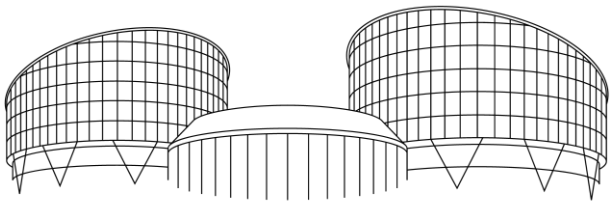

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF ĐORĐEVIĆ v. CROATIA

(Application no. 41526/10)

JUDGMENT

STRASBOURG

24 July 2012

FINAL

24/10/2012

This judgment has become final under Article 44 § 2 of the Convention.

In the case of Đorđević 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. 41526/10) 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 two Croatian nationals, Mr Dalibor Đorđević and Ms Radmila Đorđević ("the applicants"), on 12 July 2010.

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

3. On 10 September 2010 the President of the First Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1 of the Convention).

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 the European Disability Forum, which had been given leave 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 applicants were born in 1977 and 1956 respectively and live in Zagreb.

6. The first applicant is a person divested of legal capacity owing to his mental and physical retardation. He goes to a workshop for adults at the V.B. primary school in Zagreb for twelve hours a week. He is taken care of by his mother, the second applicant. The medical documentation of 16 June 2008 submitted in respect of the first applicant describes his health as follows:

> "... in his very early childhood he suffered from purulent meningitis, which resulted in permanent consequences and epilepsy. He is retarded in his mental and physical development and is under the constant supervision of a neurologist and psychiatrist. Owing to hydrocephalus he has had a Pudenz valve [a type of cerebrospinal fluid shunt] implanted. ... his eyesight is very poor ... and he is dependent on his mother as regards feeding, dressing, personal hygiene and moving about. His spine is mobile but painful in the lower region. ... he suffers from severe foot deformation, ... has difficulty walking; walking on his toes and heels is not possible. Mentally he is emotionally distant, fearful and he has a poor vocabulary. ..."

7. The applicants live in a ground-floor flat in a block of flats in Španska, a part of Zagreb. The A.K. primary school is nearby in their neighbourhood.

8. It appears that the applicants were subjected to harassment between July 2008 and February 2011. They alleged that pupils from the A.K. primary school, all minors, frequently harassed them, and in particular the first applicant, at all times of the day, especially when the pupils returned home from school in groups and in the late afternoon and evening when they gathered without parental supervision on and around a wooden bench in front of the balcony of the applicants' flat. The harassment, in their submission, was motivated by the first applicant's health and both applicants' Serbian origin. A larger group of children, also minors, came daily to a park in front of the applicants' flat, shouted obscenities at the first applicant, called him names and wrote insulting messages on the pavement. The children often rang the applicants' bell, asking when the first applicant was going out. They often spat at him.

9. A police report of 31 July 2008 shows that the second applicant called the police at 9.12 p.m. and complained that unknown young persons were harassing her son and had smashed some objects on her balcony. The police arrived at the applicants' home at 9.30 p.m. and the second applicant told them that at about 6 p.m. she and the first applicant had left the flat and that when they had returned at about 9 p.m. she had found the balcony ruined and all the flower beds torn up. She also told the police that the first

applicant had been harassed for a longer period of time by children in the neighbourhood on account of his mental retardation. She named two of the children.

10. On 2 March 2009 the Susedgrad Social Welfare Centre ordered the supervision of the parental care of D.K., a pupil at A.K. primary school, on account of his poor school results, problematic behaviour and tendency to commit criminal offences. There was no mention of his involvement in the harassment of the applicants.

11. A medical report drawn up on 6 April 2009 shows that the first applicant had been psychologically and physically harassed in the street and that he had cigarette burns on both hands. The doctor asked the social authorities to institute proceedings for the protection of the first applicant as a person with serious mental disorders and described him as a peaceful and benign person who could not and did not know how to defend himself from the abusers.

12. In a letter of 20 April 2009 to the Ombudswoman for Persons with Disabilities, the second applicant complained that on 4 April 2009 two children, D.K. and I.M., had harassed the first applicant. She alleged that while riding their bicycles they had approached the first applicant and burned his hands with cigarettes. She also complained that the first applicant had been continually harassed by children attending a nearby school on the basis of his mental retardation and added that she had on numerous occasions complained to the Susedgrad Social Welfare Centre and the authorities of the A.K. primary school, but to no avail.

13. On the same day the applicants' lawyer complained to the police about the incident of 4 April 2009.

14. A police report of 5 May 2009 records that on that day on the premises of the II Zagreb Police Station the police interviewed D.K., born in 1997, and P.B., born in 1995. The relevant part of the report in respect of D.K. reads:

> "When asked whether he remembers the event of 4 April 2009 in ... Zagreb, [D.K.] said that at about 12 noon he was there with his friend I.M., who is in the seventh grade at A.K. primary school, and that P.B., an older boy from the seventh grade of the same school, arrived together with two men, unknown to him, who were playing with a ball. A person who is disabled and has had problems from birth and who lives in a block of flats in ... Street was playing between the buildings. At one point, P.B. lit a cigarette, approached Dalibor and burned his right hand several times, after which they all ran away because that person started to shout."

The relevant part of the report in respect of P.B. reads:

> "When asked whether he remembers the event of 4 April 2009 in ... Zagreb, concerning the harassment of a disabled person, Dalibor Đorđević, [P.B.] says that he was not present on that occasion but that at the beginning of that week during the morning break he had met D.K., who is in the fifth grade at the same school and who told him that he [D.K.] and I.M. at about 12 noon on Saturday had burned with a

cigarette the hand of a person named Dalibor in ... Street who lives on that street and is disabled.

When asked a further question as to whether he knew what that person looks like, he answered that he used to go to play on that street with other boys from the neighbourhood and he saw that person, who is about thirty, strongly built, has short salt-and-pepper hair and a pale complexion and has difficulty speaking. That person plays with other children who tease him and he runs after them and beats them."

15. A police report of 7 May 2009 records that on that day on the premises of the II Zagreb Police Station the police interviewed I.M., born in 1994. The relevant part of the report reads:

"When asked whether he remembers the event of 4 April 2009 in ... Zagreb, concerning the harassment of a disabled person, Dalibor Đorđević, between thirty and forty years old, [I.M.] said that he remembered that occasion, that it was a Saturday ... and that he took his bicycle and went ... with D.K. to ... Street, where they saw Dalibor, a person disabled from birth, between the buildings, playing with a ball with some children who took the ball and did not want to return it to him. When he saw this, he [I.M.] asked the children why they did not give the ball back to Dalibor, and Dalibor started to shout and wave his hands. The children then threw the ball and he took it. He [I.M.] was holding a cigarette in his left hand ... and as he was passing Dalibor on his bicycle he [Dalibor] started to wave his hands and slapped him a few times on the hand in which he was holding the cigarette and thus Dalibor burned his hand. He was sure that he burned Dalibor only once and he was sorry for it. He did not understand why Dalibor reacted in such a manner because it was not his [I.M.'s] fault that some children took his ball. The pupil P.B. was not with them.

...

When asked a further question as to whether Dalibor had problems with other children, [I.M.] answered that he is often on that street where Dalibor plays ball with other boys and that these children tease Dalibor because of his illness ... and then he runs after them and catches them.

In the end [I.M.'s] mother R. was advised to keep an eye on I.M.'s behaviour. She said that she had no problems with him and she did not know why he had done this."

16. On 19 May 2009 the II Zagreb Police Station sent a report to the Zagreb State Attorney's Juvenile Office stating that

– on 16 April 2009 they had received a letter from the Susedgrad Social Welfare Centre stating that it had received a letter from the second applicant in which she had alleged that her son had been ill-treated by D.K. and others and enclosed medical documentation; and

– on 30 April 2009 they had received a letter from the Ombudswoman for Persons with Disabilities stating that she had also received a letter from the second applicant who was seeking help in connection with the frequent harassment of the first applicant.

The police also informed the Zagreb State Attorney's Juvenile Office about the interviews they had conducted with the children D.K., I.M. and P.B.

17. In a letter of 20 May 2009 the II Zagreb Police Station informed the Ombudswoman that they had interviewed the children I.M. and D.K., that

they had contacted the headmaster of A.K. primary school, that the police officers from the station had been informed about the problems and that they had regularly patrolled the streets in question.

18. On 17 July 2009 the police informed the Susedgrad Social Welfare Centre that they had established that on 4 April 2009 at about 12 noon the first applicant had been playing with a ball in the street with some boys from the neighbourhood who had taken his ball away, which had upset him. When the boys I.M. and D.K. had gone past the first applicant he had waved his hands and I.M. had unintentionally burned them.

19. On 16 July 2009 the Susedgrad Social Welfare Centre drew up a report on the first applicant. The relevant part of the report reads:

> " ...
>
> On 6 August 2008 [the first applicant's] mother, Radmila, complained to us about harassment of Dalibor, alleging that the children ... were visiting the girls V.K. and I.K., who lived in their block of flats. The K. girls said that they had not harassed Dalibor and that the leader of the group had been H.B.
>
> An agreement has been reached with the K. girls and their mother, J.F., that the girls will stop hanging around in front of the block of flats and will find another place to do so in order to avoid conflicts.
>
> H. and her parents were summoned to this office. H. said that she would no longer hang around in front of that block of flats and that there had been peace for a time.
>
> After that the boys started to come, in different groups, so that Mrs Đorđević could not tell their names, but she knew that they attended A.K. primary school.
>
> Mrs Đorđević again complained of harassment on 8 April 2009, when Dalibor had been burned with cigarettes and [she said that] the harassment had continued.
>
> On 17 June 2009 an interview with Mrs Đorđević was carried out. [She said] that the problems had continued. There were constantly new children who provoked Dalibor, mostly acquainted with the K. girls. There would be peace for two or three days and then the problems would start again. She had good relations with the school counsellor, the defectologist and the headmaster.
>
> Mrs Đorđević stated: 'On 16 June 2009 first the girls came and stood next to the bench. Mrs Đorđević told Dalibor to come inside because she knew how afraid he was of them. They said that he did not need to be afraid because they would soon leave. Then a group of boys came and sprayed Dalibor with water from a balloon.'
>
> Mrs Đorđević also said that lately V.K. had again started to get children to meet up in front of the building, which upset Dalibor.
>
> The police and the school were informed about the above events.
>
> The school [authorities] talked to all the children who had been reported and to their parents.
>
> The police carried out an inquiry [and interviewed] the children who had been present when Dalibor was burned.
>
> In order to prevent further harassment we wrote to the school [authorities, asking them] to hold meetings with all children and parents at the beginning of the school year, in all classes, to inform everyone of the problem and to make it clear that they

were all responsible for the ill-treatment until the perpetrators were identified. It was also suggested that lectures and workshops with children be held in order for them to understand that there were persons with disabilities who had the same rights as everybody else – to walk about and live their lives outside their flats without being harassed by anyone.

It was agreed with police officer I.M. from the II Police Station that the police in charge of that neighbourhood would keep a closer eye on and patrol more frequently the street in order to identify the perpetrators of the harassment.

