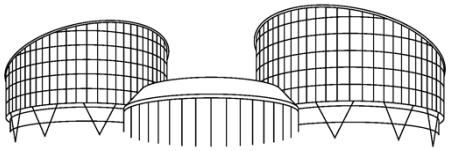

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF MILIĆEVIĆ v. MONTENEGRO

(Application no. 27821/16)

JUDGMENT

STRASBOURG

6 November 2018

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

In the case of Milićević v. Montenegro,

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

Robert Spano, *President,*
Julia Laffranque,
Ledi Bianku,
Paul Lemmens,
Jon Fridrik Kjølbro,
Stéphanie Mourou-Vikström,
Ivana Jelić, *judges,*
and Stanley Naismith, *Section Registrar,*

Having deliberated in private on 9 October 2018,

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

PROCEDURE

1. The case originated in an application (no. 27821/16) against Montenegro lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Montenegrin national, Mr Zdravko Milićević ("the applicant"), on 11 May 2016.

2. The applicant was represented by Mr R. Drakulović, a lawyer practising in Podgorica. The Montenegrin Government ("the Government") were represented by their Agent, Mrs V. Pavličić.

3. The applicant alleged, in particular, that the State had failed to take preventive measures and thus protect him from an attack by a mentally ill person, a risk of which the authorities had been aware.

4. On 19 September 2017 the complaint about the alleged failure of the State to take preventive measures was communicated to the Government and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1966 and lives in Podgorica.

A. Attack on the applicant and ensuing criminal proceedings

6. On 29 or 30 January 2013 the applicant telephoned the police and reported X for threatening him.

7. On 1 February 2013 X entered a coffee-bar owned by the applicant and asked him to come outside. Once outside, X started punching the applicant. Some passers-by separated X from the applicant, after which X left the scene saying "I will bring a knife and a hammer to kill you". Shortly afterwards, X returned to the bar with a kitchen hammer and started hitting the applicant on his head and all over his body, saying "I will kill you". One of the waiters and some of the customers separated X from the applicant and took the applicant for emergency treatment. The doctor in charge of the emergency ward noted that the applicant had suffered a head injury measuring 4 cm by 1 cm inflicted by a hammer.

8. The same day the applicant lodged a criminal complaint in written form against X, after which X was arrested. On 6 February 2013 X was charged with violent behaviour. In the processing of the indictment it transpired that there was another indictment pending against X, issued on 30 October 2012, in which he had been charged with stabbing V.J. and inflicting light bodily injuries on him. The proceedings on those two indictments were joined into a single set of proceedings.

9. On 30 May 2013 the Court of First Instance (*Osnovni sud*) in Podgorica found X guilty of inflicting light bodily injuries on V.J. on 9 October 2012, and of violent behaviour against the applicant on 1 February 2013. The court ordered the mandatory psychiatric treatment of X in a hospital (*mjera bezbjednosti obavezno psihijatrijsko liječenje i čuvanje u zdravstvenoj ustanovi*), and the confiscation of two knives and a kitchen hammer.

10. During the proceedings it transpired that X had been a long-term psychiatric patient, suffering from schizophrenia, and that he had been treated several times in a special psychiatric hospital. It also transpired that on several occasions he had attacked some of his neighbours, had set his flat on fire, and had caused a flood in the next-door flat. In the course of the proceedings X's aunt submitted that about three months before attacking the applicant, X had become more aggressive and that she had reduced contact with him to a minimum. The court also established that X had stabbed V.J. without any reason. It transpires from the case file that after that attack, X had been arrested and then released, but there is no information as to the exact dates.

11. The court found that there was a direct causal link between X's mental state and the criminal offences he had committed, that there was a serious danger that he might commit a more serious offence (*neko teže djelo*), and that he required psychiatric treatment in order to prevent that from happening.

12. That judgment became final on 20 June 2013. On 24 June 2013 the Court of First Instance requested the prison authorities to transfer X to a special hospital in Kotor. On 16 November 2015 the Court of First Instance discontinued (*obustavio*) the enforcement of mandatory inpatient psychiatric treatment and replaced it with mandatory psychiatric treatment on an outpatient basis, as long as there was a need for treatment but no longer than three years. On 12 April 2016 the Court of First Instance issued an order (*nalog*) directing X to undergo outpatient psychiatric treatment in a healthcare centre (*Dom zdravlja*). He was readmitted to hospital between 22 August and 21 October 2016, apparently at his own request. Between 18 April 2016 and October 2017 X had regular monthly check-ups by a specialist.

