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La CEDU su accuse di violenza verbale da parte di un insegnante a scuola
(CEDU, sez. I, sent. 22 aprile 2021, ric. n. 29555/13)

La Corte Edu si pronuncia sul caso di uno studente liceale, insultato duramente dal suo insegnante di matematica (R.V.), che lo aveva definito, tra l'altro, "un deficiente, un idiota, uno sciocco, un montanaro". Il ricorrente, in seguito a tali eventi, aveva manifestato un disturbo emotivo, che aveva reso necessario un trattamento psicologico. Il padre aveva avanzato le sue lamentele alla scuola e a diversi altri organi nazionali competenti, compreso il Ministero della Pubblica Istruzione. Tali interventi avevano condotto solo ad una audizione dello psicologo scolastico, di R.V. e del ricorrente, e ad una valutazione della situazione da parte dell'Agenzia per l'istruzione. Il ricorrente aveva infruttuosamente presentato, anche, una denuncia penale ed un ricorso alla Corte Costituzionale.
I Giudici di Strasburgo hanno innanzitutto valutato la possibilità di esaminare la causa alla luce dell'art. 8 della Convenzione. Gli insulti rivolti al ricorrente da parte di R.V. avevano provocato al ragazzo un disturbo emotivo, che aveva influito su benessere psicologico, dignità e integrità morale dello stesso. Inoltre, quegli insulti pronunciati in aula davanti ad altri studenti avevano umiliato e sminuito il ricorrente agli occhi dei presenti; insulti particolarmente irrispettosi nei suoi confronti, perpetrati da un insegnante in una posizione di autorità e controllo su di lui. In base a tali circostanze, tenendo conto che era nell'interesse superiore del ricorrente quale minore, dei suoi compagni di classe e dei bambini in generale essere efficacemente protetti da qualsiasi violenza o abuso nei contesti scolastici, si è concluso che il trattamento lamentato doveva essere esaminato in base al diritto al rispetto della vita privata, ai sensi dell'art. 8.
I Giudici di Strasburgo sono, poi, passati a considerare se l'accertata interferenza con il diritto garantito dall'art.8 potesse essere considerata "giustificata". Nell'effettuare tale valutazione, la Corte ha tenuto conto del fatto che il ricorrente aveva lamentato non solo le molestie subite da parte dell'insegnante, ma anche la mancata reazione delle autorità competenti adite.
Sotto il primo profilo (accuse di molestie da parte dell'insegnante nei confronti del ricorrente), la Corte ha rilevato che, mentre i primi insulti di R.V. avevano mirato a disciplinare lui e i suoi compagni di classe per il presunto ritardo a lezione, le due ultime occasioni non potevano essere viste come altro che un abuso verbale gratuito contro il ricorrente, volto semplicemente a umiliarlo, sminuirlo e ridicolizzarlo. In ogni caso, nessuna giustificazione è stata ritenuta possibile per il comportamento di R.V., che, come insegnante, era in una posizione di autorità, che rendeva le sue azioni suscettibili di avere un impatto importante sulla dignità, sul benessere e sullo sviluppo psicologico del ricorrente: ad un insegnante si richiede di interagire con gli studenti nel rispetto della loro dignità e integrità morale, avendo consapevolezza della inaccettabilità di qualsiasi forma di violenza, incluso l'abuso verbale nei confronti degli studenti, che può provocare possibili conseguenze negative, soprattutto sui più sensibili. Pertanto, tenuto conto della posizione di fiducia,

autorità e influenza nonché delle responsabilità sociali degli insegnanti, non c'è spazio per tollerare eventuali molestie da parte di un insegnante nei confronti di uno studente.

In relazione al secondo profilo (risposta delle autorità nazionali alle accuse di molestie del ricorrente), la Corte ha ritenuto che le autorità nazionali, pur godendo di un margine di apprezzamento, avrebbero dovuto mettere in atto misure legislative, amministrative, sociali ed educative adeguate per vietare in modo inequivocabile qualsiasi forma di violenza o abuso contro i bambini in ogni momento e in tutte le circostanze, e quindi garantire tolleranza zero verso qualsiasi violenza o abuso perpetrato nelle istituzioni educative.

In seguito alla denuncia iniziale del ricorrente al dirigente scolastico per molestie da parte di R.V., le autorità scolastiche non avevano adottato alcuna misura concreta, fino a quando il padre non aveva inviato lettere anche a varie autorità statali, chiedendo che il ricorrente fosse protetto da ulteriori episodi molesti a scuola. Nel frattempo, il ricorrente era stato sottoposto a due ulteriori casi di abuso verbale da parte di R.V. Le autorità scolastiche avevano organizzato un (del tutto inefficace) incontro di riconciliazione tra il ricorrente e R.V., nei cui confronti era stato elevato solo un rimprovero verbale da parte dello psicologo scolastico. Tuttavia, nessuna decisione o misura formale era stata adottata in merito alla condotta di R.V., né erano state avviate le procedure disciplinari dinanzi al Ministero. Le autorità nazionali non erano riuscite a riconoscere che la posta in gioco non era semplicemente la risoluzione del contrasto tra il ricorrente e RV, ma la necessità di affrontare il problema posto dal comportamento inaccettabile di RV che aveva colpito non solo il ricorrente, ma anche altri studenti. La scuola non aveva, inoltre, risposto in alcun modo alla richiesta del ricorrente di essere trasferito in un'altra classe o di assegnare un altro insegnante di matematica alla sua classe. Il Ministero, da parte sua, solo a seguito di una specifica richiesta del padre del ricorrente, aveva assegnato il caso all'Agenzia per l'istruzione per la supervisione pedagogica educativa, nell'ambito della quale, l'Agenzia si era concentrata esclusivamente sul modo in cui R.V. teneva le lezioni di matematica, senza condurre un'indagine sugli eventi contestati. Le conclusioni raggiunte dall'Agenzia erano, peraltro, suscettibili di essere falsate dalla circostanza che alcuni studenti non avevano risposto in maniera veritiera al questionario dell'Agenzia, per timore di ripercussioni.

In definitiva, le autorità statali non avevano risposto con la necessaria diligenza alle accuse di molestie a scuola sollevate dal ricorrente.

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

FIRST SECTION

CASE OF XXXXX v. CROATIA

(*Application no. 29555/13*)

JUDGMENT
STRASBOURG
22 April 2021

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 XXXXX v. Croatia,

The European Court of Human Rights (First Section), sitting as a Chamber composed of:
Krzysztof Wojtyczek, *President*,
Ksenija Turković,
Alena Poláčková,
Péter Paczolay,
Gilberto Felici,
Lorraine Schembri Orland,
Ioannis Ktistakis, *judges*,
and Renata Degener, *Section Registrar*,
Having regard to:
the application (no. 29555/13) 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 a Croatian national, Mr XXXXX ("the applicant"), on 15 April 2013;
the decision to give notice to the Croatian Government ("the Government") of the complaints concerning his alleged harassment by a teacher in a public school and failure on the part of the State authorities to adequately react to his allegations, under Articles 3, 8 and 13 of the Convention, and to declare inadmissible the remainder of the application;
the decision not to have the applicant's name disclosed;
the parties' observations;
Having deliberated in private on 17 October 2017 and 23 March 2021,
Delivers the following judgment, which was adopted on that date:

INTRODUCTION

1. The case concerns the applicant's alleged harassment by a teacher in a public school and failure on the part of the State authorities to respond effectively to his complaints of harassment.

