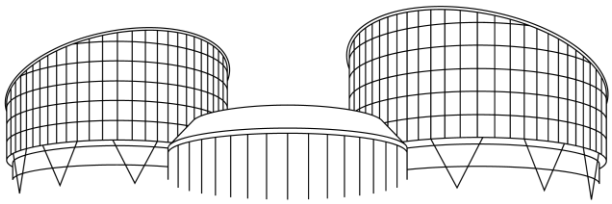

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF MILANOVIĆ v. SERBIA

(Application no. 44614/07)

JUDGMENT

STRASBOURG

14 December 2010

FINAL

20/06/2011

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

In the case of Milanović v. Serbia,

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

Françoise Tulkens, *President*,
Danutė Jočienė,
Dragoljub Popović,
András Sajó,
Nona Tsotsoria,
Kristina Pardalos,
Guido Raimondi, *judges*,
and Stanley Naismith, *Section Registrar*,

Having deliberated in private on 23 November 2010,

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

PROCEDURE

1. The case originated in an application (no. 44614/07) against Serbia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Serbian national, Mr Života Milanović ("the applicant"), on 2 October 2007.

2. The applicant was represented by Ms T. Drobnjak, a lawyer practising in Belgrade. The Serbian Government ("the Government") were represented by their Agent, Mr S. Carić.

3. The President of the Chamber gave priority to the application in accordance with Rule 41 of the Rules of Court.

4. The applicant complained about a series of religiously motivated attacks perpetrated against him.

5. On 16 November 2009 the Court decided to communicate the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it was also decided that the merits of the application would be examined together with its admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant, Mr Života Milanović, was born in 1961 and lives in the village of Belica, Jagodina Municipality, Serbia. Occasionally, however, he stays in his relative's vacant flat in Jagodina, a town comprised of some 35,000 inhabitants.

A. Introduction

7. The applicant has been a leading member of the Vaishnava Hindu religious community in Serbia, otherwise known as Hare Krishna, since 1984.

8. In 2000 and 2001 the applicant, apparently, began receiving anonymous telephone threats. On one such occasion, he was allegedly told that he would be "burned for spreading his Gypsy faith".

9. Later in 2001 the applicant informed the Jagodina Police Department (*SUP Jagodina*, hereinafter "the police") about these threats and expressed his impression that they were made by members of an organisation called *Srpski vitezovi*, a local branch of a better known far-right organisation called *Obraz*.

B. The attacks of September 2001 and other related facts

10. On an unspecified date in September 2001, in the evening hours, the applicant was attacked from behind by an unknown man, in front of his relative's flat in Jagodina, and was hit over the head by what seemed like some sort of a wooden bat.

11. On 24 September 2001, at approximately 12.30 a.m., the applicant was assaulted once again by one of three unidentified men present. The assailant inflicted several cuts to the applicant's head and chest and cut off his pigtail. The attack, once more, occurred in front of his relative's flat in Jagodina.

12. On the same day, after having received medical assistance, the applicant reported the latter incident to the police. He stated, *inter alia*, that his attackers probably belonged to an extremist organisation called *Srpski vitezovi*.

13. Later that day, the police conducted an on-site investigation, and unsuccessfully attempted to contact the applicant. The neighbours apparently said that the applicant rarely stayed in his relative's flat.

14. On 25 September 2001 the police re-interviewed the applicant, who stated that the men who had attacked him on 24 September 2001 had been "big and strong", but that it had been too dark for him to see anything else. He also recounted the earlier attack, but explained that he had not reported it to the police since he had "not seen his attacker".

15. On the same day the police issued an internal document wherein they outlined a "plan of action". As part of that plan, the police apparently questioned three members of a local skinhead group, but these persons provided them with "no useful information".

16. On 30 September 2001 and 5 October 2001 the police interviewed all local school headmasters in an attempt to gather information about the

organisations referred to by the applicant. Once again, however, "no useful information" was obtained.

C. The attack of July 2005 and other related facts

17. On the evening of 11 July 2005 the applicant suffered another attack. In the proximity of his relative's flat in Jagodina, one of three unknown youths present stabbed the applicant in his abdomen. The incident was reported to the police by the local hospital which had provided the applicant with urgent medical care.

18. The police thereafter arrived at the hospital and interviewed the applicant, who described the attack and insisted that it had been religiously motivated.

19. On five separate occasions between 13 July 2005 and 27 July 2005 the police attempted to contact the applicant at his relative's address in Jagodina, but to no avail. They learned from the neighbours that the applicant mostly lived with his parents in the village of Belica and only rarely spent time in Jagodina. The neighbours also informed the police that they had not seen the incident in question.

20. In his note of 13 July 2005 a police officer stated that the applicant, when interviewed on 11 July 2005, had failed to give the necessary details concerning the incident. Moreover, despite having had a mobile phone on his person during and after the attack he had not immediately called the police, which would have greatly facilitated the investigation.

21. On 20 July 2005 the police apparently visited several locations in an attempt to "identify" the organisation called "*Srpski vitezovi*", but "no useful information was obtained".

