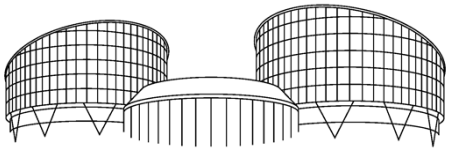

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF ŠPADIJER v. MONTENEGRO

(Application no. 31549/18)

JUDGMENT

Art 8 • Positive obligations • Authorities' failure to protect the applicant from bullying by colleagues • Art 8 applicable • Flawed implementation of civil and criminal law • Failure to take account of the overall context, including potential whistle-blowing

STRASBOURG

9 November 2021

FINAL

09/02/2022

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Špadijer v. Montenegro,

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

Síofra O'Leary, *President,*
Mārtiņš Mits,
Ganna Yudkivska,
Stéphanie Mourou-Vikström,
Ivana Jelić,
Arnfinn Bårdsen,
Mattias Guyomar, *judges,*
and Victor Soloveytchik, *Section Registrar,*

Having regard to:

the application (no. 31549/18) 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, Ms Daliborka Špadijer ("the applicant"), on 27 June 2018;

the decision to give notice to the Montenegrin Government ("the Government") of the complaints concerning the alleged violation of the applicant's psychological integrity, the failure of the relevant bodies to protect her from that violation and the lack of an effective domestic remedy in that regard, and to declare the remainder of the application inadmissible;

the parties' observations;

Having deliberated in private on 5 October 2021,

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

INTRODUCTION

1. The present case concerns primarily bullying at work affecting the applicant's psychological integrity and the failure of the relevant domestic bodies to protect her, the complaint falling under Article 8 of the Convention. The applicant also complains under Article 13 of the Convention that she did not have a relevant effective domestic remedy.

THE FACTS

2. The applicant was born in 1978 and lives in Podgorica. She was represented by Mr D. Lalićević, a lawyer practising in Podgorica.

3. The Government were represented by their Agent, Ms V. Pavličić.

4. The facts of the case, as submitted by the parties, may be summarised as follows.

5. The applicant worked as a prison guard in the Institute for the Execution of Criminal Sanctions ("the IECS"; *Zavod za izvršenje krivičnih sankcija*) in Podgorica as of September 1998. At the relevant time she was

covering the position of head of shift in the women's prison (*šef smjene Kazneno popravnog doma za žene*).

I. THE INCIDENTS AND THE ENSUING EVENTS

6. In January 2013 the applicant reported five of her colleagues for indecent behaviour at work on New Year's Eve. As established later in disciplinary proceedings, some of the male guards had entered the women's prison and one of them had had "physical contact" with two inmates there, which had been tolerated by some of the female guards (see paragraph 13 below).

7. On 12 January 2013 the applicant had a telephone conversation with another colleague, N.R. He told her that she should not have reported the other colleagues unless they had killed somebody, and that it was her fault that they would get fired. He also said that a large number of colleagues were against her, that from then on she should be prepared for anything and that she should take care of what she was doing.

8. In the night of 13 January 2013 the front windscreen of the applicant's car was broken in front of the building where she lived. On 14 January 2013 an on-site inspection (*uviđaj*) took place and the State prosecutor was informed.

9. On 17 January 2013 the applicant filed a complaint at the police station about her conversation with N.R. and the incident with the car. She also attached video footage taken by a camera from a neighbouring building, in which apparently the perpetrator could be seen damaging the windscreen and planting something underneath the car. The same day the police interviewed N.R. and informed the deputy State prosecutor accordingly. According to the official police records the prosecutor considered that the elements of a criminal offence subject to public prosecution or of a misdemeanour were lacking in the situation involving N.R.

10. On 18 February and 3 October 2013 the applicant requested the Ministry of the Interior and the Police Directorate respectively to deal with her complaint.

11. Between 26 and 28 February 2013 she allegedly reported some other irregularities at work, but without receiving any response whatsoever. There are no more details in the case file in this regard.

12. On 8 March 2013 a prison driver, M.Ž., who was taking some female colleagues to their homes, refused to take the applicant, and instead left her in another part of town. When she explained that it was not where she lived, he replied: "What do you expect, you're known for your sharp tongue and behaviour". After a short argument, he drove her home.

13. On 20 March 2013 the colleagues who had been reported for indecent behaviour on New Year's Eve were found guilty in disciplinary

proceedings. It was established that one male guard had allowed two other male guards to enter the women's prison on New Year's Eve, and that one of them, A.V., had talked with two inmates and had "physical contact" with them. Two female guards had allowed this. One of these two female guards was also found to have talked and danced with some of the inmates. The applicant's colleagues were fined between 20% and 30% of their salaries for between two and three months. During the proceedings A.V. was also temporarily suspended from work and received 60% of his salary.

14. On 24 June 2013 the applicant allegedly came across A.V., who told her: "Here is the stinking bitch. If she would only lose 50 kilos she might look acceptable" ("*Evo je smrdulja smrdljiva, da barem smrša 50 kilograma ličila bi na nešto*"), and spat next to her. The applicant reported the incident to Ra.S., head of the prison's security unit. After having enquired with him the next day, Ra.S. told the applicant that A.V. had denied her allegations but that they would both be summoned by the governor of the IECS.

15. As she was not summoned by the governor, the applicant turned to the IECS assistant governor, S.R. He said that he would talk to A.V., but that as of September she would be transferred to a remand prison. When the applicant enquired if she had done something wrong or if she was being punished for something, he replied that he wanted it that way ("*da je to njegova volja*") and that even if the Minister of Justice were to call him, the applicant would no longer be head of shift of the women's prison.

16. Two or three days later the governor of the IECS, M.R., confronted the applicant with A.V, who denied the applicant's allegations. The applicant suggested that they look at the video footage of the place where the encounter had taken place, but M.R. replied that the cameras were not functioning. The applicant enquired with the relevant officer and was told that the cameras were in fact functioning.

