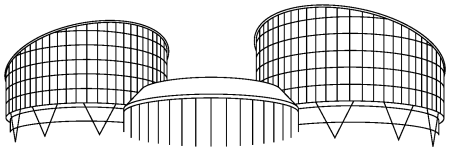

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF BLJAKAJ AND OTHERS v. CROATIA

(Application no. 74448/12)

JUDGMENT

STRASBOURG

18 September 2014

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

In the case of Bljakaj and Others v. Croatia,

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

Isabelle Berro-Lefèvre, *President,*
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Paulo Pinto de Albuquerque,
Linos-Alexandre Sicilianos,
Erik Møse,
Ksenija Turković, *judges,*

and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 26 August 2014,

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

PROCEDURE

1. The case originated in an application (no. 74448/12) against the Republic of Croatia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by five Croatian nationals, Mr Ćamilj Bljakaj ("the first applicant"), Mr Saša Bljakaj ("the second applicant"), Ms Emina Bljakaj Vulić ("the third applicant"), Ms Katarina Knapić ("the fourth applicant") and Ms Ružica Novački ("the fifth applicant") on 27 October 2012.

2. The applicants were represented by Mr V. Gredelj, a lawyer practising in Bjelovar. The Croatian Government ("the Government") were represented by their Agent, Ms Š. Stažnik.

3. The applicants alleged, in particular, that the domestic authorities had failed to protect their relative's right to life.

4. On 31 May 2013 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The first applicant was born in 1948, the second applicant was born in 1976, the third applicant was born in 1980 and they all live in Slatina. The fourth applicant was born in 1956 and lives in Osijek, and the fifth applicant was born in 1949 and lives in Josipovac.

A. Background to the case

6. The first applicant is the husband, the second and third applicants are children, and the fourth and fifth applicants are sisters of the late M.B.B., a lawyer who was based in Slatina.

7. M.B.B. represented M.N. in divorce proceedings instituted in December 2001 in the Slatina Municipal Court (*Općinski sud u Slatini*) against her husband, A.N.

8. A first hearing in those proceedings was held on 12 February 2002, attended by the parties and the lawyer M.B.B. The court heard the parties' arguments and decided to request a report from the local social services. It then adjourned the hearing until 9 April 2002.

9. According to A.N.'s police records, he had a history of alcohol abuse, violent behaviour and unlawful possession of firearms. In May 1993 the Slatina Police (*Policijska Postaja Slatina* – hereinafter "the police") instituted minor offences proceedings against him for beating up his daughter and wife under the influence of alcohol and making serious threats using firearms. On that occasion, the police seized from A.N. a rifle with a dozen bullets and a hand grenade. There is, however, no further information on the outcome of these proceedings. Furthermore, between 2000 and 2002 A.N. was reported three times for family violence and twice for a breach of the peace and public order, and in May 2001 the police lodged a criminal complaint against him with the State Attorney's Office for making serious death threats to his wife.

10. On 16 October 2000 the Slatina Minor Offences Court (*Prekršajni sud u Slatini*) found A.N. guilty of the minor offence of family violence and fined him 500 Croatian kunas (HRK). During the proceedings, M.N. explained that the divorce proceedings were pending before the courts and that A.N. had contested them. She also explained that she had ended up in hospital after having been severely beaten by A.N.

11. On 25 July 2001 the Slatina Municipal Court found A.N. guilty of the criminal offence of making serious death threats to his wife and sentenced him to two months' imprisonment, suspended for one year.

B. Killing of the applicants' relative

12. According to a police report drawn up on 25 March 2002, M.N., accompanied by A.N., attended the police station on 21 March 2002, alleging that her husband had been harassing her. She made no other complaints of possible threats or violence. She further explained that A.N. had previously beaten her up and had been convicted in the minor offences and criminal courts. She also pointed out that their divorce proceedings were pending and that a hearing was scheduled for 9 April 2002. On the same occasion, A.N. argued that he did not want his wife to see other men.

The police officer who interviewed the couple, Ž.J., warned A.N. to stop harassing his wife and instructed them to settle all their disputes in the divorce proceedings. The report also contains a note suggesting that during the interview, A.N. and M.N. showed no signs of aggression, alcohol abuse or agitation.

13. Afterwards, police officer Ž.J. informed his superior officer, M.Kr., of the interview. He was told to make a short note of the event in the logbook and that it was not necessary to draft a report or take any further action.

14. According to further police reports, at around 7 a.m. the following day, A.N. went to a bank in Slatina with the intention of withdrawing all his money. He told a bank employee, D.K., whom he had met before, that they would not see each other again. While speaking to the bank employee, A.N. was in tears. When she asked him what was troubling him, he said that "it will be talked about". He also shook hands with several other people who then told the bank manager, F.S., to contact the police. F.S. followed A.N. out of the bank and asked him what was troubling him. A.N. responded that he was sick of everything; his wife, who was having affairs with other men, and his son, who was a drug addict, and that he was going to do something and nobody could stop him.

15. At 7.15 a.m. F.S. informed the police of the event, saying that he was afraid that A.N. could do something to himself or others.

16. At 7.17 a.m. an on-duty commanding officer, T.S., sent a patrol of two police officers, M.L. and I.B., to the bank. At the same time he checked A.N.'s police records and saw that he had a violent background. He therefore informed the police chief, M.Ko., who ordered a police patrol to be sent to A.N.'s home address. At 7.38 a.m. M.L. and I.B. were sent to look for him there.

17. The report submitted by police officers M.L. and I.B. indicates that they found A.N. at home. He approached them at the front of his house and said that he was sick of everything, and that he had withdrawn the money for his funeral because he was going to kill himself either that day or the next by jumping under a train, and that there was nothing they could do about it. He also said that he had already written a suicide note, and complained that the day before he had been at the police station because his wife had been seeing another man. The police officers noted in their report that A.N. had appeared sober and had not shown any signs of aggressiveness, and had not mentioned his wife or anybody else or that he might hurt anybody. They therefore advised him that everything was going to be fine and left.

18. Upon their arrival at the police station at 8.06 a.m. the police officers reported on the interview to the on-duty commanding officer M.T., who had taken over from T.S. (see paragraph 16 above) in the meantime.

19. According to a report drawn up by M.T. on 22 March 2002, M.L. and I.B, the police officers who had visited A.N. at his home (see paragraph 17 above), had reported to him that A.N. was contemplating suicide because of his family problems, and that he had mentioned his divorce and said that nobody could stop him. At 8.12 a.m. M.T. informed the deputy police chief for the criminal police, M.B., of the event who instructed him to immediately inform the Slatina Health Centre (*Dom zdravlja Slatina* – hereinafter "the hospital") and Slatina Social Care Centre (*Centar za socijalnu skrb Slatina*). He informed the hospital doctor, I.F., at 8.15 a.m. and the Social Care Centre at 8.18 a.m. The doctor had said that he would see with a nearby psychiatric hospital whether they could admit A.N. for treatment, while an official from the Social Care Centre had said that she had known A.N.'s situation very well and told the police to contact the hospital.

20. Later during the investigation the police found that officer M.T. had falsified his report, as he had actually informed doctor I.F. at 9.40 a.m., not 8.15 a.m. as indicated, and had informed the Social Care Centre at 9.37 a.m., not 8.18 a.m. as indicated (see paragraph 19 above and paragraphs 35 and 46 below).

21. Meanwhile, sometime after 8.00 a.m., A.N. returned to the bank, shouting at F.S. for having called the police. He then went to a nearby bar for a drink and at around 9.00 a.m. went to the police station. He met the on-duty commanding officer M.T. there, and demanded to know why the police had been to see him. M.T. explained that the police had had information that he had been having some problems. A.N. replied that he was going to solve his problems himself and that he was going to do what he intended. He then left the police station.

22. A.N. then went in search of his wife, who started work in a bakery shop at 10 a.m. He waited for her in a nearby street he knew she had to pass when going to work. When A.N. saw her, he approached her and kicked her in the head, knocking her to the ground. He then fired one shot at her and went to leave, but then returned to shoot her a further three times. She survived, despite receiving serious injuries to her head, stomach and arm.

23. After shooting his wife, A.N. went to M.B.B.'s office, which was only some three hundred metres away. M.B.B. was in the office at the time with her secretary and a client, A.R. Immediately upon entering the office A.N. fired a shot in M.B.B.'s direction, but hit her desk. The client attempted to talk him round, but when A.N. threatened to kill him, he ran away. A.N. then attempted to shoot the secretary, who was calling the police, but his pistol jammed and she managed to escape. A.N. then approached M.B.B. and shot her dead by firing three bullets at her, of which two were fatal.

24. In the meantime, some onlookers had informed the police of the incidents and several police units were sent to search for the gunman.

25. At around 10.35 a.m. the police arrived at A.N.'s house and ordered him to surrender and go with them to the station in connection with the investigation into the shootings. He refused, before throwing two hand grenades at the police officers and starting to shoot at them.

26. When special police units stormed into A.N.'s house at around 3.26 p.m., they found him with a self-inflicted head wound, the type of weapon that had been used for the shootings, and a suicide note. He was immediately taken to hospital, but died the next day.

C. Investigation into the incidents

27. On the same day as the incidents occurred, an investigating judge of the Bjelovar County Court (*Županijski sud u Bjelovaru*) and a Deputy County State Attorney conducted crime scene investigations with the assistance of police forensic scientists. In A.N.'s house the police found another suicide note, a number of different bullets and an empty hand grenade cartridge. They also discovered that the weapon used by A.N. had been reported missing and that its owner had died in 1997.

28. The investigating judge ordered a forensic examination of the bodies which confirmed that M.B.B. had suffered a violent death as a result of the gunshots.

29. During the investigation the police interviewed a number of people who provided information concerning A.N. and the course of the events in which he had killed M.B.B. and attempted to kill his wife. The police drew up reports of the interviews but they were not signed or otherwise attested by the witnesses.

30. According to the police reports, A.N. and M.N.'s children, E.N. and M.B., provided information about the problems in their family and the frequent violent incidents mainly caused as a result of A.N.'s alcohol abuse. The incidents were confirmed by M.N. in her interview with the police. She also stated that he had been angry at her lawyer M.B.B., but had not threatened to kill her.

31. M.B.B.'s secretary described the course of events in which A.N. had attempted to shoot her and killed the lawyer M.B.B., which was also confirmed by the client A.R. who had been in the office at the time (see paragraph 23 above). Another witness, N.M., a waiter in a nearby bar, described how he had heard gunshots and later found M.B.B. dead in her office.

32. The police also interviewed the bank employees D.K. and F.S., who provided information about A.N.'s behaviour in the bank (see paragraph 14 above), and two other witnesses, I.T. and A.K., who had also been in the bank when A.N. was there. The two bank customers stated that A.N. had seemed disturbed and looked as though he had needed some help, but had not said he was going to kill anybody.

33. An acquaintance of A.N., Ž.M., told police that for the past year A.N. had been saying that he was going to kill his wife. After the incidents at issue, A.N. called him and said that he killed his wife and shot her lawyer. Information to that effect was also provided by another acquaintance of A.N., I.Š., who said that when he got drunk A.N. would say that he was going to kill somebody but without specifying whom. On the morning in question he had seen A.N., who had shown him a handful of bullets.

