



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

FIRST SECTION

CASE OF TESTA v. CROATIA

(Application no. 20877/04)

JUDGMENT

STRASBOURG

12 July 2007

FINAL

30/01/2008

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 Testa 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 A. KOVLER,

Mr K. HAJIYEV,

Mr D. SPIELMANN,

Mr S.E. JEBENS, *judges*,

and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 21 June 2007,

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

PROCEDURE

1. The case originated in an application (no. 20877/04) 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, Mrs Ksenija Testa (“the applicant”), on 28 April 2004.

2. The applicant was represented by Mrs V. Kučić, a lawyer from the Law Office Hanžeković and Radaković, practising in Zagreb. 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 complaints concerning the conditions in Požega Penitentiary and the interference by the prison authorities with the applicant's right to respect for her 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 1965 and is presently serving a prison sentence in Požega Penitentiary.

1. Criminal proceedings against the applicant

5. On 24 April 2001 the Požega Municipal Court (*Općinski sud u Požegi*) convicted the applicant of fraud and sentenced her to eight months' imprisonment. The court also ordered her to pay 44,000 Croatian kunas (HRK) in damages to the injured party. The first-instance judgment was upheld by the Požega County Court (*Županijski sud u Požegi*) on 21 November 2001.

6. The applicant served the sentence in Požega Penitentiary from 10 January until 29 August 2003, when she was conditionally released. Her conditional release expired on 10 September 2003.

7. On 22 November 2001 the Zagreb Municipal Court (*Općinski sud u Zagrebu*) convicted the applicant on eight counts of fraud, sentenced her to four years' imprisonment and confiscated HRK 210,782 from her, which it attributed to the proceeds from her criminal activity. The court also ordered her to pay HRK 359,416.17 in damages to various injured parties. The sixth count of the applicant's conviction was identical to the offence for which the applicant had been sentenced by the Požega Municipal Court on 24 April 2001. The judgment was upheld on 8 July 2003 by the Zagreb County Court (*Županijski sud u Zagrebu*), sitting as an appellate court.

8. On 6 April 2005 the applicant started to serve her sentence.

9. On 21 October 2005 the applicant lodged an application for a retrial, claiming that she had been sentenced twice for the same offence. On 15 February 2006 the Zagreb Municipal Court granted the application. On 12 April 2006 the Zagreb Municipal Court acquitted the applicant on the charge of fraud in respect of which she had already been convicted by the Požega Municipal Court and upheld her other convictions of 22 November 2001 the court sentenced her to three years' imprisonment and confiscated HRK 166,782 from her on account of her criminal activity.

2. The applicant's health condition

10. The medical documentation submitted by the applicant shows that since 1996 she has been suffering from chronic hepatitis (Hepatitis C) with a very high level of viremia (presence of viruses in the blood). She has unsuccessfully undergone interferon treatment. Due to the effects of that disease her liver is damaged and her general health condition is very bad. People with hepatitis C usually suffer from constant exhaustion; pain in the abdomen, joints and muscles; general sickness and weakness; and often depression. A low-fat diet is required in order to reduce liver damage. The disease is potentially fatal. On an unspecified date the applicant also contracted hepatitis A. In addition to that, she suffers from endometriosis.

3. The applicant's first stay in Požega Penitentiary and the prison hospital

11. During her first stay in Požega Penitentiary, from 10 January to 29 August 2003, the applicant was put on a low-calorie diet as a punishment for her attempts to complain about the conditions in the prison. She was first given the job of handling dissolvent without any protection and later made to work full time on shovelling pebbles. As a consequence, she collapsed and was transferred to the prison hospital (*Bolnica za osobe lišene slobode*, hereafter “the hospital”) where she spent about two and half months. She was transferred in a van, accompanied by a driver, a nurse and a policewoman. The transfer took several hours and they had several coffee breaks and a lunch break, during which they left the applicant in a closed van, without food or water and with the windows shut.