17. The applicant submitted that between January and August 2013: (a) the head of the penitentiary facility had forbidden her to organise duty shifts; (b) some of her colleagues had kept ignoring her, and had failed to perform specific tasks allocated by her, without facing any sanctions; (c) her report on the illicit actions of one of the prisoners had never been dealt with; the same prisoner had said that she was not worried about the report as she had been told that the applicant would soon be "out of there" ("*leti sa posla*"); (d) she had been ordered to make coffee twice a day for one of the prisoners, and had complained about it to the assistant governor. She submitted that, on an unspecified date thereafter, the governor of the IECS asked her what had given her the right to complain to the assistant governor about that.

18. On 16 August 2013 the applicant requested her employer to initiate proceedings for her protection against bullying ("*za zaštitu of mobinga*"), and described all of the above incidents. She complained of continuous insults and humiliation at work which were causing health problems.

19. On 26 August 2013 the applicant went on holiday, and on 10 September 2013 she went on sick leave.

20. Between 12 September and 30 October 2013 she asked the inspection authority (*Uprava za inspekcijske poslove*), the prison management and the mediator (the officer in charge of proceedings for bullying in the employer company; see paragraph 48 below) to deal with her request.

21. On 6 November 2013 the mediator dismissed her request as unfounded (*odbacuje se kao nesonovan*). He considered, in substance, that even assuming that her allegations were true, the conduct complained of had not been continuous. The incidents with N.R. and the damage to her car had taken place outside of the workplace and thus were not within the IECS's sphere of responsibility, and her transfer to another position had been due to her failing to do her job properly.

22. On 20 November 2013 the applicant instituted civil proceedings against her employer. She described the above events and maintained that her personal and professional integrity had been violated as a result. She also submitted that no decision on her appointment had been issued as of November 2013 and that her salary was being calculated on the basis of a lower coefficient.

23. During the proceedings an expert witness found that the applicant had psychological problems related to conflict at work and that her capacity to function was permanently reduced by 20% (*trajno umanjenje životne aktivnosti*) owing to post-traumatic stress disorder and an adjustment disorder with episodes of reactive psychosis.

24. On 10 February 2015, at about 9.15 p.m., just over a week before the domestic court was due to rule in the ongoing civil proceedings (see paragraph 28 below), the applicant was assaulted in a car park where she was collecting her daughter after her classes. The attacker approached her from behind and inflicted several blows on the back of her neck and the lower part of her back, and around the left elbow and the thighs. When leaving the attacker told her: "Be careful what you're doing".

25. The same evening the applicant was examined by a doctor in the emergency ward of the clinical centre (*Urgentni centar*), who noted a haematoma of about 3 cm in diameter on the back of her neck, pain in the left shoulder and significantly reduced mobility of the left arm. The doctor also notified a police officer on duty in the emergency ward that the applicant had been assaulted. The police officer talked to the applicant and advised her to file a complaint the next morning.

26. The next morning, on 11 February 2015, the applicant filed a complaint with the police and attached a medical report. She submitted that the attacker had been "rather short", and described his clothing.

27. It transpires from the official police records of 16 February 2015 that the State prosecutor was informed of this and ordered the police to take

action to identify the attacker. A police officer made an on-site inspection and spoke to people living in the building in front of which the incident had taken place, but neither measure enabled the attacker to be identified. There was no video surveillance at the scene either. The State prosecutor ordered that the police keep working on the identification of the perpetrator.

28. On 19 February 2015 the Court of First Instance (*Osnovni sud*) in Podgorica ruled against the applicant in civil proceedings (see paragraph 22 above). The court considered her submissions to be true, and observed that the respondent party had offered no evidence to the contrary. It found, on the basis of the expert witness opinion, that the applicant's psychological problems were related to conflict at work. However, it considered, in substance, that the events complained of did not amount to bullying as they had lacked the necessary frequency. In particular, bullying was a form of systematic psychological ill-treatment, rather than being sporadic and individual, and as such required repetition of the actions over a certain period. According to most academics in this field, that meant at least once a week for at least six months. That position was also accepted in the domestic case-law, notably in judgments P.br.2226/11 and P.br.768/11 (see paragraphs 60-61 below).

29. The court examined, in particular, the incidents of 13 January, 8 March and 24 June 2013. The conversation with N.R. had not amounted to psychological ill-treatment, and even assuming that the incident with M.Ž. could be considered as such, it had taken place on 8 March 2013 and the applicant had gone on holiday on 26 August 2013; therefore it had not lasted for six months, nor had it occurred once a week. The events involving the assistant governor and M.R. did not amount to bullying either, especially given that, in accordance with the systematisation of jobs, the applicant had in any event not met the criteria for the position she had been covering at the time. The court considered that these incidents taken together did not amount to bullying either, and that there had been no behaviour aimed at violating the applicant's dignity and integrity, causing fear or creating a hostile, degrading or insulting environment, worsening her working conditions or leading to her isolation and making her resign of her own accord.

30. The court also held that the fact that no decision had been made on the applicant's appointment after November 2013, and the fact that her salary was calculated on the basis of a different coefficient, did not constitute bullying either. If she considered that she had received a lower salary than she was entitled to she could have filed a compensation claim in that regard, and she would be informed of the new decision on appointment on her return from sick leave.

31. The court did not examine the following submissions: that one of the applicant's subordinates had failed to perform the allocated tasks; that the governor of the prison had forbidden the applicant to organise duty shifts,

which she had done previously; that the applicant had been ordered to make coffee for one of the prisoners twice a day; that a report concerning the search of one prisoner's rooms had never been dealt with and that the prisoner in question had said that she was not worried about the report as the applicant would soon be fired.

32. The applicant appealed. She submitted that the court had had all the right evidence before it, but that its assessment of that evidence had been incorrect, as had its interpretation of the relevant legislation. She also submitted that on 10 February 2015 she had been assaulted (see paragraph 24 above).

33. On 13 November 2015 and 15 June 2016 the first-instance judgment was upheld by the High Court (*Viši sud*) and the Supreme Court (*Vrhovni sud*) respectively. The High Court confirmed that for actions to constitute bullying it was necessary for them to be repeated over a longer period and continuously. In the applicant's case there had been three incidents in about six months, which could not be considered as amounting to bullying. The court also held that the fact that there had been no new appointment decision and that the applicant's salary had been calculated on the basis of the lower coefficient did not amount to bullying either. The expert witness's finding that the applicant had suffered from stress had reflected her subjective feelings about the said events. The court further found that the assault against the applicant was irrelevant given that she had not proved that it had been related to the respondent party's actions. The Supreme Court held, *inter alia*, that "bullying, as a form of discrimination, [could] constitute discrimination only if the treatment [was] based on personal characteristics of the employee or of a group of employees".