THE FACTS

2. The applicant was born in November 1993. The applicant was represented by Mr M. Ščetar, a lawyer practising in Križevci.
3. The Government were represented by their Agent, Ms Š. Stažnik.
4. The facts of the case, as submitted by the parties, may be summarised as follows.

I. Background to the case

5. Between 2008 and 2012 the applicant was a student in a public high school.

6. On 19 September 2011 the applicant and several of his classmates were late for their mathematics class with teacher R.V. When they entered the classroom, R.V. started shouting, telling the applicant that he was "a moron [kreten jedan], an idiot [idijot], a fool [budala], hillbilly [seljačina], a stupid cop [žandar glupi]" (because the applicant's father worked in the police).

7. On 20 September 2011, after the applicant had reported the insults to the head teacher, R.V. stated during his class that "... when you say to a fool that he is a fool, that should not be an insult for him. The head teacher called me saying that I had insulted some students. You don't know what the insults are, but you will see what the insults are."

8. On 28 September 2011, during class, R.V. approached the applicant and asked him to turn the page in a book. As the applicant turned the wrong page, R.V. said "You, fool, not that page. I didn't mean to insult you, because I know you will call your dad."

9. In the period between September and December 2011 on two occasions the applicant underwent psychological treatment related to the alleged harassment by R.V. His general practitioner gave a working diagnosis of post-traumatic stress disorder related to his harassment at school by R.V., and a psychologist in the local hospital found that due to the psychological harassment at school the applicant was suffering from an acute anxiety disorder and recommended increased support and understanding at school. The psychologist also found that the applicant was otherwise growing up in a functional family and that he was very good at school.

10. According to the applicant, his conflict with R.V. and R.V.'s subsequent involvement in his final mathematics exam resulted in his poor overall performance. He therefore failed to get on to his chosen university course.

11. According to a report of the National Centre for the External Evaluation of Education (Nacionalni centar za vanjsko vrednovanje obrazovanja) of 5 December 2014, which the Government provided to the Court, the exam process was anonymised and the reason for the applicant's poor performance was his failure to follow properly the instructions for filling in the examination papers.

II. administrative inquiry concerning the applicant's allegations of harassment

12. By a letter of 21 September 2011 the applicant's father informed the school authorities, the Ombudsperson for Children (Pravobraniteljica za djecu), the education inspectorate, the police and the competent State Attorney's Office (Općinsko državno odvjetništvo) of the applicant's harassment by R.V., and requested protection for him. He repeated the same complaints on 28 September 2011.

13. In connection with the applicant's allegations, on 3 October 2011 the school psychologist invited R.V. for an interview. R.V. admitted that he had said the words alleged by the applicant during the event of 19 September 2011 (see paragraph 6 above) but denied using the insult "stupid cop". He also argued that he had not addressed the applicant personally, but a group of students, and that he could not understand why the applicant felt so affected by the event. The school psychologist reproached R.V. for using inappropriate words, which he fully accepted, and he promised not to use insults anymore.

14. On 4 October 2011 the school psychologist interviewed the applicant. He stated that he felt stressed and uncomfortable during mathematics classes because of the situation with R.V. He also

explained that he wanted to either change school or the class, or have the teacher removed from his class. The school psychologist insisted that the applicant should try to talk to R.V. and invited him to inform her by 6 October 2011 whether he would be willing to do that. The applicant did not inform the school psychologist of his decision.

15. On 7 October 2011 the applicant's father informed the Ministry of Education (Ministarstvo znanosti, obrazovanja i športa; hereinafter: "the Ministry") of the applicant's harassment by R.V. and requested protection for him. The Ministry replied on 4 November 2011, indicating that the case had been forwarded to the Education Agency (Agencija za odgoj i obrazovanje; hereinafter: "the "Agency").

16. The applicant's father's complaints resulted in an assessment of the situation by the Agency on 22 November 2011. This assessment consisted of an interview with R.V., the school psychologist, the head teacher, the applicant and his classmates. The Agency also analysed the relevant documents and conducted an anonymous survey amongst the students concerning their satisfaction with R.V.'s teaching.

17. The Agency found that R.V. was duly complying with all his teaching tasks. He was a renowned mathematics teacher, who had even received an award from the Minister of Education for his work. The anonymous survey showed that the students were satisfied with R.V., and that their major objection was that he should spend more time with less successful students. Only two students stated that they would like to change the teacher.

18. The same view was repeated in individual interviews with the students conducted by an Agency official. She also interviewed R.V., who stated that he had not had any malicious intention when being angry at the students for being late, and that he could not understand why the applicant had got so upset. The interviews with the head teacher and the school psychologist suggested that the applicant's father had been very upset about the situation. He refused to discuss the matter further with them and preferred to have the competent institutions investigate the case.

19. In its conclusions, the Agency stressed that R.V. was a good teacher with good intentions, and that he felt sorry for not having an opportunity to discuss the possible problems with the applicant's father. The Agency found that the situation created by the conflict had damaged the applicant's progress. It suggested that the matter be resolved by a discussion between the school authorities and the applicant's father. It also instructed the school authorities to report on the further developments in the case.

20. After several unsuccessful attempts to hold a meeting at the school, on 14 December 2011 the applicant's father attended a meeting with the head teacher. According to a report from the meeting prepared by the head teacher, the applicant's father had explained that his son was now satisfied with his relationship with R.V., and that their conflict had been settled.

21. The school authorities informed the Agency and the Ombudsperson for Children of the matter.

III. The applicant's criminal complaint

22. On 4 November 2011 the applicant lodged a criminal complaint with the police, alleging harassment by R.V.

23. In the course of the proceedings, the police and the relevant State Attorney's Office questioned the applicant and a number of students and officials from the school, as well as R.V. They also obtained relevant documentation concerning the applicant's complaints.

24. Several of the students or former students from the school stated that the teacher R.V. sometimes used inappropriate and insulting language. He was particularly harsh with those who were not good in mathematics, such as the applicant. A student, L.J., stated that he had even stopped paying attention to the words such as "fools", "idiots" and "idlers" as it was a usual talk at the mathematics class. Some of the students considered the use of such a language to be a way of joking by the teacher. A former student, S.J., stated that the teacher had made some comments of a sexual nature concerning her during the class. Student M.J. explained that there had been an inquiry by the education authorities in the course of which the students had been asked to reply to a questionnaire. Most of the students had been afraid to answer the questions honestly and so was M.J. as he had not wanted to have problems. M.J. also explained that before this questionnaire, there had been another questionnaire organised within the school to which the students had answered honestly but then the teacher R.V. went "crazy" and yelled at them. It was one of the reasons why they had not honestly answered the questionnaire organised by the education authorities.