B. Civil proceedings

13. On 27 May 2013 the applicant instituted civil proceedings against the State, seeking 1,700 euros (EUR) in compensation for non-pecuniary damage. He submitted, in substance, that X had already attacked other people before attacking him, including V.J. four months earlier. Moreover, the applicant had reported X to the police for threatening him before the attack. Owing to the failure of the State to undertake any preventive measure in respect of X, the applicant had been attacked by him and had suffered injuries.

14. In the course of the proceedings, on 20 December 2013 the court heard Z.Đ., a police officer, who had been patrolling for more than ten years in the neighbourhood where X lived and where the applicant's bar was located. He stated that two to three days prior to the attack, the applicant had called the police to report X who had been "causing him problems" (*stvarao mu problem*) and who had told the applicant that he "would see who the boss in the neighbourhood was". Following that complaint, Z.Đ. had looked for X in order to talk to him but had been unable to find him for the next two days. After the applicant had been attacked, Z.Đ. had gone to the scene and, "knowing that X always carried a knife or some other cold weapon", asked him whether he had a knife. In response, X had taken a knife from behind his back and handed it in. Z.Đ. further submitted that the police often received complaints of noise, disturbances (*neredi*) and attacks by X. The police would always have "an informative talk" (*informativni razgovor*) with X, and would duly notify the State prosecutor (*Osnovni državni tužilac*) thereof. He did not know, however, whether those complaints had been further processed.

15. On 19 February 2015 the Court of First Instance ruled against the applicant. The court held that the police had acted as required, notably by taking X's statements and forwarding them to the competent prosecutor for further processing. In addition, after the attack X had been criminally

prosecuted and found guilty. Therefore, there had been no lack of action and thus the State was not liable for the non-pecuniary damage suffered by the applicant. Relying on section 148(1) of the Obligations Act, the court held as follows:

> "The court dismisses as factually and legally unfounded the applicant's submissions that the State ought to have hospitalised X before the event here in issue, as the State bodies did order his hospitalisation as soon as the conditions for that had been met. The fact that it was only after the case at issue does not affect the court's conclusion. The court has concluded that the State bodies acted in accordance with the law and their powers both pursuant to this event and other preceding events, and therefore the conditions for an award of compensation have not been met."

16. On 20 April 2015 the High Court upheld the first-instance judgment. It considered, in substance, that there was no causal link between the State's actions and the damage caused, given that the applicant's injury was a result of an attack by a third person. Therefore there was no liability on the part of the State to compensate him for the said damage. The court stated that it had examined other submissions but found that they did not influence its verdict.

17. On 12 June 2015 the applicant lodged a constitutional appeal. In substance he maintained that: (a) the State had failed to react appropriately after X had attacked V.J.; (b) four months thereafter, X had attacked and injured the applicant; and (c) three days before the attack the applicant had complained to the police that X had threatened him. The State was thus responsible, as it had had knowledge of the kind of person X was, but had failed to react. The applicant relied on Article 28 of the Constitution (see paragraph 22 below), and on the Court's findings in the case of *Branko Tomašić and Others v. Croatia* in respect of Article 2 of the Convention.

18. On 14 October 2015 the Constitutional Court rejected (*odbacuje se*) the applicant's constitutional appeal, holding, in particular:

> "[the applicant] complains of a violation of his rights in substance by challenging the established facts.
>
> The Constitutional Court reiterates that it is not competent to substitute the regular courts in assessing the facts and evidence, but that it is the task of the regular courts to [do so] (see the European Court's judgment in the case of Thomas v. the United Kingdom, 10 May 2005, no. 19354/02). The task of the Constitutional Court is to examine whether the proceedings as a whole were fair within the meaning of Article 6 of the European Convention and whether the decisions of the regular courts violate constitutional rights. Therefore, the Constitutional Court is not competent to replace the assessment of the regular courts by its own assessment, as it is up to those courts to assess the evidence and establish the facts relevant for the outcome of the proceedings. Therefore, the constitutional appeal here at issue is manifestly (*prima facie*) unfounded."

That decision was served on the applicant on 13 January 2016 at the earliest.