34. On 2 August 2016 the applicant lodged a constitutional appeal. She complained of a violation of her dignity, honour and reputation and of her personal and professional integrity. She also complained of a lack of an effective remedy. She referred to all of the above-mentioned incidents, and submitted that the two incidents in respect of which she had filed criminal complaints were related. She referred, *inter alia*, to Articles 20 and 28 of the Constitution, Article 3 of the Convention and Article 1 of Protocol No. 12.

35. On 15 November 2017 the Constitutional Court dismissed the applicant's constitutional appeal. The court examined it under Articles 28 and 32 of the Constitution, Articles 6 and 14 of the Convention, and Article 1 of Protocol No. 12. It found, in substance, that there were no grounds to find that the applicant had been bullied at work, and that the Supreme Court's judgment was in accordance with the legislation, providing sufficient, relevant and constitutionally acceptable reasons. The Constitutional Court made no reference to the criminal complaints filed by the applicant and the alleged failure of the domestic authorities to act on them. This decision was served on the applicant on 5 January 2018.

II. THE APPLICANT'S EMPLOYMENT

36. The applicant worked in the IECS between September 1998 and May 2016.

37. Between 1 February 2005 and 1 June 2012 she was a State employee in the women's prison.

38. Between 1 June 2012 and 1 December 2013 she was temporarily appointed as an adviser, covering the position of the head of shift. The appointment was extended on a monthly basis, with the relevant decisions specifying that this was to ensure the smooth and successful functioning of the security unit.

39. Between 10 September 2013 and May 2016 the applicant was on sick leave.

40. Until 1 December 2013 her salary was calculated on the basis of a coefficient of 5.01, and after that on the basis of a coefficient of 3.77.

41. In May 2016 the applicant retired owing to a complete loss of working capacity caused by illness. The Pension Fund Disability Commission (*Prvostepena invalidska komisija*) specified in its findings that the applicant's psychological problems had appeared for the first time during 2013 after a stressful situation at work, after which she had received continuous outpatient psychiatric treatment. The Government submitted that these were the data the Commission had obtained from the applicant, and not the Commission's own findings.

III. OTHER RELEVANT FACTS

42. On 2 September 2014 the Ombudsman's office, acting on the applicant's complaint, informed her that it did not consider her rights to have been violated.

43. On 18 February 2020 the Council for Civic Control of the Police, acting at the applicant's request, found that the legislation did not set a time-limit within which an assault needed to be reported, but that it went without saying that it should be reported as soon as possible. It found that in this particular case the applicant had reported the assault in the shortest time possible, following the advice of the police officer on duty in the hospital (see paragraphs 24-26 above).

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. RELEVANT DOMESTIC LAW

A. Constitution of Montenegro 2007 (*Ustav Crne Gore*; published in the Official Gazette of Montenegro – OGM – nos. 01/07 and 038/13)

44. Article 28 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. It also prohibits torture and inhuman and degrading treatment.

45. Articles 20 and 32 provide for the right to a legal remedy and the right to a fair trial respectively.

B. Labour Act (*Zakon o radu*, published in OGM nos. 049/08, 026/09, 088/09, 026/10, 059/11, 066/12, 031/14, 053/14 and 004/18)

46. Section 8a of the Labour Act prohibits every form of ill-treatment at work (bullying), that is, any behaviour towards an employee or a group of employees at work which is repeated and is aimed at violating, or represents a violation of, the dignity, reputation, personal or professional integrity or status of the employee, or which causes fear or creates a hostile, humiliating or insulting environment, worsens working conditions or makes the employee isolate himself or herself or prompts him or her to terminate the employment relationship. The same section provides that other details relating to prevention of and protection from bullying are further specified in a separate statute.

C. Prohibition of Ill-treatment at Work Act (*Zakon o zabrani zlostavljanja na radu*, published in OGM nos. 030/12 and 054/16)

47. Section 2 defines bullying as any active or passive behaviour at work or related to work in respect of an employee or a group of employees which is repeated and is aimed at violating, or represents a violation of, the dignity, reputation or personal and professional integrity of the employee, or which causes fear or creates a hostile, humiliating or insulting environment, worsens working conditions or makes the employee isolate himself or herself or makes him or her terminate the employment relationship or another contract. Bullying also encompasses inciting or persuading others to this behaviour. A perpetrator of bullying may be an employer who is a physical person, a person in a position of responsibility with an employer that is a legal entity, an employee or a group of employees at work or

another person with whom an employee or an employer comes into contact when performing his or her work.

48. Section 9 provides, *inter alia*, that an employer with more than thirty employees must designate one or more persons who will mediate between the parties in cases of bullying ("the mediator").

49. Section 12 provides that an employee is entitled to protection from bullying.

50. Sections 15-24 describe the procedure for protection from bullying. In particular, an employee who considers himself or herself to be a victim of bullying must request in writing that a mediator initiate proceedings for protection from bullying. The mediation proceedings are treated as urgent and the mediator must initiate them within three days of receiving a written request. The mediation proceedings must be completed within eight days of their initiation, either by: (a) the parties reaching a written agreement; (b) the mediator issuing a decision that mediation has failed; or (c) the parties waiving further proceedings. The time-limit for completing the mediation proceedings may, in exceptional cases, be extended to thirty days at most. If the parties in dispute fail to reach an agreement the mediator must serve the person who requested the proceedings with notification that the mediation has not been successful, within three days from the expiry of the above time-limit.

51. Section 25 provides that an employee who is not satisfied with the outcome of mediation proceedings may, *inter alia*, file a civil claim before the courts.

52. Section 27 provides that if during the proceedings the claimant makes out an arguable case that there was bullying within the meaning of section 2, the burden of proving that there was no bullying shifts to the respondent party.