On 14 July 2009 a visit of the family was carried out and only Dalibor was found; he did not know where his mother was and also said that the children had not teased him lately. Dalibor was in the flat and there were no children around the building.

..."

20. On 27 July 2009 the Zagreb Municipality State Attorney's Office informed the second applicant that the perpetrators of the criminal offence of violent behaviour under Article 331 § 1 of the Criminal Code were D.K. and I.M., who were children below 14 years of age, and that therefore no criminal proceedings could be instituted against them. The second applicant was instructed that she could bring a claim for compensation in civil proceedings.

21. A police report of 5 September 2009 states that on that day the second applicant called the police at 8.40 p.m. complaining about noise in the park. When the police arrived at 8.45, the second applicant told them that in the meantime the children had left.

22. A medical report in respect of the first applicant drawn up on 8 September 2009 indicates that he had constantly been harassed by children, who had burned his hands, shouted at him and made noise in front of the applicants' balcony. It stated that it was necessary for the first applicant to spend time outdoors.

23. A report drawn up on 17 September 2009 by the Susedgrad Social Welfare Centre indicates that they had interviewed I.M. and his mother. Since I.M. expressed regret about the incident of 4 April 2009, there was no need for any further measures.

24. On an unspecified date in September 2009 the headmaster of A.K. primary school sent a letter to the parents informing them that in their neighbourhood lived a young man with disabilities named Dalibor who had been frequently harassed by schoolchildren. The headmaster expressly stated that the children had admitted to "a number of brutal acts" against Dalibor, such as making derogatory remarks, using insulting language and swearing, behaving provocatively, taking his ball and burning his hands with cigarettes. The parents were asked to talk to their children and warn them about the possible consequences of such behaviour.

25. The relevant part of the written record of a parent-teacher meeting held on 30 September 2009 at A.K. primary school reads as follows:

"...

> At all parent-teacher meetings in the new school year we have drawn the parents' attention to a young man with special needs who lives in the school's neighbourhood and who has been harassed by pupils from our school, mostly verbally and sometimes physically. His mother often seeks help from the school employees, and a social welfare centre and the Ombudswoman for Persons with Disabilities have also been involved. The parents were asked to talk to their children and raise their awareness about the problem of accepting differences and the need for peaceful coexistence.
>
> The parents present commented on the matter. Some of them mentioned that the young man in question had sometimes also been aggressive, that he had approached young girls in an inappropriate manner and that they had expressed a fear of him and tended to avoid the area where he usually was. Some also commented that he should not be out in public and that he should spend time in conditions appropriate for him or in the park under the constant supervision of a guardian. The headmaster noted all the comments and promised to contact the competent social welfare centre.
>
> ..."

26. On 1 October 2009 the applicants' lawyer sent a written complaint to the Zagreb Municipality State Attorney's Office. She stated that her clients were two Croatian nationals of Serbian origin, a mother and her son who suffered from mental and physical retardation. She explained that her clients lived about seventy metres away from A.K. primary school and that they had been constantly harassed by schoolchildren, at all times of the day and mainly when the children went home from school in groups and in the late afternoon and evening when they gathered around a bench in front of the applicants' balcony without parental supervision. She alleged that the harassment had already been going on for about four years and was motivated by the applicants' Serbian origin and the first applicant's disability. A group of children aged from 10 to 14 hung around daily in front of the block of flats where the applicants lived, shouting insults and obscenities and calling them names. They also wrote insulting remarks on the pavement in front of the building.

The lawyer further described the incident of 4 April 2009. Relying on Articles 8 and 13 of the Convention, she complained that there was no effective remedy in the Croatian legal system affording protection from violent acts by children.

She also described the events of 5 and 7 September 2009, when a group of children had insulted the first applicant and, on the latter date, taken a ball from him. On 10 September 2009 a group of boys had urinated in front of the applicants' door. On 14 September 2009 about fourteen pupils from the fourth and fifth grades had pushed the first applicant, insulted him and taken a ball from him. The day after a boy had shouted insults at him.

She also alleged that the children had physically attacked the first applicant on at least ten different occasions and had often spat at him. On 31 July 2008 the children had ruined the applicants' balcony by tearing up all the flower beds and by throwing stones and mud onto the balcony. A few days later they had thrown a carton of chocolate milk onto the balcony.

The second applicant had reported the harassment to the social services, the police, the Ombudswoman for Persons with Disabilities and the school authorities. Despite the good will of all those concerned, the harassment of the applicants had continued.

27. A medical report in respect of the first applicant drawn up on 7 October 2009 indicates that he had constantly been harassed by children.

28. A medical report in respect of the first applicant drawn up on 9 November 2009 indicates that he had been attacked by children a few days before, which had greatly upset him. Psychotherapy was recommended.

29. A medical report in respect of the first applicant drawn up on 14 December 2009 states that "everyone hit him mercilessly with snowballs", which had scared him.

30. A medical report in respect of the first applicant drawn up on 14 January 2010 indicates that the first applicant suffered from constant anxiety and a feeling of being persecuted because "nothing ha[d] been done to resolve his situation".

31. A police report of 19 March 2010 states that the second applicant called the police that day at 9.18 p.m. because of "problems with children". When the police arrived at 9.25 p.m. the second applicant told them that the children had been playing with a ball in the park and had then hit her window with the ball and run away.

32. A medical report in respect of the first applicant drawn up on 11 April 2010 indicates that the first applicant was attacked by a group of children and was hit by a ball on the nose.

33. The applicants alleged that on 13 May 2010 a group of children, including a boy, P., pushed the first applicant against an iron fence in the park. He fell and hit his head and right leg. He was disoriented and uncommunicative for three days. Medical documents drawn up on the same day show that the first applicant suffered from swelling in his right leg and skin abrasion on the left side of his forehead. He was unable to walk for five days and the second applicant had to borrow a wheelchair for him. The medical report also indicates that the first applicant had stumbled and sprained his ankle and had also hit his head.

34. On 14 May 2010 the second applicant complained to the police that on 13 May 2010 a boy, P.B., had pushed the first applicant against a wall and had also taken his ball.

35. On 20 May 2010 the applicants' lawyer wrote to the Zagreb Municipality State Attorney's Office complaining that since her last letter of October 2009, there had been further incidents of violence and harassment against the applicants. The relevant part of the letter reads:

> "...
>
> On 5 November 2009 two boys, one of whom was P., verbally abused the first applicant, which scared him.

The second applicant informed the school counsellor about the incident but has not received a reply.

On 14, 18 and 21 December 2009 a group of children threw snow at the applicants' window and on one of those occasions covered their balcony with snow.

On 15 December 2009 a group of children verbally insulted the first applicant in the street. On 22 February 2010 the second applicant was called by a social worker from the Susedgrad Social Welfare Centre, J.S., who told her that the only way to resolve the situation was to bring a civil action.

On 19 March 2010 the children kept throwing a ball at the applicants' windows, about which the police were informed. On 20 March 2010, while the first applicant was riding on a bus, a group of children shouted his name, which upset him.

On 10 April 2010 a boy whose first name was R. hit the first applicant on the nose with a ball, which disoriented him and caused him pain. The second applicant informed the police about it. The police conducted a two-hour interview with her and expressed their regret but informed the second applicant that nothing could be done because any kind of inquiry would show that the children had only been joking.

On 13 May 2010 a group of children, including P., pushed the first applicant against an iron fence in the park. He fell and hit his head and right leg. He was disoriented and uncommunicative for three days.

On 18 May 2010, when the first applicant was sitting on a swing, a group of children approached him and made obscene gestures and told him that he was stupid."

36. On the same day the lawyer complained about the harassment of the applicants to the Ombudswoman for Children and asked for advice.

37. The applicants alleged that on 24 May 2010 a group of boys hit the first applicant's head against an iron fence in the park and said that they enjoyed it. A medical report in respect of the first applicant drawn up on the same day indicates that he had been pushed against an iron fence and had hit his head on it.

38. On 25 May 2010 the Zagreb Municipality State Attorney's Office informed the applicants' lawyer that it had no jurisdiction in the matter since the complaints concerned children who were not criminally responsible.

39. On 26 May 2010 the headmaster of A.K. primary school informed the applicants' lawyer that the school authorities had taken all measures they deemed appropriate, such as discussion with the pupils concerned and the provision of information to all parents at parent-teacher meetings about the problems the applicants had encountered with the pupils.

40. On 31 May 2010 the Ombudswoman for Children informed the applicants' counsel that she had no jurisdiction in the matter.

41. A medical report in respect of the first applicant drawn up on 29 June 2010 indicates that he had continually been attacked by children in the neighbourhood.

42. Medical reports in respect of the first applicant drawn up on 29 June, 25 October and 24 November 2010 and 9 February 2011 indicate that the

first applicant had continually been attacked by children in the neighbourhood.

43. On 1 July 2010 the police interviewed P.B., a pupil attending A.K. primary school, about the incidents of 13 and 14 May 2010, in which he denied his involvement.

44. The applicants alleged that on 13 July 2010 at 9 p.m. four boys and a girl made repeated lewd comments in a loud voice under the applicants' window. When the second applicant asked them to be quiet they replied provocatively, using the Serbian dialect in direct allusion to the applicants' Serbian origin, telling her: "Call the police, we are not afraid [*zovi bre policiju, mi se ne bojimo*]". The second applicant reported this incident on 14 July 2010 to a social worker from the Susedgrad Social Welfare Centre, Ms J.S.

45. On 19 July 2010 the Susedgrad Social Welfare Centre interviewed V.K., who lived in the same block of flats as the applicants. She denied her involvement in the harassment of the applicants. She also said that children and alcoholics frequently gathered at the bench in front of the block of flats where she lived and made screaming noises, which irritated her family as well.

46. On 2 August 2010 the Susedgrad Social Welfare Centre informed the police that the second applicant had complained of continued harassment and violence against the first applicant. The police were asked to take appropriate measures.

47. On 26 August 2010 the police interviewed Z.B., a pupil attending A.K. primary school, who denied any involvement in the harassment of the first applicant.

48. On 27 August 2010 the second applicant asked the Zagreb Municipality for the wooden bench beneath the applicants' window to be removed.

49. The applicants alleged that on 31 August 2010 at around 3 p.m., when they were returning home from a shop, a boy known to them as M. rode past them on a bicycle and shouted insults at the first applicant, saying, *inter alia*: "Dalibor is a fag". The first applicant felt extremely anxious and stressed.

50. The applicants alleged that on 1 September 2010 at 6.45 p.m. three boys on bicycles rode up in front of their window and threw rubbish and screamed. At 7.20 p.m. more children gathered around the wooden bench in front of the applicants' window and repeatedly hit a nearby metal fence, thus making a lot of noise. They also threw a stone at the applicants' window and made lewd comments in loud voices. At 10.03 p.m. the second applicant called the police. Since the police did not come, she called them again at 10.28 p.m. The police said that they would come but that they had other calls to answer as well. The police arrived at 10.32 p.m. and told the children to move a few metres away from the applicants' window. They

made no attempt to identify the children. A police report of the same day indicates that at 9.21 p.m. the second applicant had called the police and complained about noise in the park. When the police arrived at 10.35 p.m. they had not found anyone in front of the building.

