



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

THIRD SECTION

CASE OF PAVLOVIĆ v. SERBIA

(Application no. 42160/21)

JUDGMENT

Art 8 • Positive obligations • Private life • Prosecutor's unappealable decision to discontinue the criminal proceedings against the alleged perpetrator of an assault on a nine-year-old boy of Roma origin, on the condition that he made a monetary contribution to a public cause – without apologising or making any reparation to the victim • Failure to address the child's vulnerability and needs and to give primary consideration to his "best interests" • Decision in flagrant disregard of the victim's interests, particularly in the light of the alleged perpetrator's refusal to assume responsibility or to apologise • Lack of adequate protection • Defective implementation of criminal-law mechanisms • Art 34 • Victim • Lack of appropriate and sufficient redress • Albeit Constitutional Court's acknowledgment, in substance, of a violation of Art 8, compensation awarded substantially lower than Court's awards in similar cases

Prepared by the Registry. Does not bind the Court.

STRASBOURG

6 October 2026

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

In the case of Pavlović v. Serbia,

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

Ioannis Ktistakis, *President*,

Lətif Hüseynov,

Darian Pavli,

Úna Ní Raifeartaigh,

Mateja Đurović,

Canòlic Mingorance Cairat,

Vasilka Sancin, *judges*,

and Milan Blaško, *Section Registrar*,

Having regard to:

the application (no. 42160/21) against the Republic of Serbia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Serbian national, Mr Robert Pavlović (“the applicant”), on 5 August 2021;

the decision to give notice of the application to the Serbian Government (“the Government”) and the decision to request further observations from the parties pursuant to Rule 54 § 2 (c) of the Rules of Court;

the observations submitted by the parties and their additional observations;

the comments submitted by the A11 – Initiative for Economic and Social Rights (“the A11 Initiative”), a non-governmental organisation based in the Republic of Serbia, which was granted leave to intervene by the President of the Section;

Having deliberated in private on 7 October 2025 and 1 September 2026,

Delivers the following judgment, which was adopted on the last-mentioned date:

INTRODUCTION

1. The case concerns an assault on a nine-year-old boy of Roma origin and the ensuing investigation into his allegations of ill-treatment.

THE FACTS

2. The applicant was born in 2006 and lives in Valjevo. He was represented by the European Roma Rights Centre, a non-governmental organisation based in Brussels.

3. The Government were represented by their Agent, Ms Z. Jadrijević Mladar.

4. The facts of the case may be summarised as follows.

I. INCIDENT OF 21 JULY 2016 AND SUBSEQUENT EVENTS

5. The applicant belongs to the Roma ethnic group.

6. On 21 July 2016 the applicant, who was nine years old at the time, and his ten-year-old sister were performing in a square in front of a municipal administration building in Valjevo to raise some cash for family needs. The applicant was playing the accordion and his sister – the flute. J.R., their mother, was seated on a bench nearby.

7. According to the applicant's statement, given at 2.45 p.m. on the same day to the police, at approximately 12.30 p.m. the applicant and his sister were approached by a man they did not know. He told them to stop playing and threatened to break the accordion. After he left, the children complained to their mother, who told them to ignore the threats and to continue playing. Shortly after, the man came back. He grabbed the applicant with one hand and slapped him in the face with the other one. J.R. ran after the man but did not manage to catch up with him. She summoned the police.

8. On the same day the applicant was examined by a medical practitioner at the local hospital. According to the resulting medical report, the applicant had sustained a superficial injury to his head caused by a slap to the left cheek and demonstrated signs of emotional distress. The doctor concluded that the patient was conscious and mobile, and fully orientated. He discerned no disruption of skin continuity or neck stiffness. The applicant's movements in the temporomandibular joint were normal. There were no meningeal symptoms, and drop tests and the Romberg test were negative.

9. Local media and online sources covered the incident, describing it as an assault by a municipal employee on a Roma boy. In particular, on 31 July 2016 the Ministry of Labour, Employment, Veterans and Social Affairs announced that the Chairman of the Government Council for the Advancement of Roma had denounced the assault and considered that the alleged perpetrator should be held accountable for his actions.

10. In the period between 27 July and 11 October 2016 the applicant underwent various medical examinations. It was concluded that the applicant's health had deteriorated following the incident of 21 July 2016. In particular, the applicant struggled with nighttime routines, had problems sleeping and was afraid to stay home alone.

II. POLICE INVESTIGATION

A. Initial inquiry

11. On 21 July 2016 the police interviewed the applicant (see paragraph 7 above). On 22 July 2016 the police interviewed J.R. and the applicant's sister, who gave statements similar to the one given by the applicant.

12. On an unspecified date the police identified N.I., a lawyer employed by the municipality, as the alleged perpetrator.

13. On 25 July 2016 the police questioned N.I., who denied having been involved in the incident of 21 July 2016. He acknowledged having seen a boy of Roma origin playing the accordion near the municipal administration building on several occasions.

