



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

FIRST SECTION

CASE OF BENZAN v. CROATIA

(Application no. 62912/00)

JUDGMENT
(Friendly settlement)

STRASBOURG

8 November 2002

This judgment is final but it may be subject to editorial revision.

In the case of Benzan v. Croatia,

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

Mr C.L. ROZAKIS, *President*,

Mrs F. TULKENS,

Mr P. LORENZEN,

Mrs N. VAJIĆ,

Mr E. LEVITS,

Mr A. KOVLER,

Mr V. ZAGREBELSKY, *judges*,

and Mr E. FRIBERGH, *Section Registrar*,

Having deliberated in private on 24 October 2002,

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

PROCEDURE

1. The case originated in an application (no. 62912/00) 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 citizen, Mr Darko Benzan (“the applicant”), on 2 October 2000.

2. The applicant, who had been granted legal aid, was represented by Ms Ružica Paradiš, a lawyer practising in Zagreb. The Croatian Government (“the Government”) were represented by their Agent, Ms Lidija Lukina-Karajković.

3. The applicant complained that he had been victim of a violation of Article 3 of the Convention in that the conditions in the Lepoglava State Prison amounted to inhuman and degrading treatment.

4. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed First Section.

5. On 16 May 2002, after obtaining the parties’ observations, the Court declared the application admissible.

6. On 1 July 2002 a Delegation of the Court conducted a fact-finding mission to the Lepoglava State Prison.

7. On 17 September 2002, after an exchange of correspondence, the Registrar suggested to the parties that they should attempt to reach a friendly settlement within the meaning of Article 38 § 1 (b) of the Convention. On 19 September and 4 October 2002 the applicant and the Government respectively submitted formal declarations accepting a friendly settlement of the case.

THE FACTS

8. The applicant was born in 1951 and is presently serving a prison sentence in the Lepoglava State Prison (hereinafter the “LSP”).

9. In 1994 the applicant was found guilty on one account of murder. During the process he was diagnosed with the post-traumatic stress disorder and sentenced to ten years’ imprisonment. Since 3 March 2000 he has been in the LSP where he was placed in the B wing.

10. The LSP consists of a radial building comprising four wings, each of four storeys, and a two-storey annex. Three wings were renovated, wing E is currently under renovation. B-wing has not yet been renovated.

11. From May 2001 until June 2002 the applicant was placed in cell number 17 in the B wing. Most of the time there was another inmate sharing the cell with the applicant. It measured 3,50 meters by 1,60 meters. There were no in-cell sanitary facilities. There were two non-working electrical outlets. There was a dim light on the ceiling. The window on the wall opposite the door measured 80 cm². There was one wooden chair and a metal locker. There was one set of bunk beds. The cell smelled strongly of moisture. The cement walls were damp to the touch.

12. The applicant stated that the mattresses were dirty and bloodstained and the food served to the inmates was insufficient and of low quality.

Medical assistance was provided once a week, on an assigned day, regardless of his health. The applicant stated that he could not address himself to the social services in the prison. There were no entertainment or other activities in the prison.

In general, the prison was overcrowded. The prison buildings had been built about two hundred years ago and are in a very poor state.

Cases of ill-treatment by the guards were allegedly not uncommon.

The applicant alleged further that the halls where the inmates work were cold.

13. According to the Government the food served to the inmates complied with the prescribed calories value. In general, the inmates had not complained about the quality of food, nor had there been objections in that respect in the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment Report (hereinafter the “CPT Report”).

Medical assistance was provided according to the needs of each inmate. The conditions had improved after the CPT Report in so far as one general practitioner and one dentist had been employed full time. If there was a need, specialist treatment was available in the hospital for prisoners or in any regular hospital.

The inmates have an opportunity to work if they wish. There are wood and metal processing plants as well as some service-providing jobs. About 50% of the inmates worked. The applicant expressed a wish not to work.

The inmates were allowed to watch television, use a library, exercise or choose among several other activities such as art work, barrel-making, literature or music classes. On Sundays and public holidays there were film projections; sometimes concerts and theatre plays were organised.

14. The applicant was involved in therapeutic sessions concerning inmates suffering from post-traumatic stress disorder and in outdoor exercising.

15. In June 2002 the applicant was moved to another cell in one of the renovated wings.

THE LAW

16. On 4 October 2002 the Court received the following declaration from the Government:

“With a view to securing a friendly settlement of the above-mentioned case, the Government undertake to renovate before the end of September 2003 the B wing of the Lepoglava State Prison. The Government will pay EUR 12,000 to Mr Darko Benzan. This sum is to cover any pecuniary and non-pecuniary damage as well as costs, and it will be payable within three months from the date of delivery of the judgment by the Court pursuant to Article 39 of the European Convention on Human Rights. This payment will constitute the final resolution of the case

The Government further undertake not to request that the case be referred to the grand Chamber under Article 43 § 1 of the Convention.”

17. On 19 September 2002 the Court received the following declaration signed by the applicant’s representative:

“I note that the Government of Croatia will pay the sum of EUR 12,000 covering pecuniary and non-pecuniary damage and costs to Mr Darko Benzan with a view to securing a friendly settlement of the above-mentioned case pending before the European Court of Human Rights, and that they undertake to renovate before the end of September 2003 the B wing of the Lepoglava State Prison.

The applicant accepts the proposal and waives any further claims against Croatia in respect of the facts of this application. The applicant declares that this constitutes a final settlement of the case.

This declaration is made in the context of a friendly settlement which the Government and the applicant have reached.

The applicant further undertakes not to request that the case be referred to the Grand Chamber under Article 43 § 1 of the Convention after delivery of the Court’s judgment.”

18. The Court notes that the applicant has been moved from the cell which was the subject of his complaints to the Court. It further notes the undertaking of the Government to renovate the B-wing of the Lepoglava

State Prison. Finally, it takes note of the agreement reached between the parties (Article 39 of the Convention). The Court is satisfied that the settlement is based on respect for human rights as defined in the Convention or its Protocols (Article 37 § 1 *in fine* of the Convention and Rule 62 § 3 of the Rules of Court).

19. Accordingly, the case should be struck out of the list.

FOR THESE REASONS, THE COURT

1. *Decides* to strike the case out of the list;
2. *Takes note* of the parties' undertaking not to request a rehearing of the case before the Grand Chamber.

Done in English, and notified in writing on 8 November 2002, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Erik FRIBERGH
Registrar

Christos ROZAKIS
President