D. Criminal Procedure Code 2009 (*Zakonik o krivičnom postupku*; published in OGM nos. 057/09, 049/10, 047/14, 002/15, 035/15, 058/15 and 028/18)

53. Article 256 provides that a criminal complaint is to be submitted to the relevant State prosecutor. A complaint submitted to the police will be accepted and immediately transmitted to the relevant State prosecutor.

54. Article 256a provides that the State prosecutor must issue a decision within three months at the latest. By way of exception, in complex cases, the decision may be issued within six months at the latest (except in cases involving secret surveillance measures). The prosecutor may request in writing an extension for another month.

55. Article 271 provides that the State prosecutor must dismiss the complaint on procedural grounds by a reasoned decision if, *inter alia*, the offence at issue is not a criminal offence, or it is not a criminal offence

subject to public prosecution. The person who lodged the complaint and any other injured party must be informed about this decision, and must also be informed that they may file an objection against it.

56. Article 59 § 1 provides that when a State prosecutor finds that there are no grounds for public prosecution he or she must inform the injured party accordingly within eight days and serve him or her with the decision in that regard, while informing him or her of the possibility of taking over the prosecution.

E. Internal Affairs Act (*Zakon o unutrašnjm poslovima*, published in OGM nos. 044/12, 036/13, 001/15 and 087/18)

57. Sections 16 and 17, taken together, provide that a person who considers that his or her rights and freedoms have been violated by police actions may file an objection or initiate court proceedings and seek compensation.

F. IECS Rules on Internal Organisation and Job Systematisation (*Pravilnik o unutrašnjoj organizaciji i sistematizaciji Zavoda za izvršenje krivičnih sankcija*)

58. The 2004 IECS rules on job systematisation provided that candidates for the position of adviser required, *inter alia*, a specific college degree and had to have passed the examination for senior guards supervisor. The position of State employee required a high school diploma.

59. Under the 2006 IECS rules on job systematisation, candidates for the position of adviser required a specific college degree and had to have passed the examination for guards supervisor.

G. Domestic case-law

60. On 26 November 2012 and 10 May 2013 respectively the Court of First Instance in Podgorica ruled in two cases against claimants alleging that they had been victims of bullying (P.br. 768/11 and P.br. 2226/11 respectively). The court found in both cases that in order for ill-treatment to amount to bullying, most academics considered that it needed to be repeated at least once a week for at least six months. In one of the two cases the court also held that besides the frequency, in order to amount to bullying the impugned behaviour had to place the person in question in an unequal position on one of the grounds set out in section 2(2) of the Prohibition of Discrimination Act. In both cases the single judge deciding the case was the same one who later ruled in the applicant's case before the Court of First Instance.

61. Between 15 September 2017 and 24 May 2019 the Courts of First Instance in Cetinje and Podgorica respectively ruled in two cases in favour of claimants and found that they had been victims of bullying. In the first case the claimant had been a victim of bullying between June 2012 and June 2015, and in the second one between January 2013 and April 2017. Both judgments were upheld by the High Court in Podgorica, on 18 May 2018 and 6 September 2019 respectively. None of those decisions included a requirement that in order to amount to bullying the ill-treatment needed to have been repeated at least once a week for at least six months.

II. RELEVANT INTERNATIONAL MATERIAL

62. Part I of the European Social Charter (Revised) provides that the Parties accept as the aim of their policy, to be pursued by all appropriate means both national and international in character, the attainment of conditions in which a number of rights and principles, including the right to dignity at work, may be effectively realised. Part III provides, *inter alia*, that each of the Parties undertakes to consider Part I as a declaration of the aims which it will pursue by all appropriate means.

63. Article 26 provides for the right to dignity at work. Paragraph 2, in particular, provides that, with a view to ensuring the effective exercise of the right of all workers to protection of their dignity at work, the Parties undertake, in consultation with employers' and workers' organisations, to promote awareness, information and prevention of recurrent reprehensible or distinctly negative and offensive actions directed against individual workers in the workplace or in relation to work and to take all appropriate measures to protect workers from such conduct.

64. Montenegro has ratified the European Social Charter (Revised), declaring itself legally bound to accept a number of its provisions, although Article 26 § 2 is not amongst them.

65. On 21 June 2019 the United Nations International Labour Organisation (ILO) adopted a Convention concerning the elimination of violence and harassment in the world of work. The Convention entered into force on 25 June 2021. Montenegro has not ratified it.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

66. The applicant complained under Articles 3 and 6 of the Convention of a violation of her psychological integrity caused by continuous active and passive bullying at work, and of the failure of the domestic bodies to protect her from it.

67. The Government contested the applicant's complaint.

68. 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, 20 March 2018).

69. The Court considers that the complaint in the present case falls to be examined under Article 8 of the Convention (see *Sandra Janković v. Croatia*, no. 38478/05, § 27, 5 March 2009, and *Dolopoulos v. Greece* (dec.), no. 36656/14, §§ 35-37, 17 November 2015). Article 8 of the Convention 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. The parties' submissions

1. The Government

70. The Government submitted that the present application was manifestly ill-founded or, alternatively, that there had been no violation of Article 8. In particular, the applicant had referred to only a few situations at work, in which there had been no element of bullying. Her colleagues' comments had been at most inappropriate, and in any event had lacked the necessary frequency to amount to systematic psychological ill-treatment. The decisions issued in that regard, both by the mediator and by the courts, had been duly reasoned, with the latter also referring to the existing case-law. The applicant had only a high school diploma and thus had not met the conditions for the position of adviser. She had been appointed to that position only temporarily, owing to a lack of staff. As she had been on sick leave continuously as of September 2013 until her retirement she could not have been appointed to a specific post, pursuant to the relevant statutory provisions, and her salary had therefore been calculated in accordance with her permanent position as a State employee.

71. The stress that the applicant had suffered had been her subjective experience (*doživljaj*) of the events in question, and the fundamental condition for the respondent's party responsibility, namely a causal

relationship between the harm the applicant had suffered and the respondent party's actions, was not met. This had also been recognised by the Ombudsman.