34. A.N.'s brother-in-law, L.Z., stated that A.N. had complained that during a hearing in the divorce proceedings M.B.B. had prevented him from raising all his arguments before the court, and that he should do something about it but without specifying what. He had never mentioned that he was going to kill anybody. His other brother-in-law, F.Z., stated that a couple of days before the incidents his wife Ž.Z. had told him that she had seen A.N., who had told her that he was going to kill his wife and her lawyer, but she had not thought that he had really meant it. This was confirmed by Ž.Z. herself in her statement to the police.

35. During the investigation the police interviewed doctor I.F. who had taken the police's call to the hospital on the morning of the incidents (see paragraph 19 above). He stated that he had received the call at around 9.40 a.m., not 8.20 a.m. as reported in the media. He also provided evidence to that effect because his telephone had the ability to record times and dates of calls. Based on the information he had received, he had attempted to contact a nearby psychiatric hospital to arrange for A.N.'s possible hospitalisation. However, he had not managed to speak to any of the doctors, as he had been told by a nurse that they had all been in a meeting which she had not been allowed to interrupt.

36. The results of the investigation were submitted to the Slatina Municipal State Attorney's Office (*Općinsko državni odvjetništvo u Slatini*) to assess whether the police could be held liable for their actions in connection with the incidents at issue, particularly with regard to the application of section 24 of the Protection of Individuals with Mental Disorders Act. That provision stated that an individual could be admitted to a psychiatric institution where there was a reasonable suspicion that the individual posed an immediate threat to his life or health, or the life or health of others (see paragraph 81 below).

37. On 16 August 2002 the Slatina Municipal State Attorney's Office issued the following statement:

> "A.N. was a violent person against whom a criminal complaint had been made for making serious death threats to his wife and on several occasions was reported for the minor offences of family violence, abusive behaviour and inappropriately addressing police officers. On the day in question A.N., without any further elaboration, told police officers that he was going to kill himself because of his family problems. The police officer on duty, M.T., omitted to inform the hospital and Social Care Centre of the whole situation. Had there been coordination between the doctor and social

worker, who had known the situation in A.N.'s family better, measures for the prevention of suicide could perhaps have been taken. In the circumstances, at the relevant time the police officers had no reason to treat A.N. as a mentally disturbed person within the meaning of section 24 of the Protection of Individuals with Mental Disorders Act. ..."

38. On 22 March 2005 the applicants, through their lawyer, lodged a criminal complaint against police officer M.T. with the Slatina Municipal State Attorney's Office, alleging that he had falsified the police records indicating the exact time he had contacted the hospital and Social Care Centre (see paragraphs 19 and 20 above). They also lodged a criminal complaint against police chief M.Ko. for abuse of power and authority, because he had failed to institute criminal proceedings against police officer M.T.

39. On 30 May 2005 the Slatina Municipal State Attorney's Office rejected the criminal complaints against the police officers on the grounds that their actions did not constitute criminal offences.

40. On 10 June 2005 all five applicants and K.B., the mother of M.B.B., took over the prosecution as subsidiary prosecutors and lodged an indictment against the police officers in the Slatina Municipal Court.

41. During the proceedings police officer M.T. stated that after officers M.L. and I.B. had returned from their interview with A.N. (see paragraph 19 above), they had told him that A.N. had been agitated and had mentioned problems in his family, but had not made any threats. Sometime at around 8 a.m. he had therefore attempted to contact police chief M.Ko. to seek further instructions. After having failed twice to reach M.Ko., who had been out of his office, he had called the deputy police chief for the criminal police, M.B., who had instructed him to contact the hospital and Social Care Centre. He had then telephoned the hospital, but the number he had dialled had not been valid, so he had only managed to get the right number later when he had spoken to doctor I.F. When he had called the hospital for the first time he had written down the exact time on a piece of paper and then later had just taken that time for his report.

42. Doctor I.F. also gave his oral evidence during the proceedings. He testified that after he had received the information from the police about their interview with A.N., he had told the police that he would need to examine A.N. and then decide whether compulsory psychiatric treatment would be necessary. However, the police had not known where A.N. was at the time, so he had told them to find him. Approximately fifteen minutes later the hospital had received information about the shootings.

43. On 3 May 2006 the Slatina Municipal Court acquitted police officer M.T. on the grounds that there had been no evidence that he had deliberately falsified his report. The court also dismissed the charges against police chief M.Ko. on the grounds that the prosecution had become time-barred.

44. The judgment was confirmed on appeal by the Virovitica County Court (*Županijski sud u Virovitici*) on 21 September 2006.

D. Disciplinary proceedings against the police officers

45. On 18 April 2002 the Ministry of the Interior opened disciplinary proceedings against police officer M.Kr. for failing to report on the interview with A.N. and his wife on 21 March 2002 even though A.N.'s background and the information concerning their relationship warranted that such action be documented (see paragraphs 12 and 13 above).

46. On 27 May 2002 disciplinary proceedings were also opened against police officer M.T. for failing to immediately report the situation concerning A.N. on the morning of 22 March 2002 to the hospital as he had been instructed to do by his superior, and for falsifying his report about the times he had contacted the hospital and Social Care Centre (see paragraphs 19 and 20 above).

47. The first-instance Osijek Disciplinary Panel of the Ministry of the Interior (*Prvostupanjski disciplinski sud u Osijeku*) found police officer M.Kr. guilty on 10 October 2002 and sentenced him to a 15% reduction of salary, to be applied for one month.

48. On 5 November 2002 the disciplinary panel found police officer M.T. guilty and sentenced him to a 10% reduction of salary, to be applied for two months.

E. The applicants' civil proceedings for damages

49. On 22 March 2005 the five applicants and K.B. lodged a civil action against the State in the Slatina Municipal Court, seeking damages for the authorities' failure to protect their relative's right to life. They relied on section 13 of the State Administration Act, which provides that the State is liable to compensate damage caused to a citizen, legal entity or other party for the unlawful or wrongful conduct of a State authority (see paragraph 83 below).

50. A first hearing was held on 6 July 2005, at which the trial court heard evidence from bank employees F.S. and M.S.

51. F.S. testified that after he had seen A.N. crying, he had asked him what had happened and A.N. replied that it would be talked about. He had then called the police, who arrived soon after. When he had told them what had happened, the police had just replied that they had known A.N. very well. A.N. had appeared totally unstable that morning, which had been noticeable to F.S. because he worked with people. Everybody in the bank had noticed that A.N. had been totally crazy, and F.S. had therefore called the police because he had thought that A.N. was a danger, primarily to himself, and should get medical treatment. When A.N. had entered the bank

for the second time he had not calmed down and had been yelling at F.S. for calling the police about him. This version of events was confirmed by M.S.

52. At a hearing on 14 September 2005 the trial court heard evidence from doctor I.F. He testified that on the morning of 22 March 2002 at around 9.45 a.m. he had been informed by the police that A.N. had been behaving strangely and that he might do something bad. The police officer had not however known where A.N. was at the time. Doctor I.F. explained that the usual practice in such cases was to examine the person and then decide whether admission to hospital was necessary. He also specified that the police officer who had called him had said that A.N. could kill somebody or do something bad. This had prompted him to believe that his and the police's intervention had been necessary, and that A.N. should be taken to the psychiatric hospital. Had the police managed to trace A.N., he would have examined him, because that had been the practice in similar cases and also in cases where somebody had threatened suicide.

53. At the same hearing the trial court questioned police chief M.Ko., who explained that A.N. was known to him because he had once been held at the station for violent behaviour. On the day in question he had given orders to the on-duty commanding officer to send a police patrol to A.N.'s home address and had then left the police station to attend to some other business. He had returned to the police station at around 9.55 a.m. and had been told of the shootings.

54. The next hearing was held on 23 November 2005, where the trial court heard evidence from M.N. She stated that A.N. had previously had a rifle, a handgun and a bomb which had been, at some point, confiscated from him by the police. He would also say that he was saving money to buy a handgun to kill her and two other people, but she had never known exactly whom. A.N. had had a problem with alcohol and when he would get drunk he would be violent. She had called the police on more than a hundred occasions, but sometimes they would come and sometimes they would not. A.N. had contested the divorce and the day before the incidents had threatened to kill her. She had reported that on the same day to the police, but they had done nothing about it. At the same hearing the trial court questioned bank employee D.F., who explained the course of the events in the bank (see paragraph 14 above).

55. A further hearing was held on 18 January 2006, at which the police officers M.L., M.T. and I.B. gave evidence.

56. M.L. testified that on the morning of the incident, he and police officer I.B. had been ordered to go to the bank because A.N. had been there and had been behaving strangely. In the bank, they had met someone who had called the police, who explained that A.N. had gone to the bank, had withdrawn all his money and while in tears had said "it will be talked about". When M.L. and I.B. had reported on their findings to the on-duty commanding officer, they had been instructed to find A.N. at his home

address. They had found him there and interviewed him. A.N. had not been drunk or aggressive. He had said that he was going to kill himself because of problems with his wife and son and that he would do it either that day or the next, and that nobody could stop him. He had appeared normal and calm. They had not searched him because there had been no grounds to take such action, nor had there been any reason to take him to hospital in accordance with the Protection of Individuals with Mental Disorders Act. M.L. also explained A.N. was known to him and that before seeing him, he had been informed by the on-duty commanding officer that he had already threatened to kill his wife.

57. In his statement I.B. confirmed M.L.'s version of events, explaining that the police could take an individual to hospital or a police station and have a doctor examine him, but they had not considered A.N. to be a danger so had not taken any such action.

58. Police officer M.T. stated that when officers M.L. and I.B. had returned from the bank they had said that A.N. had not been drunk or aggressive but merely agitated, and that he had threatened suicide. M.T. had then attempted to contact his superiors and had managed to get in touch with the deputy chief for the criminal police M.B., who had instructed him to inform the hospital and Social Care Centre. He had attempted to contact the hospital several times and at some point had managed to reach doctor I.F, who had said that he would try to find a place for A.N. in a psychiatric hospital. He had also asked where A.N. was, but at the time M.T. had not known. M.T. further explained that he had been familiar with the Protection of Individuals with Mental Disorders Act, which enabled the police to take a mentally disturbed individual to a psychiatric hospital, but he had considered the police to have done everything they could, although with hindsight, it would have been possible to do more, but the police could not have predicted what would happen. He had known that A.N. had a violent background but stressed that he had not been registered as insane.

59. At a hearing on 15 March 2006 the deputy chief for the criminal police M.B. gave his oral evidence. He explained that he had been informed that A.N. had gone to the bank where he had been behaving strangely. Later, he had been informed that the police had interviewed him and that he had appeared calm and normal but had threatened suicide. At around 8.05 to 8.10 a.m. M.B. had instructed the on-duty commanding officer, M.T., to inform the hospital and Social Care Centre. He considered the police to have done everything they could, but there had been no grounds to take any further measures given the findings of the police patrol that had interviewed A.N. at his home. He also explained that the usual practice in similar cases was to inform the hospital, who could call the police if they needed assistance.

60. A further hearing was held on 10 May 2006 at which police officers Ž.J. and T.S. and a customer from the bank, I.T., gave evidence.

61. Ž.J. stated that the day before the incidents M.N. had arrived at the police station followed by her husband A.N. Police officer Ž.J. had interviewed them but had found no grounds for the police to take further action, so he had told them to resolve their marital problems in their court proceedings. M.N. had also mentioned that after A.N. had been handed a suspended sentence, he had stopped making threats and beating her up. Ž.J. had not reported on the interview because his superior officer M.Kr. had not requested it.

