



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

FIRST SECTION

**CASE OF GLADOVIĆ v. CROATIA**

*(Application no. 28847/08)*

JUDGMENT

STRASBOURG

10 May 2011

**FINAL**

*10/08/2011*

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



**In the case of** Gladović v. Croatia,

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

Anatoly Kovler, *President*,

Nina Vajić,

Christos Rozakis,

Peer Lorenzen,

Elisabeth Steiner,

Khanlar Hajiyeu,

George Nicolaou, *judges*,

and André Wampach, *Deputy Section Registrar*,

Having deliberated in private on 12 April 2011,

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

## PROCEDURE

1. The case originated in an application (no. 28847/08) 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 Nebojša Gladović (“the applicant”), on 8 April 2008.

2. The applicant was represented by Mr Z. Novaković, a lawyer practising in Zagreb. The Croatian Government (“the Government”) were represented by their Agent, Ms Š. Stažnik.

3. On 12 March 2010 the President of the First Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1957 and is currently serving a prison term in Lepoglava State Prison.

5. On 26 January 2007 the applicant was placed in pre-trial detention in Split Prison in connection with an investigation into suspected drug possession.

6. A psychiatric report of 15 February 2007, commissioned for the purposes of the criminal proceedings against the applicant before the Split

County Court, indicates that the applicant was a long-term drug addict and that this, together with his long stays in prison, his way of life and behavioural patterns, manifested in inappropriate responses to various personal and social circumstances. He showed signs of a personality disorder with emotional distance, paranoid elements and histrionic disorder. Long-term drug abuse had caused some organic changes together with altered perception, concentration, thought processes and behaviour. Intense therapy was recommended.

7. After the investigation was complete, a bill of indictment was filed by the Split County State Attorney's Office on 2 March 2007 and the criminal trial began before the Split County Court.

8. The Government submitted that the applicant had been identified as a difficult prisoner and had caused several incidents such as disturbing mass in the prison chapel on 11 March 2007; shouting through the window of his cell during the night of 26 March 2007; and kicking the door of his cell on 28 March 2007.

9. On 29 March 2007 two prison guards, Z.V. and F.K., each drew up a report on the use of force on the applicant.

The report drawn up by Z.V. reads:

"On 29 March 2007 at 8.20 a.m. when I was doing my round of the prisoners' cell no. 29 I heard four or five strong blows of a bench against the door of cell no. 44. After that the Head of the Second Ward, F.K., in the presence of J.Č. and me, opened the cell door. The detainee Nebojša Gladović was shouting and threw himself at F.K. F.K. attempted to resist him with physical force but [the detainee] ignored his order to stop resisting, after which I used a rubber truncheon twice on his left arm. The detainee stopped resisting and I stopped using force. F.K. put him in an elbow lock and took him to the isolation cell no. 14. After a detailed search of him we tied him up to ensure order and security."

The report drawn up by F.K. reads:

"On 29 March 2007 at 8.20 a.m. detainee Nebojša Gladović threw a metal bench against the cell door four or five times while shouting: 'I want to make a telephone call'. I opened the cell door in the presence of Z.V. and apprentice J.Č. and the detainee started to walk towards me while shouting and moving his hands. I tried to calm him by using physical force and ordering him to stop resisting. He ignored my order and [F.]V. used a rubber truncheon twice on his left arm. The detainee then stopped resisting and the use of force also stopped. I put him in an elbow lock and took him to the isolation cell no. 14 where, together with [F.]V., I carried out a detailed search of the detainee and then tied him up to ensure order and security. The Head of the Ward, Ž.R., was informed of everything."

10. On 30 March 2007 the Head of the Security Ward, Z.R., drew up a report for the prison governor, the relevant part of which reads:

"... During his time in detention, detainee Nebojša Gladović ... has consistently behaved improperly towards the prison personnel, and in the past few days he has regularly breached prison rules by shouting during the night and day in his cell and through the cell window, and even verbally insulting the officers. Warnings and conversations with the detainee have not led to any lasting results."

