



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

FIRST SECTION

CASE OF NOVAK v. CROATIA

(Application no. 8883/04)

JUDGMENT

STRASBOURG

14 June 2007

FINAL

14/09/2007

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 Novak v. Croatia,

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

Mr C.L. ROZAKIS, *President*,

Mr L. LOUCAIDES,

Mrs N. VAJIĆ,

Mr K. HAJIYEV,

Mr D. SPIELMANN,

Mr S.E. JEBENS,

Mr G. MALINVERNI, *judges*,

and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 24 May 2007,

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

PROCEDURE

1. The case originated in an application (no. 8883/04) 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 Boris Novak (“the applicant”), on 1 March 2004.

2. The Croatian Government (“the Government”) were represented by their Agent, Mrs Š. Stažnik.

3. On 14 September 2006 the Court decided to communicate to the Government the applicant's complaints concerning the conditions in Varaždin Prison and his right to respect for his correspondence. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1968 and lives in Ludbreg.

A. Criminal proceedings against the applicant

5. Following a conviction for a dangerous activity, the applicant was incarcerated in Lepoglava State Prison during an unspecified period in 1999 and 2000.

6. In a judgment of 4 July 2002 the Zagreb Municipal Court convicted the applicant of fraud and gave him a suspended sentence of ten months' imprisonment. In addition, it ordered him to undergo compulsory psychiatric treatment as he had been diagnosed as suffering from post-traumatic stress disorder (PTSD). It appears that the suspension of the sentence was lifted because the applicant was again sent to Lepoglava State Prison from 17 May 2002 until 17 April 2003.

7. In a judgment of 17 February 2003 the Varaždin Municipal Court convicted the applicant of fraud and gave him a suspended sentence of ten months' imprisonment. However, on an appeal by the State Attorney, on 24 September 2003 the Varaždin County Court altered the sentence to six months' unconditional imprisonment.

8. On 18 December 2003 a judge of the Varaždin County Court with responsibility for the execution of sentences ordered the applicant to start serving his prison sentence in Varaždin Prison on 28 January 2004. The applicant applied for the order to be postponed on account of his PTSD condition. On 12 January 2004 a Varaždin County Court judge responsible for the execution of sentences dismissed the application because the applicant had failed to submit medical documentation concerning his condition.

9. The applicant appealed against that decision and on 22 January 2004 the Varaždin County Court dismissed his appeal. It found, firstly, that the medical documentation subsequently submitted by the applicant was outdated since it originated from 1991, 1998 and 2001, and, secondly, that during his prison term the applicant would be provided with adequate medical care.

B. General conditions in Varaždin Prison

10. The applicant started to serve his sentence on 26 February 2004 in Varaždin Prison. He was placed in cell no. 8, measuring four by five metres, with thirteen beds. The number of inmates ranged from fifteen to twenty, so that some inmates had to sleep on the floor or on the table. The table in the cell was designed to accommodate four persons, so that the inmates had to eat on the beds or on the floor. There was one window in the cell, covered with wire so that light and air hardly reached the cell.

11. On 11 March 2004 the applicant was removed from cell no. 8 and placed in cell no. 5, measuring 21.87 square metres, which he shared with four other inmates.

12. The applicant's correspondence with the Court was opened.

C. The applicant's medical treatment in prison

13. The medical documentation presented by the applicant shows that he was examined on 26 February 2004 by the prison physician, who found that the applicant had suffered from PTSD since 1995 and also from a personality disorder. The prison doctor prescribed medication, a drug called Fluval.

14. On 15 March 2004 the applicant was transferred to Zagreb Prison Hospital but was sent back to Varaždin Prison the same day because the psychiatrist at the hospital found no reason to keep him there. The applicant's treatment was changed to drugs named Amyzol and Xanax. On 16 March 2004 the applicant complained that the drugs prescribed were "too heavy". On 17 March 2004 the medication prescribed to the applicant was again changed to Fluval. No psychiatric treatment was provided.