22. On 31 July 2005 the police briefly talked to the applicant in the village of Belica. In their report of the same date they stated that the applicant, however, "wanted no further contact" and noted his well-known religious affiliation, as well as his "rather strange appearance".

23. On 4 August 2005 the police again attempted to contact the applicant in the village of Belica. As it transpired, the applicant was not to be found there and the police were told by the neighbours that he stayed in the village mostly during the winter months.

24. On 25 August 2005 the police informed the Ministry of Internal Affairs (*Ministarstvo unutrašnjih poslova*) that they had found no evidence that organisations called *Srpski vitezovi* and *Obraz*, respectively, had ever existed in the Municipality of Jagodina. The police further noted that the applicant was a member of a "religious sect" called Hare Krishna.

25. On 26 August 2005 and 29 August 2005 the police attempted to contact the applicant at various locations, but to no avail.

26. On 15 September 2005 the police filed a criminal complaint against unknown perpetrators with the Municipal Public Prosecutor's Office

(*Opštinsko javno tužilaštvo*) in Jagodina. The complaint concerned the attack of 11 July 2005 and classified the incident as "a minor bodily injury inflicted by means of a dangerous weapon".

27. On 19 September 2005 the applicant was re-interviewed by the police.

28. Later that month the applicant provided the officers with a copy of the "The Serbian Front" (*Srpski front*), alleging that the said magazine was published by the nationalist organisations whose members had probably attacked him.

29. On an unspecified date thereafter, the Lawyers' Committee for Human Rights (*Komitet pravnika za ljudska prava*) addressed the Ministry of Internal Affairs on behalf of the applicant.

30. On 19 October 2005 the Ministry stated that the local police had indeed failed in their duty to identify the applicant's assailants. The Ministry, however, promised to do so shortly, and to press charges against the individuals responsible.

31. On 15 March 2006 the applicant and the Youth Initiative for Human Rights (*Inicijativa mladih za ljudska parva*) jointly filed a criminal complaint with the District Public Prosecutor's Office (*Okružno javno tužilaštvo*) in Jagodina. The complaint referred to the incident of 11 July 2005 and alleged that the applicant had been a victim of a crime called "incitement to ethnic, racial and religious hatred and intolerance" (*izazivanje nacionalne, rasne i verske mržnje i netrpeljivosti*, hereinafter "hate crime"), which crime had been committed by means of ill-treatment. The criminal complaint was supplemented by a medical certificate documenting the applicant's injuries.

32. On 12 April 2006 the District Public Prosecutor's Office informed the police about this criminal complaint and requested that "necessary measures be undertaken".

33. On 11 June 2006 the police attempted to contact the applicant, but to no avail.

D. The attacks of June 2006 and other related facts

34. On 18 June 2006, at approximately 2.30 a.m., the applicant was attacked yet again on the doorstep of his relative's flat in Jagodina, this time by a lone, unknown assailant, who stabbed him in his abdomen and scratched a crucifix on his head. The applicant stated that his attacker was hooded, some 180 cm tall, wore a dark sweater, and was accompanied by another man. The applicant was taken by taxi to a hospital, where he was promptly provided with medical assistance, and the doctors reported the incident to the police, who immediately took the applicant's statement and conducted an on-site investigation. However, no material evidence was

found and no persons fitting the applicant's description of the attackers were identified.

35. On 23 June 2006 the police re-visited the scene of the crime, and talked to a neighbour whose balcony overlooked the street. The neighbour apparently stated that he had not seen the incident and had also never seen the applicant in the company of others.

36. Between 1 July 2006 and 8 July 2006 the police canvassed the other neighbours, but again to no avail.

37. On 3 July 2006 the applicant and the Youth Initiative for Human Rights jointly filed a criminal complaint with the District Public Prosecutor's Office concerning the incident of 18 June 2006. The complaint alleged that the applicant had been a victim of a hate crime, as well as the crime of serious bodily injury (*teška telesna povreda*). The applicant attached a medical certificate documenting his injuries and a number of photographs to the same effect.

38. On 7 July 2006 the police interviewed the taxi driver who, however, offered no additional insight as regards the incident.

39. On 20 July 2006 the applicant gave a statement to the police, maintaining that the attack against him had been carried out by a "clero-fascist" organisation. In this respect, the applicant invited the police to question the regional head of a political party in Serbia as to whether any of his party's members were skinheads, as well as to visit a local church where, allegedly, the organisation called *Obraz* "had its premises".

40. On 21 July 2006 the District Public Prosecutor's Office informed the police of the criminal complaint filed on 3 July 2006.

41. By August 2006 the police filed a criminal complaint against unknown perpetrators with the Municipal Public Prosecutor's Office (*Opštinsko javno tužilaštvo*) in Jagodina. The complaint concerned the attack of 18 June 2006 and classified the applicant's injuries as minor in character.

42. On 22 August 2006 the police interviewed the local priest, who dismissed the assertion that any extremist organisation or informal group had ever had its seat in the church or any of its premises. He further stressed that he had only heard of an organisation called *Obraz* from the media.