62. Police officer T.S. had no specific knowledge about the incident. He had been off-duty at the time although he had, early in the morning, just before leaving the police station, sent a police patrol to the bank to check what had happened there and why A.N. had been behaving strangely.

63. The bank customer I.T. testified that he had seen A.N. in the bank on the morning in question, who had told him that he had been having some problems and that it would be talked about. He had been behaving strangely, as he had been walking around the bank in circles. He had looked nervous, and I.T. had thought that he had been ill and in need of medical attention.

64. On 15 September 2006 the trial court obtained a psychiatric report certifying that the first, second and third applicant and M.B.B.'s mother had all experienced mental suffering after the events. The report was confirmed by the expert at a hearing held on 21 February 2007.

65. On 5 March 2007 the Slatina Municipal Court allowed the civil action and ordered the State to pay damages for failing to protect the life of the applicants' relative. The trial court held that the State's responsibility under section 13 of the State Administration Act was objective, and that it was only necessary to establish whether the death had been a result of the unlawful or wrongful conduct of the State authorities. The relevant part of the judgment reads:

> "... It is not disputed between the parties that F.S. called the police a little after 7 a.m. F.S. informed the police of what had happened in the bank and about A.N.'s appearance. This court fully accepts the statements of F.S., M.S., D.F. and I.T. as credible when they testified about A.N.'s state of mind [in the bank]. They stated that A.N. had appeared totally unstable. The conclusion of the police officers M.L. and I.B. that A.N. had been normal and calm and had not been a danger cannot be accepted as logical. They reached such a conclusion after being informed by A.N. that he had withdrawn the money for [his] funeral, and that he was going to kill himself and nobody could stop him. Taking this into account, [this court considers that] the average person could have reached the conclusion about A.N.'s state of mind referred to by witnesses [F.]S., M.S., D.F. and I.T. The police officers who needed to act with particular diligence should have also reached [this] conclusion about A.N.'s state of mind, which they failed to do. They thus failed to act in accordance with sections 22 (1), 23§(1) and 24 of the Protection of Individuals with Mental Disorders Act ... The defendant considers that there is no connection between the failures of the police and [M.B.B.'s death] and that there is therefore no liability on the Republic of Croatia. This court considers differently. Had police officer M.T. complied with the order of the deputy chief for the criminal police M.B., and informed the hospital and Social Care Centre at 8.15 a.m., as noted in the report, it is highly probable that the outcome

> would have been avoided, particularly taking into account the statement of witness I.F ... As the liability of the State is objective; it was for it to prove that the damage occurred as a result of a cause which could not have been avoided (*vis major*), or that the damage resulted exclusively from the actions of the aggrieved party or a third party which could not have been predicted and where the outcome could not have been avoided (section 177(1) and (2) of the Civil Obligations Act). Nothing of [the sort] has been proven by the defendant. ..."

66. The Slatina Municipal State Attorney's Office, representing the State in the proceedings, lodged an appeal with the Virovitica County Court on 26 April 2007.

67. On 19 November 2007 the Virovitica County Court quashed the first-instance judgment and ordered a retrial on the grounds that the first-instance court had erred in its findings that the liability of the State was objective as it was based on the existence of a fault, namely unlawfulness. That court further found that, irrespective of the fact that A.N. had threatened suicide, there had been nothing requiring police officers M.L. and I.B. to treat the case as particularly urgent and to take A.N. to a psychiatric hospital. It also accepted the police officers' statements that A.N. had appeared calm during the interview. The Virovitica County Court instructed the first-instance court to question witnesses I.F. and M.T. again to establish what actions doctor I.F. had intended to take, since it was not clear whether he had intended to examine A.N. or just to see whether he could be placed in a psychiatric hospital, as could be inferred from the statement of police officer M.T.

68. In the resumed proceedings, at a hearing held on 27 February 2008, the Slatina Municipal Court heard doctor I.F. and police officer M.T.

69. Doctor I.F. testified that the usual practice in similar cases was to immediately respond at the scene and to examine the person if he or she was available. The medical response team consisted of a doctor, a driver and medical technician and a nurse. They first had to examine the person and then the doctor could decide whether hospitalisation in a psychiatric hospital was necessary. Police intervention was only sought if the person could not be apprehended for the examination. As regards the case at issue, doctor I.F. explained that he had been called by a police officer who had told him that A.N. had been behaving strangely and that he could do something bad. The police officer had not known where A.N. was. Had he known, he would have immediately responded at the scene and examined him. Doctor I.F. also explained that he had to first examine the person and only then he could make a prescription for that person's admission to hospital. There had been no reason for him to check whether there had been a place in the hospital because it was for the hospital to decide what they wanted to do with his prescription and the person in question. In the present case, the information he had received from the police suggested that it had been necessary to examine A.N. at the scene.

70. Police officer M.T. stated that on the day in question he had informed doctor I.F. that the police had had a person who was seriously disturbed and who should be given an injection in order to calm down. As to his further conversations with the doctor, M.T. stated:

> "I cannot remember any more what doctor [I.]F. told me when I contacted him.
>
> I don't remember exactly, but I think he told me that he would see whether [A.N] could be placed in the psychiatric hospital and then would ask for police intervention if he needed it.
>
> ...
>
> I would like to change my statement in the part where I said that doctor [I.]F. was going to first find a place in [the psychiatric hospital] and that he would then consult the police chief.
>
> Doctor F. actually told me that he would first examine [A.]N. and that he would call the police if necessary.
>
> ...
>
> In reply to the question from the defendant's representative, I cannot explain why I changed my statement as regards what doctor [I.]F. had told me."

71. On 7 March 2008 the Slatina Municipal Court obtained a police report describing the course of events later on the day of the shooting, and on 9 April 2008 concluded the trial.

72. On 22 April 2008 the Slatina Municipal Court dismissed the civil action as ill-founded, and ordered the applicants to pay HRK 80,700 in costs and expenses. The relevant part of the judgment reads:

> "... The liability of the defendant is based on the principle of fault (section 154(1) of the Civil Obligations Act). Unlawful conduct is conduct which is contrary to the law or an omission in the application of the law, which is committed deliberately or by accepting that it might cause damage to a third party. ... The purpose of section 13 of the State Administration Act is to provide for the liability of the State where there is a wilful act contrary to the law with the intent of causing damage ... Acceptance [of that outcome] is conduct or an omission of a State official in the performance of his or her official duties where he or she was able to, according to his or her individual capability, take into account the objective requirements with due diligence, and which he or she failed to do. In the particular circumstances, there is no causal link between the damage and the omissions of police officer M.Kr., in his capacity as on-duty commanding officer, to report the day before [the shootings] about M.N.'s complaint that she had been followed by A.N. This court finds nothing to suggest that the police officers who intervened at the bank, and who had had no knowledge of this, would have acted differently even if they had had such information. The plaintiffs also refer to the omissions of police officers M.L. and I.B ... Under section 24 of the Protection of Individuals with Mental Disorders Act the police may, in particularly urgent cases, take a mentally disturbed individual to a psychiatric hospital without prior medical examination, provided there is a reasonable suspicion that the individual poses an immediate threat to his life or health, or the life or health of others ... The events [in the bank] suggest that the police had an obligation to act under section 23 of the Protection of Individuals with Mental Disorders Act and to secure A.N.'s medical examination, after which the doctor could decide whether to take to a psychiatric

> hospital. But in the particular circumstances police officers M.L. and I.B. could not have been expected to recognise that there was any particular urgency or that A.N. should be taken to a psychiatric hospital without prior medical examination ... The omission of police officer [M.T.] to inform the hospital about A.N.'s behaviour is an irregularity in the performance of his official duties. However, the dispute between the parties is whether there is a causal link between this irregularity and the event ... Even if M.T. had informed the hospital at 8.15 a.m., it is doubtful whether the doctor would have carried out an examination because at that time he had not known where A.N. was. It follows that at the time A.N. was no longer available to the police and according to the evidence [submitted by] F.S. was in the bank sometime between 8.30 and 9 a.m. There is therefore no causal link between the incidents and the omissions of police officer M.T ... "

73. The first, second and third applicants and K.B. lodged an appeal against the above judgment with the Virovitica County Court, arguing that the State authorities had failed to prevent the killing of their relative, and that in accordance with the relevant domestic law they should have been awarded damages.

74. On 7 May 2009 the Virovitica County Court dismissed the applicants' appeal and upheld the first-instance judgment. It held, however, that the first-instance court had erred in concluding that at 8.30 a.m. the police had not known A.N.'s whereabouts, because around that time the police had interviewed him at his home. In any event, the police could have informed the hospital immediately after 7.15 a.m. when they had received the call from the bank. Nevertheless, the court held that the police had done everything they could and that it could not be concluded that only intervention by the doctor in the first few hours after the information had been received from the bank would have prevented the incidents. The court also found that, irrespective of A.N.'s violent background and the indications that he was mentally disturbed, he had not acted violently on the day of the incidents or the day before. It was true that police officers M.L. and I.B. had omitted to examine A.N. under section 49 of the Police Act, but he had not been behaving violently, so that omission could not be characterised as an irregularity in their work. Moreover, it was not certain whether A.N. had a gun at the time and therefore it was in doubt whether such a police search could have prevented the incidents.

75. On 29 June 2009 the first, second and third applicants and K.B. lodged an appeal on points of law against the above judgment before the Supreme Court (*Vrhovni sud Republike Hrvatske*).

76. On 11 May 2011 the Supreme Court dismissed the appeal on points of law as ill-founded and upheld the Virovitica County Court's judgment. It found that the lower courts had misinterpreted the relevant domestic law by holding that the liability of the State was based on the principle of fault because it was in fact based on the objective principle. It was thus sufficient to establish that there was unlawful or irregular conduct on the part of the State administration and the causal link to the damage thereby caused. In the case at issue, the Supreme Court held that there had been no causal link

between the irregular work of the police officers and the killing of the applicants' relative.

77. On 5 January 2012 the applicants (including the fourth and fifth applicants, who had taken over the proceedings from K.B. following her death on 14 June 2010) lodged a constitutional complaint before the Constitutional Court (*Ustavni sud Republike Hrvatske*) challenging the decisions of the lower courts.

78. On 15 March 2012 the Constitutional Court dismissed the applicants' constitutional complaint, endorsing the reasoning of the Supreme Court. The decision of the Constitutional Court was served on the applicants' representative on 27 April 2012.

II. RELEVANT DOMESTIC LAW

A. Constitution

79. The relevant provision of the Constitution of the Republic of Croatia (*Ustav Republike Hrvatske*, Official Gazette nos. 56/1990, 135/1997, 8/1998, 113/2000, 124/2000, 28/2001, 41/2001, 55/2001, 76/2010 and 85/2010) provides:

Article 21

"Every human being has the right to life.

..."

B. Police Act

80. The relevant part of the Police Act (*Zakon o policiji*, Official Gazette no. 129/2000) provides:

Section 49

"(1) A police officer is authorised to search a person or any of his or her belongings or vehicles when it is necessary to find items which could be used for an attack or self-injury.

(2) A search of a person for the purposes of paragraph 1 of this section means checking that person's clothes and shoes."

..."

C. Protection of Individuals with Mental Disorders Act

81. The relevant provisions of the Protection of Individuals with Mental Disorders Act (*Zakon o zaštiti osoba s duševnim smetnjama*, Official Gazette nos. 11/1997, 27/1998 and 128/1999) provide:

Section 22

"(1) A seriously mentally disturbed individual who, owing to his mental disturbance, seriously and directly endangers his own life, health or safety, or the life, health and safety of others, may be placed in a psychiatric hospital without his or her consent, in accordance with the procedure for involuntary admission as provided for in this Act.

