



## Croatian authorities failed to promptly investigate allegations of child abuse by a father or to hear the child's view either in the criminal or custody proceedings

The case [M. and M. v. Croatia](#) (application no. 10161/13) concerned a custody dispute, including allegations of child abuse by the father. The applicants, a mother and her daughter, complained in particular that the national authorities had failed to remove the child from the father's care and to thus prevent further domestic abuse.

In today's **Chamber** judgment<sup>1</sup> in the case, the European Court of Human Rights held:

by five votes to two, that there had been a **violation of Article 3 (prohibition of inhuman and degrading treatment)** of the European Convention on Human Rights as concerned the State's failure to investigate promptly the allegations of ill-treatment brought by the mother and child;

unanimously, that there had been **no violation of Article 3** of the European Convention as concerned the child and the State's duty to protect her from further ill-treatment;

unanimously, that there had been **no violation of Article 8 (right to private and family life)** as concerned the mother and the State's duty to protect her daughter from further ill-treatment; and

unanimously, that there had been **two violations of Article 8** on account of the excessive length of the custody proceedings in respect of both mother and daughter and on account of the daughter's lack of involvement in the custody decision-making process.

The Court noted in particular substantial delays in both the criminal proceedings brought against the father as well as in the custody proceedings, both still pending after more than four years without the child ever having been interviewed in either set of proceedings. The Court was particularly struck by the fact that the child, now 13 and a half, has still not yet been heard in the custody proceedings and has thus not been given the chance to express her view before the courts about which parent she wants to live with. The protracted nature of those proceedings has exacerbated the plight of a traumatised child who, if for nothing else than her parents' conflicting relationship, has suffered great mental anguish, culminating in self-injuring behaviour.

### Principal facts

The applicants, M. and M., a mother and her daughter, are Croatian nationals who were born in 1976 and 2001, respectively, and live in Zadar (Croatia).

M., the mother, married I.M. in 2001 and they had their daughter, M., in the same year. The couple's relationship deteriorated and in August 2007 they were granted a divorce. The father was awarded custody of their daughter and the mother granted contact rights and ordered to pay maintenance.

The case concerned a series of inter-connected proceedings involving the family, before the criminal courts, the civil courts (to decide on custody) and the social welfare authorities.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day. Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: [www.coe.int/t/dghl/monitoring/execution](http://www.coe.int/t/dghl/monitoring/execution).

In March 2011 the State Attorney indicted the father on the charge of bodily injury following an incident of alleged abuse of his daughter on 1 February 2011: the girl claims in particular that her father had hit her in the face, squeezed her throat and verbally abused her. The mother took her daughter to the police the following day and, after being examined by an ophthalmologist, she was diagnosed with bruising of the eyeball and eye socket. The father was subsequently found guilty as charged in April 2011 and issued with a penal order. He challenged the penal order, which was then set aside and the proceedings resumed. Thus three hearings were held in 2013, the first scheduled for May, with the courts eventually deciding to hear the child via a video link. These proceedings are currently still pending, however, as the courts in Zadar are not equipped with a video link and they are waiting to obtain a device.

The mother also filed a criminal complaint against the father in April 2011 accusing him of child abuse, citing the incident on 1 February 2011 as well as the allegation by her daughter that that abuse was not an isolated incident. In particular, she claims that he called their daughter names, force-fed her when she refused to eat food she did not like and threatened to hit her, to cut her long hair and to make sure she would never see her mother again. That criminal complaint was dismissed in January 2012 because no elements of abuse were found.

In the meantime, in March 2011, following the incident of February 2011, the mother instituted proceedings to reverse the custody order of August 2007, also requesting to be awarded temporary custody of her daughter. The request for temporary custody was refused two months later due to lack of proof that the abuse had taken place. These custody proceedings are currently still pending at first-instance.

In the proceedings before the social welfare authorities two child protection measures were ordered – from November 2006 to August 2008 and from September 2011 to March 2014 – so as to monitor the situation in the family and improve communication between the parents, thus preventing the daughter from being drawn into the parents' conflict. During the custody proceedings – in May 2011 – the local social welfare centre submitted its recommendation, stating that the child's situation was complex but that there was nothing to suggest that it was life-threatening. A subsequent opinion of March 2014 by a supervising welfare officer similarly made no suggestion that the child was ill-treated or at risk of ill-treatment, stating that the main problem was unresolved parental conflict and the parents' disregard of their child's needs.

During all of the above proceedings the child was examined by a series of psychiatrists and psychologists, at the instigation of both the mother as well as the father and by court order in the custody proceedings: they all concluded that the child was traumatised. The forensic experts appointed in the custody proceedings submitted their combined opinion on the family to the courts in December 2011, finding that both parents had limited parenting capacities and suffered from personality disorders. In their opinion, the child was emotionally traumatised by her parents' separation and conflict but did not find any danger in the child continuing to live with the father. In 2014 the child admitted to self-harming, and was further examined by a psychologist.

Throughout those examinations the child stated that she had been hit in the face by her father in February 2011 and that she wanted to live with her mother, which she had also confirmed when interviewed by the police in connection with the criminal proceedings against her father.

## Complaints, procedure and composition of the Court

The mother and daughter argued that because the national prosecuting and judicial authorities had only prosecuted the father for one offence of bodily injury rather than child abuse, the judicial and social authorities as well as the forensic experts in the custody proceedings had been reluctant to find that abuse had occurred and to thus protect the child from further violence by removing her

from her father's home. They relied on Article 3 (prohibition of inhuman and degrading treatment) and Article 8 (right to private and family life).