43. By 25 August 2006 two senior members of the local and regional branch of the political party in question told the police that their membership did not include any skinheads or members of *Obraz*. They further emphasised that the applicant may have been manipulated by other political parties.

E. The attack of June 2007 and other related facts

44. On 29 June 2007, at approximately 4.20 a.m., the applicant was assaulted once again. Having opened the door of his relative's flat in

Jagodina to a man who had said that he was from the police, the applicant was stabbed in his chest, hands and legs. The incident was reported to the police by the local hospital which had provided the applicant with urgent medical care.

45. The police thereafter arrived at the hospital and interviewed the applicant, who recounted the attack, adding that his assailant had been a big man with a shaved head and had been dressed in dark clothes.

46. The police subsequently conducted an on-site investigation and searched for the applicant's attacker but could not find anyone fitting the description. The police noted that the applicant's clothes had not been slashed or torn and discovered "no material evidence".

47. On 2 July 2007 the applicant filed a criminal complaint with the police.

48. On 5 July 2007 the applicant and the Youth Initiative for Human Rights jointly filed an additional criminal complaint with the District Public Prosecutor's Office. The complaint concerned the incident of 29 June 2007 and alleged that the applicant had been a victim of a hate crime, as well as the crime of serious bodily injury. Again, the applicant attached a medical certificate documenting his injuries and a number of photographs to the same effect.

49. On 11 July 2007 the District Public Prosecutor's Office informed the police of this criminal complaint and requested that all necessary steps be taken to identify the perpetrator.

50. On 13 July 2007 the same office repeated this request.

F. Other relevant facts

51. The knives used to attack the applicant had apparently had shortened blades and were designed so as not to inflict fatal injuries.

52. In his report of 27 September 2001 a police officer noted that on 26 September 2001 the applicant had gone to the premises of a local television station to protest against its earlier programme in which the Hare Krishna had been depicted as a dangerous sect. The officer noted that the applicant had apparently been verbally abusive towards the station's chief editor, as well as a journalist, and ultimately had had to be removed from the building by the security staff.

53. In response to a complaint sent on behalf of the applicant by the Lawyers' Committee for Human Rights, on 28 September 2005 the Inspector General of the Ministry of Internal Affairs stated that, as regards the attacks of September 2001 and July 2005, the police had not acted with the necessary diligence. Based on this conclusion, on 7 November 2005 one of the officers involved in the investigation was sanctioned with a 10% salary reduction.

54. It would appear, from numerous media reports, that in December 2005 the Ministry of Internal Affairs declared several organisations as extremist, including *Obraz*, which was described as clero-fascist.

55. On 19 October 2006 the lawyer acting on behalf of the applicant and the Youth Initiative for Human Rights ("the lawyer") requested an update from the District Public Prosecutor's Office as regards the status of the two criminal complaints filed in respect of the attacks of 11 July 2005 and 18 June 2006. On 31 October 2006 the said office informed the lawyer that the criminal complaints had been forwarded to the police, but that the latter had failed to provide it with any information whatsoever. On 6 March 2007 the lawyer requested another update from the District Public Prosecutor's Office and on 9 March 2007 this office informed her that it was yet to receive any information from the police.

56. On 19 July 2007 the District Public Prosecutor's Office informed the applicant that the police had failed to provide it with any information in respect of the three criminal complaints filed as of July 2005.

57. On 7 March 2008 the investigating judge, as part of a preliminary investigation aimed at identifying the perpetrators, heard the applicant in respect of all of the attacks committed against him. The applicant recounted the incidents adding, *inter alia*, that he believed that he had seen his attacker of 29 June 2007 at some point later that year. The young man in question had been walking down the street with another closely shaved youth, and both had been wearing shirts with the year 1389 printed on them (it would appear that the said year referred to the medieval battle of Kosovo between the Serbs and the Turks, and possibly to a far-right organisation bearing this year as a part of its name, *Srpski narodni pokret 1389*).

58. On 23 April 2008 a medical expert diagnosed the physical harm suffered by the applicant as amounting to minor bodily injuries (*lake telesne povrede*) inflicted with a dangerous weapon.

59. On 7 May 2008 the District Public Prosecutor's Office informed the police of this finding and requested action.

60. Between 10 October 2008 and 20 January 2009 the police apparently conducted interviews with six persons suspected of committing knife-related crimes, but "no useful information was obtained".

61. On 25 November 2008 the police interviewed a certain B.M. whom they had come to suspect as one of the applicant's possible attackers. B.M., however, maintained that he had no knowledge of any of the incidents.

62. The applicant maintained that on one occasion the police had advised him not to go out in the evenings since this "clearly provoked" others, and had repeatedly seemed more interested in discussing his religious beliefs rather than the incidents in question. The Government submitted that the applicant had provided no substantiation for these particular allegations.

63. In September 2009 the Chief Public Prosecutor (*Republički javni tužilac*) petitioned the Constitutional Court (*Ustavni sud*) to ban both *Obraz* and *Srpski narodni pokret 1389*, because of, *inter alia*, their incitement to racial and religious hatred throughout Serbia.