On 29 March 2007 at 8.20 a.m. detainee Nebojša Gladović, in cell no. 44, where he was together with three other detainees, started to shout: 'I want to make a telephone call'. Immediately after that he threw a wooden bench four or five times hard against the cell door. The officers on duty, F.K. and Z.V., together with apprentice J.Č., opened the cell [door]. Detainee Gladović then threw himself at the officers who firstly tried to calm him by physical force, but without success, and then, with the others holding him, Z.V. correctly used a rubber truncheon to hit the detainee twice on his arm, after which the active resistance of the detainee stopped. Then F.K. put him in an elbow lock, which was justified, and took him to the isolation cell, where he was handcuffed to ensure order and security until 5.40 p.m. ... when the detainee was returned to his cell.

After this event the detainee was seen by the prison doctor.

Detainee Nebojša Gladović refused to give his statement about this incident and said that he would complain to a court about the way the officers had treated him."

11. The applicant was seen by the prison doctor on 29 and 30 March 2007. The medical report of 29 March 2007 indicates that the applicant complained of pain in his shoulder. No sign of injury was found. The medical report of 30 March 2007 shows that the applicant had a violet-coloured haematoma on his left arm measuring 10 x 20 centimetres.

12. On 30 March 2007 the prison governor filed a report with the Head Prison Administration in Zagreb about the use of force against the applicant on 29 March 2007. She stated that that day at 8.20 a.m. the applicant, placed in cell no. 44, had started to shout, protesting against a decision refusing his request to use the telephone that day. Then he had thrown a metal bench against the cell door several times. When three guards, F.K., Z.V. and J.Č., had entered the cell the applicant had thrown himself at them. The attempt of F.K. to gain control over the applicant by physical force had failed and Z.V. used a rubber truncheon to hit the applicant twice on his left arm. When the applicant had stopped resisting, the guards had put him in an elbow lock and handcuffed him. He had remained handcuffed until 5.40 p.m. the same day when he had been returned to his cell.

13. In view of the prison governor, the force used against the applicant had been justified.

14. This report relied on the above-cited reports by the prison guards concerned.

15. In his complaint submitted on 2 April 2007 to the judge conducting the criminal trial against him in the Split County Court, the applicant alleged, *inter alia*, that on the previous morning six to seven prison guards had hit him with rubber truncheons when he had been lying on the floor.

16. On the same day a request for the institution of disciplinary proceedings against the applicant was lodged by the governor of Split Prison with the judge conducting the criminal trial against the applicant in the Split County Court. The request was in connection with several incidents, including the one of 29 March 2007. It was alleged that that day

at 8.20 a.m. the applicant had shouted and hit the cell door with a metal bench. When the guards had entered the cell the applicant had attempted to attack them and even after they had gained control over him by using force, he had continued to verbally insult them. The request was accompanied by the reports mentioned in the previous paragraph.

17. On 13 April 2007 the judge found the applicant guilty of, *inter alia*, “disturbing the House order on 29 March 2007 at about 8.20 a.m. in cell no. 44 where he had been placed by shouting and hitting the metal bench against the cell door and, after the prison guards had entered the cell, by attempting to attack them, and after physical force and security measures had been used against him, by continuing to verbally insult the prison guards” which amounted to “improper behaviour towards State officials, attempting to physically attack State officials and insulting State officials”. This decision was based on the reports by the prison personnel and the applicant’s written statement of 2 April 2007. The relevant part of the reasoning reads:

“... the reports by the officials ... F.K. and Z.V. and the written statement of the defendant Nebojša Gladović were submitted.

On the basis of the case file and the said statements ... this court finds that the defendant Nebojša Gladović acted exactly as stated in the operative part of this decision.

This court has accepted the above-cited reports of the officials as the truth because they describe the events in detail and logically, and on the assessment of these, [this court] finds that the defendant, on ... 29 March [2007], disturbed House order by shouting and hitting a metal bench against the cell door and then also verbally insulting the prison guards ...

As to the statements of the defendant Nebojša Gladović, this court does not find them truthful and considers that in his written submissions he, at least in the part where he describes the events in question, is trying to avoid his disciplinary liability while the remaining part of his statement is illogical and unconvincing, making allegations which have no connection with the case in issue.

...”

## II. RELEVANT DOMESTIC LAW

18. The relevant part of the Code of Criminal Procedure (Official Gazette nos. 62/2003 – *Zakon o kaznenom postupku*) provides as follows:

**Article 2**

“...

(3) Where not otherwise provided by law, the State Attorney shall bring a criminal prosecution where there is a founded suspicion that an identified individual has committed a criminal offence liable to official prosecution and where there are no statutory obstacles for prosecution of that person.”