B. Misdemeanour proceedings

14. On an unspecified date the police opened misdemeanour proceedings against N.I. on the charge of committing a violent act.

15. On 1 August 2016 the police transmitted the case file to the Misdemeanour Court in Valjevo. On 11 October 2016 misdemeanour proceedings against N.I. were begun.

16. On 8 August 2017 the Misdemeanour Court in Valjevo discontinued the misdemeanour proceedings against N.I. for lack of jurisdiction. The court noted that a set of criminal proceedings against N.I. had been discontinued (see below) and that its examining of the misdemeanour case would breach the principle of *ne bis in idem*.

C. Criminal proceedings

17. On 28 July 2016 the police submitted a report and a video footage of the incident to the prosecutor's office.

18. On an unspecified date the prosecutor's office instituted criminal proceedings against N.I. on charges of violent behaviour (Article 344 § 1 of the Criminal Code) and endangerment of safety (Article 138 § 1 of the Criminal Code).

19. On 13 October 2016 the prosecutor questioned N.I., who denied the accusations and asked that the criminal proceedings against him be deferred under Article 283 of the Code of Criminal Procedure. That Article allows prosecutors to defer proceedings against an individual and to set certain conditions for them, upon the fulfilment of which the proceedings can be dropped; the mechanism is known as the principle of opportunity (see paragraph 33 below). N.I. refused to apologise to the children or to pay compensation to them, as was proposed by J.R.

20. On 28 October 2016, relying on the principle of opportunity established in Article 283 of the Code of Criminal Procedure, the prosecutor's office decided to defer the criminal proceedings against N.I. on the charge of violent behaviour, contingent on his paying 30,000 Serbian dinars (RSD) (approximately 250 euros (EUR)) for humanitarian purposes (namely a contribution to a State flood relief fund). The applicant's representatives (his lawyer and his mother, J.R.) objected to the deferral on the conditions

indicated by the prosecutor. In their opinion, N.I. should have been made to compensate the applicant for non-pecuniary damage and apologise to him.

21. On an unspecified date N.I. made the monetary contribution to the flood relief fund and on 17 November 2016 the prosecutor's office discontinued the criminal proceedings against him on the charge of violent behaviour. That decision was final and not amenable to appeal. As regards the charge of endangerment of safety, the prosecutor's office indicated that there had been no grounds to suspect that that act had been committed by N.I. and closed the case against him. J.R. was informed that an application for a review of that decision could be lodged.

III. PROCEEDINGS BEFORE THE CONSTITUTIONAL COURT

22. On 26 December 2016 the applicant lodged a complaint with the Constitutional Court of the Republic of Serbia. The applicant complained that he had been assaulted by N.I. and, as a result, had been subjected to treatment proscribed by Article 3 of the Convention. He further complained that, as a child, he had been deprived of the protection against abuse set out in the Constitution. He also submitted that N.I.'s act was attributable to the State, that the prosecutor's office had been wrong to discontinue, under the principle of opportunity, the prosecution on the charge of a violent behaviour, and challenged the fact that, as a matter of law, he had not had a right to challenge the prosecutor's decision. Lastly, referring to Article 14 of the Convention, he argued that he had been assaulted by N.I. because of his Roma origin and that the ensuing investigation had not addressed that issue. He referred in that respect to "widespread discrimination against Roma in Serbia" and to his "belonging to a minority community that had historically been subjected to persecution and discrimination".

23. On 5 February 2021 the Constitutional Court delivered a judgment in the applicant's case. The court noted that the applicant had been a minor when he was attacked by N.I. and acknowledged a violation of the applicant's right to be protected against abuse. The court relied on Article 64 of the Constitution of Serbia which protects children from psychological physical, economic and any other form of exploitation or abuse. It ordered in that connection the payment of 300 euros (EUR) to the applicant in respect of non-pecuniary damage. While the Constitutional Court found the principle of opportunity to be compatible with the Constitution, it noted that its application in each particular case should be justified regard being had, *inter alia*, to the nature and type of obligation imposed on the defendant and the category of the victim. The court noted that children, being a vulnerable group, required special protection. The court concluded that the prosecutor's decision to discontinue the criminal proceedings against N.I., on the condition that he made a monetary contribution to a public cause, had breached the applicant's rights. In the court's view, it would have been appropriate for the

defendant to have paid compensation to the injured party. The court also took into account the prosecutor's failure to provide the applicant with an opportunity to be heard prior to its taking the decision to discontinue the criminal proceedings. In view of the civil proceedings concerning the alleged discriminatory aspect of N.I.'s act underway at that time (see paragraphs 24-29 below), the court refused to examine the applicant's allegations of discrimination.

IV. CIVIL PROCEEDINGS INSTITUTED BY THE APPLICANT AND HIS SISTER

24. On 6 December 2017 the applicant and his sister lodged a civil claim seeking non-pecuniary damages from N.I. and the town administration in respect of the incident of 21 July 2016. They submitted that N.I. had acted with discriminatory intent against them on account of their Roma origin. In particular, the plaintiffs stated that N.I. had said that only "Serbs" could perform in the square, while "gypsies" were not allowed to do so. He had also uttered a racial slur referring to the plaintiffs' mother.