C. Other relevant circumstances

19. On 10 June 2003 X was found guilty of a serious traffic offence and was sentenced to six months in prison, suspended for two years. On 28 June 2006 he was found guilty of setting his flat on fire and was ordered to undergo mandatory outpatient psychiatric treatment.

20. Before 24 June 2013 (see paragraph 12 above) X had been hospitalised on several other occasions: (a) for an unspecified period in 1997; (b) from 29 November to 19 December 2001; (c) from 25 July 2003 to 8 July 2004 (following a court decision of 21 July 2003 to that effect, after he had set his flat on fire; once it was considered that he had achieved a stable clinical condition, X was discharged from the hospital); (d) from 31 January to 21 February 2006; (e) from 23 July to 29 September 2006; (f) on 15 February and 13 March 2007 (on the recommendation of the healthcare centre in Podgorica following complaints from X's neighbours); (g) from 5 June to 25 July 2008; and (h) from 24 September 2012 to 3 October 2012. That period of hospitalisation would appear to have been prompted by an attempt by X to commit suicide by taking a large quantity of medication. The discharge note of 3 October 2012, however, noted that X "[did] not want to remain in hospital in spite of the persistent insistence of the doctor in charge (*ordinarijus*) that he continue hospital treatment. He [was] prescribed a check-up in seven days' time with a competent psychiatrist in a health care centre". There is no information as to whether X had any treatment or a medical check-up thereafter. It is clear from the case file that between the periods of hospitalisation in 2008 and 2012, X had seen a psychiatrist on at least three occasions: on 1 November 2010, 22 September and 11 October 2011. Two of the three medical reports state that X had regularly been taking medication.

21. On 13 December 2013 X was deprived of his legal capacity following a proposal to that effect by the local social work centre of 14 November 2013. On an unspecified date thereafter, the social work centre was appointed his legal guardian.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Constitution of Montenegro (*Ustav Crne Gore*; published in the Official Gazette of Montenegro - OGM nos. 001/07 and 038/13)

22. Article 28 of the Constitution guarantees everyone's dignity and personal security, the inviolability of his or her physical and psychological integrity, and his or her privacy and personal rights.

B. Criminal Procedure Code (*Zakonik o krivičnom potupku*; published in OGM nos. 057/09, 049/10, 047/14, 002/15, 035/15, 058/15 and 028/18)

23. Articles 18, 19, 44, 45, 59 and 271, read in conjunction, provide, *inter alia*, that formal criminal proceedings (*krivični postupak*) may be instituted at the request of an authorised prosecutor. In respect of crimes subject to public prosecution, the authorised prosecutor will be the State prosecutor. However, the State prosecutor's authority to decide whether to press charges is bound by the principle of legality, which requires that he has to act whenever there is a reasonable suspicion that a crime subject to public prosecution has been committed. For crimes subject to private prosecution (*za koja se goni po privatnoj tužbi*), the authorised prosecutor will be the victim (*privatni tužilac*).

24. Article 59 provides that, should the State prosecutor decide that there is no basis on which to press charges, he has to inform the victim of that decision, and the latter will then have the right to take over the prosecution of the case on his own behalf, as a "subsidiary prosecutor" (*oštećeni kao tužilac*), within eight days of being notified of that decision.

25. Article 254 provides, *inter alia*, that all physical and legal persons who have a public function or who deal professionally with protection and ensuring security of people and property, must report criminal offences which are prosecuted *ex officio*, of which they have been informed or about which they have found out in performing their duties.

26. Article 256 provides, *inter alia*, that a criminal complaint is to be lodged with a competent State prosecutor, orally or in writing. If the complaint has been submitted by phone, an official report (*službena zabilješka*) must be made in that regard. If the complaint has been lodged with a court, the police, or a State prosecutor who is not in charge (*nenadležnom*), they will accept the complaint and forward it immediately to the competent State prosecutor.

C. Criminal Code of Montenegro (*Krivični zakonik Crne Gore*, published in the Official Gazette of the Republic of Montenegro – OG RM – nos. 070/03, 013/04, and 047/06, and in OGM nos. 040/08, 025/10, 073/10, 032/11, 064/11, 040/13, 056/13, 014/15, 042/15, 058/15, and 044/17)

27. Article 168 provides for the criminal offence of jeopardising another person's security. In particular, it provides that whosoever puts another person's security in jeopardy by threatening their life or health, or the life or health of someone close to them, will be fined or sentenced to a term of up to a year in prison. If the offence has caused disturbance to citizens, the

perpetrator will be sentenced to between three months and three years in prison.