**Article 171**

“(1) All State bodies and all legal entities are obliged to report criminal offences liable to official prosecution, whether they have been informed thereof or have learned about such offences on their own.

...”

**Article 173**

“(1) A criminal complaint shall be lodged with a competent State Attorney in writing or orally.

...

(3) Where a criminal complaint has been lodged with a court, a police force or a State Attorney lacking competence, they shall receive the complaint and immediately forward it to the competent State Attorney.”

**THE LAW****I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION**

19. The applicant complained that on 29 March 2007 he had been beaten up by the prison guards in Split Prison and that no effective investigation had been carried out in that respect. He relied on Article 3 of the Convention, which reads as follows:

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

**A. Admissibility**

20. The Government argued that the applicant had failed to exhaust domestic remedies because he had not complained to the judge conducting

the criminal proceedings against him. Although in his complaint of 2 April 2007 he mentioned that the prison guards had hit him with a rubber truncheon, he admitted that he had provoked them.

21. The applicant argued that he had satisfied the exhaustion requirement by complaining about the ill-treatment in question to the judge conducting the criminal proceedings against him.

22. The Court notes that by telling the judge conducting the criminal trial against him that the prison guards had hit him with a rubber truncheon while he had been lying on the floor, the applicant complied with his duty to inform the relevant national authorities of ill-treatment against him. In this connection, the Court is also mindful of the relevant provisions of the Code of Criminal Procedure, which require a court receiving a criminal complaint involving allegations of a criminal offence liable to public prosecution to forward it immediately to the competent State Attorney. In the Court's view, there is no doubt that the allegations of ill-treatment by the prison guards amount to such a criminal offence. The applicant's complaint was submitted to a judge of the Split County Court, which was in compliance with Article 173 § 3 of the Code of Criminal Procedure.

23. As to the Government's argument that although the applicant alleged in his submission of 2 April 2007 that the prison guards had hit him with rubber truncheons while he was lying on the floor, he had also stated that he had provoked it, the Court reiterates that the protection against ill-treatment under Article 3 of the Convention is absolute and that it cannot be justified by the behaviour of the victim and that the use of force by State officials is allowed only where it is strictly necessary in the given circumstances.

24. It follows that the applicant duly informed the relevant national authorities of the substance of his complaints under Article 3 of the Convention and that therefore the Government's objection as to the exhaustion of domestic remedies cannot be accepted.

25. The Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

## **B. Merits**

### *1. The parties' arguments*

26. The applicant maintained that on 29 March 2007, while placed in a cell directly above the office of the prison governor, he had called out to the governor through the window of his cell asking to be received by him. He had done this because his ten written and repeated oral requests to the prison guards to see the prison governor had been ignored. He had kicked the cell door, after which six to seven prison guards had rushed into the cell,

grabbed him, taken him out and thrown him to the floor and then had punched, kicked and beaten him with truncheons all over his body. He had curled up on the floor, protecting his head with his hands and had given no resistance.

27. In his written submissions of 2 April 2007 he had complained about this incident to the judge conducting the criminal proceedings against him, but she had ignored it. No proper investigation had been carried out.

28. He further argued that it was normal for there to be no sign of injury inflicted by a rubber truncheon visible on the first day as these were only visible from the second day and that this was supported by the medical report of 30 March 2007 which stated that he had had a large violet-coloured haematoma on his left arm.

29. The Government submitted that the applicant had been identified as a difficult prisoner and had caused several incidents such as disturbing mass in the prison chapel on 11 March 2007; shouting through the window of his cell during the night of 26 March 2007; and kicking the door of his cell on 28 March 2007.

30. They alleged that on 29 March 2007 the prison guards had used force on the applicant by hitting him twice with a rubber truncheon and putting him in an elbow lock only in order to prevent the applicant from causing further disturbances because he had been shouting and hitting a metal bench against the door of his cell.

31. The Government argued that the force used against the applicant on 29 March 2007 did not reach the level of severity necessary for the application of Article 3 of the Convention. The force had been used only in order to prevent the applicant from attacking a prison guard. The prison doctor who had seen the applicant the same day had not noticed any injuries to his body.

32. The Government further argued that in view of the conclusions of the psychiatric report of 15 February 2007 (see paragraph 16 above), the reliability of the applicant's allegations of ill-treatment by the prison guards was questionable.