64. In their report of 12 April 2010, *inter alia*, the police noted that: (a) most of the attacks against the applicant had been reported around *Vidovdan*, a major orthodox religious holiday; (b) the applicant had subsequently publicised these incidents through the mass media and, whilst so doing, "emphasised" his own religious affiliation; (c) the nature of the applicant's injuries had been such that their self-infliction could not be excluded; and (d) the injuries had all been very shallow, which could be considered peculiar and would imply great skill on the part of the applicant's attackers who had never managed to hold him down but had "assailed him from a distance". In the same report, however, the police then went on to recall that the District Public Prosecutor's Office had urged them to explore the hate crime aspect of the attacks and stated that the investigation would continue. More recently, the police apparently questioned several known offenders, informants and drug addicts, as well as a few of the applicant's neighbours, but obtained no useful information.

II. RELEVANT DOMESTIC LAW

65. Relevant domestic provisions are contained in Articles 19, 20, 46, 61, 223, 235, 241, 242, 433 and 437 of the Code of Criminal Procedure (*Zakonik o krivičnom postupku*, published in the Official Gazette of the Federal Republic of Yugoslavia nos. 70/01 and 68/02, as well as the Official Gazette of the Republic of Serbia – OG RS – nos. 58/04, 85/05, 115/05, 46/06, 49/07, 122/08, 20/09 and 72/09) and Article 317 § 2 of the Criminal Code (*Krivični zakonik*, published in OG RS nos. 85/05, 88/05 and 107/05).

66. In accordance with these provisions, formal criminal proceedings can be instituted at the request of an authorised prosecutor. In respect of crimes subject to prosecution *ex officio*, such as the crime of "incitement to ethnic, racial and religious hatred and intolerance" perpetrated by means of ill-treatment, a felony punishable by up to eight years' imprisonment, the authorised prosecutor is the public prosecutor personally.

67. The public prosecutor's authority to decide whether to press charges, however, is bound by the principle of legality which requires that he must act whenever there is a reasonable suspicion that a crime subject to prosecution *ex officio* has been committed. It makes no difference whether the public prosecutor has learned of the incident from a criminal complaint filed by the victim or another person, or indeed even if he has only heard rumours to that effect.

68. The public prosecutor shall undertake measures necessary for the preliminary investigation of the crimes subject to prosecution *ex officio* and

the identification of the alleged perpetrators. To that end he is vested with the power to co-ordinate the work of various law enforcement agencies and other government bodies.

69. If the public prosecutor finds, based on the evidence before him, that there is a reasonable suspicion that a certain person has committed a crime subject to prosecution *ex officio*, he will request the competent court to institute a formal criminal procedure.

70. If, however, the public prosecutor decides that there is no basis for the institution of such a procedure, he must inform the victim of this decision, who shall then have the right to take over the prosecution of the case on his or her own behalf, in the capacity of a "subsidiary prosecutor".

71. There is no time-limit within which the public prosecutor, following the submission of a criminal complaint by the victim, must decide on whether to bring formal criminal proceedings. Also, as regards crimes punishable by more than five years' imprisonment, without a prosecutorial decision to dismiss a criminal complaint filed by the victim, the victim cannot personally take over the prosecution of the case. In any event, neither a public prosecutor nor a victim acting in the capacity of a subsidiary prosecutor may request the institution of a formal criminal procedure in the absence of information as to the identity of the alleged perpetrator.

72. It is noted, however, that domestic courts have held in the past that as regards the crime of incitement to ethnic, racial or religious hatred and intolerance society as a whole had to be deemed a victim, not the aggrieved individual personally, meaning that the latter could only, following a possible prosecutorial dismissal, take over the prosecution of the case for another, lesser crime (opinion adopted at the joint session of the Federal Court, the Supreme Courts, and the Supreme Military Court of the Socialist Federal Republic of Yugoslavia on 22 June 1989).

III. RELEVANT INTERNATIONAL FINDINGS AND OPINIONS

A. European Commission against Racism and Intolerance (ECRI), Report on Serbia, CRI (2008) 25, adopted on 14 December 2007 and made public on 29 April 2008

73. The relevant paragraphs of this report read as follows:

> "45. ECRI is concerned to note that ... there is a climate of hostility against religious minorities [in Serbia]. This climate is partly created by certain media outlets and politicians. Members of these groups are also attacked, sometimes by members of neo-Nazi or far-right groups, and their places of worship are vandalised and/or deliberately set on fire. Despite a decrease in the number of these attacks over the past few years, NGOs, some of which have counted between 100 and 150 attacks per year, note that they have become more violent. Religious communities appear reluctant to report these attacks or talk about them publicly. This might be because the police and

the judicial apparatus do not always respond appropriately to this problem. Religious communities deplore the fact that few persons are brought to justice for perpetrating these acts and that those found guilty are often only sentenced to a fine.

...