51. The applicants alleged that on 3 September 2010 a group of about ten children gathered around the bench and made an unbearable amount of noise. At 10.15 p.m. the second applicant called the police, who arrived at 10.40 p.m. and ordered the children to go away, without, however, making any attempt to identify them. A police report of the same day indicates that at 10.20 p.m. the second applicant had called the police and complained about noise in the park. When the police arrived at 10.25 p.m. they had not found anyone.

52. The applicants alleged that on 5 September 2010 at about 9 p.m. they noticed, on returning from church, that an unidentified white substance had been thrown at their window in their absence. There were also some children screaming under their window. At 10 p.m. the second applicant called the police. The applicants further alleged that on 7, 8, 14, 23 and 27 September 2010, children gathered around the bench and made an unbearable amount of noise.

53. On 23 September 2010 the police interviewed I.S., a pupil attending A.K. primary school, who denied any involvement in the harassment of the first applicant.

54. The applicants alleged that on 2 October 2010 five boys gathered around the bench and made loud noises. At 7.40 p.m. seven boys threw balls at the applicants' window and made noise until late at night. At 11.38 p.m. the second applicant called the police, who arrived at a quarter past midnight and told the boys to leave without asking them any questions or making any attempt to identify them. A police report of the same day indicates that the second applicant had called the police at 11.40 p.m. and complained about noise. When the police had arrived at a quarter past midnight they had not found anyone.

55. The applicants further alleged that on 4 October 2010 at 4 a.m. they were awakened by a car alarm outside their window. Some children were banging on the outer wall of their flat, making a very loud noise. The first applicant's pet rabbit died that night and he attributed the rabbit's death to the events of that night, which made him extremely upset. On 15 October 2010, while the applicants were not at home, someone spat on their living-room window until it was completely covered in saliva. On 23 October and 7, 14 and 19 November 2010 groups of children gathered around the bench, making a lot of noise.

56. On 17 November 2010 the Zagreb Municipality informed the second applicant that her request for the removal of the bench situated beneath the balcony of the applicants' flat had been denied.

57. The applicants alleged that on 22 November 2010, while they were coming home from a shop, a group of children shouted after them: "Dalibor, Dalibor!" The first applicant was paralysed with fear and asked his mother why they would not leave him alone. The second applicant wrote to the Office of the President of Croatia and the Ombudswoman for Persons with Disabilities about the harassment of her son, seeking their assistance in connection with the removal of the bench. On 5 December 2010 at around midnight some children threw snowballs at the applicants' window, which terrified the first applicant.

58. On 14 December 2010 the Ombudswoman for Persons with Disabilities recommended to the Zagreb Municipality that the bench be removed. The bench was removed in February 2011. The applicants alleged that on the same day, some children destroyed a metal container under their window where the gas meters were located.

59. The applicants alleged that further incidents occurred as follows. On 5 February 2011 a group of children shouted provocatively at the second applicant on the street, using the Serbian dialect ("*De si bre?*"). On 8 February 2011 at 6.40 p.m. some children rang the applicants' doorbell and then ran away. On 10 February 2011 the applicants went to a hairdresser, taking a detour in order to avoid the children. However, they met a group of children who shouted "Dalibor!" in a provocative manner. On 13 February 2011 at 12.30 p.m. seven boys ran around the applicants' flat, banged on the walls, climbed onto their balcony, peered into the flat and laughed loudly. At 9.45 p.m. a group of boys sang the song "We are Croats" beneath the applicants' window.

60. A medical report of 9 March 2011 in respect of the first applicant indicates that owing to stress he often bit his lips and fists, and that he had a twitch in his left eye and symptoms of psoriasis. It also mentioned that he had frequently been attacked and ridiculed and that it was necessary to ensure a calm and friendly environment for him.

II. RELEVANT DOMESTIC LAW

A. The Constitution

1. Relevant provisions

61. The relevant provisions of the Constitution of the Republic of Croatia (*Ustav Republike Hrvatske*, Official Gazette nos. 56/1990, 135/1997, 8/1998 (consolidated text), 113/2000, 124/2000 (consolidated text), 28/2001 and 41/2001 (consolidated text), 55/2001 (corrigendum) and 76/2010) read as follows.

Article 14

"Everyone in the Republic of Croatia shall enjoy rights and freedoms regardless of their race, colour, sex, language, religion, political or other belief, national or social origin, property, birth, education, social status or other characteristics.

All shall be equal before the law."

Article 21

"Every human being has the right to life.

..."

Article 23

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

..."

Article 35

"Everyone has the right to respect for and legal protection of his or her private and family life, dignity, reputation and honour."

Article 140

"International agreements in force which were concluded and ratified in accordance with the Constitution and made public shall be part of the internal legal order of the Republic of Croatia and shall have precedence in terms of their legal effects over the [domestic] statutes. ..."

2. The Constitutional Court's jurisprudence

62. In its decisions nos. U-I-892/1994 of 14 November 1994 (Official Gazette no. 83/1994) and U-I-130/1995 of 20 February 1995 (Official Gazette no. 112/1995) the Constitutional Court held that all rights guaranteed in the Convention and its Protocols were also to be considered constitutional rights having equal legal force to the provisions of the Constitution.

B. The Criminal Code

63. The relevant part of the Criminal Code (*Kazneni zakon*, Official Gazette no. 110/1997) reads as follows:

Article 10

"Criminal legislation is not applicable in respect of a child who at the time when he or she committed a criminal offence was not yet 14."

C. The Minor Offences Act

64. The relevant part of the Minor Offences Act (*Prekršajni zakon*, Official Gazette no 107/2007) reads as follows:

Section 9

"(1) A person who at the time when a minor offence was committed was not yet 14 is not liable for the minor offence.

(2) When a person under subsection 1 of this section frequently behaves in a manner which amounts to serious minor offences, the State body competent to act shall inform that person's parents or guardians and the competent social welfare centre of the person's behaviour.

(3) A parent of ... a person to whom subsection 1 of this section applies shall be punished for a minor offence committed by that person where the minor offence committed is directly connected to failure to supervise that person ..."

D. The Administrative Disputes Act

65. The Administrative Disputes Act (*Zakon o upravnim sporovima*, Official Gazette of the Socialist Federal Republic of Yugoslavia no. 4/1977, and Official Gazette of the Republic of Croatia nos. 53/1991, 9/1992 and 77/1992 – in force until 31 December 2011) in its relevant part provided as follows:

Section 66

"A request for the protection of a constitutionally guaranteed right or freedom ... if such a right or freedom has been violated by a final individual act [that is, decision], and no other judicial protection is secured, shall be decided by the [Administrative Court], by applying, *mutatis mutandis*, the provisions of this Act."

66. Sections 67 to 76 provide for special proceedings for the protection of constitutionally guaranteed rights and freedoms from unlawful factual (physical) acts of public officials where no other judicial remedy is available. Under the case-law of the domestic courts, the protection against unlawful "acts" also includes omissions (for example, the Administrative Court, in its decision no. Us-2099/89 of 21 September 1989, and the Supreme Court, in its decision no. Gž-9/1993 of 6 April 1993, held that failure of the administrative authorities to carry out their own enforcement order constituted an "unlawful act" within the meaning of section 67 of the Administrative Disputes Act).

67. Under section 67 such proceedings are to be instituted by bringing an "action against an unlawful act" (*tužba za zaštitu od nezakonite radnje*) in the competent municipal court. The action must be brought against the public authority to which the factual act (or omission) is imputable (the defendant).

68. Under section 72 the action is to be forwarded to the public authority concerned for a reply within the time-limit set by the court conducting the proceedings. However, a decision may be adopted even without such a reply where the submissions made in the action provide a reliable basis for the decision.

69. Section 73 provides that the court decides on the merits of the case by a judgment. If it finds in favour of the plaintiff, the court orders the defendant to desist from the unlawful activity and, if necessary, orders *restitutio in integrum*.

70. Section 74 provides that in proceedings following an "action against an unlawful act" the court is to apply, *mutatis mutandis*, the provisions of the Civil Procedure Act.

E. The Civil Obligations Act

71. The relevant part of the Civil Obligations Act (*Zakon o obveznim odnosima*, Official Gazette nos. 35/2005 and 41/2008), which came into force on 1 January 2006 and abrogated the former 1978 Obligations Act, reads as follows:

Rights of personality
Section 19

"(1) All natural persons or legal entities are entitled to the protection of their rights of personality [*prava osobnosti*] under the conditions provided by law.

(2) Rights of personality within the meaning of this Act are the right to life, to physical and mental health, reputation, honour, dignity, name, privacy of personal and family life, liberty, etc.

(3) A legal entity shall have all the above-mentioned rights of personality – apart from those related to the biological character of a natural person – and, in particular, the right to a reputation and good name, honour, name or company name, business secrecy, entrepreneurial freedom, etc."

Section 1046

"Damage is ... an infringement of rights of personality (non-pecuniary damage)."

Request to desist from violating rights of personality
Section 1048

"Anyone may request a court or other competent authority to order the cessation of an activity which violates his or her rights of personality and the elimination of its consequences."

The relevant case-law

72. As to which rights of natural persons, apart from those enumerated in section 19 of the Civil Obligations Act, are to be considered rights of personality, it should be noted that only the following have so far been

interpreted as rights of personality by the Croatian courts: the right to life, the right to physical and mental integrity (health), the right to liberty, the right to reputation and honour, the right to privacy of personal and family life, the right to secrecy of letters and personal manuscripts, the right to personal identity (in particular, the rights to one's image, voice and name) and the moral rights of authors.

73. The relevant part of the Constitutional Court's decision no. U-III-1437/2007 of 23 April 2008, concerning the right to compensation in respect of rights of personality, reads as follows:

> "...
>
> Section 1046 of the Civil Obligations Act defines non-pecuniary damage as an infringement of rights of personality. In other words, any infringement of rights of personality amounts to non-pecuniary damage.
>
> Section 19(2) of the Civil Obligations Act defines rights of personality for the purposes of that Act as: the right to life, physical and mental health, reputation, honour, respect for one's dignity and name, privacy of personal and family life, freedom and other aspects.
>
> ... [I]t is to be concluded that in this case there has been a violation of human, constitutional and personal values because the applicant was in prison conditions which were incompatible with the standards prescribed by the Enforcement of Prison Sentences Act and also 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.
>
> ..."

F. The Prevention of Discrimination Act

74. The relevant part of the Prevention of Discrimination Act (*Zakon o suzbijanju diskriminacije*, Official Gazette no. 85/2008) reads as follows.

Section 1

> "(1) This Act ensures protection and promotion of equality as the highest value of the constitutional order of the Republic of Croatia; creates conditions for equal opportunities and regulates protection against discrimination on the basis of race or ethnic origin or skin colour, gender, language, religion, political or other conviction, national or social origin, state of wealth, membership of a trade union, education, social status, marital or family status, age, health, invalidity, genetic inheritance, gender identity, expression or sexual orientation.
>
> (2) Discrimination within the meaning of this Act means putting any person in a disadvantageous position on any of the grounds under subsection 1 of this section, as well as his or her close relatives.
>
> ..."

Section 8

"This Act shall be applied in respect of all State bodies ... legal entities and natural persons ..."