..."

Section 23

"(1) The individual referred to in section 22 shall be admitted to psychiatric hospital ... based on a prescription of a doctor not employed in the hospital in question and who has examined the person personally and provided a relevant record thereof.

..."

Section 24

"When there is reasonable suspicion that an individual poses an immediate threat to his life or health, or the life or health of others, officers of the Ministry of the Interior may, in particularly urgent cases, take the individual to the psychiatric institution nearest to his place of residence or the place of his apprehension without the prior medical examination referred to in section 23 § 1 of this Act."

D. Civil Obligations Act

82. The relevant provision of the Civil Obligations Act (*Zakon o obveznim odnosima*, Official Gazette nos. 53/1991, 73/1991, 111/1993, 3/1994, 7/1996, 91/1996, 112/1999 and 88/2001) reads as follows:

Grounds for liability

Section 154

"Anyone who causes damage to another shall be liable to pay compensation unless he or she proves that the damage occurred through no fault of his or her own.

...

Liability to pay compensation irrespective of fault may be provided for by law."

E. State Administration Act

83. The relevant provision of the State Administration Act (*Zakon o sustavu državne uprave*, Official Gazette nos. 75/1993, 92/1996, 48/1999, 15/2000, 127/2000 and 59/2001) provides:

Section 13

"The Republic of Croatia shall be liable to compensate damage caused to a citizen, legal entity or other party by unlawful or wrongful conduct on the part of a State administration body, or a body of local self-government or administration ..."

F. Criminal Code

84. The relevant provisions of the Criminal Code (*Kazneni zakon*, Official Gazette no. 110/1997, 27/1998, 50/2000, 129/2000, 51/2001) provide:

Compulsory addiction treatment

Article 76

"(1) Compulsory addiction treatment is a measure that may be imposed only upon a perpetrator who has committed an offence under the decisive influence of alcohol or drug addiction and where there is a danger that owing to his addiction he might reoffend.

..."

Making threats

Article 129

"(1) Whoever seriously threatens another person with harm so as to intimidate or disturb him shall be fined a minimum of one hundred and fifty daily wages or sentenced to imprisonment for a term not exceeding six months.

(2) Whoever seriously threatens to kill or to inflict serious bodily injury on another person, or to kidnap or deprive a person of his liberty, or inflict harm by starting a fire, causing an explosion by using ionizing radiation or by other dangerous means, or to destroy a person's social or financial standing, shall be fined or sentenced to imprisonment for a term not exceeding one year.

..."

G. Civil Procedure Act

85. The relevant provision of the Civil Procedure Act (*Zakon o parničnom postupku*, Official Gazette of the Socialist Federal Republic of Yugoslavia no. 4/1977 with subsequent amendments, and Official Gazette of the Republic of Croatia no. 53/1991, with subsequent amendments), which has been in force since 1 July 1977, read as follows:

5.a. Reopening of proceedings following a final judgment of the European Court of Human Rights in Strasbourg finding a violation of a fundamental human right or freedom

Section 428a

"(1) When the European Court of Human Rights has found a violation of a human right or fundamental freedom guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms or additional protocols thereto, ratified by the Republic of Croatia, a party may, within thirty days of the judgment of the European Court of Human Rights becoming final, file a petition with the court in the Republic of Croatia which adjudicated at first instance in the proceedings in which the

decision violating the human right or fundamental freedom was rendered, for the setting aside of the decision [in question].

(2) The proceedings referred to in paragraph 1 of this section shall be conducted by applying, *mutatis mutandis*, the provisions on the reopening of proceedings.

(3) In the reopened proceedings the courts are required to observe the legal views expressed in the final judgment of the European Court of Human Rights finding a violation of a fundamental human right or freedom."

III. RELEVANT INTERNATIONAL MATERIALS

A. The United Nations Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care

86. The relevant provision of the United Nations Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care (A/RES/46/119, 17 December 1991) reads:

Principle 16

Involuntary admission

"(1) A person may be admitted involuntarily to a mental health facility as a patient or, having already been admitted voluntarily as a patient, be retained as an involuntary patient in the mental health facility if, and only if, a qualified mental health practitioner authorized by law for that purpose determines, in accordance with principle 4 above, that that person has a mental illness and considers:

(a) That, because of that mental illness, there is a serious likelihood of immediate or imminent harm to that person or to other persons; ..."

B. The Council of Europe Parliamentary Assembly Recommendation 1235(1994) on psychiatry and human rights

87. The relevant part of the Recommendation 1235(1994) on psychiatry and human rights provides:

"i. Admission procedure and conditions:

a. compulsory admission must be resorted to in exceptional cases only and must comply with the following criteria:

- there is a serious danger to the patient or to other persons;

... "

C. Recommendation Rec(2004)10 of the Committee of Ministers to member states concerning the protection of the human rights and dignity of persons with mental disorder

88. The Recommendation Rec(2004)10 of the Committee of Ministers to member states concerning the protection of the human rights and dignity of persons with mental disorder of 22 September 2004, in its relevant part reads:

"**Chapter VI – Involvement of the criminal justice system**

Article 32 – Involvement of the police

1. In the fulfilment of their legal duties, the police should coordinate their interventions with those of medical and social services, if possible with the consent of the person concerned, if the behaviour of that person is strongly suggestive of mental disorder and represents a significant risk of harm to him or herself or to others.

2. Where other appropriate possibilities are not available the police may be required, in carrying out their duties, to assist in conveying or returning persons subject to involuntary placement to the relevant facility.

3. Members of the police should respect the dignity and human rights of persons with mental disorder. The importance of this duty should be emphasised during training.

4. Members of the police should receive appropriate training in the assessment and management of situations involving persons with mental disorder, which draws attention to the vulnerability of such persons in situations involving the police."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

89. The applicants complained that the death of their relative had been caused by a failure on the part of the domestic authorities to take all necessary measures to afford her protection from the violent acts of A.N. They relied on Article 2 of the Convention, which, in so far as relevant, reads as follows:

"Everyone's right to life shall be protected by law ..."

A. Admissibility

1. The parties' arguments

90. The Government submitted, relying on the case of *Çakıcı v. Turkey* ([GC], no. 23657/94, § 98, ECHR 1999-IV), that the fourth and fifth applicants had not had victim status, as they had merely been sisters of

M.B.B. and had not lived with her in the same household or the same city. They had joined the domestic proceedings only by lodging a constitutional complaint before the Constitutional Court after their mother K.B., who had been a party to the proceedings before the lower courts, had died (see paragraphs 49 and 77 above). Thus, in the absence of any evidence of proximity, they could not claim to have victim status in connection with M.B.B.'s death. The Government also submitted that the applicants had only challenged the factual findings of the domestic authorities' decisions, and that their complaints had been unsubstantiated.

91. The applicants argued that there had been sufficient proximity and family ties between the fourth and fifth applicants and M.B.B., who had been their sister. Her death had affected them greatly and had caused them considerable suffering. They had, therefore, after the death of their mother K.B., who had taken part in the proceedings before the lower courts, pursued the case by lodging a constitutional complaint before the Constitutional Court. The applicants also submitted that their complaints had been sufficiently substantiated and that they had complied with all other admissibility requirements.

2. The Court's assessment

92. The Court notes at the outset that the case-law cited by the Government relates to the question of whether the brother of a disappeared person could be a victim of treatment contrary to Article 3 of the Convention (see *Çakıcı*, cited above, § 99). It therefore does not find it applicable to the circumstances of the present case concerning the domestic authorities' alleged failure to take all necessary measures to protect the applicants' relative's right to life from another individual in accordance with Article 2 of the Convention.

93. The Court reiterates that the word "victim" in the context of Article 34 of the Convention denotes the person directly affected by the act or omission in question (see *Lüdi v. Switzerland*, 15 June 1992, § 34, Series A no. 238), and that the underlying object of the Convention mechanism is to provide an effective and practical safeguard to those personally affected by violations of fundamental human rights (see *Velikova v. Bulgaria* (dec.), no. 41488/98, ECHR 1999-V).

94. The Court thus considers that the fourth and fifth applicants, as sisters of M.B.B., who took part in the domestic proceedings before the Constitutional Court as parties affected by her death and whose victim status was never challenged at the domestic level, can claim to be victims within the meaning of Article 34 of the Convention (see *Çelikbilek v. Turkey* (dec.), no. 27693/95, 22 June 1999; *Velikova*, cited above; and *Renolde v. France*, no. 5608/05, § 69, ECHR 2008). It therefore rejects the Government's objection as to the fourth and fifth applicants' victim status.

95. The Court further notes, in view of the remainder of the Government's submission, that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and that it is not inadmissible on any other grounds. The Government's objections must therefore be rejected and the complaint declared admissible.

B. Merits

1. The parties' arguments

(a) The applicants

96. The applicants submitted that it had been clear from the findings of the domestic courts that there had been serious irregularities and failures on the part of the police preceding the killing of their relative. In their view, the failure of police officer M.T. to immediately inform the doctor at 7.15 a.m. on the morning of the incident had been directly linked to the death of their relative, because the medical examination the doctor had needed to conduct could have prevented the shootings. However, the doctor had only been informed when it had already been too late to do anything. Moreover, the police had all too easily discharged A.N. from the police station the day before the shootings, when M.N. had gone there to complain that A.N. had been threatening to kill her. They had not taken any action and had merely noted the event in their logbook.

97. The applicants stressed that the failure of the police to prevent A.N. from carrying out the shootings had been obvious, as police officer M.T. had attempted to falsify the documents concerning the action he had taken. Moreover, police officers M.L. and I.B., who had interviewed A.N. at his home, had failed to take any action to clarify A.N.'s mental state and had failed to search him for weapons, though they had known he had had a violent background, had previously been violent towards his wife and on the day in question had been crying, threatening suicide and complaining about his son and wife. A.N.'s behaviour, regarded by a number of witnesses who had given evidence during the domestic proceedings as strange and dangerous, had undoubtedly suggested that he had suffered from a mental disorder, and the police officers had therefore had to take the necessary action under the Protection of Individuals with Mental Disorders Act. In the applicants' view, the fact that the police had been aware that something had needed to be done with A.N. had been evident from the fact that the police chief had ordered the on-duty commanding officer to inform the hospital and Social Care Centre of A.N.'s behaviour.

98. In view of the above circumstances, the applicants submitted that there had been a direct causal link between the killing of their relative and the failure of the police to recognise that A.N. had a mental disorder and to

take the relevant action to verify whether he had been armed and whether his hospitalisation had been necessary.

(b) The Government

99. The Government submitted that at the time the events at issue had unfolded, there had been no reason for the domestic authorities to believe that A.N. had represented a danger to M.B.B. or anybody else. It was true that A.N. had had a criminal record, but it had concerned only two convictions, namely the minor offence of family violence in 2000 and the criminal offence of making threats to his wife in 2001, which had not been sufficient to conclude that at the time of the incidents in question he had been dangerous. Moreover, there had been no indication that he should undergo psychiatric treatment nor anything to suggest that he had had firearms or that he could endanger the life of the applicants' relative. The Government pointed out that it had only been established later during the investigation that A.N. had threatened to kill his wife and her lawyer, but that had never been brought to the attention of the domestic authorities before the shootings.

