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La CEDU su inadeguata indagine russa sulle aggressioni contro i lavoratori di Greenpeace
(CEDU, sez. III, sent. 31 gennaio 2023, ric. n. 33470/18)

La Corte Edu si pronuncia sul caso riguardante le violente aggressioni subite dai lavoratori di Greenpeace nella regione di Krasnodar - potenzialmente provocate dal loro legame con la ONG ambientalista e sul presupposto che fossero agenti stranieri - e la successiva indagine interna.
I Giudici di Strasburgo hanno ritenuto tale inchiesta inadeguata e non idonea a fungere da deterrente per incidenti simili, in particolare, perché un'indagine completa era stata aperta solo quattro anni dopo l'accaduto e perché non era stato esaminato il potenziale motivo di odio a fondamento dell'attacco stesso.
Lo Stato non aveva rispettato il suo obbligo di fornire tutte le facilitazioni necessarie per lo svolgimento di una inchiesta efficace (art.38).
È stata, altresì, riconosciuta la violazione del divieto di trattamenti inumani o degradanti in combinato disposto con il divieto di discriminazione (artt.3 e 14).

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

THIRD SECTION

CASE OF XXXXX AND OTHERS v. RUSSIA
(Application no. 33470/18)

JUDGMENT
STRASBOURG
31 January 2023

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 and Others v. Russia,

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

Pere Pastor Vilanova, *President*,
Georgios A. Serghides,

Yonko Grozev,
Jolien Schukking,
Darian Pavli,
Peeter Roosma,
Ioannis Ktistakis, *judges*,
and Milan Blaško, *Section Registrar*,

Having deliberated in private on 10 January 2023,

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

INTRODUCTION

1. The application concerns an attack on the nine individual applicants (personnel of the applicant organisation) perpetrated by a group of unknown assailants on 9 September 2016 and the authorities' failure to investigate the incident, including its alleged xenophobic motive.

PROCEDURE

2. The case originated in an application (no. 33470/18) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by nine Russian nationals ("the individual applicants") and the Russian branch of the international non-governmental organisation Greenpeace, Sovet Greenpeace ("the applicant organisation") on 5 July 2018.

3. The applicants' details are set out in the appended table. The applicants were represented by Mr A.V. Popkov, a lawyer practising in Sochi. The Government were initially represented by their Agent, Mr A. Fedorov, the then Representative of the Russian Federation to the European Court of Human Rights, and later by his successor in that office Mr M. Vinogradov.

4. On 3 December 2020 the Russian Government ("the Government") were given notice of the application. On 28 May 2021 the Government submitted their observations on the admissibility and merits of the application. The applicants' observations were received on 28 September 2021.

5. On 16 March 2022 the Committee of Ministers of the Council of Europe, in the context of a procedure launched under Article 8 of the Statute of the Council of Europe, adopted Resolution CM/Res(2022)2, by which the Russian Federation ceased to be a member of the Council of Europe as from 16 March 2022.

6. On 22 March 2022 the Court, sitting in plenary session in accordance with Rule 20 § 1, adopted the "Resolution of the European Court of Human Rights on the consequences of the cessation of membership of the Russian Federation to the Council of Europe in light of Article 58 of the European Convention on Human Rights". It stated that the Russian Federation would cease to be a High Contracting Party to the Convention on 16 September 2022.

7. On 5 September 2022 the Plenary Court took formal notice of the fact that the office of judge with respect of the Russian Federation would cease to exist after 16 September 2022. This, as a consequence, entailed that there was no longer a valid list of *ad hoc* judges who would be eligible to take part in the consideration of cases where the Russian Federation was the respondent State.

8. Following a prior notification to that effect, to which the respondent Government failed to react, the President of the Section appointed one of the sitting judges of the Court to act as *ad hoc* judge, applying by analogy Rule 29 § 2 of the Rules of Court.

THE FACTS

9. The facts of the case may be summarised as follows.

10. The nine individual applicants were members of a volunteer group organised by the applicant organisation, the Russian branch of the international non-governmental organisation Greenpeace (Sovet Greenpeace), and took part in efforts to fight fires in the Krasnodar Region.

I. THE EVENTS OF 5-9 SEPTEMBER 2016 AND MEDICAL EVIDENCE

11. The applicants' description of the events of 5-9 September 2016 is set out below. The Government did not contest the applicants' account, nor did they submit an alternative version of the events.

12. In September 2016 the applicant organisation informed several local and regional authorities that it would send a group of volunteers in the Krasnodar Region to assist the authorities in fighting fires and to promote awareness of the problem. Between 5 and 13 September 2016 the group of volunteers including the nine individual applicants was based in the Krasnodar Region, slowly moving around the area in several marked vehicles. The group was subjected to multiple police checks.