Section 16

"Anyone who considers that, owing to discrimination, any of his or her rights has been violated may seek protection of that right in proceedings in which the determination of that right is the main issue, and may also seek protection in separate proceedings under section 17 of this Act."

Section 17

"A person who claims that he or she has been a victim of discrimination in accordance with the provisions of this Act may bring a claim and seek:

(1) a ruling that the defendant has violated the plaintiff's right to equal treatment or that an act or omission by the defendant may lead to the violation of the plaintiff's right to equal treatment (claim for an acknowledgment of discrimination);

(2) a ban on (the defendant's) undertaking acts which violate or may violate the plaintiff's right to equal treatment or an order for measures aimed at removing discrimination or its consequences to be taken (claim for a ban or for removal of discrimination);

(3) compensation for pecuniary and non-pecuniary damage caused by the violation of the rights protected by this Act (claim for damages);

(4) an order for a judgment finding a violation of the right to equal treatment to be published in the media at the defendant's expense.

..."

III. RELEVANT COUNCIL OF EUROPE DOCUMENTS

A. Committee of Ministers

75. The relevant parts of Recommendation Rec(2004)10 of the Committee of Ministers to member States concerning the protection of the human rights and dignity of persons with mental disorder (adopted by the Committee of Ministers on 22 September 2004 at the 896th meeting of the Ministers' Deputies) read as follows.

"...

Having regard, in particular:

– to the Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 and to its application by the organs established under that Convention;

...

Chapter II – General provisions
Article 3 – Non-discrimination

1. Any form of discrimination on grounds of mental disorder should be prohibited.

2. Member States should take appropriate measures to eliminate discrimination on grounds of mental disorder.

Article 4 – Civil and political rights

1. Persons with mental disorder should be entitled to exercise all their civil and political rights.

2. Any restrictions to the exercise of those rights should be in conformity with the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms and should not be based on the mere fact that a person has a mental disorder.

...

Article 7 – Protection of vulnerable persons with mental disorders

1. Member States should ensure that there are mechanisms to protect vulnerable persons with mental disorders, in particular those who do not have the capacity to consent or who may not be able to resist infringements of their human rights.

2. The law should provide measures to protect, where appropriate, the economic interests of persons with mental disorder.

..."

76. The relevant parts of Recommendation Rec(2006)5 of the Committee of Ministers to member States on the Council of Europe Action Plan to promote the rights and full participation of people with disabilities in society: improving the quality of life of people with disabilities in Europe 2006-2015 (adopted by the Committee of Ministers on 5 April 2006 at the 961st meting of the Ministers' Deputies) read as follows.

"...

Bearing in mind the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5);

...

3.12. Action line No. 12: Legal protection

3.12.1. Introduction

People with disabilities have the right to recognition everywhere as persons before the law. When assistance is needed to exercise that legal capacity, member States must ensure that this is appropriately safeguarded by law.

Persons with disabilities constitute a varied population group, but all have in common, to a greater or lesser extent, the need for additional safeguards in order to enjoy their rights to the full and to participate in society on an equal basis with other members.

The need to focus particular attention on the situation of persons with disabilities, in terms of the exercise of their rights on an equal basis with others, is confirmed by the initiatives taken in this area at national and international level.

The principle of non-discrimination should be the basis of government policies designed to deliver equality of opportunity for people with disabilities.

Access to the legal system is a fundamental right in a democratic society but people with disabilities can often face a number of barriers, including physical access difficulties. This requires a range of measures and positive actions, including general awareness raising among the legal professions about disability issues.

3.12.2. Objectives

i. to ensure effective access to justice for persons with disabilities on an equal basis with others;

ii. to protect and promote the enjoyment of all human rights and fundamental freedoms by persons with disabilities on an equal basis with others.

3.12.3. Specific actions by member States

i. to provide protection against discrimination through the setting up of specific legislative measures, bodies, reporting procedures and redress mechanisms;

ii. to ensure that provisions which discriminate against disabled people are eradicated from mainstream legislation;

iii. to promote training on human rights and disability (both national and international) for law enforcement personnel, public officials, judiciary and medical staff;

iv. to encourage non-governmental advocacy networks working in defence of people with disabilities' human rights;

v. to ensure people with disabilities have equal access to the judicial system by securing their right to information and communication that are accessible to them;

vi. to provide appropriate assistance to those people who experience difficulty in exercising their legal capacity and ensure that it is commensurate with the required level of support;

...

3.13. Action line No. 13: Protection against violence and abuse

3.13.1. Introduction

Acts of abuse or violence against any person are unacceptable and society has a duty to ensure that individuals, particularly the most vulnerable, are protected against such abuse.

There are indications that the rate of abuse and violence committed against persons with disabilities is considerably higher than the rate for the general population, and higher in women with disabilities, particularly women with severe disabilities, where the percentages of abuse far exceed those of non-disabled women. Such abuse can occur in institutions or other types of care and situations, including the family environment. It can be inflicted by strangers or persons known to the individual and can take many forms, for instance verbal abuse, violent actions, or the refusal to meet basic needs.

While governments cannot guarantee that abuse will not happen they must do their utmost to establish protection and the strongest possible safeguards. Prevention can be assisted in many ways, particularly through education to appreciate the rights of individuals to protection and to recognise and reduce the risk of abuse. Persons with disabilities who experience abuse or violence should have access to appropriate supports. They must have a system in which they can have sufficient confidence to report abuse and expect follow-up action, including individual support. Such systems require personnel who are skilled and qualified to detect and respond to situations of abuse.

While there has been some research undertaken in recent years, it is clear that further knowledge is required to inform future strategies and best practice.

3.13.2. Objectives

i. to work within anti-discriminatory and human rights frameworks towards safeguarding people with disabilities against all forms of violence and abuse;

ii. to ensure access for people with disabilities to services and support systems for victims of violence and abuse.

3.13.3. Specific actions by member States

i. to establish safeguards to protect people with disabilities from violence and abuse through the effective implementation of policies and legislation, where necessary;

ii. to promote the availability of and access to training courses for people with disabilities to reduce the risk of violence and abuse, for example courses in self-confidence and empowerment;

iii. to develop processes, measures and protocols adapted to people with disabilities, to improve detection of violence and abuse, and to ensure that the necessary action is taken against perpetrators, including redress and adequate professional counselling in case of emotional problems;

iv. to ensure that disabled victims of violence and abuse, including domestic, have access to the relevant support services, including redress;

v. to prevent and combat violence, ill-treatment and abuse in all situations by supporting families, raising public awareness and education, promoting discussion and co-operation among relevant parties;

vi. to support people with disabilities, in particular women, and their families, in situations of abuse through the provision of information and access to services;

vii. to ensure that systems are in place for the protection against abuse of persons with disabilities in psychiatric facilities, social care homes and institutions, orphanages, and other institutional settings;

viii. to ensure that relevant training is provided to all staff working in disability-specific institutional settings and mainstream support services;

ix. to train police and judicial authorities so that they can receive testimony from disabled people and treat instances of abuse seriously;

x. to provide people with disabilities with information on how to avoid the occurrence of violence and abuse, how to recognise it, and how to report it;

xi. to take effective legislative, administrative, judicial or other measures with strong sanctions in a transparent manner and to allow for independent review by civil society in order to prevent all forms of physical or mental violence, injury or abuse,

neglect and negligent treatment, maltreatment, exploitation or abduction of people with disabilities;

..."

77. The relevant parts of Resolution ResAP(2005)1 on safeguarding adults and children with disabilities against abuse (adopted by the Committee of Ministers on 2 February 2005 at the 913th meeting of the Ministers' Deputies) read as follows.

"...

I. Definition of abuse

1. In this Resolution abuse is defined as any act, or failure to act, which results in a breach of a vulnerable person's human rights, civil liberties, physical and mental integrity, dignity or general well-being, whether intended or through negligence, including sexual relationships or financial transactions to which the person does not or cannot validly consent, or which are deliberately exploitative. At a basic level abuse may take a variety of forms:

a. physical violence, including corporal punishment, incarceration – including being locked in one's home or not allowed out –, over- or misuse of medication, medical experimentation or involvement in invasive research without consent, and unlawful detention of psychiatric patients;

b. sexual abuse and exploitation, including rape, sexual aggression, indecent assault, indecent exposure, forced involvement in pornography and prostitution;

c. psychological threats and harm, usually consisting of verbal abuse, constraints, isolation, rejection, intimidation, harassment, humiliation or threats of punishment or abandonment, emotional blackmail, arbitrariness, denial of adult status and infantilising disabled persons, and the denial of individuality, sexuality, education and training, leisure and sport;

...

3. These abuses require a proportional response – one which does not cut across legitimate choices made by individuals with disabilities but one which recognises vulnerability and exploitation. The term 'abuse' therefore refers to matters across a wide spectrum, which includes criminal acts, breaches of professional ethics, practices falling outside agreed guidelines or seriously inadequate care. As a consequence, measures to prevent and respond to abuse involve a broad range of authorities and actors, including the police, the criminal justice system, the government bodies regulating service provision and professions, advocacy organisations, user networks and patient councils, as well as service providers and planners.

II. Principles and measures to safeguard adults and children with disabilities against abuse

1. *Protection of human rights*

Member States have a duty to protect the human rights and fundamental freedoms of all their citizens. They should ensure that people with disabilities are protected at least to the same extent as other citizens.

Member States should recognise that abuse is a violation of human rights. People with disabilities should be safeguarded against deliberate and/or avoidable harm at

least to the same extent as other citizens. Where people with disabilities are especially vulnerable, additional measures should be put in place to assure their safety.

2. *Inclusion of people with disabilities*

Member States should acknowledge that safeguarding the rights of people with disabilities as citizens of their country is a State responsibility.

They should combat discrimination against people with disabilities, promote active measures to counter it and ensure their inclusion in the socio-economic life of their communities.

They should recognise that all people with disabilities are entitled to dignity, equal opportunity, their own income, education, employment, acceptance and integration in social life, including accessibility, health care as well as medical and functional rehabilitation.

They should guarantee that people with disabilities are ensured protection – to at least the same extent as other citizens – in their use of services of all kinds.

3. *Prevention of abuse*

Member States should increase public awareness, promote open discussion, develop knowledge, and improve education and professional training.

They should encourage cooperation between authorities and organisations in finding measures to prevent abuse, to improve detection and reporting of abuse, and to support the victims.

They should create, implement and monitor legislation concerning the standards and regulation of professionals and care settings, in order to make abuse of people with disabilities less likely through action taken or through failure to act.

4. *Legal protection*

Member States should ensure access to the criminal justice system and provision of redress and/or compensation to people with disabilities who have been victims of abuse at least to the same extent as other citizens. Where necessary additional assistance should be provided to remove physical and other barriers for people with disabilities.

People with disabilities are applicants under civil law whose rights should be safeguarded. Member States should therefore ensure that professionals working within the criminal justice system treat people with disabilities without discrimination and in such a way as to guarantee them equality of opportunity in the exercise of their rights as citizens.

..."

B. Parliamentary Assembly

78. The relevant parts of Resolution 1642 (2009) of the Parliamentary Assembly on access to rights for people with disabilities and their full and active participation in society (adopted on 26 January 2009) read as follows.