33. As regards the procedural obligation under Article 3 of the Convention, the Government argued that all relevant circumstances had been assessed by the judge conducting the criminal trial against the applicant.

## *2. The Court's assessment*

### **(a) Severity of the treatment**

34. The Court reiterates that ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is relative: it depends on all the circumstances of the case, such as the nature and context of the treatment, its duration, its physical and mental

effects and, in some instances, the sex, age and state of health of the victim (see *Costello-Roberts v. the United Kingdom*, 25 March 1993, § 30, Series A no. 247-C, and *A. v. the United Kingdom*, 23 September 1998, § 20, *Reports* 1998-VI).

35. Treatment has been held by the Court to be “inhuman” because, *inter alia*, it was premeditated, was applied for hours at a stretch and caused either actual bodily injury or intense physical and mental suffering (see *Labita v. Italy* [GC], no. 26772/95, § 120, ECHR 2000-IV). Treatment has been considered “degrading” when it was such as to arouse in its victims feelings of fear, anguish and inferiority capable of humiliating and debasing them and possibly breaking their physical or moral resistance (see *Hurtado v. Switzerland*, 28 January 1994, opinion of the Commission, § 67, Series A no. 280, and *Wieser v. Austria*, no. 2293/03, § 36, 22 February 2007).

36. As to the present case, the Court notes that it is not disputed between the parties that on 29 March 2007 physical force was used against the applicant by prison guards. The Government also admitted that the prison guards had hit the applicant twice with a rubber truncheon.

37. At this juncture the Court considers it appropriate to observe that it has emphasised that persons in custody are in a vulnerable position and that the authorities are under a duty to protect their physical well-being (see *Tarariyeva v. Russia*, no. 4353/03, § 73, ECHR 2006-... (extracts); *Sarban v. Moldova*, no. 3456/05, § 77, 4 October 2005; and *Mouisel v. France*, no. 67263/01, § 40, ECHR 2002-IX). In respect of a person deprived of his liberty, any recourse to physical force which has not been made strictly necessary by his own conduct diminishes human dignity and is in principle an infringement of the right set forth in Article 3 of the Convention (see *Sheydayev v. Russia*, no. 65859/01, § 59, 7 December 2006; *Ribitsch v. Austria*, 4 December 1995, § 38, Series A no. 336; and *Krastanov v. Bulgaria*, no. 50222/99, § 53, 30 September 2004).

38. The prison doctor saw the applicant on 29 and 30 March 2007. The report of 29 March indicates that the applicant complained of pain in his shoulder. The report of 30 March found a large haematoma on the applicant’s left arm. In view of the above principles, the Court finds that in the present circumstances where physical force was used on a detained person by the prison guards, this injury was sufficiently serious to reach the “minimum level of severity” under Article 3 of the Convention.

#### **(b) Concerning the alleged inadequacy of the investigation**

##### *(i) General principles*

39. Where an individual raises an arguable claim that he or she has been seriously ill-treated by State authorities in breach of Article 3, that provision, read in conjunction with the State’s general duty under Article 1

of the Convention to “secure to everyone within their jurisdiction the rights and freedoms defined in ... [the] Convention”, requires by implication that there should be an effective official investigation. This investigation should be capable of leading to the identification and punishment of those responsible. Otherwise, the general legal prohibition of torture and inhuman and degrading treatment and punishment would, despite its fundamental importance, be ineffective in practice and it would be possible in some cases for agents of the State to abuse the rights of those within their control with virtual impunity (see *Assenov and Others*, cited above, § 102; *Labita*, cited above, § 131; and *Muradova v. Azerbaijan*, no. 22684/05, § 100, 2 April 2009). The minimum standards as to effectiveness defined by the Court’s case-law also include the requirements that the investigation must be independent, impartial and subject to public scrutiny, and that the competent authorities must act with exemplary diligence and promptness (see, for example, *Menesheva v. Russia*, no. 59261/00, § 67, ECHR 2006-III).