D. Remedies used by the applicant

15. On 8 March 2004 the applicant applied for a transfer to another prison or the immediate termination of his prison sentence on account of the lack of adequate treatment for PTSD in Varaždin Prison. He further complained about the overcrowded conditions in the cell where he was being held. On 19 March 2004 a Varaždin County Court judge responsible for execution of sentences dismissed the application, finding that the applicant was not in need of any additional treatment. However, as to the overcrowded conditions, the judge found:

"... the prisoner's allegations concerning the number of inmates placed in one cell are true. However, such placement of prisoners is due to the considerable fluctuation in their number because persons sentenced to up to six months' imprisonment serve their sentences in [Varaždin] Prison.

The Varaždin Prison authorities shall remove the said insufficiencies so as to afford enough space to inmates ..."

16. The applicant appealed against that decision, but his appeal was dismissed by a three-judge panel of the same court on 30 March 2004.

17. On an unspecified date the applicant filed an application for early release from the prison because he had not received adequate treatment for PTSD. On 26 May 2004 the Varaždin County Court dismissed the application.

18. On an unspecified date the applicant contacted the Croatian Helsinki Committee to complain about the inhuman conditions in Varaždin Prison, alleging that he was being held in a cell measuring 4 by 5 metres with thirteen beds and that the number of inmates in the cell surpassed the

number of beds. He alleged that such cramped conditions had had an adverse effect on his health since he was suffering from PTSD. Furthermore, he complained that there was insufficient daylight in the cell.

19. In a letter of 17 June 2004 the Committee informed the Department for the Enforcement of Sanctions (*Uprava za izvršenje sankcija*) about the applicant's allegations and sought an answer from it. On 6 July 2004 the Prison Administration of the Ministry of Justice (*Uprava za zatvorski sustav Ministarstva pravosuđa*) answered the Committee's enquiry. As to the applicant's health condition, it was stated that he had been diagnosed with PTSD and therefore sent to the psychiatric ward of Zagreb Prison Hospital on 15 March 2004. However, a psychiatrist from that hospital had found that there had been no indications requiring the applicant's hospitalisation. Furthermore, the applicant himself had asked not to be kept in the hospital. During his detention in Varaždin Prison he had been administered drugs. As to the applicant's allegations about the inhuman conditions in his cell, it was stated that the conditions of the execution of his sentence complied with the standards prescribed in Part XI of the Enforcement of Prison Sentences Act and that each cell had access to daylight.

20. In a decision of 12 July 2004 the Varaždin Prison Administration released the applicant on licence. His licence expired on 26 August 2004.

E. Findings of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)

21. The CPT visited Croatia between 20 and 30 September 1998. Its findings with regard to Zagreb Prison Hospital were as follows (extract from the report to the Croatian Government on the visit to Croatia from 20 to 30 September 1998, CPT/Inf. (2001) 4):

“157. ... However, occupancy rates in the psychiatric ward were rather high, a drawback which was exacerbated by the fact that patients tended to spend most of the day in their rooms...

In all wards, the general atmosphere in the patients' rooms was rather drab; efforts should be made to provide a more positive therapeutic environment. The practice observed in the hospital of having patients wear pyjamas/nightgowns continuously should also be reviewed. As regards, in particular, psychiatric patients, this practice is not conducive to strengthening personal identity and self-esteem; individualisation of clothing should form part of the therapeutic process.

...

159. ... The delegation was less impressed by the quality of psychiatric treatment, which was limited essentially to pharmacotherapy (though there were no indications of the misuse of medication). The hospital's doctors acknowledged that there was a clear need to develop rehabilitative and other therapeutic activities (occupational

therapy, group therapy, individual psychotherapy, etc.) for the establishment's psychiatric patients; however, they commented that limited staff resources and the very nature of the establishment hindered progress in this area.

160. The CPT recommends that serious efforts be made to develop rehabilitative and other therapeutic activities for psychiatric patients at the hospital; the present state of affairs is untenable from a therapeutic standpoint. ...”

