



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

FIRST SECTION

CASE OF PERKOV v. CROATIA

(Application no. 33754/16)

JUDGMENT

Art 3 (procedural and substantive) • Ineffective investigation into applicant's allegations of ill-treatment by prison guards • Allegations of having been slapped, hit and kicked on the floor not proved "beyond reasonable doubt" • Failings in investigation not allowing Court to draw any inferences in that regard • Use of force by prison guards, in view of imminent danger posed by applicant reaching for a hammer, strictly necessary and not excessive in circumstances

STRASBOURG

20 September 2022

FINAL

20/12/2022

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

In the case of Perkov v. Croatia,

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

Marko Bošnjak, *President*,

Péter Paczolay,

Krzysztof Wojtyczek,

Alena Poláčková,

Lorraine Schembri Orland,

Ioannis Ktistakis,

Davor Derenčinović, *Judges*,

and Liv Tigerstedt, *Deputy Section Registrar*,

Having regard to:

the application (no. 33754/16) 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 Damir Perkov (“the applicant”), on 3 June 2016;

the decision to give notice to the Croatian Government (“the Government”) of the application;

the parties’ observations;

Having deliberated in private on 30 August 2022,

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

INTRODUCTION

1. The case concerns the applicant’s complaints under Article 3 of the Convention that he was beaten by prison guards and that no effective investigation was carried out in that respect.

THE FACTS

2. The applicant was born in 1978 and lived in Zadar. He was represented by Ms L. Horvat, a lawyer practising in Zagreb. Following the applicant’s death on 18 January 2019, his mother, Ms R. Perkov informed the Court of her wish to pursue the application lodged by the applicant.

3. The Government were represented by their Agent, Ms Š. Stažnik.

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

I. BACKGROUND INFORMATION

5. In 2010 the applicant was convicted for drug abuse and sentenced to five years’ imprisonment. He served part of his sentence in Z. Prison.

6. According to a report prepared in 2012 for the purpose of the execution of his sentence, the applicant was a long-term drug addict and a multiple criminal offender who showed signs of a personality disorder and potential to

manifest aggressive behaviour. In the course of his stay in Z. Prison, there were several disciplinary proceedings against him, mostly on account of abuse of medication.

II. EVENTS OF 31 MAY 2015 AND SUBSEQUENT INTERNAL INVESTIGATION

7. On 31 May 2015 an incident occurred in Z. Prison involving the use of force against the applicant.

8. On 31 May and 1 June 2015, the persons involved in the incident prepared a written report for the prison governor and gave a statement to the Head of the Security Division at the prison.

9. The statements of the prison guards G.T., M.B. and M.P. concurred that on 31 May 2015 at 10.20 a.m., G.T. had noticed through a spyhole that the applicant and one of his cellmates were crushing tablets in their cell. G.T. had then called M.B. and M.P. to assist him in conducting a search, but when they had entered the cell the prisoners had blown the substance away. G.T. and M.P. had then taken the applicant to a room which served as storage for different kinds of tools in order to perform a detailed search, whereas M.B. had stayed in the cell with the applicant's cellmates, D.M. and M.D. In the storage room, G.T. had started warning the applicant about the house rules while gesticulating with his arms, whereupon the applicant had pushed G.T.'s left arm. G.T. had then started to approach the applicant, whereupon the applicant had taken a step back, bent down and glanced towards a hammer lying nearby. The guard M.P. had shouted "watch out, hammer!", and he and G.T. had applied the elbow lock technique to both of the applicant's arms, toppled him to the floor and handcuffed his hands behind his back. The guard M.B., who was in the cell with the applicant's cellmates, had heard a commotion, and the applicant's cellmate D.M. had started banging on the cell door and shouting "let him go, why are you hitting him!". M.B. had rushed to the storage room and seen the applicant lying on the floor with his arms handcuffed behind his back. He had immediately called R.Š., the guard on duty.

10. According to the guard on duty, R.Š., when he had arrived at the storage room the applicant was lying on the floor with his arms handcuffed behind his back and was calm. R.Š. had spoken separately to the three prison guards, the applicant and his two cellmates. He had warned G.T. that he should not have entered the cell without receiving his instructions, and that he should not have taken the applicant to a room full of tools. When he was speaking to the applicant, who had in the meantime been untied, he noticed redness on his face. The applicant had also shown him scratches on his elbow and leg. The applicant had asked for a medical examination and written a statement in R.Š.'s presence saying that he had nothing to report.