40. The investigation into serious allegations of ill-treatment must be thorough. That means that the authorities must always make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation or as the basis of their decisions (see *Assenov and Others*, cited above, § 103 et seq.). They must take all reasonable steps available to them to secure the evidence concerning the incident, including, *inter alia*, eyewitness testimony and forensic evidence (see *Tanrikulu v. Turkey* [GC], no. 23763/94, ECHR 1999-IV, § 104 et seq., and *Gül v. Turkey*, no. 22676/93, § 89, 14 December 2000). Any deficiency in the investigation which undermines its ability to establish the cause of injuries or the identity of the persons responsible will risk falling foul of this standard.

(ii) *Application of these principles in the present case*

41. As to the present case, the Court notes that the judge conducting the criminal proceedings against the applicant also issued a decision concerning the disciplinary offences committed by the applicant, including the incident of 29 March 2007. This decision was adopted on the basis of the written reports by the prison personnel and the applicant’s written submissions.

42. However, in these proceedings no assessment was made as to the use of force against the applicant in order to establish the intensity of the force used and whether it had been strictly necessary. A forensic report could have possibly also verified the applicant’s allegations that he had been hit while he was lying on the ground. Furthermore, the facts as submitted by both the applicant and the Government indicate that the incident in question took place in the applicant’s cell. However, at no stage was it established whether there were other inmates from the same cell present in order to take their statements, since, according to the reports by the prison authorities, the applicant shared that cell with three other inmates.

43. Instead, the judge satisfied herself with accepting the version of the events as presented by the prison guards. In view of the importance of the guarantees against ill-treatment under Article 3 of the Convention, the Court cannot accept that such approach is in conformity with the procedural requirements of that Article, in particular in view of the fact that other, relevant evidence could have been obtained, such a forensic report and witness statements from the applicant's cellmates.

44. As to the Government's arguments that, in view of the conclusions of the psychiatric report, the applicant's allegations of ill-treatment cannot be seen as reliable, the Court considers that the fact that the applicant suffers from mental problems does not dispense the relevant national authorities from properly investigating allegations of ill-treatment by State officials in circumstances where it is undisputed that some form of force was used by those officials and where the medical documentation shows that the victim sustained injuries.

45. There has accordingly been a violation of the procedural aspect of Article 3 of the Convention.

**(c) Concerning the alleged ill-treatment**

*(i) General principles*

46. The Court reiterates that in respect of a person deprived of his liberty, recourse to physical force which has not been made strictly necessary by his own conduct diminishes human dignity and is in principle an infringement of the right set forth in Article 3 (*Ribitsch*, cited above, § 38; and *Krastanov v. Bulgaria*, no. 50222/99, § 53, 30 September 2004).

47. The requirements of an investigation and the undeniable difficulties inherent in the fight against crime cannot justify placing limits on the protection to be afforded in respect of the physical integrity of individuals (*Ribitsch*, cited above, § 38). In this connection, the Court recalls that Article 3 enshrines one of the fundamental values of democratic society. Even in the most difficult of circumstances, such as the fight against terrorism or organised crime, the Convention prohibits, in absolute terms, torture or inhuman or degrading treatment or punishment, irrespective of the victim's conduct (see *Chahal v. the United Kingdom*, 15 November 1996, § 79, *Reports* 1996-V, and *Assenov and Others*, cited above, § 93).

48. Allegations of ill-treatment must be supported by appropriate evidence. To assess this evidence, the Court adopts the standard of proof "beyond reasonable doubt" – but adds that such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar un rebutted presumptions of fact (*Labita*, cited above, § 121). The Court has held on many occasions that where a person is injured while in detention or otherwise under the control of the police, any such injury will give rise to a strong presumption that the person was subjected to ill-

treatment (*Corsacov v. Moldova*, no. 18944/02, § 55, 4 April 2006; and *Bursuc v. Romania*, no. 42066/98, § 80, 12 October 2004). It is incumbent on the State to provide a plausible explanation of how the injuries were caused, failing which a clear issue arises under Article 3 of the Convention (*Selmouni v. France* [GC], no. 25803/94, § 87, ECHR 1999-V; and *Ribitsch*, cited above, § 34).

49. Where domestic proceedings have taken place, it is not the Court's task to substitute its own assessment of the facts for that of the domestic courts and, as a general rule, it is for those courts to assess the evidence before them (*Klaas v. Germany*, 22 September 1993, § 29, Series A no. 269). Though the Court is not bound by the findings of domestic courts, in normal circumstances it requires cogent elements to lead it to depart from the findings of fact reached by those courts (see *Klaas*, cited above, p. 18, § 30). Where allegations are made under Articles 2 and 3 of the Convention, however, the Court must apply a particularly thorough scrutiny (see, *mutatis mutandis*, *Ribitsch*, cited above, p. 24, § 32).