25. On an unspecified date the plaintiffs withdrew the claims against the town administration.

26. On 19 May 2021 the Valjevo High Court acknowledged that the applicant and his sister had suffered non-pecuniary damage caused by N.I.'s actions and ordered that N.I. pay RSD 100,000 (approximately EUR 850) to each plaintiff. The court dismissed the remaining claims, including the allegations of discrimination, as unsubstantiated. The court heard the plaintiffs, their mother, the respondent, two witnesses who had observed the incident and forensic experts who testified, *inter alia*, about the impact of the incident on the applicant and psychiatric treatment the applicant had undergone thereafter. It also examined the materials collected by the police in response to the applicant's criminal complaint noting discrepancies and contradictions between the plaintiffs' submissions before the police and before the civil court. The court took into account that the applicant had not mentioned discriminatory motives in N.I.'s conduct either to police officers, doctors or social workers involved in his case. The applicant and his sister appealed against that decision. They claimed that the High Court had failed to establish the facts correctly and that it had erred in interpreting the applicable laws.

27. On 14 July 2021 the Belgrade Court of Appeal upheld the judgment of 19 May 2021, dismissing the plaintiffs' appeal as unsubstantiated.

28. On 19 January 2022 the Supreme Court of Cassation decided on the applicant's application for revision. The parties did not submit a copy of its decision.

29. On 4 May 2022 the applicant lodged a complaint with the Constitutional Court alleging, *inter alia*, a violation of his rights under

Article 14 of the Convention in conjunction with Article 8 and a violation of Article 1 of Protocol No. 12 in the context of the above civil proceedings.

30. On 19 May 2025 the Constitutional Court rejected the applicant's appeal. It considered that the applicant had failed to substantiate his allegations. Lastly, referring to its earlier decision (see paragraph 23 above), the Constitutional Court noted that it had already examined the complaints in respect of the incident of 21 July 2016 and found a violation of the applicant's rights.

31. On 22 May 2025 that decision was served on the applicant.

RELEVANT LEGAL FRAMEWORK

I. THE CRIMINAL CODE

32. The relevant provisions of the Criminal Code read as follows:

Endangerment of safety Article 138

“(1) Whoever endangers the safety of another by threat of attack against the life or body of such person or a person close to him, shall be punished by a fine or by imprisonment for up to one year.

(2) Whoever commits the offence specified in the first paragraph of this Article against several persons or in such a manner as to cause anxiety to the general public or as to cause other serious consequences, shall be punished with imprisonment for three months to three years.”

Violent behaviour Article 344

“(1) Whoever by rude insults or maltreatment of another, by violence directed against another, or by instigating a brawl or insolent or ruthless behaviour causes significant distress to citizens or seriously violates public peace and order, shall be punished by imprisonment for three months to three years.

(2) If the offence specified in the first paragraph of this Article is committed by a group or if during commission of the offence a person sustains light bodily injury or if citizens are subjected to serious degradation, the offender shall be punished by imprisonment for six months to five years.”

II. THE CODE OF CRIMINAL PROCEDURE

33. The relevant provisions of the Code of Criminal Procedure read as follows:

Application for Review by the Injured Party Article 51

“If in connection with a criminal offence subject to public prosecution, the public prosecutor dismisses a criminal complaint, discontinues the investigation or abandons

criminal prosecution before the indictment is confirmed, he or she shall be required to notify the injured party thereof within eight days and to advise that party that he or she shall be entitled to apply for a review [of that decision to be carried out] by the public prosecutor's superior.

The injured party shall be entitled to apply for a review within eight days of receiving the notification and information referred to in the first paragraph of this Article. If the injured party has not been notified, he or she shall be entitled to apply for a review within three months of the date when the public prosecutor dismissed the complaint, discontinued the investigation or abandoned criminal prosecution.

..."

Deferring Criminal Prosecution Article 283

"The public prosecutor may defer criminal prosecution for criminal offences punishable by a fine or a term of imprisonment of up to five years if the suspect accepts one or more of the following obligations:

- 1) to rectify the detrimental consequence caused by the commission of the criminal offence or indemnify the damage caused;
- 2) to pay a certain amount of money to the account allocated for the payment of public revenues, to be used for humanitarian or other public purposes;

...

In the order deferring criminal prosecution the public prosecutor shall determine a time-limit within which the suspect must fulfil the obligations undertaken, whereby the time-limit may not exceed one year. Oversight of the fulfilment of obligations shall be performed by an officer of the authority in charge of the execution of criminal sanctions, in accordance with a regulation issued by the minister responsible for the judiciary.