52. There is currently a certain climate of hostility in Serbia against ... religious groups[,] which is fuelled by a number of media outlets and politicians. Far-right groups also help to generate negative feelings towards these communities ... NGOs condemn a certain tendency on the authorities' part to downplay this climate of intolerance against ... religious minorities and the fact that they have taken few steps to remedy it."

B. Views expressed by Forum 18

74. Forum 18 is a Christian, Norwegian-Danish, charitable web and e-mail initiative. It provides "original reporting and analysis on violations of the freedom of thought, conscience and belief of all people, whatever their religious affiliation, in an objective, truthful and timely manner".

1. Serbia: Violence continues against religious communities (article published on 9 October 2007)

"... The number of attacks on Serbia's religious communities appears to continue to be declining ... However, the attacks themselves seem to be becoming more violent and, as in previous years, members of religious minorities are especially likely to be attacked. The police continue to be apparently unwilling to protect members of religious minorities or religious sites at risk of attack – even if they have already been attacked. Members of religious minorities have in the past year been beaten and stabbed, and places of worship have been the targets of arson attacks. Places of worship of the Orthodox Church have occasionally been robbed, but the vast majority of attacks have been on ... religious minority individuals and property ..."

2. Serbia: Why won't the authorities stop religious violence? (article published on 7 February 2008)

"Despite continuing attacks on religious communities over a number of years, Forum 18 News Service has found that Serbian authorities appear to be taking few steps to protect their citizens. An extreme illustration of the unwillingness of the authorities to provide justice to religious minority victims is the case of Života Milanović, the only Hare Krishna devotee in Jagodina ..."

3. Serbia: Religious freedom survey, February 2009 (survey published on 26 February 2009)

"...The most serious problem affecting religion or belief in Serbia has been violent attacks, along with the problem of the authorities having shown a lack of willingness to catch and convict the attackers. However, annual surveys by Forum 18 News

> Service have shown that the numbers of attacks are declining, with fewer attacks in 2007 and 2008 compared to previous years. Serbia's desire to join the European Union, along with politicians placing greater weight on Serbia becoming a more open country, appears to be influencing popular attitudes, and hence the possibility of attacks. Many of the attacks and threats against 'non-traditional' religious communities appear to be by extreme nationalists who think that the communities are in some sense traitors to the nation ... There is a lack of consistency in whether attackers are arrested and court proceedings brought against them. The 2006 Serbian Constitution guarantees freedom of religion, and bars the fomenting of religious intolerance and hatred. However, members of religious minorities have told Forum 18 that these ideals have yet to become reality in their daily experience."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

75. Under Article 3 of the Convention, the applicant complained about the respondent State's failure to prevent the repeated attacks against him, as well as its unwillingness to conduct a proper investigation into these incidents. Article 3 reads as follows:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

A. Admissibility

76. The Government maintained that the application could be deemed incompatible with the provisions of the Convention *ratione temporis* in so far as it concerned events which had taken place prior to the Serbian ratification of the Convention on 3 March 2004. However, they then went on to acknowledge that the events of 2001 might indeed provide for an important context concerning the attacks which had occurred thereafter.

77. The applicant argued that his complaints were compatible with the provisions of the Convention *ratione temporis*.

78. The Court observes that, in accordance with the generally accepted principles of international law, a Contracting Party is only bound by the Convention in respect of events occurring after its entry into force. It further notes that Serbia ratified the Convention on 3 March 2004 and that some of the events referred to in the application in the present case had indeed taken place before that date. The Court therefore has jurisdiction *ratione temporis* to examine the applicant's complaints only in so far as they concern events as of 3 March 2004. It shall nevertheless, for reasons of context and whilst examining the situation complained of as a whole (see, *mutatis mutandis,*

Šobota-Gajić v. Bosnia and Herzegovina, no. 27966/06, § 45, 6 November 2007), also take into account any and all relevant events prior to that date (see, *mutatis mutandis*, *Salontaji-Drobnjak v. Serbia*, no. 36500/05, § 110, 13 October 2009). Consequently, the Government's objection must be dismissed.

79. The Court notes that the applicant's complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. The parties' submissions

80. The applicant re-affirmed his complaints. He added that many years after the attacks the perpetrators have yet to be identified, whilst the police themselves would still appear to entertain the idea that his injuries may have been self-inflicted. There was also very poor co-ordination between the public prosecutor and the police, and the applicant was not kept informed of the course of the investigation. Further, the police mostly spent their time looking for and re-interviewing the applicant despite having already questioned him earlier and, in a similarly pointless exercise, canvassed the applicant's neighbours, as well as the taxi driver, even though these persons clearly had no useful information to offer. Lastly, the applicant pointed out that the competent domestic authorities had taken no substantive steps since January 2009.