100. The Government further stressed that on the day in question the only information that had been brought to the attention of the police had been A.N.'s "strange behaviour" in the bank, in that he had withdrawn all his money and, while in tears, had said that "it would be talked about". The police had reacted to this information and a patrol had been sent to the bank and A.N.'s home address. However, there had been nothing to indicate that further action should be taken and the police officers, based on their experience and knowledge, had not considered it necessary to seek medical assistance. The bank employees had testified that A.N. had not been dangerous but had merely been behaving strangely, which had been a conclusion that could be also inferred from the evidence given by other witnesses during the investigation. This had been confirmed during the police interview with A.N. at his home, when he had complained about his family problems and had not appeared agitated. In such circumstances, irrespective of A.N.'s criminal record, there had been nothing warranting A.N.'s deprivation of liberty by the police or his psychiatric examination under the Protection of Individuals with Mental Disorders Act.

101. The Government further pointed out that it could not be concluded with certainty that the doctor, had he been informed in time, would have ordered A.N.'s admission to the psychiatric hospital or that by informing the doctor in time, the events at issue could have been prevented. Furthermore, the police had had no grounds to arrest A.N. or conduct a search of his home, since there had been no information to suggest that he had committed an offence or that he had illegally possessed firearms or threatened to commit an offence.

102. In the Government's view, there had been nothing at the relevant time indicating any link between A.N. and the applicants' relative. Irrespective of that, even if the police had known about any such link, there had been nothing else to suggest that A.N. had posed a danger to her life. The applicants' relative had been killed in her office, which had been located some five hundred metres away from where A.N. had shot his wife. There had therefore been no opportunity or time for the police to react and prevent her killing. In this connection, the Government also pointed out that Slatina was a small town and that its police had limited resources and on the day in question had been heavily involved in other tasks.

2. The Court's assessment

(a) General principles

103. The Court reiterates at the outset that Article 2 enshrines one of the basic values of the democratic societies making up the Council of Europe (see *McCann and Others v. the United Kingdom*, 27 September 1995, § 147, Series A no. 324). The first sentence of Article 2 § 1 enjoins the State not only to refrain from the intentional and unlawful taking of life, but also to take appropriate steps to safeguard the lives of those within its jurisdiction (see *L.C.B. v. the United Kingdom*, 9 June 1998, § 36, *Reports of Judgments and Decisions* 1998-III; and *Osman v. the United Kingdom*, 28 October 1998, § 115, *Reports* 1998-VIII).

104. The State's obligation extends beyond its primary duty to secure the right to life, by putting in place effective criminal-law provisions to deter the commission of offences against the person backed up by law-enforcement machinery for the prevention, suppression and punishment of breaches of such provisions. Article 2 may also imply in certain well-defined circumstances a positive obligation on the authorities to take preventive operational measures to protect an individual whose life is at risk from the criminal acts of another individual (see *Mastromatteo v. Italy* [GC], no. 37703/97, § 67, ECHR 2002-VIII).

105. That does not mean, however, that a positive obligation to prevent every possibility of violence can be derived from this provision (see, *inter alia*, *Tanrıbilir v. Turkey*, no. 21422/93, § 71, 16 November 2000). Such an obligation must be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities, bearing in mind the difficulties involved in policing modern societies, the unpredictability of human conduct and the operational choices which must be made in terms of priorities and resources (see *Osman*, cited above, § 116).

106. Accordingly, not every claimed risk to life can entail for the authorities a Convention requirement to take operational measures to prevent that risk from materialising. A positive obligation will arise, the Court has held, where it has been established that the authorities knew or

ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual or individuals 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 (see *Osman*, cited above, § 116; and *Choreftakis and Choreftaki v. Greece*, no. 46846/08, § 47, 17 January 2012).

107. So far the Court has dealt with various situations engaging the States' positive obligations to protect the right to life under Article 2 of the Convention from the criminal acts of a third party. It has thus, by applying the above-cited *Osman* test, defined the scope of these obligations in instances concerning the requirement of personal protection of one or more individuals identifiable in advance as the potential target of a lethal act, as entailing the necessary analysis of whether there was any decisive stage in the sequence of events leading up to the deprivation of life when it could be said that the authorities knew, or ought to have known, of a real and immediate risk to the life of the individual, and whether they failed to take the necessary measures to avoid that risk (see, for example, *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, § 57 ECHR 2002-II (murder of a prisoner); *Branko Tomašić and Others v. Croatia*, no. 46598/06, §§ 52-53, 15 January 2009, and *Opuz v. Turkey*, no. 33401/02, § 129, ECHR 2009 (killings in the context of domestic violence);, *Van Colle v. the United Kingdom*, no. 7678/09, § 88, 13 November 2012 (killing of a witness); *Kılıç v. Turkey*, no. 22492/93, § 63, ECHR 2000-III, and *Mahmut Kaya v. Turkey*, no. 22535/93, § 88, ECHR 2000-III (killing of an individual in a conflict zone); and *Yabansu and Others v. Turkey*, no. 43903/09, § 91, 12 November 2013 (killing of an individual by a third party during military service)).

108. Moreover, the positive obligations may apply not only to situations concerning the requirement of personal protection of one or more individuals identifiable in advance as the potential target of a lethal act, but also in cases raising the obligation to afford general protection to society (see *Maiorano and Others v. Italy*, no. 28634/06, § 107, 15 December 2009, and *Gorovenky and Bugara v. Ukraine*, nos. 36146/05 and 42418/05, § 32, 12 January 2012). In the latter circumstances, the positive obligation covers a wide range of sectors (see *Ciechońska v. Poland*, no. 19776/04, §§ 62-63, 14 June 2011) and, in principle, will arise in the context of any activity, whether public or not, in which the right to life may be at stake (see *Öneryıldız v. Turkey* [GC], no. 48939/99, § 71, ECHR 2004-XII).

109. Thus, in the cases of *Gorovenky and Bugara* (cited above), and *Sašo Gorgiev v. the former Yugoslav Republic of Macedonia* (no. 49382/06, ECHR 2012 (extracts)), which both concerned shootings by an off-duty police officers, the Court held that the State's duty to safeguard the right to life must be considered, *inter alia*, to involve the taking of reasonable measures to ensure the safety of individuals (see *Gorovenky and Bugara*,

cited above, § 34; and *Sašo Gorgiev*, cited above, § 43). On the facts, without examining whether the victims had been identifiable in advance as the potential targets, the Court in both cases found a violation of Article 2 of the Convention. In particular, in the *Gorovenky and Bugara* case (cited above, §§ 30 and 39) it did so because the perpetrator had been issued with the gun in breach of existing domestic law and the domestic authorities had failed to correctly assess his ability to carry a gun. In the *Sašo Gorgiev* case (cited above, §§ 50 and 52) the Court found a violation of that Article because the State had failed to put in place a system of adequate and effective safeguards to prevent its agents from misusing their service weapons as well as because nothing had suggested that any assessment had been made of the perpetrator's fitness to serve in the police and to carry a weapon.

110. Similarly, in the context of an unpredicted killing in a school, and irrespective of the fact that the victim had not been identifiable in advance as the potential target, the Court has examined the obligation on the State, notably the education authorities, to secure the safety and well-being of children placed under their supervision. On the facts of that case, the Court found that the State had failed to discharge its positive obligation (see *Kayak v. Turkey*, no. 60444/08, §§ 56, 59 and 66, 10 July 2012).

111. The Court has also distinguished cases in which the issue was determining whether the liability of the authorities is engaged for failing to provide personal protection to a previously identified victim, from cases in which the issue was the obligation to afford general protection to society against the potential acts of one or of several individuals serving a prison sentence for a violent crime (see *Mastromatteo*, cited above, § 69; *Maiorano and Others*, cited above, § 107; and *Choreftakis and Choreftaki*, cited above, §§ 48 and 50). In the latter category of cases the Court has examined whether the liability of the State under Article 2 of the Convention for the unpredicted killing of a passer-by by a prisoner on prison leave could be engaged through its failure to provide and apply an adequate prison leave system (see, for example, *Mastromatteo*, cited above, § 70).

(b) Application of these principles to the present case

112. In the light of the importance of the protection afforded by Article 2, the Court must subject complaints about loss of life to the most careful scrutiny, taking into consideration all relevant circumstances (see, among many other authorities, *Banel v. Lithuania*, no. 14326/11, § 67, 18 June 2013). In the present case, the applicants' relative was killed on 22 March 2002 in a shooting spree carried out by A.N., apparently at the time a mentally disturbed individual, who had known her from the divorce proceedings in which she, as a lawyer, had been representing his wife.

113. A.N. was a man with a history of alcohol abuse, violent behaviour against the police and his family and the unlawful possession of firearms (see paragraphs 9 and 37 above). In the period preceding the killing of the applicants' relative he was reported three times for family violence, twice for a breach of the peace and public order and for making serious threats (see paragraph 9 above). This resulted in his conviction in the Slatina Minor Offences Court on 16 October 2000 for the minor offence of family violence, and on 25 July 2001 the Slatina Municipal Court found him guilty of the criminal offence of making death threats to his wife. Although the evidence before the Court shows that A.N.'s violent behaviour had been associated with his alcohol abuse (see paragraphs 9, 30 and 54 above), there is no indication that the domestic authorities ever analysed that issue or applied any of the measures compelling him to undergo some form of treatment (see paragraph 84 above).

114. In the early hours of the day on which A.N. killed the applicants' relative, his strange behaviour had been brought to the attention of the police by F.S., a manager at the bank where A.N. had gone to withdraw his money (see paragraph 15 above). A.N. told the bank employees and some of the customers present that they would not see each other again and, while in tears, mentioned problems in his family and said that he was going to do something which would be talked about. His behaviour led the bank employees and customers to believe that he posed a danger to himself or others and that he needed medical help (see paragraphs 14, 32 and 51 above).

115. At around 8 a.m. the same day, following F.S's call reporting A.N.'s behaviour, two police officers found A.N. at his home and interviewed him there. Even though A.N. complained about his family problems and his divorce proceedings and threatened to kill himself (see paragraphs 17 and 19 above), and though his behaviour at the bank where he said he would do something which would be talked about (see paragraphs 56 and 57 above) and his background had been known to the two police officers (see paragraph 51 above), they took no further action, but returned to the police station leaving A.N. under no form of control or supervision (see paragraphs 17 and 18 above).

116. In this connection, the Court observes that the police officers' statements that A.N. appeared normal and calm during the interview at his home (see paragraphs 56 and 57 above), which were accepted by the domestic courts (see paragraphs 67, 72, 74 and 76 above), appear, as the Slatina Municipal Court initially noted, illogical (see that court's judgment of 5 March 2007 in paragraph 65 above). Moreover, the Court notes that several people who had seen A.N. on the morning of the incident, at approximately the same time he had spoken to the police officers, gave statements suggesting that A.N. had been seriously mentally disturbed.

117. The bank customers and employees considered A.N. to be disturbed, "totally unstable" and "crazy"; and that he had been behaving strangely and in need of medical attention (see paragraphs 32, 51 and 63 above). A.N.'s behaviour also prompted superior police officer M.B. to order that the hospital and Social Care Centre be informed of his behaviour (see paragraphs 19 and 59 above). Doctor I.F. and a Social Care Centre official, after receiving the information about his behaviour, considered that medical examination was needed (see paragraphs 19, 42, 52 and 69 above). Moreover, the Virovitica County Court concluded that at the time of the events, there had been indications that A.N. was mentally disturbed (see paragraph 74 above).