If the suspect fulfils the obligation referred to in paragraph 1 of this Article within the prescribed time-limit, the public prosecutor shall dismiss the criminal complaint by a decision and notify the injured party thereof, and the provision in the second paragraph of Article 51 of this Code shall not be applied.

..."

Dismissing a Criminal Complaint Article 284

"The public prosecutor shall dismiss a criminal complaint by a decision if it proceeds from the complaint that:

- 1) the reported offence is not a criminal offence which is subject to public prosecution;
- 2) the statute of limitations has expired, or the offence is encompassed by an amnesty or a pardon, or there exist other circumstances which permanently exclude prosecution;
- 3) there are no grounds for suspicion that a criminal offence which is subject to public prosecution has been committed.

The public prosecutor shall notify the injured party within eight days of the dismissal of the criminal complaint and give the reasons therefor and advise him or her of his or her rights (Article 51 paragraph 1), and if the criminal complaint was submitted by a police authority, [the prosecutor] shall also notify that authority.

In the case of criminal offences punishable by a term of imprisonment of up to three years, the public prosecutor may dismiss a criminal complaint if the suspect, as a result of genuine remorse, has prevented the occurrence of damage or has already indemnified the damage in full, and in view of the circumstances of the case the public prosecutor finds that ... a criminal sanction would not be fair. In that case, the provision of the second paragraph of Article 51 of this Code shall not be applied.”

III. THE OBLIGATIONS ACT

Monetary compensation Article 200

“(1) In cases involving the suffering of physical pain or mental anguish resulting from a reduction in the enjoyment of life, disfigurement, or interference with a person’s reputation, honour, liberty or other personal rights, ..., or fear, the court shall, where it finds that the circumstances of the case – in particular the intensity and duration of the suffering and fear – so require, award just monetary compensation, irrespective of any award for pecuniary damage and even in the absence thereof.

(2) In determining both the entitlement to, and the quantum of, non-pecuniary damages, the court shall have regard to the importance of the interest affected and the purpose of the award, while ensuring that the award does not pursue objectives incompatible with the nature and social function of compensation for non-pecuniary damage.”

THE LAW

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

34. Relying on Article 3 of the Convention, the applicant complained that he had been assaulted by N.I. and that no effective investigation had been carried out in his case. Referring to Article 13 of the Convention, he complained that he had not had any right to appeal against the prosecutor’s decision to discontinue the criminal prosecution against N.I.

35. The Court reiterates that, by virtue of the *jura novit curia* principle, it is not bound by the legal grounds adduced by the applicant under the Convention and the Protocols thereto and has the power to decide on the characterisation to be given in law to the facts of a complaint by examining it under Articles or provisions of the Convention that are different from those relied upon by the applicant (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 126, 20 March 2018). The Court, accordingly, considers that the aforesaid complaints fall to be examined under Articles 8 and 13 of the Convention (see *Sandra Janković v. Croatia*, no. 38478/05, § 27, 5 March 2009, and *Špadijer v. Montenegro*, no. 31549/18, §§ 66-69, 9 November 2021), which, in so far as relevant, read as follows:

Article 8

“1. Everyone has the right to respect for his private life ...

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

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. *Compatibility* *ratione materiae*

36. The Court notes from the outset that the Government in their observations raised no plea of inadmissibility concerning lack of jurisdiction *ratione materiae*. However, the issue whether a particular Article of the Convention or a Protocol thereto is applicable or not is a matter that goes to the Court’s jurisdiction *ratione materiae*, the scope of which is determined by the Convention itself, in particular by Article 32, and not by the parties’ submissions in a particular case. Accordingly, the Court has to satisfy itself that it has jurisdiction in any case brought before it, and is therefore obliged to examine the question of its jurisdiction of its own motion (see *Grosam v. the Czech Republic* [GC], no. 19750/13, § 107, 1 June 2023, with further references).

37. The Court has previously held, in various contexts, that the concept of private life, set out in Article 8 of the Convention, is a broad term not susceptible to exhaustive definition. It includes a person’s physical and psychological integrity, and extends to other values such as well-being and dignity, personality development, and relations with other human beings (see *Špadijer*, cited above, § 80, with further references). In order for Article 8 to come into play, however, an attack on a person must attain a certain level of seriousness and be made in a manner causing prejudice to the personal enjoyment of the right to respect for one’s private life (see *Beizaras and Levickas v. Lithuania*, no. 41288/15, § 109 *in fine*, 14 January 2020). A severity threshold is necessary for the applicability of Article 8 in such a situation (see *Nicolae Virgiliu Tănase v. Romania* [GC], no. 41720/13, § 128, 25 June 2019). In cases relating, *inter alia*, to Article 8, the Court has stressed the relevance of the age of the minors concerned and the need, where their physical and moral welfare is threatened, for children and other vulnerable members of society to benefit from State protection (see *F.O. v. Croatia*, no. 29555/13, § 58, 22 April 2021).