25. On 18 June 2012 the State Attorney's Office rejected the applicant's criminal complaint. The relevant part of the decision reads:

"The statements of the students show that the suspect has an unconventional approach. Some of the students no longer pay attention to what he says when teaching, because on several occasions he has used improper words. However, he has never addressed a particular student. It can be therefore concluded in the case at issue, given the circumstances in which the impugned conduct occurred, that the insults were not of such intensity as to amount to harassment. In accordance with the courts' case-law, examples of psychological harassment concern the recurrent insulting of minors, as a result of which they sustain severe psychological trauma damaging their physical and mental health. Although [the applicant] sought medical treatment in connection with the impugned conduct, and although he suffered certain health problems, they were not of such intensity that it can be concluded that his physical and mental health was damaged. Moreover, in order to amount to psychological harassment, insults should not only be the result of an aroused reaction, but the result of an intensive aversion to the victim, and an expression of cruel and inhuman behaviour. From the available information, and in particular from the statements of [the applicant's] classmates, it cannot be concluded that the suspect's conduct towards [the applicant] was of such a nature that it would [amount to] cruel and inhuman behaviour. This is particularly true in view of [the students'] statements that [R.V.] usually behaved in an unusual manner, and that some of the students did not pay attention [to such behaviour], and the victim himself did not suffer further [adverse consequences such as] bad marks at school."

26. The State Attorney's Office advised the applicant that he could take over the criminal prosecution as a subsidiary prosecutor in relation to the alleged offence of harassment or institute a private prosecution in relation to charges of insult.

IV. proceedings before the Constitutional Court

27. In August 2012 the applicant brought his complaints before the Constitutional Court (Ustavni sud Republike Hrvatske). He alleged, in particular, harassment by the teacher at school and inadequate response of the school, the Ministry, the Agency and the State Attorney's Office concerning his complaints of harassment. He also challenged the decision concerning the evaluation of his final mathematics exam (see paragraphs 10-11 above).
28. On 18 October 2012 the Constitutional Court declared the applicant's constitutional complaints inadmissible on the grounds that the State Attorney's Office's decision and the decision on the evaluation of his final mathematics exam had not been measures or decisions which had decided any of his rights on the merits against which a constitutional complaint was permitted.
29. The decisions of the Constitutional Court were served on the applicant on 30 October 2012.

RELEVANT LEGAL FRAMEWORK

I. Relevant domestic law

A. Constitution

30. The Constitution of the Republic of Croatia (Ustav Republike Hrvatske, Official Gazette no. 56/1990, with further amendments) prohibits any form of ill-treatment (Article 23). It also guarantees the right to respect for and legal protection of private life and dignity (Article 35). The Constitution obliges the State to protect children and youth (Article 63) and also provides that "[e]veryone shall have the duty to protect children ..." (Article 65).
31. The relevant part of section 62 of the Constitutional Court Act, and the related Constitutional Court's case-law, are set out in Remetin v. Croatia (no. 29525/10, §§ 58 and 64-67, 11 December 2012), and Pavlović and Others v. Croatia (no. 13274/11, §§ 17-21, 2 April 2015).

B. Criminal law provisions

32. The Criminal Code (Kazneni zakon, Official Gazette no. 110/1997, with further amendments), as applicable at the relevant time, in Article 213 proscribed neglect and ill-treatment of a child or minor. This related, inter alia, to a severe neglecting of duties in education (paragraph 1) and direct abuse (paragraph 2). The aggravating forms of the offence, relating to serious bodily injury or sever impairment of health resulting from the neglecting of duties or abuse, were proscribed in paragraph 3.
33. Under the Code of Criminal Procedure (Zakon o kaznenom postupku, Official Gazette, nos. 152/2008, with further amendments) there is no possibility of a judicial review of the decision not to prosecute. However, if the State Attorney has declined to prosecute, the victim has the right to take over the prosecution (as a "subsidiary prosecutor") and bring a case before the relevant criminal court (Articles 55 and 58).

C. Supervision of the education system

34. The relevant Act on Education in Primary and Secondary Schools (Zakon o odgoju i obrazovanju u osnovnoj i srednjoj školi, Official Gazette no. 87/2008, with further amendments) provided for the

right of individual complaint as one of the basic rights of students (section 61(1)). It also required schools to take necessary measures for the protection of students' well-being (section 67). Section 70 provided for the active protection of students from any form of harassment or ill-treatment and provided for the duty of school authorities to report such occurrences to the competent authorities (section 70). Under sections 138 and 149, the Act envisaged supervision of the school education system through education inspection and professional pedagogical supervision.

35. Education inspection was to be carried out by the education inspectorate, which is one of the Ministry's organisational units. Under section 11(1.13) of the relevant Education Inspection Act (Zakon o prosvjetnoj inspekciji, Official Gazette no. 61/2011, with further amendments), one of the central duties of education inspection was to control the manner in which educational staff in schools complied with their duties and responsibilities towards students. In cases of ill-treatment or inadequate behaviour towards a student, an education inspector could question the student (section 15). If professional pedagogical supervision was needed prior to the adoption of a decision by the education inspectorate, a further assessment could be commissioned. If the results of the inspection provided a sufficient basis for a decision, the education inspector could order the adoption of relevant measures for the protection of students, as well as institute minor offence proceedings, or, in the event of findings relating to criminal conduct, refer the case to the competent prosecuting authorities (sections 23-25).

36. The applicable Act on Professional Pedagogical Supervision (Zakon o stručno-pedagoškom nadzoru, Official Gazette no. 73/1997) envisages professional pedagogical supervision as an assessment of the performance of teaching tasks, and authorises a supervising official to indicate the measures which need to be taken for the elimination of identified irregularities and omissions (sections 8-12).

37. The Education Agency Act (Zakon o Agenciji za odgoj i obrazovanje, Official Gazette no. 85/2006) establishes the Education Agency as the competent body to carry out professional pedagogical supervision (section 4(3)). Under section 5, it obliges school authorities to provide relevant documents and cooperate in the supervision process.

D. Civil Obligations Act

38. The Civil Obligations Act (Zakon o obveznim odnosima, Official Gazette nos. 35/2005, with further amendments) provides for a possibility of instituting the civil proceedings to protect the rights of personality, which include, inter alia, the right to physical and mental health and dignity (sections 19, 1046, 1048 and 1100).

II. International law and materials

A. United Nations

39. The Convention on the Rights of the Child, 20 November 1989, requires that in all actions concerning children, the best interests of the child must be a primary consideration (Article 3). With regard to measures of school discipline, it provides that States Parties must take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with that Convention (Article 28(2)).

40. The report by the Secretary General to the General Assembly on the promotion and protection of the rights of children of 29 August 2006 (A/61/299) identified violence perpetrated by teachers and other school staff, which also includes humiliating forms of psychological punishment, as one of the issues requiring a proper social reaction (paragraph 50). It stressed that those who oversee and work in educational settings have a duty to provide safe environments which support and promote children's dignity and development.
41. With regard to the relevant measures which should be adopted, the report made the following recommendations:

"98. I urge States to prohibit all forms of violence against children, in all settings, including all corporal punishment, harmful traditional practices, ... and ... other cruel, inhuman or degrading treatment or punishment, as required by international treaties, ...
105. I recommend that States should build community confidence in the justice system by bringing all perpetrators of violence against children to justice and ensure that they are held accountable through appropriate criminal, civil, administrative and professional proceedings and sanctions. ...
111. ... I recommend that States:
(b) Ensure that school principals and teachers use non-violent teaching and learning strategies and adopt classroom management and disciplinary measures that are not based on fear, threats, humiliation or physical force; ..."