13. On 7 September 2016, while the volunteers were temporarily based in a hunting lodge in the village of Beysug in the Bryukhovestk District, they were approached by two unidentified individuals, who demanded that they leave the location and threatened them with "adverse consequences" should they refuse. On the same day, the director of the hunting lodge forced the volunteers off the lodge's premises, referring to a request from "influential people".

14. On 8 September 2016 the volunteer group camped in the vicinity of the village of Sadki in the Primorsko-Akhtarskiy District. Several unknown persons wearing the Cossack paramilitary uniform entered the camp and blocked its entrance. They displayed a hostile attitude towards the applicants who, according to the visitors, "came from abroad", called the volunteers "American agents", and demanded that the applicants immediately get out from the Krasnodar Region which the visitors called "their land". The police, called by the applicants, arrived at the scene and checked the applicants' identification documents but did not take any action in respect of the individuals in paramilitary uniforms. The officers and the individuals seemed to know each other. The individuals looked around the camp for a while and left.

15. During the night of 9 September 2016, at around 1 a.m., about six unidentified individuals wearing masks and sports clothes and equipped with batons, knives, pepper spray, lamps, firearms and "stunt explosives" attacked the camp. According to the applicants, the assailants beat Mr Kreyndlin, Mr Kuksin, Mr Aksenov and Mr Rebechenko (the first, second, seventh and ninth applicants respectively), and threatened the other five of them. The applicants heard noises similar to those of gunshots or explosives, the crunch of broken glass and the attackers' threats. They got scared and had to hide from the attackers: Ms Kosacheva and Ms Vasilyeva (the third and the fourth

applicants) hid in their tents, and Mr Stroganov (the fifth applicant) hid in the bushes in the water nearby. They provided the following details of the attack.

– According to the first applicant, three attackers beat him with a rubber truncheon in his head, chest and legs; he must have lost consciousness for a while.

– According to the second applicant, when he was sleeping in a car, he woke up from the screams and the noise of broken glass, gunshots and explosives; he saw the attackers with knives approaching the car; they cut the car tyres and demanded him to get out of the car, threatening with pistols; the attackers kicked him several times and fired a gunshot nearby.

– According to the seventh applicant, the attackers broke the windscreen of the car where he was sleeping and threw a pyrotechnic item in the car, probably a paintball grenade; as a result he suffered from concussion and lost consciousness for a while. The attackers cut the tents and the car tyres.

– According to the third and the fourth applicants, when the attackers cut the tents where they were hiding, they sprayed gas into the tents.

– According to the eighth applicant, three men equipped with truncheons broke into the house where she was sleeping, threatened her and ordered her to leave.

16. The assailants threatened the applicants and made xenophobic remarks in connection with the applicants' affiliation with the Greenpeace, which, according to them, was a "foreign" (that is to say, a US) organisation. They referred to their previous "warning" and their earlier demands that the applicants leave the Krasnodar area. Using obscene language, the assailants told them to "get back to [their] America" and threatened them that "if [the applicants] were not to leave immediately, they would bury them and nobody would ever find them". The applicants perceived those threats as real. They experienced "enormous stress and fear" in front of the assailants, and felt helpless and vulnerable. The attackers either damaged or stole items of equipment belonging to the group: tents, mobile telephones, car tyres and windshields. They spoke with a specific local accent similar to that of the individuals who had entered the camp the day before. After the attack a sign reading *Pindos* (*Пиндосы* – a derogatory term for Americans) was found on a fence at the camp.

17. According to the forensic medical examination report of 12 September 2016, the first applicant had the following injuries: scratches, bruises and a facial wound. It was also noted that his nose could have been broken as well. The applicants further submitted, without referring to medical documents, that the seventh applicant had had a concussion and a short-term loss of consciousness as a result of a pyrotechnic explosion in the car, and the fourth applicant had suffered from a short-term acute angioedema due to either stress or gas exposure during the attack (see paragraph 15 above).

II. RELATED INVESTIGATION

18. On 9 September 2016 the Primorsko-Akhtarskiy district police station initiated three separate sets of criminal proceedings in respect of the attack: under Article 115 § 1 of the Criminal Code ("the CC") ("Intentional infliction of minor harm to health") in respect of the injuries of Mr Kreyndlin, the first applicant; under Article 119 § 1 of the CC ("Threat of murder") in respect of

Mr Kuksin, the second applicant; and under Article 158 § 1 of the CC ("Theft") in respect of the theft of a phone belonging to L., a member of the volunteer group. It appears that thereafter the proceedings essentially stalled.