72. The damage to the applicant's car and the assault on her had been isolated incidents, unrelated to each other, and the latter was also unrelated to her claims that she had been a victim of bullying at work. In general, the relevant criminal-law mechanisms in Montenegro were satisfactory. In particular, the applicant's complaint about the assault had been duly processed. Even assuming that the prosecutor had not acted entirely in accordance with the Criminal Procedure Code in terms of the formal actions taken, these had been only technical shortcomings and oversights which should not be viewed with excessive formalism. The applicant, for her part, should have indicated more concretely and in more detail the facts of the assault. The fact that she had not filed a complaint until the next day was also suspicious. Finally, if she had been dissatisfied with the police actions she could have complained in that regard (see paragraph 57 above).

73. The Pension Fund Commission's statement that the first psychological problems had appeared during 2013 after a stressful situation at work was actually based on data obtained from the applicant, and not on the findings of the Commission itself (see paragraph 41 *in fine* above).

2. The applicant

74. The applicant reaffirmed her complaint. In particular, the ill-treatment at work had violated her dignity, honour and reputation as well as her personal and professional integrity, which was how bullying was defined in the relevant legislation. It had caused her considerable mental, social and psychosomatic problems which had ultimately led to a permanent loss of working capacity, as established by the Pension Fund, and as a result of which she had had to retire at the age of 37.

75. Despite this, the State bodies had failed to protect her. In particular, the proceedings before her employer had not been in compliance with the relevant legislation (see paragraph 50 above). The conversation with S.R. had not been a professional exchange indicating the criteria provided for in the rules on job systematisation, and the finding that she had not been performing her duties satisfactorily had been unfounded (see paragraph 38 *in fine* above). The courts had failed to take into account a number of situations at work (see paragraph 31 above) and instead had believed her employer, who had not been happy that she had been reporting irregularities at work, not only by her colleagues but by her superiors too.

76. The relevant State bodies had not acted in compliance with the relevant legislation in dealing with her two criminal complaints either. She had reported the assault immediately the next morning, following the advice of the police officer on duty in the hospital, and had provided all the necessary details. The fact that she had not complained about the work of

the police officer in charge did not deprive her of her right to have her complaint dealt with.

77. The Ombudsman had ruled only on the basis of her employer's submissions, without summoning and hearing the applicant and the persons to whom the complaint related; this was not in compliance with the relevant legislation either.

78. She had been temporarily appointed as adviser also between 1 September and 1 December 2013, that is, when on sick leave. Finally, the first domestic judgments ruling in favour of victims of bullying had been issued after she had already lodged her constitutional appeal.

B. The Court's assessment

1. Admissibility

(a) Applicability of Article 8 of the Convention

79. While the Government made no comment as to the applicability of Article 8, this being a matter that goes to the Court's jurisdiction and which it must establish of its own motion (see, for instance, *Jeanty v. Belgium*, no. 82284/17, § 58, 31 March 2020), the Court finds it important to note the following.

80. The Court has previously held, in various contexts, that the concept of private life is a broad term not susceptible to exhaustive definition. It includes a person's physical and psychological integrity (see *Denisov v. Ukraine* [GC], no. 76639/11, § 95, 25 September 2018, and *Remetin v. Croatia*, no. 29525/10, § 90, 11 December 2012), and extends to other values such as well-being and dignity, personality development and relations with other human beings (see *N.Š. v. Croatia*, no. 36908/13, § 95, 10 September 2020, with further references).

81. In order for Article 8 to come into play, however, an attack on a person must attain a certain level of seriousness and be made in a manner causing prejudice to the personal enjoyment of the right to respect for one's private life (see *Beizaras and Levickas v. Lithuania*, no. 41288/15, § 109 *in fine*, 14 January 2020). Not every act or measure which may be said to affect adversely the moral integrity of a person necessarily gives rise to such an interference (see *Nicolae Virgiliu Tănase v. Romania* [GC], no. 41720/13, § 128, 25 June 2019, and the authorities cited therein).

82. In the instant case, the applicant felt distress as a result of the impugned incidents allegedly imputable to her colleagues, including both her subordinates and her superiors, and complained that the State had failed to protect her. The expert's opinion issued in the course of the domestic civil proceedings, which was not disputed either in the domestic proceedings or by the Government, confirmed that the incidents in question had had an adverse impact on the applicant's moral integrity and had left

long-lasting effects on her well-being. In particular, the expert established that the applicant had psychological problems related to conflict at work and that her capacity to function was permanently reduced by 20% owing to post-traumatic stress disorder and an adjustment disorder with episodes of reactive psychosis (see paragraph 23 above). The Court considers that, in such circumstances, the causal link between the incidents in question and the alleged deficient reaction of the relevant authorities, on the one hand, and the applicant's psychological problems, on the other hand, can be regarded as clearly established. In addition, there was a concrete act of physical violence in February 2015 in the applicant's case, which could not necessarily be detached from the other incidents complained of given its proximity to the pending civil proceedings in her regard (see, *mutatis mutandis*, *Sandra Janković*, cited above, § 31; see, conversely, *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).

83. In these circumstances, the Court finds that the treatment complained of by the applicant reached the threshold of applicability of Article 8.

(b) The Court's assessment

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

2. Merits

(a) General principles

85. The relevant principles in this regard are set out, for example, in *Nicolae Virgiliu Tănase*, cited above, §§ 125-28). In particular, 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 the relations of individuals between themselves (ibid., § 125; see also *Söderman v. Sweden* [GC], no. 5786/08, § 78, ECHR 2013).

86. Whether a case be analysed in terms of a positive duty on the State to take reasonable and appropriate measures to secure the applicant's rights under paragraph 1 of Article 8 or an "interference by a public authority" to be justified in accordance with paragraph 2, the applicable principles are broadly similar (see *Demir and Baykara v. Turkey* [GC], no. 34503/97, § 111, ECHR 2008). 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 in determining the steps to be taken to ensure compliance with the Convention. Furthermore, even in relation to the positive obligations flowing from the first paragraph of Article 8, in striking the required balance the aims mentioned in the second paragraph may be of a certain relevance (see, for example, *Burlya and Others v. Ukraine*, no. 3289/10, § 162, 6 November 2018).