11. On 1 June 2015 the applicant described the incident to the Head of the Security Division as follows: his cellmate D.M. was crushing a tablet when the guards had entered the cell. The guard M.P. had searched the applicant and found nothing on him. The guard G.T. had then taken the applicant to the storage room and started asking him about the tablets but, when the applicant had started to reply, G.T. had hit him, and then both G.T. and M.P. had hit him (slapped him). He had wanted to reach for the hammer to scare them off, but the guards had toppled him to the floor and tied him, whereupon he had sustained injuries to his knees and elbow. The guard M.B. had then arrived and joined G.T. and M.P. in hitting and kicking him. The three guards had continued to kick him for about three to four minutes. They had then sat him on a chair, removed his handcuffs and started talking to him about the incident. He had told them that he had started to run away because they had slapped him ten times. In reply to a specific question by the Head of the Security Division, the applicant reiterated that he had tried to reach for the hammer in order to scare off the guards, so that they would stop hitting him.

12. According to the applicant's cellmate D.M. the guards had searched the applicant and then taken him away. He and the guard M.B. could hear from the cell that the applicant was being beaten, so M.B. had rushed out.

13. The applicant's cellmate M.D. submitted that he had not seen anything.

14. A medical report signed by a doctor, K.J., at 12.35 p.m. on 31 May 2015 (the day of the incident) stated that the applicant had sustained minor bodily injuries in a fist fight: excoriations on the left side of his forehead and his left cheek, a red imprint on the back of his neck and the right side of his back, a 5 cm hematoma on his right upper arm, a 2 cm contusion on his chest, excoriations on his right knee, and a 1 cm contusion on his left knee. The applicant reported feeling mild pain below his right ribs. The doctor advised him to consult his general practitioner if necessary.

15. On the evening of 31 May 2015, the applicant asked to see a doctor again. A medical report signed at 11.40 p.m. by a doctor, D.B., stated that the applicant had reported receiving several blows from prison guards and was experiencing headache and chest pain. The doctor noted excoriations on the left side of the applicant's forehead and his left cheek, a red imprint on the back of his neck, a contusion on his chest, a haemorrhage (*krvni podljev*) in the right side of the abdomen, a haematoma on his right upper arm, excoriations on his right knee and a contusion on his left knee. An X-ray examination of his head, neck and thorax showed no signs of bone trauma. The doctor advised him to rest and take painkillers if necessary.

16. On 5 June 2015 the Z. prison governor submitted a report to the Ministry of Justice Prison Administration and the sentence-execution judge of the Z. County Court. She referred to the above-mentioned statements and medical reports (see paragraphs 8-15 above) and expressed an opinion that

the use of force against the applicant had been necessary to prevent harm and had not been excessive.

III. DISCIPLINARY PROCEEDINGS AGAINST THE PRISON GUARD

17. On 21 August 2015 the prison guard G.T. was found guilty of a minor breach of duty on account of undertaking a search without informing the guard on duty and placing a prisoner in a room full of dangerous items suitable for an attack. G.T. received a warning.

IV. CRIMINAL INVESTIGATION

18. On 13 November 2015 the applicant lodged a criminal complaint with the State Attorney's Office, alleging that on 31 May 2015 two prison guards had taken him to a room full of tools in order to question him about the crushed tablets in the cell, and that there they had slapped him, handcuffed his hands behind his back and pushed him, whereby he had fallen onto construction debris and hit his head and knees, and that a third guard had joined the two other guards in hitting him.

19. On 14 and 15 December 2015 the Z. police interviewed the doctors K.J. and D.B., who submitted that the applicant's injuries had been minor but that they could not give an opinion as to the manner in which the applicant had sustained them – an expert report should be commissioned for that purpose. They added that the only part of his body where the applicant had expressed feeling mild pain was the spot below the right ribs, and that his condition had not required any treatment.