19. On 15 November 2016 the first and second applicants each lodged an application to be granted the procedural status of victim and for the actions of the attackers to be categorised as "hate crimes" (since, they argued, "hatred" constituted the motive for the attackers' actions). In particular, the applicants referred to the remarks and the demands of the attackers, as well as the above-mentioned fence sign (see paragraphs 14 and 15 above). On 2 December 2016 the investigating officer rejected the applications as regards the alleged motive of the crime, as any conclusion to that effect could only be made after the identification of individuals responsible and their questioning.

20. On 29 December 2016 the proceedings in respect of the above-mentioned three cases were suspended owing to the impossibility of identifying any suspects. On 9 January 2017 a deputy district prosecutor set aside those decisions and ordered to resume the investigation, based on the investigators' failure to establish the exact number of volunteers present in the camp during the attack, to question them and other witnesses, and to carry out other investigative actions.

21. On 8 February 2017 the first and the second applicants were granted the status of victims. At the request of the applicants' lawyer, the investigating officer included in the case file video recordings made by the applicants of the incident of 8 September 2016.

22. On 6 March and 20 June 2017 the investigation was suspended again for the same reasons as those cited above.

23. On 24 July 2017 the applicants' lawyer requested that the records of his questioning of five applicants regarding the circumstances of the attack be attached to the case file, since they had not been formally questioned in the course of the investigation. On 23 August 2017 the request was granted.

24. On 23 November 2017 the lawyer lodged a request for information about progress in the case.

25. On 26 January 2018 the lawyer received a response to that request in a letter dated 28 December 2017. It appeared that after 20 June 2017 the investigation had not been resumed.

26. In September 2017 the applicants' lawyer lodged a complaint with the Oktyabrskiy District Court of Krasnodar about the continued failure to take any investigative steps. He submitted that the attack should be regarded as single criminal act motivated by ideological hatred, not as a series of separate crimes. In support of this argument he referred to the threats and demands to leave the region made by the attackers during the attack on 9 September 2016 and the unknown individuals the day before the attack (see paragraphs 14 and 15 above). On 3 April 2018 the District Court dismissed his complaint, having found that the investigating authorities had already initiated several rounds of investigation in respect of the attack and were not required to institute another one. The complaint about the failure to investigate the alleged hate motive remained unanswered. Following an appeal by the applicants, on 22 May 2018 the Krasnodar Regional Court upheld that judgment.

27. On 9 September 2018 the criminal proceedings were discontinued, as prosecution for the offences in question had become time-barred.

28. On 22 January 2021 the case-file material of the investigation was destroyed owing to the expiration of the statutory time-limit in respect of their storage.

29. According to the Government, on 16 March 2021 the district prosecutor's office brought proceedings for the decisions of 9 September 2018 to be set aside. On 17 March 2021 proceedings under Article 213 § 2 of the CC ("Hooliganism committed by a group of persons") were instituted in connection with the attack of 9 September 2016. According to the applicants' submissions, they had not been informed of these proceedings or granted a victim status. The outcome of those proceedings is unknown.

III. THE APPLICANTS' CLAIMS IN RESPECT OF DAMAGE TO THEIR PROPERTY

30. On 16 and 17 September 2016 an investigating officer dismissed applications lodged by the third, fifth and ninth applicants for a criminal case to be opened in respect of the damage allegedly caused to their property; given that the value of that property had not exceeded the amount of 5,000 Russian roubles (RUB) (approximately 65 euros (EUR)), this constituted an administrative offence under domestic law. On 17 September 2016 the investigating officer refused to open a criminal case into damage allegedly caused to the property of the applicant organisation in the amount of RUB 26,869.05 (EUR 349), given the fact that only property damage amounting to more than RUB 250,000 (EUR 3,250) constituted a criminal offence; lesser damage constituted an administrative offence. There is no indication in the file that the applicants pursued administrative proceedings in this connection.

31. In October 2017 the applicants' lawyer lodged a complaint with the Primorsko-Akhtarskiy District Court of the Krasnodar Region, challenging, among other things, the decisions of 16 and 17 September 2016. On 20 October 2017 the District Court disallowed the lawyer's appeal on formal grounds due to the lack of authority to represent. On 24 January 2018 the Krasnodar Regional Court upheld that decision.

32. In the meantime, on 16 October 2016 an investigating officer refused to open a criminal case under Article 214 § 1 of the CC ("Vandalism") in respect of the above-mentioned fence sign. No updates are available.