38. In the present case, the Court has regard to the fact that the applicant was, at the time of the incident, a nine-year-old boy, who was vulnerable *vis-à-vis* his attacker, an adult male (see paragraph 8 above). The traumatic event,

which comprised an attack against the applicant's physical integrity, had a negative impact on his emotional state (see paragraph 10 above). The Court does not doubt that the incident must have aroused in the applicant feelings of fear and helplessness. It accordingly finds it established that the treatment complained of by the applicant attained the requisite threshold of severity for Article 8 of the Convention to apply (see, by contrast, *Tonchev v. Bulgaria*, no. 18527/02, § 41, 19 November 2009).

2. *Victim status*

39. Referring to the decision delivered by the Constitutional Court on 5 February 2021, the Government pointed out that the latter had found in the applicant's favour and awarded him a compensation in respect of the non-pecuniary damage.

40. The applicant considered that the Constitutional Court had not restored justice in his case and that the perpetrator has escaped liability.

41. In so far as the Government suggested that the applicant could no longer claim to be a victim of the violation alleged, the Court considers this question is closely linked with and should be joined to the merits (compare *Roth v. Germany*, nos. 6780/18 and 30776/18, § 58, 22 October 2020).

3. *Conclusion*

42. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. *The parties' submissions*

43. The applicant maintained his complaint. He submitted that, as a result of the prosecutor's decision to discontinue the criminal proceedings against N.I., he had been deprived of a possibility to resort to a criminal law mechanism to protect his rights, which constituted a failure on the respondent State's part to comply with its positive obligations set out in Article 8 of the Convention. The prosecutor's response had not been capable of providing effective protection to the applicant against the violence committed. The applicant further criticised the legal framework as not being capable of ensuring consistency, foreseeability or compliance as regards the protection owed by the State to children. He considered that the existing legal framework failed to ensure that the criminal-law response remained effective, child-sensitive and capable of deterrence. The misdemeanour proceedings – the discontinuance of which the applicant had only been informed of by the Constitutional Court's decision in his case – had been equally ineffective. The Constitutional Court had failed to assess that fact. Accordingly, the

investigation in the applicant's case had been ineffective. The prosecutor had failed to collect evidence properly (he had not questioned the witnesses or the applicant and N.I. had not been questioned until three months after the assault). The authorities had failed to pay due heed to the vulnerability of the victim of the crime, who was a nine-year-old Roma boy. The civil proceedings instituted by the applicant had been incapable of remedying the authorities' earlier failure to respond to the violence inflicted on the applicant. The monetary compensation awarded had not mitigated the State's failure to ensure that the act of violence had been met with an effective, deterrent and protective response. Taken as a whole, the domestic legal response had lacked the coherence or effectiveness necessary for the State to fulfil its positive obligations under Article 8. Lastly, the applicant submitted that the lack of a possibility to appeal against the prosecutor's decision to discontinue criminal proceedings had amounted to a violation of Article 13. The Constitutional Court had not remedied the situation. It had not ordered a re-opening of the criminal case against N.I.

44. The Government considered that the State had complied with its positive obligations as regards its duty to ensure effective protection of the applicant's rights set out in Article 8. In response to the complaint lodged by the applicant's parents, the police had conducted an inquiry which had led to the identification of the alleged perpetrator. While conceding that the prosecutor's subsequent decision to discontinue the criminal and misdemeanour proceedings against N.I. had been contrary to the applicant's interests, the Government considered that the said omission had been rectified by the Constitutional Court, which had acknowledged the violation of the applicant's rights and awarded him monetary compensation. The Government also referred to the civil proceedings instituted by the applicant and his sister in which the national courts had recognised the violation of the applicant's rights and awarded him compensation for the non-pecuniary damage sustained as a result of the assault.

2. Third party intervener

45. In its third-party comments, the A11 Initiative argued that, when deciding to discontinue criminal prosecution by way of application of the principle of opportunity, the prosecuting authorities should base their decision on a careful assessment of various concerns and obligations, including the State's duty to protect children from violence, with the child's best interest being the major factor. Such a decision had to be fair and should not result in the denial of justice to the victim of the crime.

3. *The Court's assessment*

(a) **General principles**

46. The Court reiterates that the object of Article 8 is essentially that of protecting the individual against arbitrary interference by the public authorities. However, this provision does not merely compel the State to abstain from such interference: in addition to this primarily negative undertaking, there are positive obligations inherent in an effective respect for private life. These obligations may involve the adoption of measures designed to secure respect for private life even in the sphere of the relations of individuals between themselves. Regarding the protection of the physical and psychological integrity of an individual from other persons, the authorities' positive obligations – in some cases under Article 8 taken alone, in others taken in conjunction with Article 3 – may include a duty to maintain and apply in practice an adequate legal framework affording protection against acts of violence by private individuals. In certain instances, as in cases of rape and sexual abuse of children, where fundamental values and essential aspects of private life have been at stake, the States' positive obligation has been found to encompass ensuring that efficient criminal-law provisions are in place and been extended to the effectiveness of a criminal investigation; in certain less serious instances the availability of a civil remedy has been deemed sufficient (see *Nicolae Virgiliu Tănase*, cited above, §§ 125 and 127).