D. Protection and Exercise of the Rights of Mentally Ill Persons Act (*Zakon o zaštiti i ostvarivanju prava mentalno oboljelih lica*; published in OG RM no. 032/05, and OGM nos. 073/10, 040/11 and 027/13)

28. Section 33 provides that when officials responsible for internal affairs suspect that an individual is mentally ill, they must, without delay, ensure that he or she is taken to the nearest healthcare institution for examination. Those officials can, especially in urgent situations, have a mentally ill person taken to a psychiatric institution if it is justifiably suspected that he or she might jeopardise his or her own life or health, or the life or health of others.

E. Internal Affairs Act (*Zakon o unutrašnjim poslovima*; published in OGM nos. 044/12, 036/13 and 001/15)

29. Section 10 provides that the police have a duty to protect the security of citizens and their constitutionally established rights and freedoms; to prevent and detect criminal and minor offences; to find the perpetrators thereof and to bring them before the competent bodies.

30. Section 23 defines police authorisations. They include the taking in of a suspect, the temporary limitation of freedom of movement, the issuing of warnings and the giving of orders (*davanje upozorenja i izdavanje naređenja*).

31. Section 53 provides that a police officer must warn a person for whom there is a probability that: (a) by their behaviour they may jeopardise their own security or the security of someone else, or disturb public order and peace; (b) they may commit a criminal offence which is subject to prosecution *ex officio* or a minor offence (*prekršaj*).

F. Obligations Act (*Zakon o obligacionim odnosima*; published in OGM nos. 47/08 and 04/11)

32. Sections 148 and 149 set out the different grounds for claiming compensation for both pecuniary and non-pecuniary damage, including for a violation of personal rights (*povreda prava ličnosti*). In particular, section 148(1) provides that whosoever causes somebody else damage is liable to pay compensation, unless he or she can prove that the damage caused was not his or her fault.

33. Section 166(1) provides that a legal entity is liable for the damage caused by one of its bodies when exercising its functions or related thereto.

34. Sections 206-207 provide that anyone who has suffered fear, physical pain or mental anguish as a consequence of a breach of personal rights (*prava ličnosti*) is entitled to sue for financial compensation in the civil courts and, in addition, to request other forms of redress "which might be capable" of affording adequate non-pecuniary relief. Section 207 provides that personal rights include the right to physical and psychological integrity, and the right to the protection of private life.

G. Relevant domestic case-law

35. On 24 September 2015 the Supreme Court (Rev. br. 578/15) held that the State was responsible for the damage suffered as a consequence of an attack by a mentally ill person, as State officials (*ovlašćeni službenici*) who had known about the mentally ill person had failed to take him to a psychiatric institution for examination. In that case a mentally ill person had attacked a minor with a knife. In the ensuing criminal proceedings he was found guilty of attempted murder and ordered to undergo mandatory psychiatric treatment in hospital. In the course of the civil proceedings it was established that neighbours had previously complained about the attacker to the police on several occasions. The court held that the police had known, or should have known, about the mentally ill person, given the neighbours' prior complaints in that regard, and therefore they had an obligation to undertake all actions in order to protect the lives of citizens.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

36. The applicant complained under Article 2 of the Convention that by failing to undertake necessary measures, the State had failed to prevent an attack on him by a mentally ill person, a risk of which the police had been aware.

37. The Government contested that argument.

38. The Court reiterates that the scope of a case referred to it in the exercise of the right of individual application is determined by the applicant's complaint. A complaint consists of two elements: factual allegations and legal arguments. By virtue of the *jura novit curia* principle the Court is not bound by the legal grounds adduced by the applicant under the Convention and the Protocols thereto and has the power to decide on the characterisation to be given in law to the facts of a complaint by examining it under Articles or provisions of the Convention that are different from

those relied upon by the applicant (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 126, ECHR 2018).