20. On 21 December 2015 the police submitted a report to the Z. Municipal State Attorney's Office ("the ZMSAO") concerning the interview with the doctors (see paragraph 19 above), as well as the prison governor's report of 5 June 2015 with the accompanying documents (see paragraph 16 above).

21. On 15 November 2016 the ZMSAO interviewed the applicant, who submitted that on 31 May 2015 the guards G.T. and M.P. had taken him to the storage room, slapped him and thrown him onto a pile of construction debris. They had then punched and kicked him all over his body while he had covered his head with his hands. At that moment he had not yet been handcuffed. They had been hitting him for about two minutes when the third guard had entered the room and kicked him several times, including, if he remembered correctly, in the head. He confirmed that after the guards had started hitting him, he had tried to reach for the hammer, but said that the guards had prevented this by throwing him onto the floor and tying him up.

22. On 29 and 30 November and 2 December 2016, the prison guards G.T., M.P. and M.B. submitted that they had partially searched the applicant in the cell and that the guards G.T. and M.P. had then taken him to the storage

room in order to perform a detailed search. With regard to the remainder of their statement, they made the same submissions as those set out in paragraph 9 above. They specifically denied having hit or kicked the applicant.

23. On 6 December 2016 the applicant's cellmate D.M. submitted that after the guards G.T. and M.P. had taken the applicant to the storage room he had heard a slap – as if someone had been hit in the face with an open hand. He had then heard a commotion and shouting but had not known what was going on. Then the guard M.B. had rushed to the storage room to calm the situation down. When the applicant had returned to the cell, D.M. had noticed bruises around his ribs and back and possibly some injuries to his face, and the applicant had told him that the guards had hit him.

24. On 12 December 2016 the ZMSAO rejected the applicant's criminal complaint with the following reasoning: it was undisputed that the prison guards had acted in breach of the internal rules when they had taken the applicant to the storage room. However, all three denied having hit or kicked the applicant. G.T. and M.P. concurred that the applicant had hit G.T. on the arm and had tried to reach for the hammer. The applicant admitted trying to reach for the hammer, although he argued that he had done so because the guards had started to hit him. In any event, that action by the applicant had provoked a reaction by G.T. and M.P., who had toppled him to the floor and tied him, whereby the applicant could have sustained the minor bodily injuries documented in the medical reports. The applicant's cellmate D.M. had not seen the incident, but only reported hearing a commotion, shouting and something that sounded like a slap. Having regard to the fact that, according to D.M., the guard M.B. had calmed the situation in the storage room down, the ZMSAO concluded that the applicant had not told D.M. that M.B. had been hitting him, as the applicant had afterwards stated in his criminal complaint. The ZMSAO concluded that there was insufficient evidence that the prison guards had ill-treated the applicant on 31 May 2015.

25. The decision dismissing the criminal complaint was served on the applicant's lawyer on 18 January 2017. The applicant was informed that he could take over the proceedings as a subsidiary prosecutor.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

26. The applicant complained that he had been beaten by the prison guards 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

1. *As to whether the applicant's mother can pursue the application*

27. Following the applicant's death on 18 January 2019, his mother expressed a wish to continue the application on his behalf. The Government objected, arguing that the mother had not shown that she was the applicant's sole heir, and that in any event the Article 3 rights relied on by the applicant were of a non-transferable nature.

28. Having regard to its case-law concerning situations where the applicant died in the course of the proceedings before the Court (see, for instance, *Mile Novaković v. Croatia*, no. 73544/14, § 33, 17 December 2020; *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 97, ECHR 2014; and *Igor Shevchenko v. Ukraine*, no. 22737/04, § 36, 12 January 2012), the Court considers that the applicant's mother, who stated her intention of continuing the proceedings, has a legitimate interest in obtaining a finding of whether there had been a breach of her son's Article 3 rights under the Convention.

29. Accordingly, the Court finds that the applicant's mother has standing to continue the proceedings in the applicant's stead. However, for practical reasons, Mr Damir Perkovic will continue to be called "the applicant" in this judgment.

2. *Severity of treatment*

30. The Government contended that the minor injuries sustained by the applicant did not reach the minimum level of severity to fall within the scope of Article 3. The applicant was a healthy 37-year-old man at the time, who had served in the army and who had a conflict-prone past.