The application was lodged with the European Court of Human Rights on 3 January 2013.

Judgment was given by a Chamber of seven judges, composed as follows:

Isabelle **Berro** (Monaco), *President*,  
 Mirjana **Lazarova Trajkovska** ("The former Yugoslav Republic of Macedonia"),  
 Julia **Laffranque** (Estonia),  
 Paulo **Pinto de Albuquerque** (Portugal),  
 Linos-Alexandre **Sicilianos** (Greece),  
 Erik **Møse** (Norway),  
 Ksenija **Turković** (Croatia),

and also Søren **Nielsen**, *Section Registrar*.

## Decision of the Court

### Articles 3 and 8 (State's duty to investigate allegations of ill-treatment and to prevent further abuse)

The Court noted that the child had stated to the police that she had been hit by her father on 1 February 2011 and had repeated those allegations before clinical and forensic experts throughout the various proceedings. Furthermore, the injury she had allegedly sustained in that incident had been medically documented by an ophthalmologist, as had her remaining allegations of – mainly psychological – abuse by various therapists and forensic experts appointed in the custody proceedings. It therefore considered that the case, which concerned a child with an arguable claim that she had been a victim of domestic violence, raised the question of whether the State had failed in its duty under Article 3 to investigate the child's allegations and to protect her from further violence.

As concerned the State's duty to investigate, the Court noted that the authorities had decided to criminally prosecute the father only for the injuries the child had allegedly sustained during the incident on 1 February 2011 and not for an offence covering all the instances of the alleged ill-treatment, which would have addressed the situation in its entirety. Moreover, even those criminal proceedings which had been brought against the father have been substantially delayed. Notably, from the moment when the father challenged the penal order – in May 2011 – and the scheduling of the first hearing – in May 2013 – the proceedings were at a complete standstill, with no explanation by the Government for such a delay. Further delays occurred once the trial court decided to hear the child because neither the court nor the police authorities were equipped with a video-link device, a justification which is rather difficult to understand at a time when such technology should usually be easily available. Thus, more than four years and five months after the child's injury had occurred the national authorities have still not established by a final judicial decision whether the injuries had been inflicted by her father and, if so, determined his criminal liability and imposed a penalty. There had therefore been a violation of Article 3 as concerned the State's failure to investigate promptly the allegations of ill-treatment brought by the mother and child.

However, as concerned the duty to prevent further abuse, the Court found that, in the period after 1 February 2011, the national authorities had taken reasonable steps to assess the risk of the child being potentially ill-treated by her father and to prevent it. Notably, the child's situation had been closely monitored by the social authorities between September 2011 and March 2014 – as it had been previously between November 2006 and August 2008 – when child protection measures had been in place. Furthermore, both the recommendation by the local social welfare centre of May

2011 and the combined opinion by forensic experts of December 2011 had found that the child was not at risk. The decision in June 2011 to refuse the mother temporary custody of her daughter, based on that recommendation by the social welfare centre as well as other evidence and the fact that the criminal proceedings against the father were still pending, had therefore been taken after careful consideration of all relevant materials. There had therefore been no violation of Article 3 as concerned the State's duty to protect the child from ill-treatment.

Given that finding under Article 3, the Court further held that there had been no violation of Article 8 as concerned the mother and the State's duty to protect her daughter from ill-treatment. As concerned the child's complaints under Article 8, the Court found that they were absorbed by her complaints under Article 3 above.

#### Article 8 (right to respect for private and family life and length of custody proceedings)

The Court considered that the applicants' complaints that the domestic authorities had been ignoring the daughter's wish to live with her mother, and that she had not yet been heard in the protracted custody proceedings, raised issues regarding the right to private and family life which were distinct from those analysed under Articles 3 and 8 above.

The Court was particularly struck by the fact that, after four years and three months, the child has still not yet been heard in the custody proceedings and has thus not been given the chance to express her view before the courts about which parent she wants to live with. The national courts have not realised that the protracted nature of those proceedings has exacerbated the plight of a traumatised child who, if for nothing else than her parents' conflicting relationship, has suffered great mental anguish, culminating in self-injuring behaviour. Even more surprising is the fact that no steps have been taken to accelerate the custody proceedings since 2014 when the child started exhibiting such behaviour.

Indeed, the forensic experts in psychology and psychiatry had found that both parents were equally (un)fit to take care of her, a view that was apparently shared by the local social welfare centre. Those experts also established that the child expressed a strong wish to live with her mother. The child, who is an A-grade pupil and whom the experts viewed as being of good or even above average intellectual capacities, was nine and a half years old at the time of the institution of the proceedings and is now 13 and a half. It would thus be difficult to argue that, given her age and maturity, she was not capable of forming her own views and expressing them freely. Moreover, both of her parents live in the same town and reversal of custody order would therefore not entail the child having to change school or otherwise be removed from her habitual social environment.

The Court therefore found that not respecting the child's wishes as regards which parent she would like to live with has, in the specific circumstances of her case, breached her right to respect for private and family life, in violation of Article 8. It also considered that both the mother and the child's right to respect for family life had been breached as concerned the protracted nature of the custody proceedings, in further violation of Article 8.

#### Article 41 (just satisfaction)

The Court held that Croatia was to pay in respect of non-pecuniary damage 19,500 euros (EUR) to the child and EUR 2,500 to her mother, and EUR 3,600, jointly to mother and daughter, for costs and expenses.

#### Separate opinion

Judges Berro and Møse expressed a joint separate opinion which is annexed to the judgment.

*The judgment is available only in English.*

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