50. The Court is also mindful of the potential for violence that exists in penitentiary institutions and of the fact that disobedience by detainees may quickly degenerate into a riot (see *Gömi and Others v. Turkey*, no. 35962/97, § 77, 21 December 2006). The Court has previously accepted that the use of force may be necessary to ensure prison security, to maintain order or prevent crime in penitentiary facilities. Nevertheless, as noted above, such force may be used only if indispensable and must not be excessive (see *Ivan Vasilev v. Bulgaria*, no. 48130/99, § 63, 12 April 2007).

(ii) *Application of these principles in the present case*

51. In the present case the applicant did not dispute that he had provoked the incident by shouting and hitting a metal bench against the door of his cell. However, he denied the Government's allegations that he had attempted to attack the prison guards. He alleged that when the prison guards had opened the door of his cell they had immediately rushed in and grabbed him, taken him out and thrown him to the floor. They had then punched, kicked and beaten him with truncheons all over his body whilst he had curled up on the floor, protecting his head with his hands and putting up no resistance.

52. The Government on the other hand did not deny the use of force but claimed that it had been necessary owing to the applicant's attack on one of the guards.

53. The Court notes that the incident in question occurred when the applicant started to shout and hit a metal bench against the door of his cell. Four officers entered the cell, clearly outnumbering the applicant. The findings of the domestic court do not indicate that any of them sustained injuries during the incident. The medical record of 30 March 2007 indicates that the applicant sustained quite a large haematoma to his left arm. In these

circumstances where it is undisputed that the applicant was hit by a prison guard with a rubber truncheon and, as a result, sustained injuries, the burden rests on the Government to demonstrate with convincing arguments that the use of force was not excessive (see *Matko v. Slovenia*, no. 43393/98, § 104, 2 November 2006).

54. However, as explained above, the national judge considering the case based her conclusions solely on the written reports produced by the officers involved. She did not hear them, and she did not hear the applicant. Furthermore, she made no serious effort to assess the most important aspect of the case – whether the force used by the prison guards was necessary in the given situation. In order to establish the facts relevant for that issue she took no steps to verify the version of the events given by the officers involved. No attempts were made to establish whether any of the applicant's cellmates were present at the scene and, if so, to hear their evidence. No forensic reports were ordered which could have established how the injuries were caused and brought clarification to the applicant's allegations that he had been hit while lying on the ground. Without any such assessment the Court is unable to see on what basis the domestic authorities satisfied themselves that the force used against the applicant had been necessary.

55. Consequently, regard being had to the applicant's allegations of ill-treatment, corroborated by the medical reports, and to the circumstances in which the applicant sustained the injuries, the Court considers that the Government have not furnished any convincing or credible arguments which would provide a basis to explain or justify the degree of force used against the applicant.

56. The Court therefore concludes that the State is responsible under Article 3 on account of the inhuman and degrading treatment to which the applicant was subjected by the prison guards.

## II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

57. 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

58. The applicant claimed 150,000 Croatian kunas (HRK) in respect of non-pecuniary damage.

59. The Government deemed the sum claimed excessive and unsubstantiated.

60. The Court awards the applicant 9,000 euros (EUR) in respect of non-pecuniary damage.

### **B. Costs and expenses**

61. The applicant also claimed HRK 20,000 for the costs and expenses incurred before the Court, of which 50% is in respect of the submissions of 8 April 2010 and the remaining 50% in respect of the submissions of 19 November 2009.

62. The Government deemed the sum claimed excessive.

63. 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. Regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 1,350 for the proceedings before the Court.

### **C. Default interest**

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

## **FOR THESE REASONS, THE COURT UNANIMOUSLY**

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of the procedural aspect of Article 3 of the Convention;
3. *Holds* that there has been a violation of the substantive aspect of Article 3 of the Convention;
4. *Holds*
  - (a) that the respondent State is to pay the applicant, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, which are to be converted into Croatian kunas at the rate applicable on the date of settlement:
    - (i) EUR 9,000 (nine thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 1,350 (one thousand three 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* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 10 May 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach  
Deputy Registrar

Anatoly Kovler  
President