RELEVANT LEGAL FRAMEWORK

33. For the relevant provisions of the Code of Criminal Procedure see *Turluyeva v. Russia*, no. 63638/09, §§ 60-63, 20 June 2013, and *Lyapin v. Russia*, no. 46956/09, §§ 99-102, 24 July 2014.

34. Intentional infliction of minor bodily harm is punishable by up to four months of imprisonment (Article 115 of the CC). If such acts are motivated by political, ideological, racial, ethnic or religious hatred or enmity, or by enmity in respect of any social group, they are punishable by up to two years of imprisonment (Article 115 § 2 (b) of the CC).

35. Making a threat of murder is punishable by up to two years of imprisonment. If such act is motivated by political, ideological, racial, ethnic or religious hatred, or by enmity or enmity in respect of any social group, it is punishable by up to three years of imprisonment (Article 119 § 2 of the CC).

36. For a summary of the provisions of Article 213 of the CC ("hooliganism"), see *Mariya Alekhina and Others v. Russia* (no. 38004/12, § 87, 17 July 2018). Article 213 § 1(b) of the CC provides for a heavier penalty for hooliganism committed for reasons of political, ideological, racial,

national or religious hatred or enmity or for reasons of hatred or enmity towards a particular social group.

THE LAW

I. PRELIMINARY ISSUES

37. The Court observes that the Russian Federation ceased to be a member of the Council of Europe as from 16 March 2022 (see paragraph 5 above) and that it also ceased to be a Party to the Convention on 16 September 2022 (see paragraph 6 above).

38. In those circumstances, the Court is called upon to determine whether it has jurisdiction to deal with the present application, although its jurisdiction has not been disputed in the context of the present proceedings by the respondent State. Since the scope of the Court's jurisdiction is determined by the Convention itself, in particular by Article 32, and not by the parties' submissions in a particular case, the mere absence of a plea cannot extend that jurisdiction (see *Blečić v. Croatia* [GC], no. 59532/00, § 67, ECHR 2006 III). The Court must satisfy itself that it has jurisdiction in any case brought before it, and is therefore obliged to examine the question of its jurisdiction at every stage of the proceedings, of its own motion where necessary (see *Mocanu and Others v. Romania* [GC], nos. 10865/09 and 2 others, § 201, ECHR 2014 (extracts)).

39. The legal basis for the Court's jurisdiction in the event that one of the Council of Europe member States ceases to be a Contracting Party to the Convention can be found in Article 58 of the Convention. That provision, in so far as relevant, provides:

> " 1. A High Contracting Party may denounce the ... Convention only after the expiry of five years from the date on which it became a party to it and after six months' notice contained in a notification addressed to the Secretary General of the Council of Europe, who shall inform the other High Contracting Parties.
>
> 2. Such a denunciation shall not have the effect of releasing the High Contracting Party concerned from its obligations under [the] Convention in respect of any act which, being capable of constituting a violation of such obligations, may have been performed by it before the date at which the denunciation became effective.
>
> 3. Any High Contracting Party which shall cease to be a member of the Council of Europe shall cease to be a Party to [the] Convention under the same conditions.
>
> ..."

40. It appears from the wording of Article 58, and more specifically the second and third paragraphs, that a State which ceases to be a Party to the Convention by virtue of the fact that it has ceased to be a member of the Council of Europe is not released from its obligations under the Convention in respect of any act performed by that State before the date on which it ceases to be a Party to the Convention.

41. This reading of Article 58 of the Convention was confirmed by the Court, sitting in plenary session (in accordance with Rule 20 § 1 of the Rules of Court), in its Resolution of 22 March 2022. The Court stated that it "remain[ed] competent to deal with applications directed against the Russian Federation in relation to acts or omissions capable of constituting a violation of the

Convention provided that they occurred until 16 September 2022" (see paragraph 2 of the Resolution).

42. In the present case, the facts giving rise to the alleged violations of the Convention occurred prior to 16 September 2022. The Court therefore decides that it has jurisdiction to examine the present application.

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

43. The applicants complained under Article 3 of the Convention, taken alone and in conjunction with Articles 13 and 14 of the Convention, that the domestic authorities had failed to protect the nine individual applicants from the attack on 9 September 2016, and that the authorities had failed to effectively investigate the attack of 9 September 2016 by establishing, in particular, a possible hate motive on the part of the attackers. They argued that the attack had been motivated by the individual applicants' affiliation with the applicant organisation.