47. As regards a Contracting State's responsibility under the Convention for violations of human rights caused by acts of its agents carried out in the performance of their duties, the Court reiterates that, where the behaviour of a State agent is unlawful, the question of whether the impugned acts can be imputed to the State requires an assessment of the totality of the circumstances and consideration of the nature and circumstances of the conduct in question (see *Reilly v. Ireland* (dec.), no. 51083/09, § 53, 23 September 2014, with further references). Whether a person is an agent of the State for the purposes of the Convention is defined on the basis of a multitude of factors, none of which is determinative on its own. The key criteria used to determine whether the State is responsible for the acts of a person, whether formally a public official or not, are as follows: the manner of appointment, supervision and accountability of the person in question, and his or her objectives, powers and functions (see *V.K. v. Russia*, no. 68059/13, §§ 174-75, 7 March 2017).

(b) **Application of the principles**

(i) *Scope of the case*

48. Having established that the treatment complained of by the applicant entailed an adverse effect on his psychological well-being which gives rise to an issue under Article 8 of the Convention (see paragraph 38 above), the Court is unable, however, to accept the applicant's contention that the State

should bear responsibility for N.I.'s behaviour, unacceptable as it was, merely because he happened to be a municipal employee. No evidence has been submitted that would cause the Court to conclude that, at the time of the incident, N.I. was acting in his official capacity or was performing any of his duties. On the contrary, N.I.'s actions were so flagrantly abusive and so far removed from his official duties that they could not engage the State's responsibility (compare, *mutatis mutandis*, *Enukidze and Girgvliani v. Georgia*, no. 25091/07, §§ 289-90, 26 April 2011, with further references).

49. Accordingly, the Court's task in the present case is to determine whether the domestic authorities, in handling the applicant's case, complied with their positive obligation under Article 8, as regards the protection of the applicant's physical and psychological integrity. In particular, the issue before the Court is not whether the remedies used by the applicant led to a result favourable to him, but whether they were sufficient and accessible and applied a standard of protection that secured, in principle, the effective defence of the applicant's rights set out in Article 8 of the Convention (compare *Špadijer*, cited above, § 91). It is incumbent on the Court to examine the manner in which the domestic authorities responded to the applicant's complaints about the treatment he was subjected to by N.I.

(ii) *The domestic authorities' response*

50. The Court reiterates that an attack on a person's physical integrity would in principle require a criminal-law response, including in cases concerning Article 8 of the Convention (see, among other authorities, *Söderman v. Sweden* [GC], no. 5786/08, § 63, ECHR 2013; and *Biba v. Albania*, no. 24228/18, § 63, 7 May 2024, with further references). Referring to its earlier findings (see paragraph 38 above), the Court sees no reason to find otherwise in the present case.

51. The Court also accepts that the Serbian legal system provides for criminal-law mechanisms that impart protection against violent acts by private individuals (see paragraph 30 above). As to the manner in which those mechanisms were implemented in the instant case, the Court observes that the local police reacted promptly to the complaint lodged by the applicant's mother. They established the identity of the alleged perpetrator, interviewed the applicant, his family members and other witnesses, collected documentary and other evidence and submitted the materials to the prosecutor's office for the criminal case to proceed. The prosecutor, however, chose not to pursue the case against the alleged perpetrator. He opted to discontinue the criminal proceedings against N.I., on the condition that he made a monetary contribution to a public cause – without having to apologise or to make any reparation to the victim of the crime.

52. While it is not the Court's task to assess the strategy chosen by the prosecuting authorities, it cannot but note that the prosecutor's decision lacks any explanation as to the choices made by him. The Court observes that

Serbian law provides for a possibility to have the detrimental consequences of an offence be rectified by the alleged perpetrator or to have the damage caused to the victim indemnified (see Article 283 of the Code of Criminal Procedure cited in paragraph 33 above). For reasons unknown, the prosecutor considered that unnecessary. As a result, the outcome of the prosecution did not include any attempt to mitigate the negative impact of N.I.'s actions on the applicant's well-being. The situation was exacerbated by the fact that, as a matter of law, the applicant did not have a right to appeal against the prosecutor's decision.

53. The Court does not lose sight of the fact that the Constitutional Court found that the approach employed by the prosecutor's office had infringed the applicant's rights. The Constitutional Court held that the applicant was a vulnerable person, in view of his young age. The Court sees no reason to depart from the findings of the Constitutional Court in that respect. It considers, however, that the authorities' response to the applicant's complaint was ineffective. In particular, the child's vulnerability and needs were not addressed. His right to have his best interests as a primary consideration was not respected. The prosecutor's decision to discontinue the criminal proceedings against the alleged perpetrator was in flagrant disregard of the interests of the victim of the crime, particularly in the light of the perpetrator's refusal to assume responsibility for his conduct or to apologise for it (see paragraphs 19-21 above). Such an outcome, in the Court's view, did not provide adequate protection to the applicant against the attack on his physical integrity. It showed that the manner in which the criminal-law mechanisms were implemented were defective and resulted in the respondent's State's failure to comply with its positive obligation under Article 8 of the Convention.