12. In the hospital the applicant shared a hospital room with five other inmates, most of whom were suffering from various mental disorders or epilepsy. The room had no sanitary facilities. The common sanitary facilities were shared by male and female inmates of the same floor. There were six female and fifteen male inmates on the applicant's floor. Access to toilets was allowed only in the company of a prison warden. The prison wardens were all male. Requests to be accompanied to the toilet were often ignored for prolonged periods of time. There was no access to the toilet during the night and the inmates had to use a common chamber pot (one for six inmates). The rooms were unlocked for an hour per day when the inmates were allowed to go out into the corridor, take a shower or wash their clothes. If an inmate urinated or threw up in the room, it had to be cleaned by the other inmates.

13. After her return to Požega Penitentiary, the applicant was again given the job of handling dissolvent, without any protection. After she had collapsed again, she was assigned another job.

14. The applicant was discharged on 29 August 2003. Her conditional release expired on 10 September 2003.

4. The applicant's second stay in prison

15. Following a fresh criminal conviction, on 6 April 2005 the applicant was taken by police to Remetinec Centre for Psychosocial Diagnostics (*Centar za psihosocijalnu dijagnostiku Remetinec*), a detention centre in Zagreb, where she stayed for two weeks.

a. The applicant's submissions

16. According to the applicant, she had not been allowed to write to the Court. The prison authorities had repeatedly questioned her as to what she had written to the Court about her previous stay in Požega Penitentiary and the hospital. After she had refused to reply she had been transferred to

Požega Penitentiary and placed in the high-security unit where she had been ever since.

17. Požega Penitentiary consisted of four buildings that were old and in a bad state of repair. The walls were damp, windows broken and the heating facilities old and insufficient. As a result, it was often very cold in the cells and in the other prison areas. On rainy days the water leaked through the roof into the bedrooms. The sewage and water installations often broke down and when this happened the inmates were deprived of running water for days.

18. Požega Penitentiary was divided into three sections: an open section with the lowest security regime, a semi-open section with a medium security regime and a closed section with the highest security regime. The applicant had been assigned to the latter one. She had been put in a cell measuring twelve square metres with five other inmates. The beds were old and partly broken, and the mattresses were torn and soiled. There were approximately two toilets on average for thirty inmates. The inmates were not allowed to use the toilets at night. The applicant had been put in the same cell as an inmate who took heavy sedatives and therefore soiled her bed almost every night, which created an unbearable smell in the cell. The penitentiary lacked sufficient sanitary facilities, so inmates were occasionally sent to take showers in the basement. The showers there were mouldy and there were often mice, cockroaches, rats and cats running around. The inmates were not allowed to wash their civilian clothes in the penitentiary laundry room but had to wash them by hand and dry them in a very small room, which created an unbearable smell.

19. Before every meal the inmates were lined up in the courtyard where, regardless of the weather conditions and often for a prolonged period of time, they waited to be allowed access to the canteen. The applicant found it increasingly difficult to bear such line-ups on account of her illness.

20. Inmates were made to work about fifteen hours per day. From 12 May to 25 November 2005 the applicant had not worked because of her health condition, but later on she had volunteered to work in order to earn at least some money to buy vitamins and some food. The applicant earned between HRK 300 and 400 per month, HRK 100 of which she was obliged to save. She worked as a seamstress. She was allowed one hour's rest in her bed per day. The bedrooms were locked for the rest of the day. If she needed more rest she had to seek the doctor's permission each time. The applicant found it almost unbearable not to be able to stay in her bed for longer periods during the day since she suffered from tiredness associated with hepatitis C.

21. Although a low-fat diet for her liver disease had been prescribed, the applicant was served food cooked in pig fat. In general the food served to the inmates was insufficient and of poor quality. The bread was often stale

and the food had often gone off. Breakfast often consisted of a spoon of bare pig fat.

22. She had seen a doctor once, on 21 February 2006. The medical documentation stated only that the test for hepatitis C was positive and that her viremia was 2.556.220 units/ml of serum. Apart from that, the applicant had not been sent for any other medical check-ups despite having a serious disease which required regular tests and check-ups. Since her arrival at Požega Penitentiary the applicant had not been seen by a hepatologist. She stated that she had not asked to be sent to the prison hospital because the conditions there were even worse than in Požega Penitentiary.