"1. More than one person in every 10 suffers from some form of disability, representing a total of 650 million people worldwide, with an even greater ratio of up to 200 million in Europe alone. There is a correlation between age and disability: as

the population ages and health care improves, the number of people with disabilities in Europe grows, and it will continue to grow.

2. The Parliamentary Assembly recalls that the Council of Europe's European Convention on Human Rights (ETS No. 5) protects all people, including those with disabilities, and that Article 15 of the revised European Social Charter (ETS No. 163) explicitly guarantees people with disabilities the effective exercise of the right to independence, social integration and participation in the life of the community. A more recent and eagerly awaited text, the United Nations Convention on the Rights of Persons with Disabilities, came into force with effect from 3 May 2008. The Assembly welcomes this text, which gives a detailed description of the rights of people, including children, with disabilities, and will certainly contribute to the change of perception needed to improve the situation of people with physical or mental disabilities.

3. The Assembly notes that, in practice, the access of people with physical or mental disabilities to their rights on an equal basis with those of people without disabilities frequently remains wishful thinking and proves inadequate. It therefore welcomes the preparation by the Council of Europe of the Disability Action Plan to promote the rights and participation of people with disabilities in society for 2006-2015 (Recommendation Rec(2006)5 of the Committee of Ministers), which endeavours to find practical responses to the most serious and most common problems encountered by people with disabilities, to foster equality of opportunities, and which advocates a number of measures to improve the situation of people with disabilities in all aspects of everyday life.

...

18. Whereas the attitude of society, prejudice and fixed mindsets remain the main obstacle to the access to rights for people with disabilities and their full and active participation in society, the Assembly invites member States to:

18.1. step up their campaigns drawing public attention to, and providing information about, disability-related issues;

18.2. take legal action against and penalise discriminatory practices and unacceptable attitudes towards people with disabilities, especially abuse, committed either by isolated individuals or in health-care establishments;

18.3. disseminate examples of good practices in all spheres of everyday life, so as to make clearer − to all, and particularly to young people − the scope of this question in civil society, the working environment and the world of education;

18.4. ensure the full and active participation of people with disabilities in all of these processes.

..."

IV. RELEVANT UNITED NATIONS MATERIALS

79. The relevant parts of the Convention on the Rights of Persons with Disabilities (which was ratified by Croatia in August 2007 and came into force on 3 May 2008) read:

Article 1 – Purpose

"The purpose of the present Convention is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity.

Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others."

Article 4 – General obligations

"1. States Parties undertake to ensure and promote the full realization of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of disability. To this end, States Parties undertake:

a. to adopt all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the present Convention;

b. to take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against persons with disabilities;

c. to take into account the protection and promotion of the human rights of persons with disabilities in all policies and programmes;

d. to refrain from engaging in any act or practice that is inconsistent with the present Convention and to ensure that public authorities and institutions act in conformity with the present Convention;

e. to take all appropriate measures to eliminate discrimination on the basis of disability by any person, organization or private enterprise;

..."

Article 5 – Equality and non-discrimination

"1. States Parties recognize that all persons are equal before and under the law and are entitled without any discrimination to the equal protection and equal benefit of the law.

2. States Parties shall prohibit all discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds.

3. In order to promote equality and eliminate discrimination, States Parties shall take all appropriate steps to ensure that reasonable accommodation is provided.

4. Specific measures which are necessary to accelerate or achieve *de facto* equality of persons with disabilities shall not be considered discrimination under the terms of the present Convention."

Article 8 – Awareness-raising

"1. States Parties undertake to adopt immediate, effective and appropriate measures:

a. to raise awareness throughout society, including at the family level, regarding persons with disabilities, and to foster respect for the rights and dignity of persons with disabilities;

b. to combat stereotypes, prejudices and harmful practices relating to persons with disabilities, including those based on sex and age, in all areas of life;

c. to promote awareness of the capabilities and contributions of persons with disabilities.

Measures to this end include:

a. Initiating and maintaining effective public awareness campaigns designed:

i. to nurture receptiveness to the rights of persons with disabilities;

ii. to promote positive perceptions and greater social awareness towards persons with disabilities;

iii. to promote recognition of the skills, merits and abilities of persons with disabilities, and of their contributions to the workplace and the labour market;

b. Fostering at all levels of the education system, including in all children from an early age, an attitude of respect for the rights of persons with disabilities;

c. Encouraging all organs of the media to portray persons with disabilities in a manner consistent with the purpose of the present Convention;

d. Promoting awareness-training programmes regarding persons with disabilities and the rights of persons with disabilities."

Article 15 – Freedom from torture or cruel, inhuman or degrading treatment or punishment

"1. No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his or her free consent to medical or scientific experimentation.

2. States Parties shall take all effective legislative, administrative, judicial or other measures to prevent persons with disabilities, on an equal basis with others, from being subjected to torture or cruel, inhuman or degrading treatment or punishment."

Article 16 – Freedom from exploitation, violence and abuse

"1. States Parties shall take all appropriate legislative, administrative, social, educational and other measures to protect persons with disabilities, both within and outside the home, from all forms of exploitation, violence and abuse, including their gender-based aspects.

2. States Parties shall also take all appropriate measures to prevent all forms of exploitation, violence and abuse by ensuring, *inter alia*, appropriate forms of gender- and age-sensitive assistance and support for persons with disabilities and their families and caregivers, including through the provision of information and education on how to avoid, recognize and report instances of exploitation, violence and abuse. States Parties shall ensure that protection services are age-, gender- and disability-sensitive.

3. In order to prevent the occurrence of all forms of exploitation, violence and abuse, States Parties shall ensure that all facilities and programmes designed to serve persons with disabilities are effectively monitored by independent authorities.

4. States Parties shall take all appropriate measures to promote the physical, cognitive and psychological recovery, rehabilitation and social reintegration of persons with disabilities who become victims of any form of exploitation, violence or abuse, including through the provision of protection services. Such recovery and reintegration shall take place in an environment that fosters the health, welfare, self-respect, dignity and autonomy of the person and takes into account gender- and age-specific needs.

5. States Parties shall put in place effective legislation and policies, including women- and child-focused legislation and policies, to ensure that instances of exploitation, violence and abuse against persons with disabilities are identified, investigated and, where appropriate, prosecuted."

Article 17 – Protecting the integrity of the person

"Every person with disabilities has a right to respect for his or her physical and mental integrity on an equal basis with others."

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 2, 3 AND 8 OF THE CONVENTION

80. The applicants complained that the State authorities had not given them adequate protection from harassment by children from their neighbourhood. They relied on Articles 2, 3 and 8 of the Convention, the relevant parts of which read as follows:

Article 2

"1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

..."

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 ... 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."

A. Admissibility

1. The parties' submissions

(a) The Government's submissions

81. The Government maintained that Articles 2 and 3 were not applicable to the circumstances of the present case. As regards Article 2, they argued that the applicants' lives had never been put at risk in any way. As regards Article 3 of the Convention, the Government submitted that the requisite level of severity had not been reached since the harassment complained of had mostly been verbal while the injuries the first applicant had sustained on 4 April 2009 had been of a mild nature. They also submitted that the fact that the first applicant had expressed a wish to walk around showed that he had not been traumatised by the events in issue.

82. The Government also argued that the applicants had not exhausted all available domestic remedies. In the Government's view the applicants should have brought a civil action for damages against the children concerned and their parents and also against the school the children were attending, or other authorities. Furthermore, they could have instituted minor-offences proceedings against the children's parents. They could also have brought an "action against an unlawful act" against the relevant authorities under the Administrative Disputes Act. In the proceedings instituted upon such an action the competent court was obliged to act urgently. In a judgment upholding the action, the court would forbid any further unlawful act. The judgment had to be enforced within three days after it had been served on the parties.

83. As regards the events of 10 April and 13 May 2010, the Government submitted that the alleged perpetrators, P.B. and Z.B., were 14 at the time and that they could be held criminally responsible. Since the criminal inquiry was still ongoing, any complaint relating to these incidents was premature.

(b) The applicants' submissions

84. The applicants maintained in reply that they had been submitted to ongoing harassment which also included acts of physical violence against the first applicant and verbal violence against both applicants. Such harassment had disrupted their daily lives and caused them a significant level of constant stress and suffering, in particular in view of the first applicant's medical condition. They argued that the ongoing pattern of harassment and abuse met the requisite intensity standard under Articles 3 and 8 of the Convention and that Article 2 of the Convention was also applicable given the escalation of violence against the first applicant in view of his extreme vulnerability and also in view of the likelihood, as demonstrated by research on disability hate crime, of low-level harassment

turning into full-scale violence if left unchecked, possibly resulting in extreme circumstances in death or severe ill-treatment.

85. As to the exhaustion of domestic remedies, they argued that the domestic legal system did not provide any remedies affording redress in respect of disability hate crime; this was supported by the fact that the Government had not submitted any relevant case-law to support their assertions as to the availability and efficiency of the remedies they relied on.

86. As regards the possibility of bringing an action against the authorities on account of an unlawful act under section 67 of the Administrative Disputes Act, the applicants maintained that the admissibility requirements for that remedy – for example, that the unlawful act had to amount to a violation of the Constitution, that the remedy should be the last resort, and that the unlawful activity was ongoing at the time when the action was brought – made it ineffective in the case in issue.

87. As regards a possible civil action for damages against the parents of the children involved, the applicants argued that the Court had already held in cases against Croatia that effective deterrence against attacks on the physical integrity of a person required efficient criminal-law mechanisms that would have ensured adequate protection in that respect (they cited *Sandra Janković v. Croatia*, no. 38478/05, § 36, 5 March 2009).

88. As regards minor-offences proceedings, the applicants submitted that they applied only to minor offences against public peace and order and that therefore such a remedy was clearly inadequate in respect of the harm done to the applicants' physical and psychological integrity.

89. As regards the Government's contention that the application was premature in respect of the events of 10 April and 13 May 2010 since the investigation into those events was still ongoing, the applicants replied that they had never received any official information that any investigation into the matter had been instituted and that in any event there had been unjustified delays in the conduct of the authorities. Furthermore, the investigation concerned isolated incidents and not the applicants' situation as a whole.

2. The Court's assessment

(a) The applicability of Articles 2, 3 and 8 of the Convention to the circumstances of the present case

(i) In respect of the first applicant

90. The Court takes note of repeated incidents of violent behaviour towards the first applicant. The facts in issue concern frequent episodes of harassment in the period between 31 July 2008 and February 2011, amounting to about two and half years. The incidents concerned both verbal and physical harassment, including violent acts such as burning the first

applicant's hands with cigarettes, pushing him against an iron fence and hitting him with a ball. In view of the fact that all the incidents in the present case concerned a series of acts by a group of children and occurred over a prolonged period of time, the Court will examine them as a continuing situation.

91. The Court notes further that the incidents of harassment of the first applicant by children living in his neighbourhood and children attending a nearby primary school are well documented by, *inter alia*, police reports and medical reports. The latter show the adverse impact that these incidents have had on his physical and mental health. The reports concerning the first applicant indicate that he is suffering from serious mental disorders, but is a peaceful and benign individual who cannot and does not know how to defend himself from his abusers. Owing to the continued harassment against him, he has had to undergo psychotherapy, has often been scared and is under stress. His removal from the situation of harassment was recommended.