87. The Court has previously held, in various contexts, that the concept of private life includes a person's physical and psychological integrity. Under Article 8 States have a duty to protect the physical and moral integrity of an individual from other persons. To that end they are to maintain and apply in practice an adequate legal framework affording protection against acts of violence by private individuals (see *Isaković Vidović v. Serbia*, no. 41694/07, § 59, 1 July 2014, and the authorities cited therein), including in the context of harassment at work (see *Dolopoulos*, cited above, §§ 56-57).

88. In the context of attacks on the physical integrity of a person, such protection should be ensured through efficient criminal-law mechanisms (see *Remetin v. Croatia (no. 2)*, no. 7446/12, § 70 *in fine*, 24 July 2014, and the authorities cited therein). Where attacks on physical integrity come from a private individual, the Convention does not necessarily require State-assisted prosecution of the attacker in order to secure the applicant's Convention rights (see *Sandra Janković*, cited above, § 50). In such instances, it is conceivable under the Convention for domestic law to afford the applicant a possibility to pursue the prosecution of his attacker, either as a private prosecutor or as the injured party in the role of a subsidiary prosecutor (see *M.S. v. Croatia*, no. 36337/10, § 75, 25 April 2013). In each case, however, irrespective of whether the prosecution remained in the hands of the domestic authorities or the applicant availed himself of the possibility to pursue the prosecution of his attacker, the Court must examine the relevant criminal-law mechanisms and the manner in which they were implemented (see *Remetin*, cited above, §§ 95-96, and the authorities cited therein).

89. As regards less serious acts between individuals which may violate psychological integrity, an adequate legal framework affording protection does not always require that an efficient criminal-law provision covering the specific act be in place. The legal framework could also consist of civil-law remedies capable of affording sufficient protection (see *X and Y v. the Netherlands*, 26 March 1985, §§ 24 and 27, Series A no. 91; *Söderman*, cited above, § 85; *Tolić v. Croatia* (dec.), no. 13482/15, §§ 94-95, 4 June 2019; and *Noveski v. the Former Yugoslav Republic of Macedonia* (dec.), nos. 25163/08 and 2 others, § 61, 13 September 2016).

90. The Court has also considered, albeit in the context of Article 10, that whistle-blowing by an applicant regarding alleged unlawful conduct on the part of his or her employer requires special protection in certain

circumstances (see *Guja v. Moldova* [GC], no. 14277/04, §§ 72 and 77, ECHR 2008; *Langner v. Germany*, no. 14464/11, § 47, 17 September 2015; and *Heinisch v. Germany*, no. 28274/08, § 63, ECHR 2011 (extracts)).

(b) Application of these principles

91. The issue before the Court is not whether the remedies used by the applicant led to a result favourable to her but whether they were sufficient and accessible and applied a standard of protection that secured in principle effective defence of the applicant's Article 8 rights.

92. Furthermore, the Court's task is not to substitute itself for the competent domestic authorities in determining the most appropriate methods of 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 domestic authorities, in handling the applicant's case, were in breach of their positive obligation under Article 8 of the Convention (see, *mutatis mutandis*, *Isaković Vidović*, cited above, § 60).

93. The Court observes that the domestic law provided for possibilities for the applicant to seek protection against harassment at work. In her particular case those possibilities included mediation, administrative complaints to her managers and the authorities responsible for managing the prison system, and civil proceedings for damages. There is no indication that those possibilities, as set out under the relevant law, were inherently inadequate or insufficient to provide the requisite protection against incidents of harassment. It is also important, however, that the available remedies should function in practice.

94. The Court observes that the applicant first initiated proceedings before her employer and then before the civil courts. The mediation proceedings before the applicant's employer were not in compliance with the relevant legislation in that they were neither initiated nor completed within the statutory time-limits. More importantly, the mediator examined whether the applicant's request was well-founded (see paragraph 21 above), thereby overstepping his statutory competence since there was nothing in the legislation authorising him to do so (see paragraph 50 above).

95. After the mediation proceedings the applicant lodged a civil claim. It is undisputed that the civil courts considered the applicant's submissions in respect of the incidents at work to be true and found that there was at least some causal link between those incidents and the applicant's illness and psychological suffering (see paragraph 28 above). Regardless of that, however, the applicant did not receive protection because the courts required proof of incidents occurring every week for six months. Despite the margin of appreciation enjoyed by Contracting States in devising protection mechanisms in respect of acts of harassment at work, the Court finds it

difficult to accept the adequacy of such an approach in the instant case. The Court considers that complaints about bullying should be thoroughly examined on a case-by-case basis, in the light of the particular circumstances of each case and taking into account the entire context. In other words, there may be circumstances in which such incidents are less frequent than once a week over a period of six months and still amount to bullying, or circumstances in which such incidents are more frequent and yet do not amount to bullying.

96. The Court also notes that the relevant case-law in Montenegro is scarce and not settled in relation to, in particular, the element of frequency of occurrence of bullying needed to trigger the application of the Prohibition of Ill-treatment at Work Act. Only four domestic judgments have been provided by the Government (see paragraphs 60-61 above). Two of them found in favour of the claimants and two against the claimants, and only the latter two required bullying to occur at least once a week for a period of six months, whereas the former two contained no such requirement. The Court further notes that, when interpreting bullying, the judge ruling in the applicant's case referred to two earlier domestic judgments, in which he had also been the ruling judge.

97. Although the workplace incidents examined in the applicant's case may indeed not have amounted to bullying, the courts examined only some of them, while a number of the incidents complained of remained completely unexamined (see paragraph 31 above). The courts made no attempt to establish how often these other incidents had been repeated and over what period, or to examine them individually and taken together with the other incidents. They also failed to consider the context and the alleged background to the incidents, notably the applicant's reporting some of her colleagues for their conduct on the New Year's Eve, conduct which led to disciplinary proceedings and sanctions. The Court cannot overlook the applicant's allegation that the acts of harassment to which she was subjected were in reaction to her reporting the alleged illegal activities of some of her colleagues and were aimed at silencing and "punishing" her. In the Court's view, States' positive duty under Article 8 to effectively apply in practice laws against serious harassment takes on a particular importance in circumstances where such harassment may have been triggered by "whistle-blowing" activities.