81. The Government contested the applicant's allegations. They maintained at the outset that the abuse to which the applicant had been exposed had not attained the minimum level of severity required for the application of Article 3. In any event, Serbian prosecuting and law-enforcement authorities had done everything in their power to fully investigate the attacks and identify the perpetrators. Numerous potential witnesses had been heard, expert medical assistance had been obtained, all available leads had been explored, and one police officer had even been disciplined. The applicant's own position, however, seemed ambivalent and his demeanour less than co-operative. In particular, he had been difficult to contact and had not reported the attacks in a timely manner. The applicant had also failed to request that his telephone line be monitored following the threats received in 2001, which could have been useful for identification purposes and led to a conviction. Further, the applicant's descriptions of his attackers had been vague, there had been no eyewitnesses, and the applicant had never remained in Jagodina after the attacks, thus precluding a timely on-site investigation in his presence. Finally, the Government submitted that no material traces of the attacks, apart from the injuries sustained by the

applicant, had ever been found and provided the Court with several final domestic judgments, in unrelated incidents, arguing that the Serbian judiciary had been perfectly willing to convict individuals of hate crimes whenever the available evidence had so warranted.

2. Relevant principles

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

83. In general, actions incompatible with Article 3 of the Convention primarily incur the liability of a Contracting State if they were inflicted by persons holding an official position. However, the obligation on the High Contracting Parties under Article 1 of the Convention to secure to everyone within their jurisdiction the rights and freedoms defined in the Convention, taken in conjunction with Article 3, also requires States to take measures designed to ensure that individuals within their jurisdiction are not subjected to ill-treatment administered by other private persons (see *A. v. the United Kingdom*, judgment of 23 September 1998, § 22, *Reports of Judgments and Decisions* 1998-VI; *Z and Others v. the United Kingdom* [GC], no. 29392/95, §§ 73-75, ECHR 2001-V; *E. and Others v. the United Kingdom*, no. 33218/96, 26 November 2002).

84. Bearing in mind the difficulties in policing modern societies, the unpredictability of human conduct and the operational choices which must be made in terms of priorities and resources, the scope of this positive obligation must, however, be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities. Not every claimed risk of ill-treatment, thus, can entail for the authorities a Convention requirement to take operational measures to prevent that risk from materialising. For a positive obligation to arise, it must be established that the authorities knew or ought to have known at the time of the existence of a real and immediate risk of ill-treatment of an identified individual from the criminal acts of a third party and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk. Another relevant consideration is the need to ensure that the police exercise their powers to control and prevent crime in a manner which fully respects the due process and other guarantees which legitimately place restraints on the scope of their action to investigate crime and bring offenders to justice, including the guarantees contained in

Articles 5 and 8 of the Convention (see *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*, no. 13178/03, § 53, 12 October 2006; and *Members (97) of the Gldani Congregation of Jehovah's Witnesses v. Georgia*, no. 71156/01, § 96, ECHR 2007-V; see also, *mutatis mutandis*, *Osman v. the United Kingdom*, 28 October 1998, § 116, Reports of Judgments and Decisions 1998-VIII).

85. The Court further recalls that where an individual raises an arguable claim that he has been seriously ill-treated in breach of Article 3, that provision, read in conjunction with Article 1 of the Convention, requires by implication that there should also be an effective official investigation capable of leading to the identification and punishment of those responsible (see *Assenov and Others v. Bulgaria*, 28 October 1998, § 102, *Reports of Judgments and Decisions* 1998-VIII). A positive obligation of this sort cannot, in principle, be considered to be limited solely to cases of ill-treatment by State agents (see *M.C. v. Bulgaria*, no. 39272/98, § 151, ECHR 2003-XII; *Šečić v. Croatia*, no. 40116/02, § 53, ECHR 2007-VI).

86. Lastly, the scope of the above obligation is one of means, not of result; the authorities must have taken all reasonable steps available to them to secure the evidence concerning the incident (see, *mutatis mutandis*, *Menson v. the United Kingdom* (dec.), no. 47916/99, ECHR 2003-V). A requirement of promptness and reasonable expedition of the investigation is implicit in this context (see, *mutatis mutandis*, *Yaşa v. Turkey*, judgment of 2 September 1998, *Reports* 1998-VI, p. 2439, §§ 102-104) since a prompt response by the authorities may generally be regarded as essential in maintaining public confidence in their maintenance of the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts (see *Batı and Others v. Turkey*, nos. 33097/96 and 57834/00, § 136, ECHR 2004-IV (extracts); *Abdülsamet Yaman v. Turkey*, no. 32446/96, § 60, 2 November 2004; and, *mutatis mutandis*, *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, § 72, ECHR 2002-II).

3. The Court's assessment

87. Turning to the present case, the Court considers that the injuries suffered by the applicant, consisting mostly of numerous cuts, combined with his feelings of fear and helplessness, were sufficiently serious to amount to ill-treatment within the meaning of Article 3 of the Convention (see *Price v. the United Kingdom*, no. 33394/96, § 24, ECHR 2001-VII).