31. According to the approach established in *Bouyid v. Belgium* ([GC], no. 23380/09, §§ 100-01, ECHR 2015), where an applicant is wholly under the control of State agents, the Court's examination shifts to the necessity, rather than the severity, of the treatment to which the applicant was subjected in order to determine whether the issue complained of falls within the scope of Article 3 of the Convention. If the treatment is not considered strictly necessary, it amounts to degrading treatment and thus a violation of Article 3 (*ibid.*, §§ 111-12).

32. The Court thus considers that the Government's objection raises issues which are closely related to the merits of the complaint (compare *A.P. v. Slovakia*, no. 10465/17, § 43, 28 January 2020). Accordingly, it finds that this objection is to be joined to the merits of the complaint.

3. *Non-exhaustion of domestic remedies*

33. The Government argued that the applicant had failed to exhaust the domestic remedies because, instead of turning to the Court shortly after

lodging the criminal complaint, he could have asked for information from the ZMSAO about the progress of the investigation and could also have lodged complaints with the higher State Attorney's Office in respect of the inefficiency of the investigation. Additionally, once the ZMSAO had rejected his criminal complaint, the applicant could have taken over the prosecution as a subsidiary prosecutor. Those avenues worked effectively in practice.

34. In cases against Croatia involving allegations of ill-treatment by State agents the Court has already rejected the objections raised by the Government in the case at hand (see *V.D. v. Croatia (no. 2)*, no. 19421/15, §§ 55-61, 15 November 2018, and *Tadić v. Croatia*, no. 10633/15, § 43, 23 November 2017). It sees no reason to depart from those conclusions in the present case.

35. As regards the Government's allegation that the application was premature since the investigation was pending for only five and a half months when the application was lodged, the Court notes that under the national law the State Attorney's Office is obliged to adopt a decision on a criminal complaint within six months (see *Tadić*, cited above, § 44), which time-limit had already expired at the time the applicant lodged his application on 3 June 2016 (see paragraph 18 above). In any event, the Court notes that the domestic investigation came to a conclusive end on 16 December 2016 when the ZMSAO rejected the applicant's criminal complaint (see paragraph 23 above).

36. Accordingly, the Court rejects the Government's objection of non-exhaustion of domestic remedies.

4. Conclusion

37. The Court notes that the application is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. Substantive aspect of Article 3 of the Convention

(a) The parties' arguments

(i) The applicant

38. The applicant contended that on 31 May 2015 one of his cellmates had been crushing a tablet when the guards had entered his cell. The guard M.P. had searched him and found nothing on him, but then M.P. and G.T. had taken him to a room full of tools and started asking him about the tablets and slapping him. The applicant had tried to run away and had looked towards the hammer to defend himself, but the guards had handcuffed him and pushed him, and he had fallen onto construction debris and hit his head and knees. M.P. and G.T. had continued to hit and kick him, and at one point a third guard had arrived and kicked him as well. The three guards had kicked him

until the guard on duty had arrived and found him lying on the floor, surrounded by G.T., M.P. and M.B.

(ii) The Government

39. The Government argued that there were several factors indicating the lack of credibility of the applicant's allegations. They firstly pointed to a discrepancy in the applicant's statements as to the moment the guard on duty had arrived at the scene. Secondly, they argued that the type of injuries sustained by the applicant had corresponded to him being elbow-locked, toppled to the floor and handcuffed, and there had been no injuries attesting to him being beaten. Thirdly, the applicant had lodged his criminal complaint almost six months after his alleged ill-treatment, without any justification for such a delay.

40. The Government lastly contended that, although it was true that the guard G.T. should not have taken the applicant to a room full of dangerous items, that situation had not rendered the subsequent use of force against the applicant unjustified. The applicant himself had confirmed that he had tried to reach for the hammer to scare off the prison guards. The guards had thus had to restrain him in order to prevent greater harm. The restraining measures used had been appropriate in the situation and the force used had not been excessive.

(b) The Court's assessment

(i) Allegations of being slapped, hit, and kicked by prison guards

41. Allegations of ill-treatment contrary to Article 3 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 unrebutted presumptions of fact (see, among other authorities, *Bouyid*, cited above, § 82). Where the events at issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of individuals within their control in custody, strong presumptions of fact will arise in respect of injuries occurring during such detention. The burden of proof is then on the Government to provide a satisfactory and convincing explanation by producing evidence establishing facts which cast doubt on the account of events given by the victim, while in the absence of such explanation the Court can draw inferences which may be unfavourable for the Government (*ibid.*, § 83).

