investigation into the applicant's allegations of rape, the Court agrees that, as they were essentially aimed at remedying some of the violations of the Convention alleged before the Court, these domestic legal costs may be taken into account in assessing the claim for costs (see *Scordino v. Italy (no. 1)* [GC], no. 36813/97, § 284, ECHR 2006-V). In the present case, regard being had to the information in its possession and the above criteria, the Court awards the applicant the sum of EUR 2,000 for costs and expenses in the proceedings before the national authorities. As to the Convention proceedings, making its assessment on an equitable basis and in the light of its practice in comparable cases, the Court considers it reasonable to award the applicant, who was represented by counsel, the sum of EUR 2,000, less EUR 850 already received by way of legal aid from the Council of Europe, plus any tax that may be chargeable to her on these amounts.

C. Default interest

116. The Court considers it appropriate that the default interest 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. *Decides* to join to the merits the Government's objection as to the applicant's victim status as regards her complaints under Articles 3 and 8 of the Convention and rejects it;

2. *Declares* the application admissible;

3. *Holds* that there has been a violation of Articles 3 and 8 of the Convention in relation to the lack of an effective investigation;

4. *Holds* that there is no need to examine the complaints under Articles 13 and 14 of the Convention;

5. *Holds*

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

(i) EUR 12,500 (twelve thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 4,000 (four thousand euros), less EUR 850 (eight hundred and fifty 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;

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

Done in English, and notified in writing on 24 July 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Anatoly Kovler
President