42. The Committee on the Rights of the Child, in General Comment No. 8 (2006) on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (inter alia, Article 19, Article 28 paragraph 2, and Article 37), CRC/C/GC/8 of 2 March 2007, stressed that, in addition to corporal punishment, which is considered to be invariably degrading, there are other non-physical forms of punishment that are also cruel and degrading and thus incompatible with the Convention on the Rights of the Child. These include, for example, punishment which belittles, humiliates, denigrates, scapegoats, threatens, scares or ridicules the child (paragraph 11). The Committee on the Rights of the Child rejected any justification of violence and humiliation as forms of punishment for children but stressed that this did not mean rejecting the positive concept of discipline (paragraph 13). The Committee further insisted on the distinct nature of children, their initial dependent and developmental state, their unique human potential as well as their vulnerability, which all demanded the need for more, rather than less, legal and other protection from all forms of violence (paragraph 21). The Committee also emphasised that eliminating violent and humiliating punishment of children, through law reform and other necessary measures, was an immediate and unqualified obligation of States (paragraph 22).
43. The United Nations General Assembly adopted a Resolution on the rights of the child, A/RES/62/141, 22 February 2008, which in the relevant part provides:

"52. Condemns all forms of violence against children, including ... mental, psychological ... violence ... and other cruel, inhuman or degrading treatment, ... and urges States to strengthen efforts to prevent and protect children from all such violence through a comprehensive approach and to develop a multifaceted and systematic framework, which is integrated into national planning processes, to respond to violence against children; ...

57. Urges all States: ...
(b) To consider taking appropriate measures to assert the right of children to respect for their human dignity and physical integrity and to prohibit and eliminate any emotional or physical violence or any other humiliating or degrading treatment;
(c) To give priority attention to the prevention of all forms of violence against children and to addressing its underlying causes, through a systematic, comprehensive and multifaceted approach;
(d) To protect children from all forms of violence or abuse by all those who work with and for children, including in educational settings ..."

44. In the General comment No. 13 (2011): The right of the child to freedom from all forms of violence, CRC/C/GC/13, 18 April 2011, the Committee on the Rights of the Child stressed that the term "mental violence" encompasses psychological maltreatment, mental abuse, verbal abuse and emotional abuse or neglect, including insults, name-calling, humiliation, belittling, ridiculing and hurting a child's feelings. The Committee also noted the following (paragraph 17):

The Committee has consistently maintained the position that all forms of violence against children, however light, are unacceptable. 'All forms of physical or mental violence' does not leave room for any level of legalized violence against children. Frequency, severity of harm and intent to harm are not prerequisites for the definitions of violence. States parties may refer to such factors in intervention strategies in order to allow proportional responses in the best interests of the child, but definitions must in no way erode the child's absolute right to human dignity and physical and psychological integrity by describing some forms of violence as legally and/or socially acceptable."

B. Council of Europe

45. The relevant early Council of Europe materials concerning child protection are summarised in O'Keeffe v. Ireland [GC], no. 35810/09, §§ 91-92, ECHR 2014 (extracts).
46. Further relevant material of the Parliamentary Assembly of the Council of Europe ("PACE"), reaffirmed in Resolution 1803 (2011) on Education against violence at school, includes: Recommendation 1666 (2004) on a Europe-wide ban on corporal punishment of children; Recommendation 1778 (2007) on child victims: stamping out all forms of violence, exploitation and abuse; and Recommendation 1934 (2010) on child abuse in institutions: ensuring full protection of the victims.
47. In the latter Recommendation, PACE expressed its concerns over the sexual, physical and emotional abuse of children in various institutions, including public and private educational facilities. It therefore urged enhanced protection by adopting legislation to explicitly prohibit all forms of violence against children: physical and mental violence, injury or abuse (including sexual abuse), neglect or negligent treatment, maltreatment or exploitation, in child care institutions, public and private educational institutions, correctional facilities and leisure associations, amongst other institutions. It also stressed the need to criminalise any intentional abuse of a child by a person in a recognised position of trust, authority or influence in relation to the child, and recommended the adoption of legislation providing for ex officio prosecution in all kinds of child abuse cases, based on the principle of the "graded prosecution" of child abuse according to the gravity of offences,

which includes measures against all kinds of child abuse (sexual, physical and emotional). Moreover, with regard to the punishment of minors in institutions, the legislative measures are required so as to define as illegal and exclude certain practices which are contrary to their dignity and rights.

48. The Council of Europe Committee of Ministers, in Recommendation CM/Rec(2009)10 on integrated national strategies for the protection of children from violence, also emphasised the following:

"Protection against violence

All children have the right to protection from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation ... while in the care of ... any other person who has the care of the child.

Prevention

The national legal framework should prioritise the prevention of violence and safeguard the rights of the child by taking action, such as:

Prohibition of violence

The state has an explicit obligation to secure children's right to protection from all forms of violence, however mild. Appropriate legislative, administrative, social and educational measures should be taken to prohibit all violence against children at all times and in all settings and to render protection to all children within the state's jurisdiction. Legal defences and authorisations for any form of violence, including for the purposes of correction, discipline or punishment, within or outside families, should be repealed. Prohibition should imperatively cover: ...

g. all forms of violence in school;

h. ... all other cruel, inhuman or degrading treatment or punishment of children, both physical and psychological ..."

49. Appendix 2 to Recommendation CM/Rec(2009)10 defines the term "psychological violence" as insults, name-calling, ignoring, isolation, rejection, threats, manipulation, emotional indifference, and belittlement, witnessing domestic violence, and other behaviour that can be detrimental to a child's psychological development and well-being.

50. The Revised European Social Charter, 3 May 1996, provides that with a view to ensuring the effective exercise of the right of children and young persons to grow up in an environment which encourages the full development of their personality and of their physical and mental capacities, the States must undertake all appropriate and necessary measures designed, inter alia, to protect children and young persons against negligence and violence (Article 17).

51. In its practice, the European Committee of Social Rights has held the following (Association for the Protection of All Children (APPROACH) Ltd. v. Belgium, No. 98/2013, decision on the merits 20 January 2015):

"50. In this regard, the Committee recalls its interpretation of Article 17 of the Charter as regards the corporal punishment of children laid down most recently in its decision in World Organisation against Torture (OMCT) v. Portugal, Complaint No. 34/2006, decision on the merits of 5 December 2006, §§19-21:

'19. To comply with Article 17, states' domestic law must prohibit and penalize all forms of violence against children that is acts or behaviour likely to affect the physical integrity, dignity, development or psychological well-being of children.
20. The relevant provisions must be sufficiently clear, binding and precise, so as to preclude the courts from refusing to apply them to violence against children.
21. Moreover, states must act with due diligence to ensure that such violence is eliminated in practice.'