42. In order to benefit from the presumption of fact in respect of injuries occurring during their detention, individuals claiming to be the victims of a violation of Article 3 of the Convention must demonstrate that they display traces of ill-treatment after being under the control of the police or a similar authority. Many of the cases with which the Court has dealt show that such

persons usually provide medical certificates for that purpose, describing injuries or traces of blows, to which the Court attaches substantial evidential weight (ibid., § 92).

43. In the present case the applicant essentially claimed that two prison guards had slapped him several times, toppled him to the floor and tied him, and then continued to hit and kick him for about three to four minutes, together with a third guard who arrived in the meantime (see paragraphs 11, 21 and 38 above). The Court observes that the State Attorney's Office did not make any effort to assess whether the applicant had indeed been slapped by the prison guards before reaching for the hammer, but merely concluded that in any event, by reaching for the hammer, the applicant had provoked the prison guards' reaction (see paragraph 24 above). In the Court's view, this particular issue falls to be examined primarily under the procedural aspect of Article 3 of the Convention (see paragraph 65 below), whereas in assessing the credibility of the applicant's factual assertions it finds it appropriate to scrutinise first of all the existing medical evidence concerning his condition following the incident.

44. In that connection, the Court notes that the medical certificates issued shortly after the incident recorded excoriations on the left side of the applicant's forehead and his left cheek, a red imprint on the back of his neck, a contusion on his chest, a haemorrhage in the right side of the abdomen, a haematoma on his right upper arm, excoriations on his right knee and a contusion on his left knee (see paragraphs 14 and 15 above). Although no expert report was obtained as regards the manner in which the applicant sustained those injuries, the Court accepts the Government's explanation that these were the possible consequences of the applicant being elbow-locked, toppled to the floor and handcuffed, as found in the domestic investigation (see paragraph 24 above).

45. Apart from these minor bodily injuries, which mostly consisted of scratches to his head, chest and limbs, neither the examination by two doctors, nor the X-ray examination revealed any other sign of injury which would indicate that the applicant had been severely beaten by three prison guards for three to four minutes, as alleged by him (see paragraphs 14 and 15 above). There would equally appear to be no record of any kind of marks on the applicant's face which would follow from being slapped by two police officers (compare *Brahmi v. Poland* (dec.), no. 4972/14, 17 December 2015, and *X and Y v. North Macedonia*, no. 173/17, § 60, 5 November 2020, and contrast *Bouyid*, cited above, § 93, and *A.P. v. Slovakia*, cited above, §§ 50 and 55).

46. It is true that the applicant's cellmate D.M. submitted that he had heard a slap once the applicant had been taken to the storage room. However, D.M. did not give that statement until the criminal investigation (see paragraph 23 above), whereas immediately after the incident he submitted in

general terms that he had heard the applicant being beaten (see paragraph 12 above).

47. It is also true that the guard on duty reported noticing redness on the applicant's face when he interviewed him after the incident (see paragraph 10 above). However, nothing indicates that the applicant told him about being slapped.

48. In these circumstances, the Court considers that on the basis of the material available in the file, it cannot be established with sufficient certainty that the applicant displayed traces of being slapped and hit and kicked on the floor by the guards as alleged by him, which would create a strong presumption of ill-treatment and shift the burden of proof on the Government (see paragraphs 41-42 above). At the same time, however, the Court notes the deficiencies in the way in which the domestic investigation has been carried out (see paragraphs 62-69 below).

49. In view of the foregoing and applying the standard of proof of "beyond reasonable doubt" (see paragraph 41 above), the Court cannot find a violation of the substantive aspect of Article 3 of the Convention on account of the applicant's alleged slapping and being hit and kicked by the guards, the failings in the investigation carried out by the authorities not being such as to allow the Court to draw any inferences in this regard (compare *Stevan Petrović v. Serbia*, nos. 6097/16 and 28999/19, § 123, 20 April 2021).