44. The application in this part was communicated under Articles 3, 8, 13 and 14 of the Convention. Being the master of the characterisation to be given in law to the facts of the case (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 114, 20 March 2018), the Court finds it appropriate to examine these complaints under Article 3 (see also paragraphs 53-54 below) taken in conjunction with Article 14 of the Convention, which read as follows:

Article 3

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

Article 14

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

A. As regards the alleged failure to conduct an effective investigation

45. As regards the interplay of Articles 3 and 14, having regard to the facts of the case, the Court considers that the most appropriate way to proceed is to subject the applicants' complaints to a simultaneous dual examination under Article 3 taken in conjunction with Article 14 of the Convention (see *Women's Initiatives Supporting Group and Others v. Georgia*, nos. 73204/13 and 74959/13, §§ 57, 16 December 2021, with further references).

1. Admissibility

(a) Victim status of the applicant organisation

46. In so far as the applicant organisation, a non-governmental organisation, submitted that it had been an indirect victim of the alleged violation of Articles 3 and 14 of the Convention, the

Court reiterates its well established case-law that the word "victim", within the context of Article 34 of the Convention, denotes the person or persons directly or indirectly affected by the alleged violation and, in principle, associations cannot be allowed to claim to be a victim of acts or omissions that affected the rights and freedoms of its individual members, who can lodge complaints with the Court in their own name (see *Identoba and Others v. Georgia*, no. 73235/12, §§ 43 and 45 with further references, 12 May 2015).

47. It follows that the applicant organisation cannot claim to be either a direct or indirect victim, within the meaning of Article 34 of the Convention, of a breach of Article 3 of the Convention, taken either separately or in conjunction with Article 14. This part of the application is thus incompatible *ratione personae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) and must be rejected, in accordance with Article 35 § 4.

(b) Non-exhaustion of domestic remedies

48. The Government argued that the case was premature, referring to the fresh investigation and the applicants' failure to exhaust domestic remedies in that connection. The Court considers that this objection should be joined to the merits, since it is closely linked to the substance of the individual applicants' complaint about the alleged failure to conduct an effective investigation (see, among others, *Denis Vasilyev v. Russia*, no. 32704/04, § 91, 17 December 2009; *S.T. and Y.B. v. Russia*, no. 40125/20, § 63, 19 October 2021; and *Makhashevy v. Russia*, no. 20546/07, §§ 143 and 146, 31 July 2012).

49. The Court further notes that the complaints of the nine individual applicants under Article 3 in conjunction with Article 14 are neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. They must therefore be declared admissible.

2. Merits

(a) The parties' submissions

50. The nine individual applicants submitted that the authorities' response to the violent attack of 9 September 2016 had not been adequate. It had clearly followed from the evidence available before the police that the applicants had been victims of a premeditated attack on 9 September 2016 motivated by ideological hatred towards the applicants' volunteer activities supported by the applicant organisation, which, according to the assailants, was a foreign (American) organisation. The applicants pointed out that the attackers had not sought any pecuniary gain – indeed, of the applicants' personal belongings, only phones had been stolen, apparently with the aim of leaving the victims without means of communication. Pointing to the investigating authorities' failure to question all the victims of the attack and to carry out other key investigative actions, they argued that there had been no prompt and thorough investigation into the attack and its motives. They further alleged that the domestic legal framework was insufficient to address such attacks. They pointed out that the investigating authorities had wrongly qualified the facts, launching three separate sets of investigation (see paragraphs 18 and 19 above) instead of a full investigation into the entire attack, and disregarding the apparent xenophobic motives of the attackers – that is, the applicants' perceived belonging to a different nation or ideology.

51. The Government contested those arguments. They furthermore submitted that no discriminatory motive for the attack had been established during the domestic proceedings.

(b) The Court's assessment

(i) The severity threshold

52. For a summary of the relevant principles concerning the threshold of severity, see *Identoba and Others* (cited above, § 65); *Women's Initiatives Supporting Group and Others* (cited above, § 59); and *Sabalić v. Croatia* (no. 50231/13, §§ 63-66, 14 January 2021).

53. In the present case, it has not been disputed by the Government that on 9 September 2016 the applicants became the target of aggressive behaviour by a group of armed persons who attacked them late at night, caused visible injuries to the first applicant, and threatened and verbally insulted other applicants. The applicants heard noises similar to those of gunshots or explosives and saw their belongings being damaged. The incident was marked by xenophobic verbal threats (see paragraph 15 above). Furthermore, the applicants' feeling of helplessness must have been exacerbated by a perceived link between the unfolding events and the threats they had received a day before, as well as an apparent lack of the authorities' immediate reaction to the incident of 8 September 2016 (see paragraph 14 above). In such circumstances, it is clear that all the individual applicants perceived the threat of physical violence very seriously. The Court reiterates in this connection that a threat of conduct prohibited by Article 3, provided it is sufficiently real and immediate, may fall foul of that provision (see *Women's Initiatives Supporting Group and Others,* cited above, § 60*)*.