54. Further as regards the case law cited by the Government, the Committee notes the Government has not provided any examples of case-law by superior courts showing that the above-mentioned provisions of the Civil Code have been interpreted as prohibiting all forms of violence against children by parents and 'other persons', including for educational purposes."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

52. The applicant complained of harassment by a teacher in a public school and the failure of the domestic authorities to respond effectively to his complaints of harassment. He relied on Articles 3, 8 and 13 of the Convention.
53. The Court finds, being the master of the characterisation to be given in law to the facts of the case (see S.M. v. Croatia [GC], no. 60561/14, § 243, 25 June 2020), that the applicant's complaints fall to be examined under Article 8. While the complaints of harassment at school may fall to be examined under Article 3 (see, for instance, V.K. v. Russia, no. 68059/13, §§ 171-172, 7 March 2017), the Court notes that the applicant's allegations of harassment concern verbal abuse by R.V. consisting of three instances in which the latter uttered insults aimed directly or indirectly at the applicant and which all occurred within several days of each other. In such circumstances, having regard to its case-law (see, for instance, R.B. v. Hungary, no. 64602/12, §§ 44-52, 12 April 2016), the Court considers it more appropriate to examine the case from the perspective of the right to respect for private life under Article 8 of the Convention.
54. Article 8, in its relevant part, reads as follows:

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

A. Admissibility
1. Applicability of Article 8 of the Convention

55. The Government contended that the conduct of the teacher had not produced any adverse effects on the applicant's private life, within the meaning of Article 8 of the Convention.
56. While it is not clear whether the Government sought to challenge the applicability of Article 8, this being a matter that goes to the Court's jurisdiction and which the Court must establish on its own motion (see, for instance, Jeanty v. Belgium, no. 82284/17, § 58, 31 March 2020), it finds it important to note the following.
57. The Court has previously held, in various contexts, that the concept of private life is a broad term not susceptible to exhaustive definition. It includes a person's physical and psychological integrity (see Denisov v. Ukraine [GC], no. 76639/11, § 95, 25 September 2018; see also Remetin v. Croatia, no. 29525/10, § 90, 11 December 2012), and extends to other values such as well-being and dignity, personality development and relations with other human beings (see N.Š. v. Croatia, no. 36908/13, § 95, 10 September 2020, with further references).
58. In order for Article 8 to come into play, however, an attack on a person must attain a certain level of seriousness and be made in a manner causing prejudice to the personal enjoyment of the right to respect for one's private life (see Beizaras and Levickas v. Lithuania, no. 41288/15, § 109 in fine, 14 January 2020). However, in cases relating, inter alia, to Article 8 the Court has stressed the relevance of the age of the minors concerned and the need, where their physical and moral welfare is threatened, for children and other vulnerable members of society to benefit from State protection. The need to take account of the vulnerability of minors has also been affirmed at international level (see Wetjen and Others v. Germany, nos. 68125/14 and 72204/14, § 74, 22 March 2018, with further references).
59. Measures taken in the field of education may, in certain circumstances, affect the right to respect for private life, but not every act or measure which may be said to affect adversely the moral integrity of a person necessarily gives rise to such an interference (see Costello-Roberts v. the United Kingdom, 25 March 1993, § 36, Series A no. 247-C). In Costello-Roberts, concerning an instance of corporal punishment at school, the Court found that the treatment complained of by the applicant did not entail adverse effects on the applicant's physical or moral integrity sufficient to bring it within the scope of the prohibition contained in Article 8. However, since Costello-Roberts, there has been an evolution of social attitudes and legal standards concerning the application of measures of discipline towards children, emphasising the need of protection of children from any form of violence and abuse. This is reflected in various international instruments (see paragraphs 39-51 above) and the Court's case-law (see, for instance, A, B and C v. Latvia, no. 30808/11, § 152, 31 March 2016; see also V.K. v. Russia, cited above, §§ 171-172, and Wetjen and Others, cited above, §§ 76-78).
60. In the case at issue, there is no doubt that the insults to which the applicant was subjected by R.V. entailed his emotional disturbance, which affected his psychological well-being, dignity and moral integrity (see paragraph 9 above). Moreover, those insults were uttered in the classroom in front of other students and were thus capable of humiliating and belittling the applicant in the eyes of others. It should also be taken into account that the insults in question were particularly disrespectful towards the applicant and were perpetrated by a teacher in a position of authority and control over him.
61. In these circumstances, and taking into consideration that it is in the best interests of the applicant as a child, his classmates and the children in general to be effectively protected from any

violence or abuse in educational settings (see paragraphs 58-59 above and 80-82 below), the Court finds that there can be no doubt that the treatment complained of by the applicant falls to be examined under the right to respect for private life, within the meaning of Article 8 of the Convention.

2. Exhaustion of domestic remedies and compliance with the six-month time-limit

62. The Government argued that a constitutional complaint had not been a remedy to be exhausted against a decision rejecting the applicant's criminal complaint. Thus, by waiting for the Constitutional Court to decide upon his constitutional complaint, the applicant had failed to comply with the relevant six-month time-limit. In the Government's view, instead of lodging a constitutional complaint, the applicant had been required to institute a private criminal prosecution or avail himself of the opportunity to take over the prosecution against R.V. as a subsidiary prosecutor. By failing to do that, the applicant had failed to exhaust the domestic remedies.
63. The applicant contended that he had instituted a number of proceedings before various domestic authorities concerning his harassment in school, but the relevant authorities had failed to address them properly. Accordingly, he had not been required to use any further remedies as suggested by the Government. The applicant also pointed out that, after the remedies used before the relevant authorities had proved to be ineffective, he had duly lodged a constitutional complaint with the Constitutional Court and brought his application to the Court within the period of six months following the rejection of his constitutional complaint.
64. In many previous cases against Croatia the Court has already examined and rejected similar objections of the respondent Government concerning applicants' use of the constitutional complaint before the Constitutional Court before bringing their complaints to the Court (see Pavlović and Others v. Croatia, no. 13274/11, §§ 32-38, 2 April 2015; see also Bajić v. Croatia, no. 41108/10, §§ 68-69, 13 November 2012, and Remetin, cited above, §§ 83-84). It sees no reason to hold otherwise in the present case, where in his constitutional complaint the applicant complained of harassment at school and inadequacy of the response of the relevant domestic authorities, including the school, the Ministry, the Agency and the State Attorney's Office, to his allegations of harassment (see paragraph 27 above).
65. With regard to the Government's objection that the applicant should have pursued a subsidiary or private criminal prosecution, the Court reiterates that once the applicant had lodged a criminal complaint concerning his alleged harassment, he cannot be required to pursue the subsidiary or private criminal prosecution (compare Škorjanec v. Croatia, no. 25536/14, § 46, 28 March 2017). In any event, it is not clear that a criminal prosecution would be the most appropriate procedural avenue in the circumstances of the present case (see paragraph 93 below).
66. In view of the above, the Court rejects the Government's objections.