(ii) *Whether the use of force against the applicant was strictly necessary*

50. It was undisputed that the applicant in the present case was elbow locked, toppled to the floor and handcuffed.

51. The Court reiterates that, 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, whatever the impact on the person in question, diminishes human dignity and constitutes a violation of Article 3 of the Convention (see *Bouyid*, cited above, §§ 100-01).

52. The Government argued that after the applicant had tried to reach for the hammer, the prison guards had had no choice but to restrain him, using physical force (see paragraph 40 above).

53. The Court notes that the applicant did not deny reaching for the hammer. At the same time, it cannot but note that it was the prison guards who took the applicant to a room full of dangerous items, such as the hammer in question, in disregard of the relevant prison rules (see paragraphs 10 and 17 above), thereby risking a security incident. In that connection, the Court emphasises the requirement of professionalism and high level of competence on the part of law-enforcement officials (see *Bouyid*, cited above, § 108) and their obligation to avoid obvious risks to life and physical integrity of persons under their control. The Court also reiterates that the protection against ill-treatment under Article 3 of the Convention is absolute and cannot be justified

by the prisoner being rude or possessing unauthorised substances in the cell (compare *Gladović v. Croatia*, no. 28847/08, § 23, 10 May 2011).

54. The Court considers that, in the particular circumstances, in view of the imminent danger posed by the applicant reaching for the hammer, it has been shown that it was strictly necessary for the prison guards to resort to physical force in order to prevent him from using the hammer and harming himself and others.

55. The Court also finds that the Government have demonstrated that the extent of the physical force used against the applicant was not excessive in the circumstances.

56. In sum, the Court considers that there has been no violation of the substantive aspect of Article 3 of the Convention on account of the applicant being elbow locked, toppled to the floor and handcuffed.

2. *Procedural aspect of Article 3 of the Convention*

(a) **The parties' arguments**

(i) *The applicant*

57. The applicant contended that the domestic authorities had failed to launch an independent investigation of their own motion as soon as they had learned of the possibility that he had been ill-treated. The investigation they had conducted following his criminal complaint was excessively lengthy and had not been thorough, since an expert report on the manner in which his injuries had been sustained had not been obtained, as suggested by the doctors who had treated him. The ZMSAO had wrongly concluded that the guards had not ill-treated him.

(ii) *The Government*

58. The Government argued that the domestic authorities had investigated the applicant's allegations of ill-treatment effectively. In the internal investigation the prison governor had examined the statements of all the persons involved in the incident and had concluded that the use of force against the applicant had been necessary and not excessive. In the subsequent independent investigation, the police had interviewed the doctors who had treated the applicant on the day of the incident, and the ZMSAO had personally questioned the applicant, the prison guards and the applicant's cellmate D.M. Its decision rejecting the applicant's criminal complaint had been based on a careful analysis of all the evidence obtained.

(b) **The Court's assessment**

59. The relevant general principles are summarised in *Bouyid* (cited above, §§ 114-23) and *El-Masri v. the former Yugoslav Republic of Macedonia* ([GC], no. 39630/09, §§ 182-85, ECHR 2012).

60. Article 3 of the Convention requires the authorities to investigate allegations of ill-treatment when they are “arguable” and “raise a reasonable suspicion” (see *Gök and Güler v. Turkey*, no. 74307/01, § 38, 28 July 2009).

61. In the present case it was not disputed that on 31 May 2015, force was used against the applicant by prison guards. The medical examination performed after the incident showed that the applicant suffered injuries to his head, chest and limbs (see paragraphs 14 and 15 above). In his statement the day after the incident to the Head of the Security Division of the prison, the applicant stated that he had been slapped, toppled to the floor, handcuffed, and then hit and kicked by three prison guards (see paragraph 11 above). In view of the requirement that any use of physical force by State officials must be confined to what is strictly necessary, the Court considers that the above facts called for an investigation into the applicant’s allegations in order to establish all relevant circumstances.