(c) Whether the applicant has lost his victim status

54. It remains for the Court to ascertain whether the applicant, as argued by the Government, has lost his victim status. In this connection, the Court reiterates that under the subsidiarity principle it falls first to the national authorities to provide redress for any violation of the Convention (see *Mansour v. Slovakia*, no. 60399/15, § 38, 21 November 2017).

55. It is the settled case-law of the Court that a decision or measure favourable to an applicant is not in principle sufficient to deprive that applicant 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, among other authorities, *Brumărescu v. Romania* [GC], no. 28342/95, § 50, ECHR 1999-VII).

56. As to the redress which is appropriate and sufficient in order to remedy a breach of a Convention right at national level, the Court has generally considered this to be dependent on all the circumstances of the case, having regard, in particular, to the nature of the Convention violation at stake

(see, *Gäfgen v. Germany* [GC], no. 22978/05, § 116, ECHR 2010, with further references).

57. Regard being had to the particular circumstances of the present case and in view of the earlier findings that the criminal-law response was required on the part of the authorities (see paragraph 51 above) and that they failed to comply with their positive obligation in that respect (see paragraph 53 above), the Court considers that the breach of Article 8 in the present case could not be remedied only by an award of compensation to the applicant, which, in any event was substantially lower than the amounts awarded by the Court in other cases involving deficiencies in an investigation (see, for example, *Isaković Vidović v. Serbia*, no. 41694/07, 1 July 2014, in which the Court found a violation of Article 8 of the Convention and awarded EUR 3,000 in respect of non-pecuniary damage).

58. Therefore, while the Court may accept that the Constitutional Court acknowledged, in substance, the violation of the applicant's rights set out in Article 8 of the Convention, it is unable to conclude that the authorities have provided a redress which could be considered appropriate and sufficient to remedy the breach of the applicant's rights at the national level.

59. Having regard to the above, the Court considers that the measures taken by the domestic authorities failed to comply with the requirement of sufficient redress as established in its case-law (compare *Biba*, cited above, § 77). It follows that the applicant may still claim to be the victim of the violation complained of.

(d) Conclusion

60. Having regard to the above findings, the Court considers that the authorities' response to the applicant's criminal complaint did not provide adequate protection to him against an attack on his physical integrity and showed that the manner in which the criminal-law mechanisms were implemented were defective to the point of constituting a violation of the respondent State's positive obligations under Article 8 of the Convention. The applicant may still claim to be the victim of a breach of Article 8. There has therefore been a violation of that provision.

61. In view of the above finding, there is no need to examine the remainder of the applicant's arguments under Article 8 of the Convention or to examine separately his complaint under Article 13 of the Convention that he had not had a right to appeal against the prosecutor's decision to discontinue criminal proceedings against N.I.

II. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION IN CONJUNCTION WITH ARTICLE 8 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL No. 12

62. The applicant complained that he had been subjected to discrimination in contravention of Article 14 of the Convention read in conjunction with Article 8 and Article 1 of Protocol No. 12 on account of his Roma origin. In particular, he alleged that the sole reason for the assault he had been subjected to and the authorities' decision not to prosecute the alleged perpetrator had been the existence of institutional antigypsyism in Serbia. Lastly, he alleged that, in the context of the criminal proceedings, the authorities had failed to investigate whether ethnic or racial hatred or prejudice had played a role in the assault.

63. Article 14 of the Convention and Article 1 of Protocol No. 12 thereto read as follows:

Article 14

“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.”

Article 1 of Protocol No. 12

“1. The enjoyment of any right set forth by law 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.

2. No one shall be discriminated against by any public authority on any ground such as those mentioned in paragraph 1.”

A. The parties' submissions

64. The Government submitted that at no time had the applicant or his relatives reported to the investigating authorities that the assault had been motivated by racial or ethnic hatred or prejudice. The applicant had raised those allegations only in the course of the civil proceedings. They had been duly considered by domestic courts which had dismissed them as unfounded and contradictory. The Government also argued that the applicant had failed to exhaust effective domestic remedies in respect of the complaint. He should have lodged a constitutional appeal to challenge the findings of the domestic courts as regards his allegations of discrimination.

65. The applicant maintained his complaints. He noted that he had duly raised his grievances before the Constitutional Court in his complaint about the lack of an effective investigation into the ill-treatment. The possibility of complaining to the Constitutional Court about the finding of the civil court concerning his allegations of discrimination had no bearing on his contention

that the authorities had failed to investigate the racial or ethnic motives of the assault. In any event, he had in fact raised the issue when lodging his complaint with the Constitutional Court in respect of the civil proceedings.