3. Non-significant disadvantage

67. The Government argued that the applicant had not suffered any significant disadvantage, given that his allegations of emotional abuse by R.V. concerned several isolated incidents which had not produced any long-lasting effects on either his emotional well-being or success at school.

68. The applicant maintained his complaints.
69. The Court has already found above that the treatment complained of by the applicant entailed his emotional disturbance and affected his psychological well-being and his moral integrity protected under the concept of private life under Article 8 of the Convention (see paragraph 60 above). In such circumstances, given the context of the case, namely the allegations of harassment in school at the hands of a teacher, where any form of violence, however light, is considered unacceptable, the Court finds that there can be no room for application of the non-significant disadvantage criterion (see paragraphs 81-82 and 91 below). The Government's objection is therefore rejected.

4. Conclusion

70. The Court notes that the applicant's complaint of harassment in school by the teacher, and the failure of the domestic authorities to react effectively to his complaint of harassment, is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

5. Whether the applicant's complaint of alleged interference with his final mathematics exam is manifestly ill-founded

71. The Government argued that the applicant's complaints of adverse effects on his performance in the final exam and his university enrolment were completely unsubstantiated and unfounded. They pointed out that the available material clearly indicated that the applicant's poor performance on the exam had been the result of his failure to properly follow the instructions for filling in the examination papers.
72. The applicant maintained that he had effectively completed his exam, but a panel (of which R.V. had been a member) had failed to give him a score for it. In his view, this had been as a result of his poor relationship with R.V.
73. The Court notes that the material available to it shows that the final mathematics exam which the applicant took was anonymised, and that his poor performance in the exam related to his failure to properly follow the instructions for filling in the examination papers (see paragraph 11 above). There is no indication that the applicant's examination papers were tampered with. Accordingly, the Court finds that the complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

B. Merits

1. The parties' arguments

(a) The applicant

74. The applicant contended that he had been harassed by R.V. That had been condoned by the relevant school authorities, and the State authorities had not provided an adequate response. In particular, the head teacher and the school psychologist had taken no effective measures to respond

to R.V.'s verbal abuse. At a meeting on 14 December 2011 the head teacher had asked his father to drop all the allegations he had made, otherwise the applicant would not be allowed to finish school. His father had then realised that there was a lack of goodwill in relation to resolving the matter and had asked the head teacher to prevent the applicant from being harassed further.

75. Moreover, the applicant argued that the measures which the Ministry and the Agency had taken concerning his allegations of harassment at school had been completely ineffective. Likewise, the State Attorney's Office had failed to assess properly all the relevant circumstances of the case and had rejected his criminal complaint, despite the medical evidence suggesting that he had suffered severe psychological disturbance as a result of the harassment by R.V.

(b) The Government

76. The Government maintained that there had been no adverse effects on the applicant's psychological or physical integrity or well-being as a result of R.V.'s conduct. Even if the applicant had felt insulted by the remarks made by R.V., this in itself could not be considered in breach of the applicant's Article 8 rights. Moreover, in the Government's view, the school and the State authorities had properly reacted to the allegations made by the applicant and had tried to settle the dispute between him and the teacher. However, the applicant's father had not properly participated in the mediation efforts made by the relevant authorities.

77. In any event, the Government asserted that the efforts made by the authorities, in particular the inspection carried out by the Agency, had produced the desired result, as the applicant's father had acknowledged in a meeting with the head teacher that the applicant's conflict with R.V. had been settled. In the Government's view, all other relevant authorities, including the Ombudsperson for Children and the State Attorney's Office, had properly discharged their obligations concerning the applicant's allegations of harassment at school.

2. The Court's assessment

(a) General principles

78. The object of Article 8 is essentially that of protecting the individual against arbitrary interference by the public authorities. However, this provision does not merely compel the State to abstain from such interference: in addition to this primarily negative undertaking, there are positive obligations inherent in an effective respect for private life (see A, B and C v. Latvia, cited above, § 147).

79. Whether a case be analysed in terms of a positive duty on the State to take reasonable and appropriate measures to secure the applicants' rights under paragraph 1 of Article 8 or an "interference by a public authority" to be justified in accordance with paragraph 2, the applicable principles are broadly similar. In both contexts, regard must be had to the fair balance that has to be struck between the competing interests of the individual and of the community as a whole; and in both contexts the State enjoys a certain margin of appreciation in determining the steps to be taken to ensure compliance with the Convention. Furthermore, even in relation to the positive obligations flowing from the first paragraph of Article 8, in striking the required balance the aims mentioned in

the second paragraph may be of a certain relevance (see, for instance, Burlya and Others v. Ukraine, no. 3289/10, § 162, 6 November 2018).

80. These principles may also be relevant in an education context. While under Article 2 of Protocol No. 1 the State has an obligation to secure to children their right to education, the sending of a child to school necessarily involves some degree of interference with his or her private life under Article 8. Moreover, functions relating to the internal administration of a school, such as discipline, are an inherent part of the education process and the right to education (see Costello-Roberts, cited above, § 27).

81. Although not all measures in the field of education will affect the right to respect for private life, it would be impossible to reconcile any acts of violence or abuse by teachers and other officials in educational institutions with the children's right to education and the respect for their private life (see paragraphs 58-59 above). The need to remove any such treatment from educational environments has also been clearly affirmed at international level (see paragraphs 39-51 above).

82. In the context of provision of an important public service such as education (see Grzelak v. Poland, no. 7710/02, § 87 in fine, 15 June 2010), the essential role of the education authorities is to protect the health and well-being of students having regard, in particular, to their vulnerability relating to their young age. Thus, the primary duty of the education authorities is to ensure the students' safety in order to protect them from any form of violence during the time in which they are under the supervision by the education authorities (see Kayak v. Turkey, no. 60444/08, § 59, 10 July 2012).

(b) Application of these principles to the present case

83. The Court has already found above that the treatment complained of by the applicant entailed an adverse effect on his psychological well-being and his moral integrity, giving rise to an issue under Article 8 (see paragraphs 60-61 above). There is no doubt that the treatment entailing such consequences, administered by a teacher in a public school while the applicant was under his control, amounted to an interference under Article 8 (see, mutatis mutandis, V.K. v. Russia, cited above, § 183).

84. It remains to be determined whether such an interference was justified. In making that assessment, the Court will have regard to the fact that the applicant complained of not only the harassment by the teacher, but also of the failure of the relevant authorities to react to his allegations of harassment; a matter which may more appropriately be analysed in terms of the State's positive duty (see, for instance, Radionova v. Russia (dec.), no. 36082/02, 28 March 2009). In any event, it should be reiterated that whether a case be analysed in terms of a positive duty on the State or an interference by a public authority, the applicable principles are broadly similar (see paragraph 79 above).

(i) The applicant's allegations of harassment by the teacher

85. The Court notes that the teacher R.V. initially uttered various insults against the applicant for allegedly being late for class (see paragraph 6 above). R.V. then verbally abused the applicant on two further occasions. In particular, the day after the initial incident, R.V. indirectly referred to the

fact that the applicant had reported him to the head teacher by saying "when you say to a fool that he is a fool, that should not be an insult for him" (see paragraph 7 above). On a later occasion R.V. again called the applicant "a fool" because the applicant had turned a wrong page in the textbook during a lesson (see paragraph 8 above).