II. RELEVANT DOMESTIC LAW AND PRACTICE

22. Article 23 of the Croatian Constitution (*Ustav Republike Hrvatske*) provides as follows:

“No one shall be subjected to any form of ill-treatment...”

23. The Enforcement of Prison Sentences Act (*Zakon o izvršavanju kazne zatvora*, Official Gazette no. 128/1999 of 30 November 1999, and no. 190/2003 of 3 December 2003 (consolidated text) – “the Act”) came into force on 1 July 2001, whereas the provisions concerning the judge responsible for the execution of sentences came into force six months later, on 1 January 2002. The relevant provisions of the Act read as follows:

COMPLAINTS

Section 15

“(1) Inmates shall have the right to complain against an act or decision of a prison employee.

(2) Complaints shall be lodged orally or in writing with a prison governor, a judge responsible for the execution of sentences or the Head Office of the Prison Administration. Written complaints addressed to a judge responsible for the execution of sentences or the Head Office of the Prison Administration shall be submitted in an envelope which the prison authorities may not open...”

JUDICIAL PROTECTION AGAINST ACTS AND DECISIONS OF THE PRISON ADMINISTRATION

Section 17

“(1) An inmate may file a request for judicial protection against any acts or decisions unlawfully denying him, or limiting him in, any of the rights guaranteed by this Act.

(2) Requests for judicial protection shall be decided by the judge responsible for the execution of sentences.”

ACCOMMODATION, FURNISHINGS AND NUTRITION

Section 74

“(1) The accommodation of inmates shall meet the required standards in terms of health, hygiene and space, including climatic conditions.

(2) Inmates shall as a general rule be accommodated in separate rooms...

(3) Inmates' rooms shall be clean, dry and of adequate size. Each inmate shall have at least 4 square metres and 10 cubic metres of space in the room.

(4) Every room ... must have daylight and artificial light...

(5) Penitentiaries and prisons must be equipped with sanitary facilities allowing inmates to meet their physiological needs in clean and adequate conditions, whenever they wish to do so.

(6) Inmates shall have drinking water at their disposal at all times.”

HEALTH PROTECTION

Section 103

“(1) Inmates shall be provided with medical treatment and regular care for their physical and mental health...”

CORRESPONDENCE

Section 124

“(1) Inmates shall have the right to unlimited correspondence at their own expense.

...

(4) Inmates shall have the right to correspond with their lawyer, the State authorities or international organisations for the protection of human rights without any restrictions or supervision of the content of such letters...”

24. Rule 13 of the Varaždin Prison House Rules (*Kućni red za zatvorenike i kažnjenike Zatvora u Varaždinu*) provided that letters addressed to lawyers, State authorities or international organisations for the protection of human rights were not to be opened by the prison authorities.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

25. The applicant complained about the conditions in the two prisons where he had been incarcerated. 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. Complaint in respect of Lepoglava State Prison

26. The applicant firstly complained about the conditions in Lepoglava State Prison, where he had been incarcerated for an unspecified period during 1999 and 2000, and again from 17 May 2002 until 17 April 2003.

27. The Court notes that the applicant was released from Lepoglava State Prison on 17 April 2003, whereas his first letter to the Court was sent on 1 March 2004, more than six months after he had been released.

28. It follows that this complaint has been lodged out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

B. Complaint in respect of Varaždin Prison

29. Secondly, the applicant complained about the conditions in Varaždin Prison, where he had been incarcerated from 26 February until 12 July 2004. In particular he complained about the overcrowded conditions in cell no. 8, where he had been detained, and the lack of adequate medical treatment for his psychiatric condition, namely PTSD.

30. The Government contested those submissions.

1. Admissibility

31. The Government requested the Court to declare the application inadmissible for failure to exhaust domestic remedies. They submitted that under section 17 of the Enforcement of Prison Sentences Act the applicant could have lodged a complaint concerning the conditions of his detention in cell no. 8 at Varaždin Prison. However, the applicant had not lodged a specific complaint with the judge responsible for execution of sentences, but had mentioned the prison conditions only sporadically in his application of 8 March 2004 by which he had sought a transfer to another prison or the termination of his prison sentence owing to the lack of adequate treatment for PTSD in Varaždin Prison.