118. The Court further notes that upon their arrival to the police station, the two police officers who had interviewed A.N. submitted their report to the on-duty commanding officer M.T. At 8.12 a.m. M.T. was ordered by his superior M.B. to contact the hospital and Social Care Centre to inform them of the situation concerning A.N. (see paragraphs 19 and 59 above). However, M.T. only informed the hospital at 9.40 a.m. and the Social Care Centre at 9.37 a.m.

119. In the meantime, at around 9.00 a.m., about an hour before shooting his wife and killing the applicants' relative, A.N. went to the police station and saw police officer M.T., demanding to know why the police had come to his home and saying that he had problems which he would be solving himself (see paragraph 21 above). However, police officer M.T., though at that time already under a duty to inform the hospital and Social Care Centre about the situation with A.N., and though aware of A.N.'s history of violent behaviour (see paragraphs 19 and 58 above), did nothing and left A.N. to walk out of the police station, subsequently to which he carried out his shooting spree, which resulted in serious injuries to A.N.'s wife, the death of the applicants' relative, his shooting encounter with the police and his suicide (see paragraphs 21-26 above).

120. Against the above background, the Court finds that in the present case it is not necessary to go into the issue of the requirement of personal protection of one or more individuals identifiable in advance as the potential target of a lethal act (see paragraph 107 above), or to deal with the question of the scope of the states' positive obligations in cases concerning random violence out of the practical control or possible reasonable knowledge of the domestic authorities (see *Acet v. Turkey* (dec.), no. 41590/06, 29 June 2010, and *Vosylius and Vosyliene v. the United Kingdom* (dec.), no. 61974/11, 3 September 2013).

121. What is at issue in the present case is the obligation to afford general protection to society against potential violent acts of an apparently mentally disturbed person (compare, *mutatis mutandis*, *Mastromatteo*, cited above, § 69; *Maiorano and Others*, cited above, § 111, and *Choreftakis and Choreftaki*, cited above, § 50). The Court notes in particular that A.N. at the

time appeared to be mentally disturbed and dangerous to himself and/or others (see paragraphs 116-117 above) and that competent authorities considered that his further medical supervision was needed (see paragraphs 19, 42, 52 and 69 above). Moreover, he was twice under immediate police control and supervision on the morning of the incidents (see paragraphs 17, 19 and 21 above). This means that the risk to life in the present case was real and immediate and that the authorities had or ought to have had knowledge of it. In such situations the States' positive obligations under Article 2 of the Convention require the domestic authorities to do all that could reasonably be expected of them to avoid such risk (see, for example, *Osman*, cited above, § 116; and *Mastromatteo*, cited above, § 74; *Maiorano and Others*, cited above, § 109, and *Choreftakis and Choreftaki*, cited above, § 55).

122. When examining whether the domestic authorities complied with those positive obligations, it must be borne in mind that they have to be interpreted in such a way as not to impose an excessive burden on the authorities (see paragraph 105 above). In particular, due regard must be paid to 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 *Osman*, cited, above, § 116, and *Maiorano and Others*, cited above, § 106). The Court must also be cautious about revisiting the events with the wisdom of hindsight (see *Bubbins v. the United Kingdom*, no. 50196/99, §147, ECHR 2005-II (extracts)). In the present case the Court also has to take into account the relatively short time span in which the events unfolded.

123. The Court notes that during the domestic proceedings, the competent domestic authorities identified several shortcomings as to the manner in which the police had dealt with the situation in question. Thus, the disciplinary panel of the Ministry of the Interior found police officer M.Kr. guilty of failing to report on the interview with A.N. and his wife the day before the shootings, and police officer M.T. guilty of tampering with the reports concerning the measures the police had taken on the morning of the incident.

124. In the Court's view, there are several other measures which the domestic authorities might reasonably have been expected to take to avoid the risk to the right to life from the violent acts of A.N. While the Court cannot conclude with certainty that matters would have turned out differently if the authorities had acted otherwise, it reiterates that the test under Article 2 does not require it to be shown that "but for" the failing or omission of the authorities the killing would not have occurred (see *Opuz*, cited above, § 136 and, *mutatis mutandis*, *E. and Others v. the United Kingdom*, no. 33218/96, § 99, 26 November 2002), as it could be inferred

from the decisions of the domestic courts (see paragraphs 74-76 above). Rather, what is important, and sufficient to engage the responsibility of the State under that Article, is that reasonable measures the domestic authorities failed to take could have had a real prospect of altering the outcome or mitigating the harm (see *Opuz*, loc. cit. and, *mutatis mutandis*, *E. and Others v. the United Kingdom*, loc. cit.).

125. In this connection, the Court firstly notes that on 21 March 2002, the day before the shootings, A.N.'s wife M.N. went to the police station, followed by A.N., to report that he had been harassing her. According to police officer Ž.J.'s report and testimony, she mentioned no threats or violence, although she did allege that A.N. had previously beaten her up, for which he had been convicted in the minor offences and criminal courts (see paragraphs 12 and 61 above).

126. The Court notes that the police report concerning this event was not drawn up the day on which A.N. and M.N. had gone to the police station but four days later, on 25 March 2002, when A.N. had already carried out the shootings and an investigation into the circumstances surrounding the case was already underway. Moreover, the Court observes that during the civil proceedings, M.N. testified that on the day before the shootings she had reported to the police that A.N. had threatened to kill her, but they had not done anything about it (see paragraph 54 above). Her evidence was not put into doubt by the domestic courts, nor did the Government argue that it was fabricated, untruthful or unreliable for any other reason.

127. The Court thus finds that it was already incumbent on the authorities as early as 21 March 2002, given that the police had sufficient information about A.N.'s violent background, to take reasonable measures and investigate further the allegations that A.N. had been making serious death threats, an offence under Croatian law (see paragraph 83 above), which could have led to his arrest and detention.

128. Furthermore, the Court reiterates that it has already found that the two police officers who had interviewed A.N. in his home on the day of the incidents had failed to take the necessary precautions given his mental state and threats of suicide, and the bank customers and employees' statements that A.N. had threatened to do something which would be talked about (see paragraphs 115-117 above). In fact, it is not fully clear what A.N. actually told the police officers, since doctor I.F. testified that when the police had called, they had told him that A.N. could kill somebody or do something bad (see paragraph 52 above).

129. In such a situation, even if the undisputed threat of suicide is taken alone into account, the Court reiterates that where State agents become aware of such a threat a sufficient time in advance, a positive obligation arises under Article 2 requiring them to prevent that threat from materialising, by any means reasonable and feasible in the circumstances

(compare *Mikayil Mammadov v. Azerbaijan*, no. 4762/05, § 115, 17 December 2009).

130. The effective measures for protecting citizens from violence by mentally disturbed persons are also envisaged in the relevant domestic law, which provides for the involuntary/compulsory admission of a mentally disturbed individual who poses a danger to himself or others (see paragraph 81 above) and the ability to carry out a preventive search of a potentially dangerous individual (see paragraph 80 above). However, as already indicated above, two police officers returned to the police station without taking any measures, and the on-duty police officer only informed the hospital and the social services when it was already difficult, or perhaps even impossible, to react or alter the course of events.

131. Thus the police's belated reaction prevented the doctor from taking the measures necessary for assessing A.N.'s mental state. Doctor I.F. explained that the information he had received required him to examine A.N. and to decide about his further psychiatric treatment. In particular, it had led him to believe that his and the police's intervention had been necessary in the circumstances of the case (see paragraphs 35, 42, 52 and 69 above). The intention of the doctor to examine A.N. was also confirmed by the police officer M.T. in his evidence before the domestic courts (see paragraph 70 above), and such measures had been considered necessary by the Social Care Centre official who had answered the police's call concerning A.N.'s behaviour (see paragraph 19 above).

132. The Court thus considers that the failures of the police were not only a missed opportunity, but could, had they not occurred, have objectively altered the course of events by leading to A.N's medical supervision and the taking of further necessary action relevant to his apparently disturbed mental state.

133. Against the above background, the Court concludes that the identified series of failures of the police to deploy necessary diligence in dealing with the objective indications that A.N. was mentally disturbed, disclose a breach of the State's obligation to safeguard the right to life by putting in place all reasonable measures to ensure the safety of individuals from his violent acts resulting in the death of the applicants' relative.

134. There has accordingly been a violation of Article 2 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

135. The applicants complained that they had been unable to obtain damages for the death of their relative. They relied on 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."

A. Admissibility

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

B. Merits

1. The parties' arguments

137. The applicants argued that the domestic authorities had erred in the application of the relevant domestic law which had prevented them from obtaining any damages for the death of their relative.

138. The Government submitted that the applicants had had effective domestic remedies at their disposal concerning the death of their relative, which they had effectively used. They had had the opportunity to institute criminal and civil proceedings, by which they had claimed damages for the allegedly irregular work of the police officers, who had been also prosecuted in disciplinary proceedings. In particular, the applicants had lodged a civil action in the Slatina Municipal Court and that court, applying the relevant domestic law and having found no causal link between the irregular work of the police officers and the death of the applicant's relative, dismissed their case on the merits.

2. The Court's assessment

139. The Court reiterates that Article 13 of the Convention provides a general obligation on the Contracting States to provide an effective remedy in respect of breaches of the Convention, including of Article 2 (see, *mutatis mutandis*¸ *Aksoy v. Turkey*, 18 December 1996, §§ 93-94, *Reports* 1996-VI).

140. In particular, when there is an arguable claim of a breach of Article 2 of the Convention, the Court must examine whether civil proceedings for establishing any liability and, if so, awarding non-pecuniary damages were available to the applicant in that respect (see *Reynolds v. the United Kingdom*, no. 2694/08, § 60, 13 March 2012). However, the "effectiveness" of a "remedy" within the meaning of Article 13 does not depend on the certainty of a favourable outcome for the applicant (see, *inter alia*, *Giuliani and Gaggio v. Italy* [GC], no. 23458/02, § 336, ECHR 2011 (extracts)).

141. The Court notes in the present case that the applicants did not allege any failures in the criminal or disciplinary investigation conducted into the circumstances relating to the death of their relative. As to the effectiveness of civil remedies, the Court notes that the applicants had the

opportunity to lodge a civil action for damages for the death under section 13 of the State Administration Act (see paragraph 83 above). The civil courts examined their complaints on the merits and provided sufficient reasons for their interpretation of the relevant domestic law (see paragraphs 65, 72 and 76 above).

142. The Court therefore, noting that it is primarily for the domestic authorities to interpret the relevant domestic law and that Article 13 does not guarantee success in respect of a remedy used (see, for example, *Vanjak v. Croatia*, no. 29889/04, § 77, 14 January 2010), does not find any appearance of a violation of that provision.

143. There has accordingly been no violation of Article 13 of the Convention in the present case.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

144. 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

145. The applicants jointly claimed 920,000 Croatian kunas (HRK) in respect of non-pecuniary damage.

146. The Government considered the applicant's claim unspecified, unfounded and unsubstantiated.

147. Having regard to all the circumstances of the present case, the Court accepts that the applicants suffered non-pecuniary damage which cannot be compensated for solely by the finding of a violation. Making its assessment on an equitable basis, the Court awards the applicants EUR 20,000 jointly in compensation for non-pecuniary damage, plus any tax that may be chargeable to them.