39. The Court considers that the complaint in the present case falls to be examined under Article 8 of the Convention (see, *mutatis mutandis*, *Sandra Janković v. Croatia*, no. 38478/05, § 27, 5 March 2009, and *A. v. Croatia*, no. 55164/08, § 57, 14 October 2010), which reads as follows:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

A. Admissibility

40. The Government submitted that the applicant had failed to exhaust available domestic remedies. Notably, he had failed to lodge a criminal complaint in the form prescribed by the legislation, and instead had complained about X to the police only over the telephone. The Government maintained that the legislation in that respect was precise and referred to Article 256 of the Criminal Procedure Code.

41. The applicant contested the Government's objection. He maintained that the relevant legislation provided for a possibility of lodging a complaint by telephone, which is what he had done.

42. Even assuming that the use of a criminal complaint prior to the incident was necessary for the purposes of exhaustion, the Court notes that Article 256 of the Criminal Procedure Code explicitly provides for the possibility of lodging a complaint not only in writing but also orally, including by telephone (see paragraph 26 above). As it is not in dispute that the applicant had reported X to the police by telephone, the Government's objection in this regard must be dismissed.

43. The Court notes that the applicant's complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The Government

44. The Government acknowledged that the State had a positive obligation, under Articles 2 and 8 of the Convention, to protect an individual's life, as well as his or her physical and moral integrity even from other individuals, respectively. However, what must be taken into account are the difficulties in police work in a modern society; the unpredictability of human behaviour and the operational choices that need to be made; that an impossible or disproportionate burden is not placed on State bodies; as well as the balance that needs to be struck between the public interest and the interest of an individual, in which respect the State enjoys a wide margin of appreciation.

45. The Government submitted that the State bodies had known that X was a long-term psychiatric patient, but that the police and the courts could not predict and monitor the behaviour of all psychiatric patients, bearing in mind the amount of work they had. Also, the authorities could not have known about the particular risk for the applicant, given that he had failed to lodge a formal criminal complaint against X, and given that X was continually monitored and on medication.

46. Regardless of that, however, the State bodies had acted promptly and had undertaken all possible and necessary measures both in order to prevent the attack as well as after the attack. Notably, the officer on duty, who had taken the applicant's call, had tried to find X, but without success, as X had shown up neither in the neighbourhood nor in the flat where he had been living until the attack itself, for which the Government expressed their regret. After the attack X had been arrested and prosecuted, and mandatory inpatient psychiatric treatment had been ordered. Once the conditions had been met, that measure had been replaced by adequate treatment on an outpatient basis. He had also been deprived of his legal capacity and a legal guardian had been appointed for him. The statutory mechanisms applied in the present case had thus fully fulfilled the State's positive obligations in accordance with Article 8. In view of sections 148, 166 and 207 of the Obligations Act, the applicant's compensation claim had also been duly dismissed for reasons clearly explained by the courts.

47. The Government further submitted that in general, X had been treated in accordance with the procedures in place. In particular, after he had set his flat on fire he had been arrested and detained, and then temporarily placed in a psychiatric hospital. He had been discharged only once he was considered to be in a favourable clinical condition. He had also been ordered to undergo mandatory psychiatric treatment on an outpatient basis

in 2006, and, in addition, he had been hospitalised for certain periods in 2007, 2008 and 2012.

48. The Government pointed out that the fact that X had stabbed V.J. was not the subject of the present application and therefore they had not commented on it.

49. They concluded that the State had met its positive obligations to protect the applicant and that there had been no violation of the Convention.

(b) The applicant

50. The applicant submitted that the Government had focused more on what had happened after the attack than on what had happened before it. He averred that X's subsequent deprivation of legal capacity and the implementation of protective measures after 2016 were irrelevant. Before the attack the authorities had not regularly supervised the execution of psychiatric treatment on an outpatient basis, for example by obtaining reports from the psychiatrist responsible in order to find out whether X had been regularly undergoing the treatment or taking medication. The applicant did not ask the authorities to supervise all psychiatric patients, as submitted by the Government, but only the one who had threatened him.

51. The applicant further submitted that the Government had provided no evidence that at the time when he had reported X, the police had had more pressing tasks to deal with. The authorities had been aware of X's state of health, as he was already known to the police, and his behaviour had thus been predictable and expected. In addition, the authorities had known that he had threatened the applicant. They had thus been obliged to act without delay, to call or warn X, or to take him to a medical institution. However, X had been neither detained nor taken to a healthcare institution, either after he had stabbed V.J. or after the applicant had reported him to the police. Had that been done, he would have been prevented from hurting others, but he had remained free and unsupervised. It was only after he had attacked the applicant that he had been arrested and detained, and been given compulsory inpatient treatment. The authorities had thus failed to implement the legal framework that protects against violent actions of others as their action was untimely.