32. As to the lack of adequate medical treatment for the PTSD, the applicant had failed to lodge a constitutional complaint against the appellate decision of 30 March 2004.

33. The applicant submitted that he had exhausted all remedies available within the domestic legal system in respect of the alleged violations.

34. Contrary to the Government's first contention regarding the overcrowded conditions in cell no. 8, the Court considers that the applicant did apply to a competent judge for the execution of sentences since from the decision of 19 March 2004 by the relevant judge of the Varaždin County Court it transpires that the judge examined a complaint on that subject. Moreover, the judge accepted the applicant's complaint concerning the overcrowded conditions in cell no. 8 and ordered the Varaždin Prison authorities to take measures to provide him with adequate conditions. The prison authorities, however, had already removed the applicant from cell no. 8 on 11 March 2004 and placed him in cell no. 5, where there was an area of 4.47 square metres per prisoner. In this connection the Court notes that in its decision in *Štitić v. Croatia* ((dec.), no. 9660/03, 9 November 2006) it found that the applicant, whose situation in prison had been remedied by a decision of a judge responsible for execution of sentences and who, following such a decision, had been transferred to an adequate cell, could have brought a civil action against the State claiming damages for the suffering hitherto sustained. Whilst the institution of civil proceedings for damages in itself could not be regarded as an effective remedy for addressing adverse prison conditions, such proceedings in combination with an urgent decision of a judge responsible for execution of sentences, with an immediate effect on the actual conditions of an individual applicant, did satisfy the requirements of effectiveness. Since the applicant in that case had failed to institute civil proceedings against the State, his complaint under Article 3 of the Convention concerning the prison conditions was declared inadmissible for non-exhaustion of domestic remedies.

35. The Court sees no reason to take a different stance in the circumstances of the present case. It follows that in respect of his complaint concerning the overcrowded conditions in cell no. 8 the applicant has not exhausted domestic remedies and that this complaint must therefore be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

36. It remains to be determined whether the applicant exhausted domestic remedies in respect of his complaint concerning the allegedly inadequate medical treatment for his PTSD.

37. The Court observes that the rule of exhaustion of domestic remedies contained in Article 35 § 1 of the Convention requires that normal recourse should be had by an applicant to remedies which are available and sufficient to afford redress in respect of the breaches alleged. The existence of the remedies in question must be sufficiently certain not only in theory but in practice, failing which they will lack the requisite accessibility and

effectiveness. It is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one available in theory and practice at the relevant time, that is to say, that it was accessible, was one which was capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success. (see, among other authorities, *Akdivar and Others v. Turkey*, judgment of 16 September 1996, *Reports of Judgments and Decisions* 1996-IV, pp. 1210 and 1211, §§ 65 and 68).

38. Turning to the present case, the Court observes that the established practice of the Constitutional Court is to declare inadmissible constitutional complaints which do not concern the merits of a given case. Having regard to such a practice and the failure of the Government to produce before the Court any case-law supporting their argument concerning the sufficiency and effectiveness of that remedy, and leaving aside the question of the adequacy of a constitutional complaint as a remedy capable of providing redress in respect of the applicant's complaint, the Court concludes that a constitutional complaint about the lack of adequate medical treatment in prison is not a remedy whose existence has been established with sufficient certainty.

39. The Court finds that the applicant, by complaining to the competent judge for the execution of sentences and appealing in respect of that judge's decision against him, made use of all the remedies that were at his disposal in respect of his complaint concerning the inadequate medical treatment for his PTSD while serving his prison sentence in Varaždin Prison. Accordingly, this complaint cannot be dismissed for failure to exhaust domestic remedies.