54. Having regard to the overall context of the attack, the Court considers that such treatment of the applicants must necessarily have aroused in them feelings of fear and insecurity, which were not compatible with respect for their human dignity and which therefore reached the threshold of severity within the meaning of Article 3 of the Convention (see *Identoba and Others*, cited above, §§ 70-71, and *Sabalić*, cited above, §§ 63-66).

(ii) Procedural obligations

55. The general principles as regards the State's procedural obligations when confronted with cases of violent incidents triggered by suspected discriminatory attitudes have been summarised in *Identoba and Others*, cited above, §§ 66-67, and *Sabalić*, cited above, §§ 93-98, with further references therein. Such procedural obligations are similar in cases where the treatment contrary to the Convention has been inflicted through the involvement of State agents and cases where violence is inflicted by private individuals (see *Sabalić*, cited above, § 96).

56. The Court notes that the domestic authorities, instead of launching a comprehensive investigation into the circumstances surrounding the attack in its entirety immediately after the incident, inexplicably narrowed the scope of the investigation and opened several separate cases concerning the physical injuries caused to the first applicant and threats of murder in respect of the second applicant (see paragraph 18 above). During 2016-17 the investigations into those cases were suspended several times, owing to the impossibility of identifying the attackers, before being discontinued on September 2018 in the light of the expiration of the statute of limitations

in respect of criminal prosecution (see paragraphs 20, 22 and 27 above). In this connection, the Court reiterates that any deficiency in the investigation that undermines its ability to establish the identity of the persons responsible will risk falling foul of the standards of an effective investigation under Article 3 of the Convention (see *Lyapin*, cited above, § 126). The Court has already found in a number of cases where the authorities' failure to show diligence resulted in the prosecution becoming time-barred that the effectiveness of the investigation was irreparably damaged and that the purpose of effective protection against acts of ill-treatment was frustrated (see *V.K. v. Russia*, no. 68059/13, § 189, 7 March 2017, with further references). This finding is particularly relevant in the present case, given the lack of any meaningful progress in the investigation prior to September 2018 and the authorities' failure to take necessary actions, such as – at the very least – questioning all the members of the volunteer group and other witnesses (see paragraph 20 above). Further, there is nothing to suggest that the investigators had made any genuine attempts to identify the attackers, even though the applicants in their domestic complaints had consistently pointed to a link between the incidents of 8 and 9 September 2016 and had provided the investigators with video recordings of the events of 8 September 2016. However, the relevant recordings had only been admitted to the investigation file five months after the events (see paragraph 21 above), and apparently had not triggered any further investigative steps or otherwise received any domestic assessment. This failure to follow an obvious line of inquiry undermined the investigation's ability to establish the circumstances of the case and those responsible, let alone the attackers' motives.

57. Only four and a half years after the incident, in March 2021, did the investigating authorities open a full investigation into the entire attack of 9 September 2016 (see paragraph 29 above). The Government did not provide any information as regards progress in this investigation and the results thereof, either to the Court or to the applicants. In any event, in view of the considerable lapse of time, the Court is not convinced that those proceedings would be capable of adequately addressing the shortcomings of the previous rounds of investigation, especially in the light of the Government's submissions that the initial investigation case file was destroyed (see paragraph 28 above), and accordingly rejects the Government's objection concerning the applicants' failure to exhaust domestic remedies in respect of that fresh round of the proceedings before Russian authorities.

58. The Court further reiterates that, when investigating violent incidents, State authorities have the additional duty to take all reasonable steps to unmask any bias motive, since prejudice-motivated crimes cannot be treated on an equal footing with ordinary cases that do not carry such overtones (see, in so far as relevant, *Identoba and Others*, cited above, § 77, and *Sabalić*, cited above, §§ 94-95; see further, in the context of a failure to investigate political motives of violence, *Virabyan v. Armenia*, no. 40094/05, §§ 218 and 220, 2 October 2012). The Court takes note of the general context of the attack – undisputed by the Government - marked by hostile and insulting remarks from the part of the assailants, as well as the offensive sign left on the fence by them (see paragraph 16 above). Immediately after the physical attack against the applicants had taken place, the domestic authorities were confronted with *prima facie* indications of violence motivated or at least influenced by the applicants' perceived belonging to a different nation or ideology (see paragraphs 14 and 16 above), and the applicants made continuous efforts to bring such allegations to the attention of the domestic authorities (see paragraphs 19 and 26 above). Indeed, they clearly mentioned xenophobic