98. Admittedly, the applicant did not pursue some other possible remedies such as challenging the unfavourable calculation of her salary before the courts. However, she did try to obtain protection via an appropriate path in the circumstances since her complaints did not relate to an employment dispute of a pecuniary nature.

99. In addition to the incidents at work there were two other incidents which took place outside of the applicant's workplace, which she considered to be related and in respect of which she filed criminal

complaints. Specifically, the applicant's car was damaged in January 2013 and she was assaulted in February 2015.

100. The Court has already held that the relevant domestic criminal legal framework in Montenegro provides sufficient protection in respect of such assaults (see *Milićević v. Montenegro*, no. 27821/16, § 57, 6 November 2018). It observes, however, that, contrary to the relevant legal provisions (see paragraphs 53-56 above), the State prosecutor did not issue any official decision whatsoever for more than eight and six years respectively in response to the applicant's complaints, thereby effectively preventing her from taking over the investigation as a subsidiary prosecutor, or a private prosecutor as the case might be, and consequently denying her the ability to bring proceedings before a court of competent jurisdiction. The applicant raised before the Constitutional Court the issue concerning the State prosecutor's failure to deal with her criminal complaints, but that court made no reference to it whatsoever (see paragraph 35 above). While it might have been established that neither the damaging of the applicant's car nor the assault against her were in any way related to the incidents at work, the Court cannot but note the above failures of the domestic bodies in dealing with the applicant's criminal complaints in that regard (see *Remetin (no. 2)*, cited above, §§ 111-12).

101. In view of the above the Court considers that the manner in which the civil and criminal-law mechanisms were implemented in the particular circumstances of the applicant's case, in particular the lack of assessment of all the incidents in question and the failure to take account of the overall context, including the potential whistle-blowing context, was defective to the point of constituting a violation of the respondent State's positive obligations under Article 8 of the Convention. There has accordingly been a violation of that Article.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

102. The Government were also given notice of a complaint under Article 13 of the Convention, which reads as follows:

> "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."

103. The Government contested the applicant's submissions in this regard.

104. Given that the applicant's complaint under Article 13 is effectively the same as her complaint already considered under Article 8, and having regard to its finding in respect of the latter (see, in particular, paragraph 101 above), the Court declares the former complaint admissible but considers that it need not be examined separately on its merits (see *Isaković Vidović*, cited above, § 66, and the authorities cited therein).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

105. 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

106. The applicant claimed 50,000 euros (EUR) in respect of non-pecuniary damage.

107. The Government contested the claim as unfounded and excessive.

108. The Court awards the applicant EUR 4,500 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

109. The applicant also claimed EUR 1,000 in total for the costs and expenses incurred before the domestic courts and the Court. She submitted as proof a copy of a payment slip certifying that she had paid the specified amount to her representative for her representation before the Constitutional Court and the Court.

110. The Government contested the claim as unfounded and excessive, and insufficiently itemised.

111. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the entire sum claimed covering costs under all heads, plus any tax that may be chargeable to the applicant.

C. Default interest

112. 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* that there is no need to examine the complaint under Article 13 of the Convention;

4. *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 1,000 (one 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;

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

Done in English, and notified in writing on 9 November 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Victor Soloveytchik
Registrar

Síofra O'Leary
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Yudkivska is annexed to this judgment.

S.O.L.
V.S.

CONCURRING OPINION OF JUDGE YUDKIVSKA

I voted together with my colleagues for the finding that Article 8 of the Convention is applicable in the present case, albeit with some hesitation.

There is no doubt that the applicant was deeply humiliated by her colleagues – both superiors and subordinates – and as a result, as concluded in paragraph 82 of the judgment, "felt distress" and experienced "psychological problems related to conflict at work" and "post-traumatic stress disorder".

However, is this enough to reach the threshold of severity required to trigger the State's positive obligations under Article 8?

At first glance it looks like an unfortunate, but rather banal, conflict situation in the workplace: the applicant was not allowed to organise duty shifts; some of her colleagues kept ignoring her and failed to perform tasks assigned by her; her report on the actions of one of the prisoners was never dealt with; the same prisoner said that she was not worried about the report as she had been told that the applicant would soon be "out of there"; and she was ordered to make coffee twice a day for one of the prisoners. This clearly put the applicant in a very difficult situation; however, by itself, this obvious unease was not capable of coming within the ambit of Article 8 requiring the State to react.

In addition, at one point the front windscreen of the applicant's car was broken; about six months later a colleague suggested she should lose fifty kilos in order to "look acceptable"; and some twenty months later she was beaten up in a car park – an incident which, according to the Chamber, "could not necessarily be detached from the other incidents complained of" (in other words, it was likely that this incident was part of a campaign against the applicant, although that was not proved).

All of these incidents taken together constituted "bullying" in the applicant's view.

In my years at the Court, I have consistently opposed the proliferation of what are construed to be "fundamental rights". I have argued that "the Convention cannot be interpreted as an inexhaustible source of different privileges which were never intended to be guaranteed"[1]; that Article 8 does not require "the State to guarantee the level of comfort an individual seeks ... A mere issue of a greater or lesser degree of psychological comfort does not ... reach the required 'level of seriousness', and goes far beyond the original intentions of the drafters of the Convention to protect the private life of an individual against arbitrary interference by the public authorities"[2]; and that "the Convention ... is concerned exclusively with the

[1] Partly dissenting opinion in the case of *Evers v. Germany*, no. 17895/14, 28 May 2020.
[2] Concurring opinion in the case of *Dubská and Krejzová v. the Czech Republic*, nos. 28859/11 and 28473/12, 11 December 2014.

protection of fundamental human rights rather than with the fostering of feelings of one kind or another"[3].

Lord Bingham famously observed that "[t]he Convention is concerned with rights and freedoms which are of *real* importance in a modern democracy governed by the rule of law. It does not, as is sometimes mistakenly thought, offer relief from 'the heartache and the thousand natural shocks that flesh is heir to"[4] (emphasis added). In another recent separate opinion I quoted Milan Kundera, for whom the very notion of "human rights" had lost its meaning, becoming more a "kind of universal stance of everyone toward everything ... the desire for love [being turned into] the right to love, the desire for friendship [being turned into] the right to friendship ..."[5].