B. Costs and expenses

148. The applicants did not submit a claim for costs and expenses as required under Rule 60 of the Rules of Court.

149. The Court therefore makes no award in that respect.

C. Default interest

150. 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

1. *Declares*, unanimously, the application admissible;

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

3. *Holds*, by five votes to two, that there has been no violation of Article 13 of the Convention;

4. *Holds*, unanimously,

   (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 20,000 (twenty thousand euros) jointly, plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into Croatian kunas at the rate applicable at the date of settlement;

   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount 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 applicants' claim for just satisfaction.

Done in English, and notified in writing on 18 September 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen	Isabelle Berro-Lefèvre
Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the common separate opinion of Judges Lazarova Trajkovska and Pinto de Albuquerque is annexed to this judgment.

I. B.L.
S.N.

JOINT PARTLY CONCURRING AND PARTLY DISSENTING OPINION OF JUDGES LAZAROVA TRAJKOVSKA AND PINTO DE ALBUQUERQUE

1. The *Bljakaj and Others* case concerns the murder of a lawyer in the performance of her professional activity by an allegedly mentally disturbed person. Two major new questions are raised by this case, having regard to the identities of the victim and the perpetrator at issue. First, what kind of protection should the State afford from violent acts of a mentally disturbed person? And second, what kind of protection should the State afford to lawyers from work-related violence?

We agree with the majority on the finding of a violation of Article 2 of the European Convention on Human Rights (the Convention) on account of a failure by the domestic authorities to take all necessary measures to protect the late M.B.B. from the violent conduct of A.N.. But we disagree with the majority on the assessment of the response by the respondent State to M.B.B.'s murder. We are of the opinion that its response showed very serious shortcomings, at the level of both the subsequent disciplinary and court proceedings, thus leading us to conclude that no effective remedies were available to the applicants for the breach of Article 2, and therefore that there has also been a violation of Article 13.

The State's obligation to protect against violent acts of mentally disturbed persons

2. The majority assumed that A.N. was a mentally disturbed person, although he was never submitted to psychiatric expertise[1], and he had been found liable for his misdeeds at least twice, in judgments of the Slatina Minor Offences Court and the Slatina Municipal Court following previous criminal proceedings against him[2]. The reasoning proposed by the majority for finding a violation of Article 2 of the Convention draws heavily on the approach followed by the Court in the case of *Mastromatteo v. Italy*[3]. According to the majority, the instant case is similar to that precedent in that it cannot be said that, on the basis of actual or constructive knowledge, there was a real and immediate threat to the life of a specific identifiable

[1] Contrary to *BrankoTomasic and Others v. Croatia*, no. 46598/08, § 52, 14 October 2010.
[2] See paragraphs 10 and 11 of the judgment.
[3] *Mastromatteo v. Italy* [GC], no. 37703/97, CEDH 2002-VIII; see also *Maiorano and Others v. Italy*, no. 28634/06, 15 December 2009, and *Choreftakis and Choreftaki v. Greece*, no. 46846/08, 17 January 2012. In these cases the Court discussed the scope of the States' positive obligation to protect the public when it came to the release of prisoners with a history of violence. In all three cases prisoners had either been placed on a semi-custodial regime or granted leave from prison at the time they killed members of the public.

individual[4], but on the other hand, in the instant application – unlike in the referenced case – A.N. had not been released into society following an assessment of the risk which he represented to the public. It is proposed by the majority nevertheless to extend the approach followed in *Mastromatteo* to the instant case since it concerns an apparently mentally disturbed person who has been, or ought to have been, under the domestic authorities' immediate control and supervision.

3. We believe that this approach is insufficient. The case is more complex than the way in which it is portrayed in the majority's reasoning. There were three different categories of potential victims of A.N.: himself, his wife and close relatives, and the public at large. We will deal with each of these categories of risks separately.

4. On the morning of 22 March 2002, A.N. was patently not in his right mind, seeming "seriously disturbed", "nervous", "totally unstable" or even "totally crazy"[5]. He repeatedly threatened to kill himself. The threat of suicide known to State agents suffices to trigger the State's positive obligation to prevent harm to the suicidal person's life and physical integrity under Articles 2 and 3 of the Convention. In the domestic legal framework, such obligation is reflected in section 24 of the Protection of Individuals with Mental Disorders Act. The police officers simply disregarded their positive obligation to protect A.N.'s life against self-harm. Instead of procuring the urgently needed psychiatric care to A.N., they simply "advised him that everything was going to be fine and left"[6]. One hour after their first encounter with A.N., a second one took place at the police station, and once again, A.N. was left to walk out, in spite of his clear warning that "he was going to do what he intended"[7]. It is difficult to understand such a careless attitude on the part of the police officers.

5. In addition, A.N. represented a real and present, or even imminent, danger for some identifiable persons, namely his wife and children. They had been harassed, threatened and severely beaten several times in the past, and therefore were in danger of being targeted again, following the long pattern of domestic violence shown by A.N.'s behaviour. Less than eight months before the facts, A.N. had been sentenced to two months'

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[4] All four cases are therefore to be distinguished on this point from *Osman v. the United Kingdom* (28 October 1998, Reports 1998-VIII), *Opuz v. Turkey* (no. 33401/02, ECHR 2009) and *Van Colle v. the United Kingdom* (no. 7678/09, 13 November 2012).

[5] See paragraphs 32, 51, 63 and 70 of the judgment. Based on the testimony in question, we readily accept that the applicant was in a state of mental disturbance on the morning of 22 March 2002.

[6] See paragraphs 17 and 56 of the judgment. It is indeed incredible that the police officers could leave someone alone who claimed that he was "sick of everything, and that he had withdrawn the money for his funeral because he was going to kill himself either that day or the next by jumping under a train, and that there was nothing they could do about it. He also said that he had already written a suicide note…"

[7] See paragraph 21 of the judgment.

imprisonment for making serious death threats against his wife[8]. On the very day prior to the murder, A.N.'s wife had again complained to the police about her husband's harassment and death threats[9]. There was a strong likelihood that he might repeat the same or similar offences, or even worse, carry out his death threats. This obvious danger warranted particular diligence on the part of the competent police officers, since it triggered the State's positive obligation to protect the life and physical and psychological integrity of A.N.'s wife and close relatives under Articles 2 and 3 of the Convention[10].

If a State knows or ought to know that a segment of its population, such as women, is subject to repeated violence and it fails to prevent harm to the members of that group of people when they face a real and present risk, the State can be found responsible by omission for the resulting human rights violations committed by non-State actors[11]. In view of the context of widespread domestic violence and more generally of abuse and violence against women in Croatian society, which was known to the State authorities[12], and of A.N.'s past behaviour and criminal record, of which they were also aware, the police officers had a duty to act for the protection of A.N.'s wife and close relatives as early as 21 March 2002, when A.N.'s wife, M.N., went to the police station. By failing to take any preventive

[8] See paragraph 11 of the judgment.

[9] See paragraph 54 of the judgment.

[10] See Articles 3 and 33 of the Council of Europe Convention on Preventing and Combating Violence against Women.

[11] A review of the Osman test for the State's positive obligation of prevention and protection in the field of domestic violence based on the existence of a real and present, but not necessarily imminent, danger was proposed in the separate opinion of Judge Pinto de Albuquerque in *Valiulienė v. Lithuania* (no. 33234/07, 26 March 2013). We reiterate that view in the present opinion. The claim that domestic authorities should exercise an "even greater degree of vigilance" in view of the "particular vulnerability of victims of domestic violence", made in *Hajduova v. Slovakia* (no. 2660/03, § 50, 30 November 2010), corresponds in substance to this stricter standard for the State's positive obligation.

[12] The fact that domestic violence, and especially violence against female partners or former partners, is a widespread problem in Croatia has been extensively dealt with in the Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo, Mission on Croatia, A/HRC/23/49/Add.4, 3 June 2013, paragraphs 12, 71 and 72 ("Domestic violence is a widespread problem throughout the country, usually perpetrated by intimate partners, including current or former spouses or boyfriends"), the Concluding observations of the Human Rights Committee on Croatia, CCPR/C/HRV/CO/2, 4 November 2009, para. 8, and the Report of the Committee on the Elimination of Discrimination against Women on its thirty second session, Concluding comments on the combined second and third periodic report, A/60/38(SUPP), 2005, paragraphs 198 and 199 ("high incidence of domestic violence"). The Court's case-law also bears witness to this fact (see *BrankoTomasic and Others v. Croatia*, no. 46598/08, 14 October 2010; *A. v. Croatia*, no. 55164/08, 14 October 2010; and *Sandra Jankovic v. Croatia*, no. 38478/05, § 50, 5 March 2009). On the need for a gender-sensitive administration of justice see the Report of the Special Rapporteur on the independence of judges and lawyers, Gabriela Knaul, A/HRC/17/30, 29 April 2011.

measures on that day, or the following day, the police officers rendered the respondent State liable for the foreseeable future harm to M.N. and her children.

6. It is true that the danger posed by A.N. was not limited to himself and the members of his close family, since he also said that he would do "something bad" to other people or "kill somebody" or "kill two other people" (other than his wife)[13]. In view of A.N.'s disturbed state of mind, a risk to the life and physical integrity of members of the public at large emerged on the morning on 22 March 2002[14]. Like the majority, we accept that *Mastromatteo* should be extended to threatening mentally disturbed persons living in an open environment, whose dangerousness is known or ought to be known to State agents. In these circumstances, the threat of harm to third persons (including non-identifiable persons) made by a mentally disturbed person suffices to trigger the State's positive obligation to prevent harm to the life and physical integrity of others under Articles 2 and 3 of the Convention. In the present case, the police officers had two opportunities immediately prior to the murder to apprehend A.N. and take the necessary measures to properly assess his dangerousness, namely by taking him to the psychiatric institution nearest to his place of residence or place of apprehension. They failed to use either of those opportunities. In legal terms, they failed to satisfy their positive obligation to prevent any foreseeable acts of violence against third persons committed by a dangerous, mentally disturbed person.

The State's obligation to protect lawyers from work-related violence

7. Scientific research suggests that many law professionals face a higher-than-average risk of work-related violence and threats. The risk is particularly acute for lawyers practising in the areas of criminal, family and divorce law and threats and violence are primarily perpetrated by opposing parties and their associates and relatives, or by the lawyer's own client[15]. In some countries, the risk is concentrated on lawyers defending human rights causes, who have to face persecution and even violence on the part of State

[13] See paragraphs 14, 15 and particularly 52 and 54 of the judgment.
[14] See *Mastromatteo*, cited above, § 74.
[15] See, among others, Mark Hansen, "Lawyers in Harm's Way", in *American Bar Association Journal*, 1998, Frederick Calhoun, "Hunters and Howlers: Threats and Violence Against Federal Judicial Officials in the United States", U.S. Marshals Service, 1998, Stephen Kelson, "An Increasingly Violent Profession", in *Utah Bar Journal*, 2001, "Violence Against the Utah Legal Profession: A Statewide Survey", in *Utah Bar Journal*, 2006, "Violence Against the Idaho Legal Profession: Results of a 2008 Survey", in *The Advocate*, Idaho State Bar, 2008, "Violence Against the Nevada Legal Profession", in *Nevada Lawyer Magazine*, 2012, and David Hyde, "Violence and threats against lawyers is a growing concern in Canada", *First Reference Talks*, 2013.

officials or private persons under their direction[16]. The instant case is an unfortunate example of this kind of targeted violence against a lawyer who was attacked in her office and for professional reasons. Unfortunately the majority were not willing to take into consideration this aspect of the case. We find that an opportunity was thus missed.