88. The Court further notes that to date, many years after the attacks, the last one having occurred in 2007, the perpetrators thereof have yet to be identified and brought to justice. In this context, the applicant would appear not to have been properly kept abreast of the course of the investigation or afforded an opportunity to personally see and possibly identify his attackers from among a number of witnesses and/or suspects questioned by the police (see, for example, paragraphs 60 and 61 above). At the same time, the

police considered that the applicant's injuries may have been self-inflicted (see paragraph 64 above), even though there was no medical or other meaningful evidence, indeed anything but pure conjecture, to that effect. The co-operation between the police and the public prosecution service also left a lot to be desired (see paragraphs 55 and 56 above), and the entire investigation seems to have been focused on Jagodina despite the fact that the suspected far-right organisations were known for operating throughout the country (see paragraphs 24 and 63 above). Indeed, according to the information contained in the case file, the applicant's statement indicating that one of his attackers may have been a member of an organisation called *Srpski narodni pokret 1389* (see paragraph 57 above) does not seem to have been followed up at all.

89. Finally, as of July 2005, at the latest, it should have been obvious to the police that the applicant, who was a member of a vulnerable religious minority (see, *mutatis mutandis*, *Okkali v. Turkey*, no. 52067/99, § 70, ECHR 2006-XII (extracts)), was being systematically targeted and that future attacks were very likely to follow, particularly in June or July of each year in advance of or shortly after a major religious holiday (see paragraph 64 above). Yet, nothing was done to prevent such attacks on another two occasions. No video or other surveillance was ever put in place in the vicinity of the flat where the incidents had occurred, no police stakeout seems to have even been contemplated, and the applicant was never offered protection by a special security detail which might have deterred his future assailants.

90. In view of the foregoing and while the respondent State's authorities took many steps and encountered significant objective difficulties, including the applicant's somewhat vague descriptions of the attackers as well as the apparent lack of eyewitnesses, the Court considers that they did not take all reasonable measures to conduct an adequate investigation. They have also failed to take any reasonable and effective steps in order to prevent the applicant's repeated ill-treatment, notwithstanding the fact that the continuing risk thereof was real, immediate and predictable.

91. In such circumstances, the Court cannot but find that there has been a breach of Article 3 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 14 IN CONJUNCTION WITH ARTICLE 3 OF THE CONVENTION

92. Under Article 14 of the Convention, taken together with Article 3, the applicant further complained that the respondent State's failure to properly investigate the attacks against him was due to his religious affiliation. Article 14 reads as follows:

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

A. Admissibility

93. The Court notes that this complaint is linked to that examined above and must therefore likewise be declared admissible.

B. Merits

1. The parties' submissions

94. The applicant re-affirmed his complaint, adding that it was clear that the police had considered him "strange", uncooperative and even anti-social merely because of his religion. Apart from the questioning of a group of skinheads in 2001, the respondent State's authorities seemed more interested in discussing the "suspicious" nature of the Hare Krishna community rather than in uncovering the religious aspect of the attacks in question.

95. The Government maintained that the applicant had offered no evidence to the effect that there had been a violation of Article 14 of the Convention. The official investigation into the attacks against the applicant had been impartial and all allegations of religious motivation behind these incidents had been thoroughly checked by the competent domestic authorities. Further, no attacks against any other member of the Hare Krishna community in Jagodina had ever been reported, and any police interest in this community would have been perfectly reasonable given the alleged motivation of the applicant's assailants.

2. The Court's assessment

96. The Court considers that, just like in respect of racially motivated attacks, when investigating violent incidents State authorities have the additional duty to take all reasonable steps to unmask any religious motive and to establish whether or not religious hatred or prejudice may have played a role in the events. Admittedly, proving such motivation may be difficult in practice. The respondent State's obligation to investigate possible religious overtones to a violent act is thus an obligation to use best endeavours and is not absolute; the authorities must do what is reasonable in the circumstances of the case (see, *mutatis mutandis*, *Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, § 160, ECHR 2005-VII; and *Members (97) of the Gldani Congregation of Jehovah's Witnesses v. Georgia*, cited above, §§ 138-142).

97. The Court considers that the foregoing is also necessarily true in cases where the treatment contrary to Article 3 of the Convention is inflicted by private individuals. Treating religiously motivated violence and brutality on an equal footing with cases that have no such overtones would be turning a blind eye to the specific nature of acts that are particularly destructive of fundamental rights. A failure to make a distinction in the way in which situations that are essentially different are handled may constitute unjustified treatment irreconcilable with Article 14 of the Convention (ibid.; see also, *mutatis mutandis*, *Šečić v. Croatia*, cited above, § 67).

98. In the present case it is suspected that the applicant's attackers belonged to one or several far-right organisations which, by their very nature, were governed by an extremist ideology.

99. The Court further considers it unacceptable that, being aware that the attacks in question had most probably been motivated by religious hatred, the respondent State's authorities allowed the investigation to last for many years without taking adequate action with a view to identifying or prosecuting the perpetrators (see paragraphs 87-91 above).

100. Finally, though perhaps most importantly, it is noted that the police themselves referred to the applicant's well-known religious beliefs, as well as his "strange appearance", and apparently attached particular significance to "the fact" that most of the attacks against him had been reported before or after a major orthodox religious holiday, which incidents the applicant subsequently publicised through the mass media in the context of his own religious affiliation (see paragraphs 22 and 64 above). The Court considers, once again, that such views alone imply that the police had serious doubts, related to the applicant's religion, as to whether he was a genuine victim, notwithstanding that there was no evidence to warrant doubts of this sort. It follows that even though the authorities had explored several leads proposed by the applicant concerning the underlying motivation of his attackers these steps amounted to little more than a *pro forma* investigation.