B. Third party intervener

66. In its third-party submissions, the A11 Initiative referred to the Court's case-law and international-law instruments, arguing that the failure on the part of the authorities to address and adequately punish instances of violence against Roma children amounted not only to a denial of justice, but also showed a lack of commitment to protecting vulnerable groups.

C. The Court's assessment

67. The applicant relied on Article 14 of the Convention taken in conjunction with Article 8 of the Convention and Article 1 of Protocol No. 12. The Court reiterates that the test for Article 14 and Article 1 of Protocol No. 12 is the same and finds it appropriate to look at these complaints jointly (see, for the same approach, *Zornić v. Bosnia and Herzegovina*, no. 3681/06, §§ 26-28, 15 July 2014).

68. The Court further notes that, regard being had to the scope of the applicant's complaints (see paragraph 62 above), its task in the present case is two-fold. It has to examine (1) whether N.I.'s assault on the applicant was racially motivated and (2) whether the authorities' response to the applicant's grievances in the context of the criminal proceedings amounted to discriminatory treatment.

69. The Court is aware of the seriousness of the applicant's allegations and of the sensitive nature of the situation of Roma in Serbia at the relevant time. However, having examined the materials before it, the Court considers that the applicant in the present case has failed to make a *prima facie* case that the assault and the ensuing investigation into it were discriminatory. It notes the vagueness and the general nature of the applicant's allegations made both domestically (see paragraph 22 above) and in the proceedings before it. The Court discerns no individual elements in those allegations imputable to the alleged perpetrator or the authorities involved in the applicant's case or in any other way linked to its specific circumstances (compare, *mutatis mutandis*, *Adam v. Slovakia*, no. 68066/12, §§ 84-95, 26 July 2016, with further references). Accordingly, the present case must be distinguished from cases in which the burden of proof as regards the presence or absence of discrimination on the part of the authorities has been shifted to the respondent Government (see, by contrast, *Makhashevy v. Russia*, no. 20546/07, §§ 176-79, 31 July 2012).

70. As regards the authorities' response to the applicant's criminal complaint, the Court notes that the applicant has failed to complain

throughout the proceedings of the alleged failure to investigate the potential racial motive on the part of the police. The Court does not underestimate the existence of prejudice and hostility against Roma in Serbia. It also takes into account the media coverage of the incident of 21 July 2016 (see paragraph 9 above). Nevertheless, regard being had to the circumstances of the case, it must conclude that it has not been established that a discriminatory attitude played a role in the authorities' decision to discontinue the criminal case against N.I. Similarly, the Court does not consider that, in the circumstances of the case, the authorities had before them information which was sufficient to alert them to the need to investigate on their own initiative possible racist overtones in the assault on the applicant (see, in particular, the applicant's and his sister's statements to the police, paragraphs 7 and 11 above).

71. As to the examination of the applicant's civil claims by domestic courts, the Court discerns no plausible explanation in the applicant's submissions as to why he failed to raise the issue of discrimination before the investigating authorities and brought it only to the attention of civil courts. The Court further notes that, apart from his and his family members' statements, the applicant did not submit any evidence in support of his allegations. As noted by the domestic courts, the applicant and his family members did not mention the racial slur when questioned by the police and came forward with their accusations only in the civil proceedings. The Court understands the difficulties the applicant must have encountered when presenting his case to the judicial authorities. It gives heed to his young age and vulnerability. Nevertheless, regard being had to the materials submitted, the Court finds that the applicant has failed to make out that there was a racial motive underlying N.I.'s assault.

72. It follows that the complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

73. 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

74. The applicant claimed 10,000 euros (EUR) in respect of non-pecuniary damage.

75. The Government considered that the applicant was not entitled to any award. In their opinion, he could no longer claim to be a victim of the violations alleged. In any event, they considered the claim excessive.

76. The Court, taking into account the nature of the violation found and the awards made by the domestic courts, awards the applicant EUR 3,400 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

77. The applicant also claimed EUR 2,700 for the costs and expenses incurred before the domestic courts and the Court.

78. The Government submitted that the applicant had failed to support his claim with evidence.

79. 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 were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court rejects the claims in respect of costs and expenses in their entirety (see *Merabishvili v. Georgia* [GC], no. 72508/13, §§ 370-73, 28 November 2017).

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join to the merits the Government's objection concerning the applicant's victim status under Articles 8 and 13 of the Convention;
2. *Declares* the complaints under Articles 8 and 13 of the Convention concerning the authorities' failure to conduct an effective investigation into the applicant's allegations of ill-treatment admissible and the remainder of the application inadmissible;
3. *Holds* that there has been a violation of Article 8 of the Convention and dismisses the Government's objection concerning the applicant's victim status;
4. *Holds* that there is no need to examine the complaint under Article 13 of the Convention taken in conjunction with Article 8;
5. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 3,400 (three thousand four hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount 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 6 October 2026, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško
Registrar

Ioannis Ktistakis
President