8. Judges, prosecutors, attorneys and lawyers, judicial clerks and other judicial officials perform a public function in so far as they all collaborate in the administration of justice. Any physical or verbal attack on them, or threat thereof, as a result of their work must be seen as an attack on the entire public system of justice. An equitable system of administration of justice which guarantees the independence of lawyers in the discharge of their professional duties without any violence or threat thereof is imperative for the maintenance of the rule of law. It is inherent in the rights to a fair trial and access to justice that the protagonists of justice perform their respective roles free from any violence or threat of violence. While the threat of violence does not in the majority of cases alter the way lawyers conduct their legal business, nonetheless the sheer existence of such a possibility calls into question the fairness of any court or out-of-court procedure. The State is therefore called not only to punish, but also to prevent such acts, and ultimately to take the measures necessary to ensure the lawyer's safety, in order to guarantee the rule of law and the rights to a fair trial and access to justice, as provided by Article 6 of the Convention, in addition to the lawyer's right to life and physical integrity. To reiterate a well-enshrined principle, where the safety of lawyers is threatened as a result of discharging their duties, they must receive appropriate protection from the State authorities[17]. Having regard to the specific professional risk

[16] See the overview of the actual situation given by Lawyers for Lawyers, Amnesty International, Human Rights Watch and Asian Human Rights Commission, on their respective sites. For example, Russia: Protect Human Rights Lawyer – 'Look Over Your Shoulder,' Police in Caucasus Region Tell Attorney for Memorial, Human Rights Watch, 2012.

[17] See paragraph 17 of the Basic Principles on the Role of Lawyers adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, 27 August to 7 September 1990, Principle I (1) and (4) of Council of Europe Committee of Ministers Recommendation 2000 (21) on the Freedom of exercise of the profession of lawyer and Principle I (b) and (f) of the Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa. See also paragraph 16 of the UN Basic Principles: "Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.", and particularly the work of the UN Special Rapporteur on the Independence of judges and lawyers, such as the Report on the Mission to Mexico, 18 April 2011, A/HRC/17/30/Add.3, paragraphs 52 and 53. Within the European human rights system, see the Guidelines on Human Rights Defenders of the European Union, General Affairs Council of 8 December 2008; within the African system, the Resolution on the

of violence for this segment of the population, the State can be found responsible by omission for the resulting human rights violations, if it fails to prevent harm to the members of that group when they face a clear and present risk[18].

9. In the instant case, the threat of violence against M.B.B. in her capacity as M.N.'s lawyer in the latter's divorce proceedings had already been expressed by A.N.[19]. The murder of M.B.B. was a cold-blooded, calculated act of the perpetrator, not a sudden thoughtless impulse. Had the police officers been diligent when they met A.N. twice on the morning of 22 March 2002, and had they carried out an adequate investigation into the background to the case before them, and a proper assessment of the risks posed by A.N. to himself and others, they could have become aware of the special risk that he represented to M.B.B.[20], and could consequently have taken the necessary measures to avoid further aggravation of that danger.

The lack of effective domestic remedies

10. The majority accept the Government's submissions on the effectiveness of the domestic remedies[21]. We depart from the majority's finding, with a firm conviction, in their assessment of the State's response to the murder of M.B.B., for five reasons. Firstly, we cannot understand the complacency of the disciplinary authorities which punished the police

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protection of human rights defenders in Africa of the African Commission on Human and Peoples' Rights, 4 June 2004, and within the Inter-American system, the General Assembly of the Organization of American States' Resolutions AG/Res. 1671 (XXIX-0/99), 7 June 1999, AG/Res. 1711 (XXX-O/00), 5 June of 2000, and AG/Res. 2412 (XXXVIII-O/08), 3 June 2008. A summary of the international standards can be found in the commentary to principle 7 of the International Commission of Jurists in its Legal Commentary to the ICJ Geneva Declaration - Upholding the Rule of Law and the Role of Judges and Lawyers in Times of Crisis, 2011: "All branches of government must take all necessary measures to ensure the protection by the competent authorities of lawyers against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of their professional functions or legitimate exercise of human rights. In particular, lawyers must not be identified with their clients or clients' causes as a result of discharging their functions."

[18] In other words, we adopt here the more rigorous test of a "clear and present" danger, which was proposed in Judge Pinto de Albuquerque's opinion in *Valiulienė v. Lithuania.* In fact, we believe that this criterion of protection should be applicable to all segments of the population which are subject to a specific, higher-than-average risk of violence.

[19] See for example paragraph 34, read in conjunction with paragraph 30.

[20] For instance, by talking to the children of A.N., or his brothers-in-laws, L.Z. and F.Z., or the wife of the latter, ZZ, who could all bear witness to A.N.'s angry and even threatening state of mind with regard to M.B.B..

[21] In this opinion we assess the Article 13 complaint having regard to the broad, multi-faceted argumentation of the Government, resumed in paragraph 138 of the judgment, which touches upon the disciplinary, criminal and civil procedures.

officers M.Ko. and M.T. with minor penalties, even though they had been found guilty of very serious professional misconduct[22].

11. Secondly, we have even less understanding for the acquittal of police officer M.T. on the grounds that there was no evidence that he had deliberately falsified his report, and for the dismissal of the charges against police officer M.Ko. on the grounds that the prosecution was time-barred. Since the failure of police officer M.T. to immediately report the situation concerning A.N. on the morning of 22 March 2002 to the hospital, as he had been instructed to do by his superior, and the objective falsification of his report about the times he had contacted the hospital and Social Care Centre were irrefutable, the only disputed question was the *dolus* of police officer M.T.. The justification given by police officer M.T. for his behaviour is evidently not convincing[23], but even if one were to accept it, it would correspond, at least, to a *dolus eventualis* form of commission of the imputed crime of falsification, since M.T. knew quite well that the relevant time for the report was the exact time at which he spoke with Dr IF, not the time when he tried to call him, and therefore that the recorded time of the communication with Dr. IF did not correspond to the actual time of that communication. Indeed, no plausible explanation was given for M.T.'s crucial delay of one hour and twenty minutes. Hence, the *dolus* of M.T. is patently evident, and his acquittal cannot be considered founded, falling short of minimum procedural standards of fairness. The expiry of the time-limit for M.Ko.'s prosecution as a result of State inertia aggravates the impression of connivance in the way the criminal case was dealt with.

12. Thirdly, the initial criminal investigation of 2002 is fraught with serious factual misjudgements which we cannot leave unmentioned. The statement of the Slatina Municipal State Attorney's office of 16 August 2002 is plainly wrong, since it considered, against all evidence, that "at the relevant time the police officers had no reason to treat A.N. as a mentally disturbed person within the meaning of section 24 of the Protection of Individuals with Mental Disorders Act. ...". In fact, all the evidence points in the opposite direction. The witness testimony as well as the opinions of medical practitioners and of the Social Care Centre in the file confirm that A.N. had a record of domestic violence, death threats and use of firearms, and that he was acting strangely, and was "seriously disturbed", "nervous", "totally unstable" or even "totally crazy" on the day of the facts, and had made known his suicidal and violent intentions. Any diligent police officer could and should have treated A.N. as a dangerous mentally disturbed person, in the light of the general obligations imposed by the Police Act and the specific obligations imposed by the protection of Individuals with Mental Disorders Act. Failure to act accordingly constituted unlawful

[22] Unfortunately, while the majority noted this fact too in paragraph 123, they did not draw any conclusion from it with regard to the Article 13 complaint.
[23] See paragraph 41 of the judgment.

conduct on the part of an agent of the State, thus entailing State liability, as provided in section 13 of the State Administration Act, in addition to the agent's own criminal and disciplinary liability[24]. The failure on the part of the prosecutor to pursue this obvious line of inquiry is to be accorded particular attention.

13. Fourthly, the civil courts concurred in the same basic evidentiary mistake of the Slatina prosecutor, taking the view that A.N. appeared normal, and that no special police action was called for[25]. This conclusion is not only illogical, as the majority acknowledged and the Slatina Municipal Court initially noted[26], it quite simply contradicts the elementary tenets of medical science: a man who is threatening to kill himself and do "something bad" that would be talked about could not be considered as being in full control of his senses, particularly bearing in mind his violent past and history of alcohol abuse. In other words, the civil courts based their findings on an "illogical" and scientifically untenable evaluation of the facts of the case. Such a blatant error definitively prejudiced the effectiveness of the civil remedies provided for by law.

14. Finally, last but not the least, the applicants were ordered to pay HRK 80,700 in costs and expenses[27]. This huge amount of money was clearly punitive, and aimed at silencing the applicants, and avoiding further appeals allowed by domestic law. It is simply inadmissible to "punish" the applicants for having used the procedural powers that domestic law accorded them, all the more so when the applicants' civil action was in substance righteous.

15. In sum, the very lenient disciplinary punishment of the police officers, followed by the complacent attitude of the Slatina Municipal State Attorney's office, the erroneous acquittal of police officer M.T. and the convenient time-barring of the prosecution against police officer M.Ko., leave serious doubts about the respondent State's willingness to carry out a proper investigation into the facts of the case, to punish those responsible by action or omission, and to remedy the damage caused to the applicants. If one adds to these doubts, the disregard for the disciplinary punishment of M.T. and M.Ko. and for the evidence of A.N.'s mental disturbance by the civil courts, and the rather terse and unconvincing final finding of the Supreme Court after a tortuous set of contradictory judgments and appeals, some stating that the State's liability could be engaged on the basis of fault

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[24] The police officers' obligation is aggravated by another circumstance. In March 2002, A.N. was still on probation, which had been established by the Slatina Municipal Court in its judgment of 25 July 2001. The police should have been particularly attentive to complaints made against a person who was on probation. They were not.

[25] See paragraphs 67, 72, 74 and 76 of the judgment.

[26] See paragraph 116 of the judgment. Unfortunately, the majority did not draw any conclusions from these "illogical" judgments of the domestic civil courts with regard to the Article 13 complaint.

[27] See paragraph 72 of the judgment. This corresponds approximately to 10,500 euros.

on the part of its agents, others stating the opposite and requiring only the existence of an objective link of causality between the State agent's conduct and the damage, and finally the fact that the Supreme Court wrongly rejected even the existence of such a link, one cannot but conclude that no effective remedies were available to the applicants. No justice was done to them. In their tireless efforts to shed light on the facts, bring to justice those responsible and seek fair compensation, they were always let down. The "punishment" of the applicants by ordering them to pay approximately 10,500 euros for costs and expenses only serves to show the adverse environment that they had to face in order to see justice done.

Conclusion

16. The murder of M.B.B. could have been avoided, and the respondent State is responsible for not having done everything in its power to prevent it. Seen from a wider perspective, this case heralds a major development in the theory of the State's positive obligations with regard to violent mentally disturbed persons, on the one hand, and to lawyers who are victims of violence in the performance of their professional activity, on the other. But the present case is not closed. After the Court's judgment the domestic proceedings should be reopened, in both the criminal and the civil courts[28]. The husband, children and sisters of the late M.B.B. are still waiting to obtain full justice.

[28] That is the meaning of the reference in the judgment to the possibility of reopening the case under domestic law (see paragraph 85). The just satisfaction established by the Court only redresses the Convention violation, without prejudice to satisfaction based on section 13 of the State Administration Act. When establishing compensation in the light of section 13, the domestic authorities may take in account the amount already paid by the respondent State under Article 41 of the Convention. Furthermore, the domestic authorities must evidently reimburse the applicants for all the expenses and costs that they unlawfully had to pay during the domestic proceedings.