92. The first applicant made credible assertions that over a prolonged period of time he had been exposed to threats to his physical and mental integrity and had actually been harassed or attacked on a number of occasions.

93. In view of these facts, the Court considers that the State authorities had a positive obligation to protect the first applicant from the violent behaviour of the children involved. This obligation in the circumstances of the present case arises both under Articles 3 and 8 of the Convention. In the circumstances of the case the Court considers, however, that it suffices to analyse the first applicant's complaints from the standpoint of Article 3 of the Convention only.

94. The Court reiterates that ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is relative: it depends on all the circumstances of the case, such as the nature and context of the treatment, its duration, its physical and mental effects and, in some instances, the sex, age and state of health of the victim (see *Costello-Roberts v. the United Kingdom*, 25 March 1993, § 30, Series A no. 247-C, and *A. v. the United Kingdom*, 23 September 1998, § 20, *Reports of Judgments and Decisions* 1998-VI).

95. Treatment has been held by the Court to be "inhuman" because, *inter alia*, it was premeditated, was applied for hours at a stretch and caused either actual bodily injury or intense physical and mental suffering (see *Labita v. Italy* [GC], no. 26772/95, § 120, ECHR 2000-IV). Treatment has been considered "degrading" when it was such as to arouse in its victims feelings of fear, anguish and inferiority capable of humiliating and debasing them and possibly breaking their physical or moral resistance (see *Hurtado v. Switzerland*, 28 January 1994, opinion of the Commission,

§ 67, Series A no. 280-A, and *Wieser v. Austria*, no. 2293/03, § 36, 22 February 2007).

96. The Court considers that the harassment of the first applicant – which on at least one occasion also caused him physical injuries, combined with feelings of fear and helplessness – was sufficiently serious to reach the level of severity required to fall within the scope of Article 3 of the Convention and thus make this provision applicable in the present case (see *Price v. the United Kingdom*, no. 33394/96, § 24, ECHR 2001-VII, and *Milanović v. Serbia*, no. 44614/07, § 87, 14 December 2010).

(ii) In respect of the second applicant

97. As regards the second applicant, the Court notes that she has not been exposed to any form of violence affecting her physical integrity. However, there is no doubt that the continued harassment of the first applicant – her disabled son, of whom she has been taking care – and the incidents of harassment which also concerned her personally, even in their milder forms, caused disruption to her daily life and her routines, which had an adverse effect on her private and family life. Indeed, the moral integrity of an individual is covered by the concept of private life. The concept of private life extends also to the sphere of the relations of individuals between themselves.

98. It follows that Article 8 is applicable to the circumstances of the present case as regards the complaints concerning the second applicant.

(b) Exhaustion of domestic remedies

99. The Court points out that the purpose of Article 35 is to afford the Contracting States the opportunity of preventing or putting right the violations alleged against them before those allegations are submitted to the Convention institutions. Consequently, States are dispensed from answering for their acts before an international body before they have had an opportunity to put matters right through their own legal system. The rule of exhaustion of domestic remedies referred to in Article 35 of the Convention requires that normal recourse should be had by an applicant only to remedies that relate to the breaches alleged and at the same time are available and sufficient. The existence of such remedies must be sufficiently certain not only in theory but also in practice, failing which they will lack the requisite accessibility and effectiveness; it falls to the respondent State to establish that these various conditions are satisfied (see *Selmouni v. France* [GC], no. 25803/94, §§ 74-75, ECHR 1999-V).

100. Article 35 provides for a distribution of the burden of proof. It is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one available in theory and in practice at the relevant time, that is to say, that it was accessible, was capable of providing redress in respect of the complaints invoked and offered

reasonable prospects of success (see *Akdivar and Others v. Turkey*, 16 September 1996, § 68, *Reports* 1996-IV).

101. The Court would emphasise that the application of this rule must make due allowance for the context. Accordingly, it has recognised that Article 35 must be applied with some degree of flexibility and without excessive formalism (see *Cardot v. France*, 19 March 1991, § 34, Series A no. 200). It has further recognised that the rule of exhaustion of domestic remedies is neither absolute nor capable of being applied automatically; in reviewing whether the rule has been observed, it is essential to have regard to the particular circumstances of the individual case (see *Van Oosterwijck v. Belgium*, 6 November 1980, § 35, Series A no. 40). This means, amongst other things, that the Court must take realistic account not only of the existence of formal remedies in the legal system of the Contracting Party concerned but also of the general legal and political context in which they operate as well as the personal circumstances of the applicants (see *Akdivar and Others*, cited above, § 69).

102. As regards the present case, the Court notes that the Government suggested that the applicants should have brought a civil action in damages against the parents of the children implicated in the acts of harassment and violence against the first applicant, adding that they also had the possibility of instituting minor-offences proceedings against the parents of these children.

103. In this connection, the Court notes that what is at stake in the present case is not the individual responsibility of the parents of the children involved but the alleged lack of an adequate response by the competent State authorities to the repeated acts of harassment and violence by children who, on account of their young age, cannot be criminally prosecuted under the national law.

104. As regards the Government's contention that the application was premature because the children P.B., Z.B. and I.S., who had allegedly been involved in the events of 10 April and 13 May 2010, were 14 at the time and were therefore criminally liable, the Court firstly reiterates that individual criminal responsibility is not at issue in the present case. In any event, the incidents concerned took place in April and May 2010 and the Government have failed to show that any further steps were taken in addition to the police interviews conducted in July, August and September 2010 with the children in question.

105. However, some further remedies referred to by the Government call for an assessment of their effectiveness in the particular circumstances of the present case. The Court notes that sections 67 to 76 of the Administrative Disputes Act provide for an "action against an unlawful act" (see paragraphs 66 and 67 above), a judicial remedy open to anyone who considers that his or her rights or freedoms guaranteed by the Constitution have been violated by a public authority and that no other judicial remedy is

available. This remedy and the remedy available under section 66 of the same Act against a "final individual act" (see paragraph 65 above) represent remedies of last resort, to be used in the absence of any other judicial protection, against decisions or other (factual) acts or omissions by public authorities that are capable of violating constitutionally guaranteed rights or freedoms. The rationale behind those remedies is that constitutional rights and freedoms are so precious that they cannot be left unprotected by the courts.

106. The Court also notes that the right not to be ill-treated and the right to respect for one's private and family life are both guaranteed by the Croatian Constitution. Furthermore, the relevant case-law of the national courts shows that an action of this nature may also be brought in a situation of an omission to act, such as in the present case, where the applicants alleged that the national authorities had failed to take appropriate steps. However, certain issues arise as regards the effectiveness of such an action in the circumstances of the present case.

107. Firstly, the Government did not indicate which authority could be held responsible for a failure to take adequate measures. Since the remedy in issue is an "action against an unlawful act" (or omission), it is necessary to establish which body had a duty to act and on the basis of which law. Furthermore, an action in respect of an omission to act may only be brought against an individual public official who had a duty to act with a basis in law. It would be difficult in the present case to name an individual official who had such a duty. The Government, moreover, made no submissions in that respect. The Court notes in this connection that one aspect of the applicants' complaint was that no State authority was obliged by law to take any measures in the situation complained of.

108. An action of this nature under the Administrative Disputes Act would entail the institution of proceedings in the ordinary civil courts. The Government have not indicated that the application of any kind of interim measures would be possible in such proceedings. However, the situation complained of by the applicants shows that they were continually harassed, at times almost on a daily basis, and the essence of their complaints lies in the fact that the national authorities, although aware of that situation, failed to take appropriate measures to prevent further harassment. Thus, the situation called for an immediate reaction by the State authorities. The Government have not shown that any of the remedies referred to by them could be capable of leading to such an immediate response to the situation of harassment.

109. Thus, regarding an "action against an unlawful act" and a civil action for damages against the State under the Civil Obligations Act, the Government have not shown that these remedies would have been capable of leading to the prompt and appropriate measures that were necessary in the circumstances of the present case.

110. At this juncture the Court reiterates that the rationale behind the requirement of the exhaustion of domestic remedies is the subsidiary nature of the Convention instruments, that is to say, the principle that the national authorities must first be given the opportunity to remedy the violation complained of. In this connection the Court notes that the second applicant repeatedly complained about the ongoing harassment to various national authorities, such as the police and the State Attorney's Office, the competent social welfare centre and the school the children concerned attended. The Court considers that she thus gave the relevant authorities adequate opportunity to react to her allegations and put an end to the harassment complained of. She has therefore exhausted the available domestic remedies.

111. Furthermore, the applicants alleged deficiencies in the national system for the protection of persons with disabilities from acts of harassment and violence, including the legal framework within which the competent authorities are to operate and the mechanisms provided for. In this connection the Court notes that the Government have not shown that these issues could have been examined in any of the types of proceedings they relied on.

112. It follows that the applicants were not required to avail themselves also of the remedies suggested by the Government. In reaching this conclusion, the Court has taken into consideration the specific circumstances of the present case, as well as the fact that a right as fundamental as the right not to be subjected to inhuman and degrading treatment is at stake and that the Convention is intended to guarantee rights that are not theoretical or illusory, but rights that are practical and effective (see, for example, *Matthews v. the United Kingdom* [GC], no. 24833/94, § 34, ECHR 1999-I). Accordingly, the Government's objection has to be dismissed.

(c) Conclusion

113. The Court finds that the complaints under Articles 3 and 8 of the Convention are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further finds that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicants' submissions

114. The applicants firstly addressed the issue of violence against the first applicant as a disability hate crime. Studies relating to that issue showed that the rate of abuse and violence committed against persons with

disabilities was considerably higher than the rate for the general population and was widespread. The most common forms of violence against people with intellectual disabilities were kicking, biting, name-calling, teasing, stealing, pushing, threatening, throwing objects at them, telling them to leave a building, hitting, shouting at them, swearing, demanding money, hair-pulling, throwing stones, spitting, poking, punching, beating and banging their head against a wall. People with disabilities frequently experienced violence on an ongoing basis perpetrated by the same people. Abuse was often perpetrated by gangs of youths who targeted the same person systematically, as in the present case.

115. Harassment against disabled persons was usually motivated by a perception of such persons as inferior. Violence and hostility might have wide-ranging consequences, including emotional, physical and sexual implications, or even the death of the victim. People with disabilities might be forced to restructure their daily lives in order to avoid risk.

116. In their submissions, the applicants also relied on the international sources cited above, in particular the United Nations Convention on the Rights of Persons with Disabilities and the obligations stemming from it.

117. The applicants submitted that they had been subjected to ongoing harassment and abuse for a period of over five years by a group of mostly unidentified children on account of their Serbian origin and the first applicant's disability. The harassment had consisted mostly of verbal abuse and other forms of anti-social behaviour such as spitting, making noise, drawing insulting messages on the pavement, and causing damage to the applicants' place of residence. It had caused the applicants intense suffering. Besides the physical harm resulting from the incidents mentioned above, the ongoing harassment had taken a very significant toll on the first applicant's mental well-being as documented by his psychotherapist.