verbal abuse in their complaints to the authorities and gave relevant details of the insults used; referred to a sign on the fence as evidence of the attackers' hate motive; complained throughout the proceedings about the investigators' unwillingness to take this element into account; and raised this complaint with the domestic courts (see *Antayev and Others v. Russia*, no. 37966/07, § 125, 3 July 2014; and, in so far as relevant, *Grigoryan and Sergeyeva v. Ukraine*, no. 63409/11, § 94, 28 March 2017). However, the investigating authorities repeatedly rejected the applicants' allegations in a summary manner, without properly addressing their complaints in this regard (see *Mikeladze and Others v. Georgia*, no. 54217/16, § 67, 16 November 2021), stating that any bias motive could be established only after the identification of the individuals responsible, and the domestic courts did not remedy that defect (see paragraphs 19 and 26 above). Therefore, being aware that the attack could have been motivated by hatred towards the applicants – apparently perceived by the attackers as belonging to, or being associated with persons of different nationality or ideology – the authorities allowed the investigation to last for many years without taking adequate action with a view to identifying or prosecuting the perpetrators (see *Milanović v. Serbia*, no. 44614/07, § 99, 14 December 2010; *Šečić v. Croatia*, no. 40116/02, §§ 66-70, 31 May 2007; *Makhashevy*, cited above, §§ 144-45; and, in so far as relevant, *Antayev and Others,* cited above, §§ 111 and 128-29), let alone establishing the alleged bias motive.

59. To sum up, in the Court's view, the authorities failed in their duty under Article 3 taken in conjunction with Article 14 to take all reasonable steps to investigate whether or not a hate motive may have played a role in the attack on the applicants. As a result, the criminal proceedings in the present case cannot be said to have provided adequate response to the allegedly hate-motivated act of violence against the applicants, to have had a sufficient deterrent effect on the individuals concerned, or to have been capable of ensuring the effective prevention in the future of such acts.

60. Accordingly, the Court dismisses the Government's objection regarding the non-exhaustion of domestic remedies (see *Denis Vasilyev*, cited above, § 104, and *S.T. and Y.B. v. Russia*, cited above, § 75) and concludes that in the present case there has been a violation of Article 3 under its procedural limb read together with Article 14 of the Convention. In view of the above, there is no need to address separately the applicants' arguments as regards the alleged insufficient domestic legal framework (see, in so far as relevant, *Sabalić*, cited above, § 103).

B. As regards the alleged failure to protect the applicants from the attack of 9 September 2016

61. The applicants further complained under Article 3 of the Convention, taken alone and in conjunction with Article 14 of the Convention, that, despite having been immediately informed of the incident of 8 September 2016, the domestic authorities had remained passive and failed to identify the "visitors" and to protect the applicants from the attack on 9 September 2016.

62. Having regard to its findings in paragraphs 56-60 above, and given, in particular, that the issue of the alleged failure to identify the participants of the episode of 8 September 2016 partially overlaps with the complaint about ineffective investigation into the subsequent attack on the applicants, the Court does not find it necessary to decide whether prior to the incident the

authorities ought to have been aware of the real and imminent danger to the applicants (see *Amadayev v. Russia*, no. 18114/06, § 84, 3 July 2014). It accordingly considers that there is no need to give a separate ruling on the admissibility and merits of these complaints (see, *mutatis mutandis*, *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 156, ECHR 2014).

III. COMPLIANCE WITH ARTICLE 38 OF THE CONVENTION

63. When giving notice of the application on 27 November 2020, the Court requested the Government to produce copies of the entire investigation file in respect of the events.

64. In their observations before the Court the applicants drew the Court's attention to the Government's failure to provide a copy of the investigation file, as requested by the Court, and to its destruction (in breach of their obligation under Article 38 of the Convention) after Government had been given notice of the application.

65. The Government noted that they had not been given notice of this complaint and argued that such a new complaint should have been introduced via a new application form.

66. The Court cannot accept the Government's argument. It reiterates that the Government are obliged, as a party to the proceedings, to comply with the Court's requests to produce evidence (see *Adzhigitova and Others v. Russia*, nos. 40165/07 and 2593/08, § 157, 22 June 2021). It will examine the matter in the light of the general principles concerning compliance with Article 38 of the Convention, as they have been summarised in *Janowiec and Others v. Russia* ([GC], nos. 55508/07 and 29520/09, §§ 202-04, ECHR 2013).