86. While R.V.'s first insults against the applicant were aimed at disciplining him and his classmates, the two latter occasions cannot be seen as anything but gratuitous verbal abuse against the applicant amounting to his humiliation, belittling and ridiculing. In any case, no justification for R.V.'s conduct can be provided. R.V., as a teacher, was placed in a unique position of authority over the applicant, which made his actions susceptible of having an important impact on the applicant's dignity, well-being and psychological development.

87. It is true that the verbal abuse was not at a very high scale of intensity and did not degenerate into further, more systemic, harassment. However, R.V., as a teacher, was expected to understand that effects of verbal provocation and abuse might deeply affect students, particularly those who are sensitive (see paragraph 13 above). Moreover, as a teacher, he should have been aware that any form of violence, including verbal abuse, towards students, however mild, is not acceptable in an educational setting and that he was required to interact with students with due respect for their dignity and moral integrity.

88. Accordingly, having regard to a position of trust, authority and influence as well as the social responsibility that teachers have, there is no room for tolerating any harassment by a teacher towards a student (see paragraph 48 above). The Court emphasises that frequency, severity of harm and intent to harm are not prerequisites for defining violence and abuse in an educational setting (see paragraph 44 above).

89. In view of the principles set out above (see paragraphs 81-82 above), and the right of children to respect for their human dignity, physical and psychological integrity, the Court finds that the harassment by verbal abuse of the kind to which the applicant was subjected by R.V. amounts to an unacceptable interference with the right to respect for private life under Article 8, for which the State bore responsibility (see paragraphs 83-84 above).

90. The above considerations would be sufficient for the Court to find a violation of Article 8 of the Convention. However, as already noted, given the nature of the applicant's complaint, the Court finds it important to examine the manner in which the domestic authorities responded to the applicant's allegations of harassment (see paragraph 84 above).

(ii) The domestic authorities' response to the applicant's allegations of harassment

91. Consistently with the above principles under Article 8 on the protection of children from any form of violence or abuse in educational institutions (see paragraphs 80-82 above), as well as the relevant international standards (see paragraphs 39-51 above), the Court finds that the domestic authorities must put in place appropriate legislative, administrative, social and educational measures to prohibit unequivocally any such conduct against children at all times and in all circumstances, and thus to ensure zero tolerance to any violence or abuse in educational institutions. This also relates to the necessity of ensuring accountability through appropriate criminal, civil, administrative and professional avenues. In this context, it is important to reiterate that the State

enjoys a margin of appreciation in determining the manner in which to organise its system to ensure compliance with the Convention (see paragraph 79 above).

92. The Court notes the absence of school policies and procedures that specifically address the problem of bulling behaviour by teachers. However, the relevant Croatian legal framework, through the criminal, civil, administrative and professional provisions, in principle provided for the protection of children in educational institutions from violence or abuse (see paragraphs 30-38 above). In the present case, the applicant's allegations of harassment by R.V. were addressed through the criminal and administrative and professional avenues.

93. While some of the aspects of the State Attorney's reasoning when rejecting the applicant's criminal complaint sit uncomfortably with the authorities' duty to ensure zero tolerance to any violence or abuse in educational institutions (see paragraphs 25 and 91 above), the Court, acknowledging that an approach to protection of children from violence should be graded according to its gravity (see paragraph 47 above), does not consider in the circumstances of the present case that the recourse to criminal avenue was critical to fulfil the State's obligations under Article 8. The Court will thus further examine the manner in which the applicant's allegations were addressed within the available administrative and professional avenues.

94. In this connection, it is noted that the domestic legislation envisages a system of mechanisms for supervision of the education process (see paragraphs 34-37 above). Those mechanisms can generally be viewed as measures of education inspection and measures of pedagogical supervision. Education inspection is carried out by the education inspectorate, which is one of the Ministry's organisational units. Its aim is to control the manner in which education staff in schools comply with their duties and responsibilities towards students, including dealing with instances of ill-treatment or other inappropriate behaviour towards students. An education inspector may order the adoption of relevant measures for the protection of students, as well as institute minor offence proceedings or, in the event of findings relating to criminal conduct, refer a case to the competent prosecuting authorities.

95. In some instances, if professional pedagogical supervision is needed prior to the adoption of a decision by the education inspectorate, such supervision may be carried out. The authority responsible for professional pedagogical supervision is the Agency, which, in accordance with the Act on Professional Pedagogical Supervision, has the authority to make an assessment of the performance of teaching tasks in a school and indicate the measures which need to be taken for the elimination of identified irregularities and omissions (see paragraphs 36-37 above).

96. In the case at issue, following the applicant's initial complaint to the head teacher of harassment by R.V. (see paragraph 6 above), no concrete measure was taken by the school authorities until his father sent letters also to various State authorities asking for the applicant to be protected from further harassment at school (see paragraph 12 above). In the meantime, the applicant had been subjected to two additional instances of verbal abuse by R.V. (see paragraphs 7-8 above).

97. Following the specific complaints made by the applicant's father, the school authorities organised a reconciliation process between the applicant and R.V. In that process, the only measure taken with regard to R.V. involved a verbal reproach from the school psychologist (see paragraph 13 above). However, no formal decision or measure was adopted with regard to R.V.'s conduct, nor

were the relevant administrative professional procedures before the Ministry set in motion (see paragraphs 93-94 above).

98. In the Court's view such reconciliation process was manifestly ineffective. The domestic authorities failed to recognise that what was at stake was not merely the settling of things between the applicant and R.V., but the necessity of confronting and addressing the problem posed by R.V.'s inacceptable conduct that affected not only the applicant but, according to the relevant information, some other students as well (see paragraph 24 above).

99. It is further noted that the Ministry reacted only following a specific request by the applicant's father. It sent the case to the Agency for its pedagogical educational supervision (see paragraph 15 above). However, there is no indication that the Ministry's education inspectorate considered taking any other measures within its competence to address the specific complaints made by the applicant, such as questioning the applicant or adopting the relevant measures to protect students, providing specific training for the teacher and, if appropriate, instituting the relevant proceedings (see paragraph 35 above).

100. In the context of its pedagogical supervision, the Agency focused on the manner of R.V.'s delivery of mathematics lectures, without conducting an investigation into the impugned events whereby he had verbally abused the applicant and his behaviour in class towards students (see paragraphs 17-19 above). The conclusions reached by the Agency are open to doubt in view of the allegations that some students had not honestly answered the Agency's questionnaire due to a fear of reprisal (see paragraph 24 above). Moreover, in its conclusions the Agency suggested that the matter be resolved in a further discussion between the school authorities and the applicant's father.

101. Having regard to its findings above concerning the ineffectiveness of a mere reconciliation process (see paragraph 97 above), the Court fails to see how a discussion between the school authorities and the applicant's father could be considered an adequate measure addressing the infringement of the applicant's rights by the verbal abuse from R.V. In the Court's view, a resolute action was needed to address the deficiencies in the methods of approach to the students applied by R.V. The school also failed to respond in any way to the applicant's request to be removed to another class or to assign another math teacher to his class (see paragraph 14 above).