52. The applicant referred to, *inter alia*, sections 10, 23 and 53 of the Internal Affairs Act (see paragraphs 29-31 above).

2. The Court's assessment

53. The relevant principles as regards Article 8 are set out, for example, in *Aksu v. Turkey* [GC], nos. 4149/04 and 41029/04, § 59, ECHR 2012, and *Sandra Janković v. Croatia*, no. 38478/05, §§ 44-45, 5 March 2009.

54. The Court has previously held, in various contexts, that the concept of private life within the meaning of Article 8 of the Convention includes a person's physical and psychological integrity (see, for example, *Denisov*

v. Ukraine [GC], no. 76639/11, § 95, 25 September 2018, and *Von Hannover v. Germany*, no. 59320/00, § 50, ECHR 2004-VI). While the essential object of Article 8 is to protect the individual against arbitrary interference by the public authorities, there may in addition be positive obligations inherent in effective respect for private life, which may involve the adoption of measures in the sphere of relations between individuals (see *Bărbulescu v. Romania* [GC], no. 61496/08, § 115, 5 September 2017 (extracts); *Tavlı v. Turkey*, no. 11449/02, § 28, 9 November 2006; and *Mikulić v. Croatia*, no. 53176/99, § 57, ECHR 2002-I). To that end, States are to maintain and apply in practice an adequate legal framework affording protection against acts of violence by private individuals (see *Söderman v. Sweden* [GC], no. 5786/08, § 80, ECHR 2013, and *Isaković Vidović v. Serbia*, no. 41694/07, § 59, 1 July 2014, and the authorities cited therein).

55. However, the boundaries between the State's positive and negative obligations under this provision do not lend themselves to precise definition. The applicable principles are nonetheless similar. In both contexts regard must be had to the fair balance that has to be struck between the competing interests of the individual and of the community as a whole; and in both contexts the State enjoys a certain margin of appreciation (see *Tavlı v. Turkey*, cited above, § 29, and *Jeunesse v. the Netherlands* [GC], no. 12738/10, § 106, 3 October 2014).

56. The Court also reiterates that its task is not to substitute itself for the competent domestic authorities in determining the most appropriate methods for protecting individuals from attacks on their personal integrity, but rather to review under the Convention the decisions that those authorities have taken in the exercise of their power of appreciation. The Court will therefore examine whether the respondent State, in handling the applicant's case, has been in breach of its positive obligation under Article 8 of the Convention (see, *mutatis mutandis*, *Sandra Janković*, cited above, § 46).

57. Turning to the present case, the Court firstly notes that the Montenegrin legal framework provides for the criminal offence of jeopardising someone's personal security. It further observes that Montenegrin criminal law distinguishes between criminal offences to be prosecuted by a State prosecutor and criminal offences to be prosecuted by means of private prosecution. It also provides for the injured party to act as a subsidiary prosecutor. In respect of criminal offences for which the prosecution is to be undertaken by a State prosecutor, where that official has declined to prosecute, on whatever grounds, the injured party can take over the prosecution as a subsidiary prosecutor. In those circumstances, the Court is satisfied that, in the present case, the domestic legal framework as such provides sufficient protection (see *Alković v. Montenegro*, no. 66895/10, § 68, 5 December 2017, and *Isaković Vidović*, cited above, § 62).

58. The Court further notes that the threat posed by X, which constitutes the basis of the applicant's complaint under Article 8 of the Convention, materialised into a concrete act of physical violence, resulting in the applicant's head injury (see, *a contrario*, *Hajduová v. Slovakia*, no. 2660/03, § 49, 30 November 2010, in which the Court found that the State had breached its positive obligations under Article 8 even in a situation where the threats against the applicant had not materialised).