118. In addition, the applicants had had to change their daily routines. Daily walks in the park, sitting on a bench in the park and talking to people were crucial for the first applicant to develop an independent lifestyle and a sense of inclusion in the community. Because of the constant harassment by children from his neighbourhood, the first applicant had had to stop all these activities.

119. Relying extensively on the Court's case-law as regards the State's positive obligations under Articles 3 and 8 of the Convention, the applicants argued that the relevant State authorities had been under a duty to take positive measures to protect them from harm perpetrated by third parties. The second applicant had repeatedly informed the authorities of the abuse to which the applicants had been exposed but the authorities had largely failed to take any action to prevent ill-treatment from recurring. The authorities had thus been aware that the harassment against the first applicant had followed the same pattern.

120. However, despite their knowledge of the applicants' situation, the relevant authorities had failed in their duty to put an end to the harassment and abuse. The applicants argued that there had been no clarity as to which authority was competent to address their situation. As to the Government's contention that the police had reacted adequately to all complaints by the second applicant, they argued that the police had failed to grasp the full extent of the ongoing abuse and to prevent further abuse. The police had failed to identify the perpetrators; they would simply arrive at the scene and warn the children to go away. Such a relaxed approach by the police had failed in its deterrent effect. Furthermore, the police had addressed each instance of abuse as an isolated event, without comprehending the continuing nature of the situation. They had also failed to take any appropriate action, such as instituting minor-offences proceedings against the parents of the children involved.

121. The competent social welfare centre should have: investigated the case and established the relevant facts; invited the parents of the perpetrators to a meeting in order to establish their personal circumstances; issued protective measures to prevent the violence from recurring; advised or obliged the perpetrators and their parents to attend counselling; monitored the situation; and drawn up reports on the measures taken. However, the Susedgrad Social Welfare Centre had done none of the above. In 2009 it had taken measures against one of the minors involved in the cigarette-burn incident and placed him under the supervision of a social worker and then initiated court proceedings to place him in an institution for children with behavioural problems for a period of one year. However, all that had been done not because of the attack on the first applicant, but owing to the overall behavioural problems of the individual concerned.

122. As to the authorities of the school the children in question attended, the applicants maintained that although they had been entitled to take a range of disciplinary measures in cases of violent behaviour by pupils, including warnings, reprimands, severe reprimands and expulsion from school, they had failed to take any such measures. It was true, however, that the school authorities had taken some other measures, such as calling on parents and children to make sure that violent behaviour against the applicants ceased and organising meetings to tell pupils about the requirements of people with special needs. They had also facilitated interviews with the pupils concerned. However, these measures had not been capable of preventing further violence against the applicants.

123. Likewise, none of the other authorities had done much in order to prevent the violence against and harassment of the applicants.

(b) The Government's submissions

124. The Government argued that, save for the incidents reported to the police and documented by the police reports, the applicants had not proved

that any further incidents had occurred. The Government submitted that the relevant authorities had taken all appropriate measures to protect the applicants from harassment. Each time the second applicant had called the police, the police had arrived in due time and interviewed the children concerned and warned them about their inappropriate behaviour. Each time a report had been drawn up by the police and sent to the State Attorney's Office.

125. The school the children in question attended had also always reacted promptly to the applicants' allegations of harassment. The school employees had often held discussions with the pupils and their parents about people with special needs. The parents had been told to discuss that issue with their children and the school headmaster had sent a letter to the parents to that effect.

126. As regards the incident of 4 April 2009, the Government submitted that the national authorities had taken all relevant steps in order to identify the perpetrator. Finally, it had been revealed that I.M. had burnt the first applicant's hands with a cigarette. Since I.M., as a child below 14 years of age, could not be held criminally responsible, the applicants had been instructed to institute civil proceedings for damages. The competent State Attorney's Office had informed both the Ombudswoman for Children and the competent social welfare centre of its findings.

127. As regards the events of 10 April and 13 May 2010, as well as the allegations of constant harassment of the first applicant, the police had interviewed the children P.B., Z.B. and I.S. The inquiry was ongoing and since all of them were already over 14 when the alleged acts had taken place, they could be held criminally responsible.

128. The Government argued that the above showed that the national authorities had acted promptly and diligently as regards each complaint submitted by the applicants and taken all steps and measures aimed at preventing further harassment. Since June 2010 there had been no further complaints.

129. The Government further submitted that the parents had a major responsibility in preventing their children from behaving inappropriately. The parents of the children involved had repeatedly been told by the school authorities, as well as the social services, about the problems with their children.

130. On the other hand, the second applicant as the first applicant's mother should also bear a certain degree of responsibility in caring for him. It had been established that the first applicant needed help walking and required constant care from his mother. He had also been found to be suffering from epilepsy and was short-sighted. The social services had warned the second applicant not to let him out of the flat alone; heeding this warning would have solved all problems relating to his physical contact

with others, and if she had always accompanied him outside, she would have been able to raise the other children's awareness as regards her son.

(c) The third-party intervener

131. The European Disability Forum viewed the issues in the present case through the lens of disability hate crime. It maintained that recognising a hate crime against persons with disabilities represented a challenge for many legal systems since the use of their vulnerability tended to prevent the law-enforcement agencies and courts from identifying the actions as a hate crime. Two separate studies in the United Kingdom had shown that, while people with disabilities were four times more likely than their non-disabled peers to be verbally and physically attacked, they were half as likely to report crimes to the police.

132. The third-party intervener further argued that hostile behaviour towards persons with disabilities that provoked violent attacks was inherently discriminatory since the victims were chosen because of their visible disability. It argued that the fear of persons with visible disabilities whose appearance was seen as "disturbing and unpleasant" was the dominant reason for violence against persons with disabilities. Such persons were often seen as inferior or responsible for their own condition, which put the burden on society as a whole.

133. Fear of the "different" was nourished only where the potential victim was perceived as vulnerable. The vulnerability of a disabled person was an opportunity for the offenders to carry out their attacks. This was especially pertinent in cases where persons with disabilities were attacked not for the purpose of robbing them or their property, but to humiliate and hurt their persona.

134. The European Disability Forum also submitted that the specific recognition of disability hate crime was a recent trend. Relying on Article 5 of the United Nations Convention on the Rights of Persons with Disabilities (cited above), it submitted that that Article confirmed the entitlement of persons with disabilities to protection on an equal basis to others. For the State, this again meant the ability to recognise and address discrimination based on the victim's disability, and sufficient knowledge about disability to be able to apply the law with respect for the needs of persons with disabilities. In specific cases, observance of the non-discrimination principle might mean recognising the specific situation of persons with disabilities compared with their non-disabled peers. The second paragraph of Article 5 alluded to the obligation of the State to protect persons with disabilities against discrimination on all grounds. Again, meeting this obligation required extensive training of State agents.

135. The third-party intervener also pointed out that the United Nations Convention obliged the States Parties to "take all effective legislative, administrative, judicial or other measures to prevent persons with

disabilities" from being subjected to violence, which also required training of those working in the field of the administration of justice.

136. In conclusion, the European Disability Forum submitted that, so far, disability hate crime had not received enough attention from law-makers and law-enforcement authorities. This had resulted in a failure to recognise disability hate crime as such, as well as in under-reporting and misunderstanding of that phenomenon. The response of the authorities to this problem should shift from reactive to proactive and be aimed at protecting persons with disabilities from all acts of violence.

2. The Court's assessment

(a) As regards the first applicant

(i) General principles

137. The Court reiterates that Article 3 of the Convention must be regarded as one of the most fundamental provisions of the Convention and as enshrining core values of the democratic societies making up the Council of Europe (see *Pretty v. the United Kingdom*, no. 2346/02, § 49, ECHR 2002-III). In contrast to the other provisions in the Convention, it is cast in absolute terms, without exception or proviso, or the possibility of derogation under Article 15 of the Convention (see, *inter alia*, *Chahal v. the United Kingdom*, 15 November 1996, § 79, *Reports* 1996-V).

138. The Court reiterates that, as regards the question whether the State could be held responsible, under Article 3, for ill-treatment inflicted on persons by non-State entities, the obligation on 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 torture or inhuman or degrading treatment or punishment, including such ill-treatment administered by private individuals (see, *mutatis mutandis*, *H.L.R. v. France*, 29 April 1997, § 40, *Reports* 1997-III). These measures should provide effective protection, in particular, of children and other vulnerable persons, and include reasonable steps to prevent ill-treatment of which the authorities had or ought to have had knowledge (see, *mutatis mutandis*, *Osman v. the United Kingdom*, 28 October 1998, § 116, *Reports* 1998-VIII, and *E. and Others v. the United Kingdom*, no. 33218/96, § 88, 26 November 2002).

139. Bearing in mind the difficulties in policing modern societies, the unpredictability of human conduct and the operational choices which must be made in terms of priorities and resources, the scope of this positive obligation must, however, be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities. Not every claimed

risk of ill-treatment, therefore, can entail for the authorities a Convention requirement to take operational measures to prevent that risk from materialising. For a positive obligation to arise, it must be established that the authorities knew or ought to have known at the time of the existence of a real and immediate risk of ill-treatment of an identified individual from the criminal acts of a third party and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk. Another relevant consideration is the need to ensure that the police exercise their powers to control and prevent crime in a manner which fully respects the due process and other guarantees which legitimately place restraints on the scope of their action to investigate crime and bring offenders to justice, including the guarantees contained in Article 8 of the Convention (see *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*, no. 13178/03, § 53, ECHR 2006-XI; *Members of the Gldani Congregation of Jehovah's Witnesses and Others v. Georgia*, no. 71156/01, § 96, 3 May 2007; and *Milanović*, cited above, § 84; see also, *mutatis mutandis*, *Osman*, cited above, § 116).

140. The Court will therefore examine whether the respondent State, in dealing with the first applicant's case, has been in breach of its positive obligations under Article 3 of the Convention.

(ii) Application of these principles to the present case

141. The Court notes at the outset that acts of violence in contravention of Article 3 of the Convention would normally require recourse to the application of criminal-law measures against the perpetrators (see *Beganović v. Croatia*, no. 46423/06, § 71, 25 June 2009, as regards Article 3, and *Sandra Janković*, cited above, § 47, as regards Article 8).

142. However, in the present case most of the alleged perpetrators were children below 14 years of age, against whom, under the national system, it is not possible to apply any criminal-law sanctions. Furthermore, in the specific circumstances in issue, it might be that none of the acts complained of in itself amounts to a criminal offence, but that nevertheless in their entirety the incidents of harassment are incompatible with the requirements of Article 3 of the Convention. Therefore, the present case is to be distinguished from cases concerning the State's procedural obligations under criminal law in respect of acts of ill-treatment contrary to Article 3 of the Convention, where the State authorities are under a duty to conduct of their own motion a thorough, effective and independent investigation.

143. The present case concerns the issue of the State's positive obligations in a different type of situation, outside the sphere of criminal law, where the competent State authorities are aware of a situation of serious harassment and even violence directed against a person with physical and mental disabilities. It concerns the alleged lack of an adequate

response to such a situation in order to properly address acts of violence and harassment that had already occurred and to prevent any such further acts.

144. In line with the above, the Court has examined, firstly, whether the relevant authorities were or should have been aware of the situation of harassment of and violence against the first applicant.