102. The Court also notes that there is no indication that the Agency or the Ministry followed up on further developments in the applicant's case or his situation at school. In this connection, it is difficult to accept that a single letter from the head teacher alleging that the applicant's father had stated that the matter had been settled could be considered sufficient. Indeed, there is no indication that the content of that letter was authorised by the applicant's father, and his version of events differs from that presented in the letter (see paragraphs 20 and 74-75 above). In any event, it should have been obvious to the State education administration that the type of behaviour impugned to R.V., and its effects on the applicant, required a more diligent investment of the knowledge and resources to understand its consequences and implications of failing to provide appropriate and expected care to the applicant at school.

103. In sum, the State authorities failed to respond with requisite diligence to the applicant's allegations of harassment at school. The Court therefore considers that their response fell short of the requirements of Article 8 of the Convention.

(iii) Conclusion

104. In light of the above considerations, the Court finds that there has been a violation of Article 8 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

105. Article 41 of the Convention provides:

"If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

106. The applicant claimed 15,000 euros (EUR) in respect of non-pecuniary damage. He also claimed EUR 3,000 in respect of pecuniary damage related to his university fees.
107. The Government contested the applicant's claim.
108. The Court does not discern any causal link between the violation found and the pecuniary damage alleged. It therefore rejects this claim. On the other hand, it awards the applicant EUR 7,500 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

109. The applicant also claimed EUR 650 for the costs and expenses incurred before the domestic authorities and the Court.
110. The Government challenged the applicant's claim.
111. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum claimed, plus any tax that may be chargeable to the applicant.

C. Default interest

112. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT,

1. Declares, by a majority, the applicant's complaint of harassment in school by the teacher and the failure of the domestic authorities to respond effectively to his complaint of harassment admissible;
2. Declares, unanimously, the remainder of the application inadmissible;

3. Holds, by 4 votes to 3, that there has been a violation of Article 8 of the Convention;
4. Holds, by 4 votes to 3,

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Croatian kunas (HRK) at the rate applicable at the date of settlement:

(i) EUR 7,500 (seven thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
(ii) EUR 650 (six hundred and fifty euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

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

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

Done in English, and notified in writing on 22 April 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

{signature_p_2}

Renata Degener — Registrar
Krzysztof Wojtyczek — President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following separate opinions are annexed to this judgment:

(a) joint dissenting opinion of Judges Wojtyczek and Paczolay;
(b) dissenting opinion of Judge Ktistakis.

K.W.O.
R.D.

JOINT DISSENTING OPINION OF JUDGES WOJTYCZEK AND PACZOLAY

1. We respectfully disagree with points 1, 2 and 3 of the operative part of the instant judgment. In our view, the whole application is inadmissible. In any event, we consider that Article 8 has not been violated in the present case.
2. In order for Article 8 to come into effect, an attack on a person must attain a certain level of seriousness and be made in a manner causing prejudice to the personal enjoyment of the right to

respect for one's private life (see Beizaras and Levickas v. Lithuania, no. 41288/15, § 109 in fine, 14 January 2020). Measures taken in the field of education may in certain circumstances affect the right to respect for private life, but not every act or measure which may be said to affect adversely the moral integrity of a person necessarily gives raise to such an interference (Costello-Roberts v. the United Kingdom, 25 March 1993, § 36, Series A no. 247 C).

3. In the instant case, we consider that, although the student, XXXXX felt distress related to the language used by R.V., the teacher, the intensity of verbal abuse was of a lower scale of intensity. There is no evidence that the assault had left any long-lasting or serious effects on the applicant's development and well-being. As a result, the assault established in the instant case does not reach the threshold of applicability of Article 8.

We would also note that medical reports and certificates submitted by litigants, at least in certain countries, are not always fully reliable. There is no evidence that any other pupils in the same class were affected in a similar way by the teacher's behaviour. We have some doubts as to whether the causal link between the impugned assault, on the one hand, and the anxiety and stress disorders diagnosed in respect of the applicant, on the other hand, can be considered as clearly established (see paragraph 9).

We further note that on 14 December 2011 the applicant's father attended a meeting with the head teacher. According to a report from the meeting prepared by the head teacher, the applicant's father had explained that his son was now satisfied with his relationship with R.V., and that their conflict had been settled.

4. In our view, lowering the threshold of applicability of Article 8, thus triggering a flow of applications to the Court lodged by pupils complaining about their relations with teachers, will not necessarily advance human rights protection.

DISSENTING OPINION OF JUDGE KTISTAKIS

1. I regret not to be able to agree with the majority of the Court that the treatment complained of by the applicant was in itself serious enough to give rise to an issue under Article 8 of the Convention (see Beizaras and Levickas v. Lithuania, no. 41288/15, § 109, 14 January 2020). While having no intention of being seen to condone in any way the conduct of R.V., and stressing that discipline plays an important role in an educational setting, I conclude that the complaint must be dismissed as incompatible ratione materiae with the provisions of the Convention, pursuant to Article 35 §§ 3 (a) and 4 of the Convention, for the reasons stated below.

2. The applicant was born in November 1993 and the facts of the case took place in September 2011. The applicant was very close to reaching the age of majority. Moreover, according to Article 1 of the Convention on the Rights of the Child, the age of majority is relative: "a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier". Further, even though the applicant was still a minor at the material time – just two months short of his majority – he could not really be considered as a typical vulnerable human being.

3. There is no evidence that the conduct of R.V. left any long-standing or serious effect on the applicant's development and well-being. It is to be noted that the applicant argued that all his visits

to the doctor since September 2011 were the result of stress caused by the alleged harassment. However, from the applicant's medical chart, submitted by the Government (and not contested by the applicant), it can be noted that the applicant consulted the doctor on 7 different occasions in the year 2009, followed by 10 times in 2010, 9 times in 2011 (including 26 October 2011, 2 November 2011 and 20 December 2011), 4 times in 2012, 3 times in 2013 and 5 times in 2014. Taking it into consideration that the applicant suffered from asthma before the impugned events, it is to be concluded that, at least, R.V.'s conduct towards him did not worsen his medical condition. In any event, because of his chronic disease (asthma), the number of the applicant's visits to the doctor is not a reliable indicator upon which to draw a conclusion that R.V.'s behaviour had inflicted on him any additional medical issue.

4. Just after the impugned events related to the mathematics teacher R.V., the applicant received the highest mark in mathematics [very good – (4)], while the average grade in mathematics for that academic year was (3), similar to the grade he had obtained in all previous years. Moreover, the applicant concluded this year (2011-2012) with a very good overall achievement, as well as in the third grade, namely better than the first two grades (facts submitted by the Government and not contested by the applicant). Thus there is no evidence that the applicant had suffered any particular consequences in relation to his annual school performance.

5. Although the applicant was not the only pupil to be late for the mathematics class with teacher R.V., no other classmate complained about the conduct of R.V.

6. Finally, according to what the majority have accepted, the conduct of R.V. was "verbal, not a very high scale of intensity and did not generate into further, more systematic, harassment" (paragraph 87 of the judgment)