62. The Court notes that initially the only investigation into the use of force against the applicant was conducted within the prison. In particular, the persons involved in the incident prepared written reports and made oral statements to the Head of the Security Division, which were subject to scrutiny by the prison governor (see paragraphs 8-16 above). However, the prison governor was the hierarchical superior of the persons implicated in the incident and could thus not be considered independent (compare *Dolenec v. Croatia*, no. 25282/06, §§ 152-53, 26 November 2009). Moreover, her report, concluding that the use of force against the applicant had been necessary to prevent harm and not excessive, was submitted to the Ministry of Justice Prison Administration and the sentence-execution judge. However, no further action appears to have been taken on that account (see paragraph 16 above).

63. The Court further notes that in November 2015, soon after he learnt that the authorities had failed to institute an investigation into his alleged ill-treatment, it was the applicant himself who lodged a criminal complaint (see paragraph 18 above). These plausible allegations of ill-treatment triggered the authorities’ further investigation into the applicant’s case and thus revived their procedural obligation under Article 3 of the Convention (see *Brecknell v. the United Kingdom*, no. 32457/04, §§ 70-71, 27 November 2007).

64. The Court is satisfied that the relevant State Attorney’s Office carried out interviews with the suspected prison guards, the applicant and his cellmate D.M. The police also interviewed the doctors who treated the applicant and forwarded to the State Attorney’s Office the applicant’s medical documentation and the statements obtained during the internal investigation (see paragraphs 19-23 above).

65. However, the State Attorney’s Office did not make any effort to specifically assess whether the applicant had indeed been slapped by the prison guards before reaching for the hammer, but merely concluded that in

any event, by reaching for the hammer, the applicant had provoked the prison guards' reaction (see paragraph 24 above). Moreover, the Court observes that the State Attorney's office did not interview R.Š., the guard on duty, who could have clarified exactly what the applicant had told him immediately after the incident when he had noticed redness on his face (see paragraph 10 above). Likewise, no expert report was obtained in order to verify the cause of the injuries on the applicant's face, or whether it was possible that slapping would not leave any trace on the applicant's face in the event of two hours passing between the incident and the medical examination.

66. Furthermore, the Court finds it noteworthy that the decision rejecting the applicant's criminal complaint merely states that there is insufficient evidence that the prison guards had ill-treated the applicant, without considering separately what had happened before the applicant reached for the hammer and what happened thereafter. It also shows that the State Attorney's Office failed to examine whether the force used against the applicant had been strictly necessary and/or excessive (see paragraph 24 above).

67. Lastly, the Court observes that, although the police had interviewed the doctors in December 2015, it took another eleven months for the State Attorney's Office to conduct further investigative measures, without any justification for such a pause (see paragraphs 19 and 21 above).

68. The foregoing considerations are sufficient for the Court to conclude that the investigation into the applicant's allegations of ill-treatment fell short of the procedural obligation under Article 3 of the Convention.

69. There has therefore been a violation of the procedural aspect of Article 3 of the Convention.

II. ARTICLE 41 OF THE CONVENTION

A. Damage

70. The applicant claimed 30,000 euros (EUR) in respect of non-pecuniary damage.

71. The Government considered this claim to be unfounded.

72. Having regard to its finding of a procedural violation of Article 3 of the Convention and ruling on an equitable basis, the Court awards the applicant's heir EUR 2,500 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

73. The applicant also claimed EUR 5,155.40 for the costs and expenses incurred before the domestic courts and the Court.

74. The Government considered this claim unsubstantiated.

75. 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. 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 of EUR 3,000 covering costs under all heads, plus any tax that may be chargeable to the applicant heir.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Holds* that the applicant's mother, Ms R. Perkov, has standing to pursue the application in his stead and *dismisses* the Government's objection in that respect;
2. *Declares* the application admissible;
3. *Holds* that there has been no violation of the substantive aspect of Article 3 of the Convention;
4. *Holds* that there has been a violation of the procedural aspect of Article 3 of the Convention;
5. *Holds*
 - (a) that the respondent State is to pay the applicant's mother, 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 the currency of the respondent State at the rate applicable at the date of settlement:
 - (i) EUR 2,500 (two thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 3,000 (three thousand euros), plus any tax that may be chargeable to the applicant's mother, 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;
6. *Dismisses* the remainder of the claim for just satisfaction.

PERKOV v. CROATIA JUDGMENT

Done in English, and notified in writing on 20 September 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Liv Tigerstedt
Deputy Registrar

Marko Bošnjak
President