101. In view of the above, the Court considers that there has been a violation of Article 14 taken in conjunction with Article 3 of the Convention.

III. OTHER ALLEGED VIOLATIONS

102. Lastly, under Articles 2 and 13 of the Convention, the applicant essentially repeated his complaints already made under Article 3 thereof (see paragraph 75 above).

103. Having regard to its findings under the latter provision (see paragraphs 87-91 above), the Court considers that it is not necessary to examine separately the admissibility or the merits of the applicant's identical complaints made under Articles 2 and 13.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

104. 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

105. The applicant claimed 20,000 euros (EUR) in respect of non-pecuniary damage.

106. The Government contested this claim.

107. The Court considers that the applicant has suffered non-pecuniary damage which cannot be sufficiently compensated by its mere finding of a violation of the Convention. Having regard to the character of the violations found in the present case and making its assessment on an equitable basis, the Court therefore awards the applicant EUR 10,000 under this head.

B. Costs and expenses

108. The applicant also claimed EUR 1,200 for the costs and expenses incurred before the Court.

109. The Government contested this claim.

110. 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 were also reasonable as to their 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 in full the sum sought by the applicant for the proceedings before it.

C. Default interest

111. The Court considers it appropriate that the default interest 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

1. *Declares* unanimously the complaints under Articles 3 and 14 of the Convention admissible;

2. *Holds* unanimously that there has been a violation of Article 3 of the Convention;

3. *Holds* by 6 votes to 1 that there has also been a violation of Article 14 taken in conjunction with Article 3 of the Convention;

4. *Holds* unanimously that it is not necessary to examine separately the complaints under Articles 2 and 13 of the Convention;

5. *Holds* unanimously

(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 sums, to be converted into the national currency of the respondent State at the rate applicable on the date of settlement:

(i) EUR 10,000 (ten thousand euros) in respect of non-pecuniary damage, plus any tax that may be chargeable,

(ii) EUR 1,200 (one thousand two hundred euros) in respect of costs and expenses, plus any tax that may be chargeable to the applicant;

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

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

Done in English, and notified in writing on 14 December 2010, pursuant to Rule 77 § 2 and 3 of the Rules of Court.

Stanley Naismith	Françoise Tulkens
Registrar	President

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

F.T.
S.H.N.

PARTIALLY DISSENTING OPINION OF JUDGE RAIMONDI

I agree with the majority that in this case there has been a breach of Article 3 of the Convention, and that no separate issue arises from the complaints submitted under Articles 2 and 13 of the Convention, but I cannot join the further conclusion that a distinct violation of the same Article 3 in conjunction with Article 14 of the Convention is to be found.

My position is linked to the reasons leading me to find a violation of Article 3. In fact, these reasons do not correspond entirely to those of the majority.

Like the majority, I consider that the injuries suffered by the applicant, consisting mostly of numerous cuts, combined with his feelings of fear and helplessness, were sufficiently serious to amount to ill-treatment within the meaning of Article 3 of the Convention.

I also consider with the majority that credible allegations of repeated criminal attacks were made by the applicant, whose physical integrity had been seriously put in danger, and that the response of the authorities did not reach the level of adequateness of the investigation required by the jurisprudence of the Court.

In fact, the same authorities of the concerned High Contracting Party admitted that the police had not acted with the necessary diligence (see paragraph 53 of the judgment).

I do not agree, however, with the majority that the activities of the police amounted to "little more than a *pro forma* investigation". In my view on all the relevant occasions (in 2001, 2005, 2006 an 2007), the police made serious attempts to investigate the allegations made by the applicant, even though these attempts did not reach the required level of promptness and reasonable expedition. As the majority recognizes "the respondent State's authorities took many steps and encountered significant objective difficulties, including the applicant's somewhat vague descriptions of the attackers as well as the apparent lack of eyewitnesses" (paragraph 90 of the judgment).

I do not concur, furthermore, with the criticism expressed by the majority on the fact that "no video or other surveillance was ever put in place in the vicinity of the flat where the incidents had occurred, no police stakeout seems to have even been contemplated, and the applicant was never offered protection by a special security detail which might have deterred his future assailants" (paragraph 89 of the judgment). In my view imposing these measures would result in a disproportionate burden for the authorities.

To me, the fact that the police considered the possibility that the applicant's injuries may have been self-inflicted (see paragraphs 64 and 88

of the judgment) does not necessarily show a discriminatory attitude of the authorities.

The police took into account the alleged religiously motivated nature of the attacks. With the respondent Government, I find that the allegations of religious motivation behind the relevant incidents have been checked. In particular in 2005 they apparently visited several locations in an attempt to "identify" the organisation called "*Srpski vitezovi*" which, according to the applicant, was responsible for the attacks.

For these reasons, I do not find a separate violation of Article 3 combined with Article 14 of the Convention.