59. The Court appreciates that the competent bodies did intervene after X had attacked the applicant: he was arrested, prosecuted and ordered to undergo mandatory inpatient psychiatric treatment. It is also clear that as of 18 April 2016 he was medically monitored on a regular basis (see paragraph 12 *in fine* above). The Court cannot, however, overlook the fact that it was the domestic authorities' inactivity and failure to ensure that the applicant was protected after X had threatened him, or to ensure that X was duly provided with psychiatric treatment after he had stabbed V.J., which led to his threat against the applicant materialising. It was only after the applicant had been attacked by X that the State intervened. In this connection, the Court reiterates that the domestic authorities were under a duty to take reasonable preventive measures where they "knew or ought to have known at the time of the existence of a real and immediate risk" to the life or bodily integrity of an identifiable individual (see, *mutatis mutandis*, *Osman v. the United Kingdom*, 28 October 1998, § 116, *Reports of Judgments and Decisions* 1998-VIII).

60. It is undisputed in the present case that the applicant had notified the police that X had threatened him. They were therefore aware thereof. Although the threat in itself may not have sounded too ominous, it was coupled with a few other facts. Firstly, less than four months prior to threatening and attacking the applicant, X had left the hospital even though the doctor in charge had considered that he needed to continue hospital treatment (see paragraph 20 above). Secondly, at the time when the applicant complained to the police about X's threats, the police were well aware that X had already attacked others, given that they had often received reports to that effect (see paragraph 14 above). The latest such attack had been six days after he had left the hospital contrary to the doctor's recommendation, when he had stabbed V.J. for no reason, inflicting light bodily injuries on him. There is no evidence in the case file that after that attack and before attacking the applicant, X had been taken to any medical centre for an assessment as to whether he represented a danger to others. Although an indictment had been issued against him in that regard, it was not processed until after the attack against the applicant, when the two indictments were processed jointly (see paragraph 8 above). Thirdly, the police, on their own admission, also knew that X always carried a knife or some other similar weapon. Nevertheless, the only measure undertaken by

the domestic authorities was by the police, who kept an eye open for X around the neighbourhood.

61. The Court thus notes that: (a) the authorities were aware of the fact that X was a long-term psychiatric patient, that he had a history of violent behaviour, which included attacking his neighbours, setting his flat on fire, and causing a flood in a neighbour's flat, and that he always carried a knife or some other similar weapon; they were also aware of X's previous criminal record and that during those proceedings the domestic courts had established a causal link between X's mental state and the offences he had committed; (b) four months prior to attacking the applicant X had left the hospital of his own will and contrary to the doctor's recommendation; (c) a few days after he had left the hospital he had stabbed V.J. without any reason; (d) there is no evidence that X was medically checked after attacking V.J. in order to ensure that he was taking his medication, which indicates a lack of cooperation between the police and the medical services; (e) the indictment for that attack had been issued but it had not been processed for more than three months, that is until after X attacked the applicant; and (f) the authorities were aware of X's threatening the applicant as the latter reported it to the police. The Court considers that in these circumstances the authorities ought to have been aware of the real and imminent risk of violence against the applicant (see, *mutatis mutandis*, *Hajduová*, cited above, § 50).

62. In the light of the foregoing, the Court finds that the lack of sufficient measures taken by the authorities in reaction to X's behaviour amounted to a breach of the State's positive obligations under Article 8 of the Convention to secure respect for the applicant's private life.

63. In view of the above, the Court considers that in the present case there has been a violation of Article 8 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

64. 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

65. The applicant claimed 6,700 euros (EUR) in total in respect of non-pecuniary damage: EUR 5,000 for a violation of the Convention and EUR 1,700 for non-pecuniary damage suffered due to the attack by X (see paragraph 13 above).

66. The Government contested the applicant's claim as unrealistic and not proportional to the seriousness of the injuries suffered.

67. The Court awards the applicant EUR 4,500 in respect of non-pecuniary damage.

B. Costs and expenses

68. The applicant also claimed EUR 1,720 for the costs and expenses incurred before the domestic courts, and enclosed translated copies of a compensation claim, the minutes of all the hearings in the domestic proceedings and the tariff issued by the Bar Association Tariff. He also claimed EUR 1,970 for the costs and expenses incurred before the Court. The latter amount includes EUR 470 for translation of the enclosed documentation.

69. The Government contested the applicant's claim as unfounded. In particular, they argued that the costs of the translation of the enclosed documentation were unnecessary.

70. 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 it reasonable to award the sum of EUR 3,000 covering costs under all heads.

C. Default interest

71. 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 application admissible;

2. *Holds* that there has been a violation of Article 8 of the Convention;

3. *Holds*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:

(i) EUR 4,500 (four thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 3,000 (three thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 6 November 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith
Registrar

Robert Spano
President