67. The obligation to produce the evidence requested by the Court is binding on the respondent Government from the moment such a request has been formulated, notwithstanding the stage of the proceedings (ibid., § 203). In the present case the investigation file requested by the Court was destroyed on 22 January 2021 – that is to say after the Court had given notice of the application to the Government on 27 November 2020. Given the circumstances, the expiration of the statutory time-limit for the storage of the material requested (see paragraph 28 above) cannot be considered to constitute a reasonable explanation for the Government's failure to comply with the Court's request for evidence.

68. Given that the Government's failure to comply with the Court's request undermined the latter's ability to examine the merits of the applicants' complaint by clarifying important issues related to the effectiveness of the investigation, the Court finds that the Government have not complied with their obligations under Article 38 of the Convention on account of their failure to submit copies of the requested documents (see *Estemirova v. Russia*, no. 42705/11, § 77, 31 August 2021).

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

69. Some of the individual applicants and the applicant organisation complained that there had been no effective investigation into the damage to their property caused during the attack. They referred to Article 1 of Protocol No. 1 to the Convention and Article 14 of the Convention.

70. In view of the Court's conclusions concerning the lack of an effective investigation (see paragraph 60 above), the relatively minor damage allegedly sustained (as confirmed by the applicants themselves), and given that the applicants did not pursue this part of the case at the domestic level any further (see paragraph 30 above), the Court considers that there is no need to examine the admissibility and merits of these complaints separately under Article 1 of Protocol No. 1, taken alone or in conjunction with Article 14 of the Convention (see, *mutatis mutandis*, *Centre for Legal Resources on behalf of Valentin Câmpeanu*, cited above).

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

71. 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

72. The applicants claimed compensation for non-pecuniary damage and left the determination of its amount to the Court's discretion. The first, third, fifth and ninth applicants claimed a total of 22,660 Russian roubles (RUB) (approximately 269 euros (EUR)) in respect of pecuniary damage representing the cost of stolen phones and property damaged during the attack. The applicant organisation claimed RUB 33,668 (approximately EUR 396) and RUB 42,500 (approximately EUR 500) in respect of pecuniary damage arising out of property damaged during the attack and the expenses for physiological assistance provided to the individual applicants.

73. The Government contested those claims.

74. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects the claims in this regard. On the other hand, the Court awards each of the individual applicants 4,000 euros (EUR) in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

75. The applicants claimed RUB 2,436,842 (EUR 28,656) for the costs and expenses incurred by the applicant organisation in connection with the present application at the national level and before the Court. They requested these amounts to be paid into the bank account of the applicant organisation.

76. The Government contested those claims as excessive.

77. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum (see, among other authorities, *Merabishvili v. Georgia* [GC], no. 72508/13, § 370, 28 November 2017).

78. The Court notes that the application in respect of the applicant organisation was found inadmissible. In the present case nothing indicates that the nine individual applicants in respect of whom a violation of Article 3 under its procedural limb read together with Article 14 of the Convention has been found paid or were under a legal obligation to pay the fees charged by their representative or the expenses incurred by him.

79. In the absence of such evidence, the Court finds no basis on which to accept that the costs and expenses claimed by the applicants were actually incurred by them (see *Merabishvili*, cited above, § 372). It follows that the claim must be rejected.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Holds* that it has jurisdiction to deal with the applicants' complaints in so far as they relate to facts that took place before 16 September 2022;
2. *Decides* to join to the merits the Government's preliminary objection of failure to exhaust domestic remedies in respect of the complaint under the procedural limb of Article 3 taken in conjunction with Article 14 of the Convention introduced by the nine individual applicants, and *dismisses* it;
3. *Declares* the complaints introduced by the applicant organisation inadmissible and the complaint under the procedural limb of Article 3 taken in conjunction with Article 14 of the Convention introduced by the nine individual applicants admissible;
4. *Holds* that there has been a violation of Article 3 under its procedural limb taken in conjunction with Article 14 of the Convention, with respect to the nine individual applicants;
5. *Holds* that there is no need to examine the admissibility and merits of the complaint under the substantive limb of Article 3, taken alone or in conjunction with Article 14 of the Convention and the complaint under Article 1 of Protocol No. 1 to the Convention, both taken alone and read together with Article 14 of the Convention;
6. *Holds* that the respondent State has failed to comply with its obligations under Article 38 of the Convention;
7. *Holds*

(a) that the respondent State is to pay each individual applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 4,000 (four thousand euros), plus any tax that may be chargeable, to be converted into the currency of the respondent State 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;

8. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 31 January 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško	Pere Pastor Vilanova
Registrar	President

APPENDIX

List of applicants: (omissis)