40. The Court notes that this complaint 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

41. As to the merits of the applicant's complaint concerning the lack of adequate medical treatment for his PTSD, the Government submitted that the applicant had been sent to Zagreb Prison Hospital's psychiatric ward. However, he himself had requested to be returned to prison and had refused consultation with the prison doctor and the psychiatrist from Zagreb Prison Hospital, insisting on having therapy with a specific psychiatrist, which the State was not obliged to provide. Upon his return to Varaždin Prison, the applicant had regularly received drugs prescribed for his condition and his mental health had not deteriorated during his prison term.

42. The applicant argued that he had seriously suffered as a result of the lack of adequate medical treatment for his psychiatric condition.

43. 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, in the nature of things, relative; it depends on all the circumstances of the case (see *Vilvarajah and Others v. the United Kingdom*, judgment of 30 October 1991, Series A no. 215, p. 36, § 107).

44. The Court has consistently stressed that the suffering and humiliation involved must in any event go beyond that inevitable element of suffering or humiliation connected with a given form of legitimate treatment or punishment. Measures depriving a person of his liberty may often involve such an element. Under this provision the State must ensure that a person is detained in conditions which are compatible with respect for his human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured (see *Kudła v. Poland* [GC], no. 30210/96, §§ 93-94, ECHR 2000-XI).

45. The Court firstly notes that the CPT report, issued after the visit to Zagreb Prison Hospital in 1998, indicates that psychiatric treatment was limited to pharmacotherapy and that there were no rehabilitative or other therapeutic activities (occupational therapy, group therapy, individual psychotherapy, etc.). The Court notes that the Government did not provide information indicating any improvement in this respect and acknowledged the lack of such therapeutic options in Varaždin Prison or any other prison in Croatia. It is undisputed that the applicant received prescription drugs only for his psychiatric condition.

46. The Court finds it regrettable that the Croatian authorities have not yet provided adequate treatment for prisoners suffering from PTSD, a very serious and damaging psychiatric condition. However, in relation to the circumstances of the present case the Court notes that the applicant was incarcerated for a relatively short period of four months and eighteen days and that, apart from a fourteen-day placement in cell no. 8, he did not complain of the general living conditions in Varaždin Prison. Furthermore, there is no indication from the documents submitted by the applicant that the conditions of his detention had led to a deterioration of his mental health. The lack of additional therapeutic treatment for PTSD does not seem to have had such serious effects on his mental health as to be classified as inhuman or degrading and hence to fall within the scope of Article 3.

47. In conclusion, the Court considers that there has been no breach of Article 3.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

48. The applicant further alleged that the prison authorities had opened his correspondence with the Court. He relied on Article 8 of the Convention which reads as follows:

“1. Everyone has the right to respect for his private and family life, his home and his correspondence.

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

49. The Government firstly argued that the applicant had failed to exhaust domestic remedies because he had not addressed this complaint to the domestic authorities such as the Varaždin Prison administration or the judge responsible for the execution of sentences. They further argued that the applicant had not specified the events of which he was complaining.

50. The applicant made no comments on the Government's observations on this point.

51. The Court notes that the applicant did not address a complaint concerning the opening of his correspondence with it to any domestic authority, although under section 15(2) of the Enforcement of Prison Sentences Act he was able to lodge such a complaint with either the Varaždin Prison governor, a judge responsible for the execution of sentences or the Head Office of the Prison Administration.

52. It follows that in respect of this complaint the applicant has not exhausted domestic remedies and that therefore this complaint must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

53. Lastly, the applicant complained under Article 6 § 1 of the Convention about the unfairness of the criminal proceedings against him and under Article 7 of the Convention, without further substantiating this complaint.

54. In the light of all the material in its possession, and in so far as the matters complained of were within its competence, the Court considers that this part of the application does not disclose any appearance of a violation of any of the above Articles of the Convention. It follows that these complaints are inadmissible under Article 35 § 3 as being manifestly ill-founded and must be rejected pursuant to Article 35 § 4 of the Convention.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning the lack of adequate medical treatment for the applicant's PTSD while he served his sentence in Varaždin Prison admissible and the remainder of the application inadmissible;
2. *Holds* that there has been no violation of Article 3 of the Convention;

Done in English, and notified in writing on 14 June 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President