From this perspective, the applicant's sufferings appear to be a regrettable "heartache" and a "desire" for normal relations with colleagues, rather than a fundamental right. It is hard to imagine that the "founding fathers" of the Convention who drafted Article 8 – explicitly seeking to limit it "solely to the *essential* rights"[6] (emphasis added) – as a classic negative right guaranteeing protection from unlawful and arbitrary interference with one's private and family life, meant to secure a right to a normal working atmosphere and protection from slurs on the part of one's co-workers.

It is noticeable that, in recent years, the Court has dramatically expanded the protection of the personal sphere to include virtually all "aspects of an individual's physical and social identity"[7], in other words to include everything that, the Court believes, is of *essential importance* for a person.

Due to growing standards of human dignity, the Court can no longer apply post-Second World War approaches to current pressing human rights issues. The human sensitivity threshold to griefs has become extremely low. As humiliation is a breeding ground for psychological suffering, our tolerance towards it has declined considerably.

Social advances require evolutive interpretation. Although they are much harder to pin down than advances in technology, they call for application of the "living tree" doctrine even more than technological development does.

Human dignity is harmed when a person is marginalised, disregarded or degraded, and the concept of an attack on human dignity today includes not only physical trauma, not only deeply traumatic experiences in, for

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[3] Joint partly dissenting opinion in the case of *Parrillo v. Italy* [GC], no. 46470/11, ECHR 2015.

[4] *Brown v. Stott* (also known as *Brown v. Procurator Fiscal (Dunfermline)*) [2001] 2 WLR 817 PC.

[5] Milan Kundera, *Immortality*, 1991.

[6] *Travaux préparatoires* concerning Article 8. https://www.echr.coe.int/LibraryDocs/Travaux/ECHRTravaux-ART8-DH(56)12-EN1674980.pdf, p.4 .

[7] See *Paradiso and Campanelli v. Italy* [GC], no. 25358/12, § 159, 24 January 2017.

example, a war- or disaster-related context, but many other negative emotions. The boundaries of what is socially acceptable are dramatically shifting as today's society becomes more sensitive to many kinds of sufferings of different social groups that were previously deprived and powerless: women, children, minorities, and so on. Reparation for past offences against them requires a change of social norms, and the increased focus on *words* is a marker of important social changes: there are more and more words and expressions in our language that cannot be uttered because they offend the feelings of certain social groups and thus are triggers that might cause people to relive traumatic experiences.

The margins of violence and of trauma are becoming blurred: whether one was physically or verbally attacked lost a major difference – both would be trauma, and both would demand empathy. Humiliation limits human dignity, and, in the new sensitivity, feelings and emotional integrity seek legal protection. Human dignity, as elegantly put by the Supreme Court of Canada, "means that an individual or group feels self-respect and self-worth"[8]. The most important emotions of self-assessment need a society's acceptance of oneself as an inherently valuable human being, whilst humiliation produces in a person a perception of inferiority incompatible with human dignity.

Two recent judgments of the Court relating to bullying are worth mentioning in this context.

In *F.O. v. Croatia*[9], the Court dealt with a complaint from a 17-year-old student in a public high school whose teacher had on several occasions called him "a moron", an "idiot", a "fool" and a "stupid cop" (this last one because the applicant's father worked in the police); he subsequently underwent psychological treatment and a psychologist found that owing to the psychological harassment at school the applicant was suffering from an acute anxiety disorder.

In a sharply divided formation, by four votes to three, the Court found Article 8 to be applicable, but stressed "the best interests of the applicant as a child" and "his emotional disturbance, which affected his psychological well-being, dignity and moral integrity" (§ 60).

In *Beizaras and Levickas v. Lithuania*[10], two gay applicants received online comments under their photo on social media that showed hatred towards LGBT people in general, but also directly threatened them; furthermore, on several occasions the applicants had been verbally harassed in public places. They had also received several threatening private messages in their social media mailboxes. The Court found that these "offensive and vulgar" comments had "affected the applicants' psychological well-being and dignity, thus falling within the sphere of their

[8] *Law v. Canada (Minister of Employment and Integration)*, (1999) 1SCR 497, § 53.
[9] No. 29555/13, 22 April 2021.
[10] No. 41288/15, 14 January 2020.

private life" (§ 117). Reference was also made to "human dignity as a constitutional value" (ibid.).

Obviously, this does not mean that every interference with human dignity reaches the Article 8 threshold, but only those that have a serious effect on the psychological integrity of the victim.

In this respect I could not agree more with Dr Dzehtsiarou, one of the leading commentators on the ECHR, who pointed out that "the role of a human rights court is to ensure that minimal rights are properly protected while avoiding 'human rights inflation', which was defined as 'the tendency to frame any grievance as a rights violation'"[11].

One may also refer to the brilliant formula of the Italian philosopher Massimo Renzo, who suggested the notion of a "minimally decent human life" as the basis for human rights. He warned, however, that "a minimally decent life is something less than a minimally happy or flourishing life"[12]. To distinguish "minimally decent" from "minimally happy" remains the main challenge for the evolutive interpretation of the Convention and the Court's competence *ratione materiae*.

This being so, protection from bullying as an attack on human dignity (actually the very aim of bullying is dehumanisation – a destruction of human dignity) in the modern world clearly relates to a "minimally decent" life.

The role of the judge, in Justice Barak's apt words, is "*bridging* the *gap* between law and society"[13]. Our society today with its increased sensitivity requires us to see bullying as a human rights abuse. If the Court does not reflect these societal changes it will be unable to reflect the social reality and advance human rights with the same speed. Therefore, in my view, the present judgment does not amount to "human rights inflation".

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[11] Kanstantsin Dzehtsiarou, *Can the European Court of Human Rights Shape European Public Order?* CUP, 2021, pp. 4-5.

[12] Renzo, Massimo, "Human Needs, Human Rights", in: Rowan Cruft, Matthew Liao and Massimo Renzo (eds.), *The Philosophical Foundations of Human Rights*, Oxford: Oxford University Press, 2015, p. 570.

[13] See Aharon Barak, *The judge in a democracy,* Princeton University Press, 2006.