145. In this connection the Court notes that the documents in the case file show that as early as 31 July 2008 the second applicant informed the police of the ongoing harassment of her son by children from the neighbourhood. She also informed the police of numerous further incidents, including the burning of the first applicant's hands with cigarettes on 4 April 2009. In April 2009 she informed the Ombudswoman for Persons with Disabilities of the same incident. Between May and July 2009 the police informed the State Attorney's Office as well as the competent social welfare centre of the alleged abuse against the first applicant and by September 2009 the school authorities had also been duly informed.

146. In view of the above, the Court is satisfied that the domestic authorities were aware of the ongoing harassment of the first applicant by children from his neighbourhood and children attending a nearby school. The Court will therefore examine whether the relevant authorities took all reasonable steps in the circumstances of the present case to protect the first applicant from such acts.

147. In the present situation, where incidents of violence have persisted over a certain period of time, the Court finds that the relevant authorities failed to take sufficient steps to ascertain the extent of the problem and to prevent further abuse taking place.

148. It is true that the police interviewed some of the children allegedly involved in certain incidents and that the school authorities discussed the problem with the pupils and their parents. However, the Court finds that no serious attempt was made to assess the true nature of the situation complained of, and to address the lack of a systematic approach which resulted in the absence of adequate and comprehensive measures. Thus, the findings of the police were not followed by any further concrete action: no policy decisions have been adopted and no monitoring mechanisms have been put in place in order to recognise and prevent further harassment. The Court is struck by the lack of any true involvement of the social services and the absence of any indication that relevant experts were consulted who could have given appropriate recommendations and worked with the children concerned. Likewise, no counselling has been provided to the first applicant in order to aid him. In fact, the Court finds that, apart from responses to specific incidents, no relevant action of a general nature to combat the underlying problem has been taken by the competent authorities despite their knowledge that the first applicant had been systematically targeted and that future abuse was very likely to follow.

149. In view of this, the Court considers that the competent State authorities have not taken all reasonable measures to prevent abuse against the first applicant, notwithstanding the fact that the continuing risk of such abuse was real and foreseeable.

150. There has accordingly been a violation of Article 3 of the Convention in respect of the first applicant.

(b) As regards the second applicant

(i) General principles

151. While the essential object of Article 8 is to protect the individual against arbitrary interference by public authorities, it does not merely compel the State to abstain from such interference: in addition to this negative undertaking, there may be positive obligations inherent in effective respect for private or family 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 (see *X and Y v. the Netherlands*, 26 March 1985, § 23, Series A no. 91; *Botta v. Italy*, 24 February 1998, § 33, *Reports* 1998-I; *Mikulić v. Croatia*, no. 53176/99, § 57, ECHR 2002-I; and *Sandra Janković*, cited above, § 44).

152. The Court has previously held, in various contexts, that the concept of private life includes a person's psychological integrity. Under Article 8, States have in some circumstances a duty to protect the moral integrity of an individual from acts of other persons. The Court has also held that States have a positive obligation to ensure respect for human dignity and the quality of life in certain respects (see *L. v. Lithuania*, no. 27527/03, § 56, ECHR 2007-IV, and, *mutatis mutandis*, *Pretty*, cited above, § 65).

(ii) Application of these principles to the present case

153. The Court considers that the acts of ongoing harassment have also affected the private and family life of the second applicant. It has found that the State authorities have not put in place adequate and relevant measures to prevent further harassment of the first applicant. Likewise, the State authorities have failed to afford adequate protection in that respect to the second applicant. Therefore, there has also been a violation of Article 8 of the Convention in respect of the second applicant.

II. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION

154. The applicants further complained that the acts of abuse against them and the response of the competent authorities were also discriminatory, on the basis of their Serbian ethnic origin and the first applicant's disability. They relied on Article 14 of the Convention, which provides:

"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."

Admissibility

1. The parties' submissions

155. The Government argued that the applicants could have brought a claim pursuant to the Prevention of Discrimination Act, by which they would have been able to seek an acknowledgment of any possible discrimination as set out in that Act, an order for the removal of the discrimination and its consequences, as well as compensation.

156. The applicants contended in reply that proceedings under the Prevention of Discrimination Act did not constitute an effective remedy because they could not address the particular situation complained of. Furthermore, they claimed that two years after that Act had been passed, there was no relevant case-law showing either that citizens had felt confident about instituting proceedings pursuant to the Act, or that the proceedings that had been instituted had progressed with adequate speed.

2. The Court's assessment

157. As regards Article 14 of the Convention, the Court reiterates that it has no independent existence, but plays an important role by complementing the other provisions of the Convention and its Protocols, since it protects individuals placed in similar situations from any discrimination in the enjoyment of the rights set forth in those other provisions (see *Dudgeon v. the United Kingdom*, 22 October 1981, § 67, Series A no. 45; *Chassagnou and Others v. France* [GC], nos. 25088/94, 28331/95 and 28443/95, § 89, ECHR 1999-III; and *Timishev v. Russia*, nos. 55762/00 and 55974/00, § 53, ECHR 2005-XII). Although the application of Article 14 does not presuppose a breach of those provisions – and to this extent it is autonomous – there can be no room for its application unless the facts in issue fall within the ambit of one or more of the latter (see, for example, *Van Buitenen v. the Netherlands*, no. 11775/85, Commission decision of 2 March 1987, unreported, and *Cha'are Shalom Ve Tsedek v. France* [GC], no. 27417/95, § 86, ECHR 2000-VII).

158. The Court has also held that even in a situation where the substantive provision is not applicable, Article 14 may still be applicable (see *Savez crkava "Riječ života" and Others v. Croatia*, no. 7798/08, § 58, 9 December 2010). Consequently, admissibility issues concerning Article 14 may be assessed separately.

159. As to the present case, the Court will examine under Article 14 the issue of exhaustion of domestic remedies in relation to the Prevention of

Discrimination Act. In this connection the Court notes that it has already examined the issue of exhaustion of domestic remedies as regards a discrimination complaint separately from the exhaustion issues concerning the main complaint (see *Valkov and Others v. Bulgaria*, nos. 2033/04, 19125/04, 19475/04, 19490/04, 19495/04, 19497/04, 24729/04, 171/05 and 2041/05, §§ 104-08, 25 October 2011). This approach goes hand in hand with the principle that where a substantive Article of the Convention or its Protocols has been relied on both on its own and in conjunction with Article 14 and a separate breach has been found of the substantive Article the Court may not always consider it necessary to examine the case under Article 14 as well, though the position is otherwise if a clear inequality of treatment in the enjoyment of the right in question is a fundamental aspect of the case (see *Dudgeon*, cited above, § 67; *Chassagnou and Others*, cited above, § 89; and *Timishev*, cited above, § 53).

160. As regards the present case, the Court notes that the Prevention of Discrimination Act contains specific reference to discrimination based on health condition and invalidity, as well as on ethnic origin (see section 1 of the Act). It provides for a range of remedies, including the acknowledgment of discrimination, a ban on discriminatory acts and compensation for damage. Remedies may also be used against the national authorities in the event of their alleged failure to take action (see paragraph 74 above).

161. Protection against discrimination is to be sought before the ordinary courts, and an appeal against the first-instance judgment is provided for, as well as a constitutional complaint. The right not to be discriminated against is also guaranteed by the Croatian Constitution, and the Convention is directly applicable in Croatia. In order to comply with the principle of subsidiarity, applicants, before bringing their complaints before the Court, have first to afford the national courts the opportunity of remedying their situation and addressing the issues they wish to bring before the Court.

162. Against the above background, the Court considers that an action pursuant to the provisions of the Prevention of Discrimination Act represents an effective domestic remedy and that proper use of that remedy could have led to an acknowledgment of the violation alleged and an award of damages. In the event that the applicants' claim was not successful before the ordinary courts, they would have been able to lodge a constitutional complaint and have their complaints examined by the Constitutional Court as well. However, the applicants failed to make use of the remedies available to them.

163. It follows that this complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

164. The applicants alleged that they had no effective remedy in respect of their complaints under the Convention. They relied on Article 13 of the Convention, which provides:

> "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. As regards the applicants' complaints under Articles 3 and 8 of the Convention

165. The Court notes that this complaint is linked to the one examined above under Articles 3 and 8 of the Convention and must therefore likewise be declared admissible.

2. As regards the applicants' complaint under Article 14 of the Convention

166. The Court has already established that in respect of their complaint under Article 14 of the Convention, the applicants had at their disposal an effective remedy – an action pursuant to the provisions of the Prevention of Discrimination Act – which they failed to use. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

B. Merits

167. The applicants argued that they had no effective remedy by which to obtain protection against acts of harassment and violence. The Court notes that the Government suggested a number of remedies allegedly at their disposal in that connection. However, the Court has established that none of the remedies referred to by the Government could have addressed the applicants' situation in connection with their complaints under Articles 3 and 8 of the Convention.

168. Therefore, the Court considers that the applicants had no effective remedy available in respect of their complaints under Articles 3 and 8 of the Convention. Accordingly, there has been a violation of Article 13 in that respect.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

169. 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

170. The applicants claimed 10,000 euros (EUR) each in respect of non-pecuniary damage.

171. The Government deemed the amount claimed excessive and unsubstantiated.

172. Having regard to all the circumstances of the present case, the Court accepts that the applicants suffered non-pecuniary damage which cannot be compensated for solely by the finding of a violation. Making its assessment on an equitable basis, the Court awards the applicants jointly EUR 11,500 in respect of non-pecuniary damage, plus any tax that may be chargeable to them.

B. Costs and expenses

173. The applicants, who had been granted legal aid under the Council of Europe's scheme, also claimed EUR 1,206 for the costs and expenses incurred before the domestic courts and EUR 4,997.13 for those incurred before the Court.

174. The Government submitted that the applicants had not provided the itemised particulars of the claim.

175. 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. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers that the costs the applicants incurred in connection with the complaints they made before the national authorities about their harassment were essentially aimed at remedying the violation of the Convention rights alleged before the Court, and that these 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, and *Medić v. Croatia*, no. 49916/07, § 50, 26 March 2009). Regard being had to the information in its possession and the above criteria, the Court awards the applicants jointly EUR 1,206 for the costs and expenses incurred in the domestic proceedings and EUR 3,500 for those before the Court, less EUR 850 already received by way of legal aid from the Council

of Europe, plus any tax that may be chargeable to the applicants on that amount.

C. Default interest

176. The Court considers it appropriate that the default interest rate 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. *Declares* the complaints under Articles 3 and 8, as well as the complaint under Article 13 of the Convention in so far as it relates to the complaints under Articles 3 and 8, admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 3 of the Convention in respect of the first applicant;

3. *Holds* that there has been a violation of Article 8 of the Convention in respect of the second applicant;

4. *Holds* that there has been a violation of Article 13 of the Convention;

5. *Holds*
   (a) that the respondent State is to pay the applicants jointly, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, which are to be converted into the currency of the respondent State at the rate applicable on the date of settlement:
      (i) EUR 11,500 (eleven thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 4,706 (four thousand seven hundred and six euros), less EUR 850 (eight hundred and fifty euros), plus any tax that may be chargeable to the applicants, 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 applicants' 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