23. All letters sent and received by the inmates were subject to censorship. On several occasions the applicant was told to shorten her letters addressed to her family and not to write about the conditions in the prison. Mail was received with up to twenty days' delay. Mail sent without a request for acknowledgment of receipt often did not reach its destination at all. The inmates had to bear all the postage costs. All telephone calls were screened. The inmates apparently had to bear the costs of the telephone calls they made. The applicant stated that she had not been informed that she was entitled to any visits.

b. The Government's submissions

24. According to the Government, the penitentiary had been built in 1915 and had been adapted to the life and accommodation of inmates so as to comply with the conditions set out in the relevant legislation. It was able to accommodate 157 inmates, yet on 5 October 2006 there had been 72 inmates. Each section comprised bedrooms, sanitary premises, a living room, a tea-kitchen, a smoking area, an area for leisure activities, a library with computer equipment and premises for religious worship. The inmates were allowed to use the toilet and other sanitary facilities at any time and for an unlimited period. Each living room was equipped with a television set and a DVD or video recorder. Inmates were allowed to watch television until 11 p.m. on working days and until midnight on Saturdays and Sundays.

25. As to the applicant's personal circumstances, the Government submitted that after her initial one-week stay at the Reception Unit, she had been placed in the high-security unit and assigned to a non-working group on account of her health condition. The applicant had been qualified as having minor adaptability problems as most of the time she had been without any obvious occupation, just listening to music. Occasionally she had got into arguments with other inmates. She had lacked the motivation for more active participation in her individual programme, remaining passive and inert, with no insight into her own behaviour and uncritical in respect of her criminal conviction. However, with time the applicant's attitude had altered for the better. She had expressed a higher level of

motivation for completing her daily duties and had satisfactorily participated in her counselling sessions, distancing herself from negative events in the section, and concentrating on herself. She had also expressed a wish to work and, as of 23 November 2005, had been working in the laundry service where she had been given less demanding tasks.

26. As of 1 June 2006 the applicant had been labelled “successful”, which had resulted in her removal to a semi-open section from 2 August 2006. Ever since then she had benefited from the following privileges: unsupervised use of telephone in her free time; unlimited correspondence at her own expense; the right to receive a package once a month and during public holidays; an additional package once every two months; the right to supervised one-hour visits twice a month and during public holidays; and an unsupervised three-hour monthly visit.

27. As to the medical care provided to the applicant, they submitted that one doctor and three nurses were employed in the penitentiary. During her second stay in the penitentiary the applicant had been allowed to stop work until she herself had asked to work again. She was also prescribed a liver and vitamin diet and offered fresh cheese and dairy products. On 4 January 2006 she underwent a qualitative and quantitative test for chronic hepatitis virus and was informed of the results. Since 5 May 2005 she had seen the prison doctor on 43 occasions.

28. As to the applicant's right to respect for her correspondence, they submitted that she had been able to send and receive letters at her own expense without any limitation. During her stay in the high-security section she had had to hand over her letters – opened – while the letters addressed to a legal representative, State authorities and international organisations for the protection of human rights had to be handed over sealed. Packages could be sent any day.

5. Remedies used by the applicant

29. It appears that the applicant complained to the prison authorities, the Ministry of Justice and the President of Croatia. She did not submit copies of the letters she had sent to these authorities, stating that she had not made any. However, she submitted a letter of 5 September 2005 sent to her by the Ministry of Justice, Central Prison Administration, the relevant part of which read as follows:

“The Ministry of Justice, Central Prison Administration, has received your complaint of 17 August 2005 in which you expressed your dissatisfaction with the accommodation arrangements with other inmates, the approach of the prison officials, the health care and the manner of using your free time.”

The applicant's complaints were declared unfounded.

30. Furthermore, the Government submitted a complaint lodged by the applicant in a letter of 28 September 2005, lodged with the Požega County Court judge responsible for the execution of sentences (*Županijski sud u*

Požegi), alleging, *inter alia*, that she suffered from chronic hepatitis and that, on account of her illness, she was not able to comply with the prison regime. Although the judge held an interview with the applicant on 19 October 2005, he did not adopt a formal decision on her complaints. The interview and subsequent action had concentrated solely on giving advice to the applicant about applying for a retrial (see paragraph 9 above).

II. RELEVANT NON-CONVENTION MATERIAL

1. Relevant domestic law

31. Article 23 of the Croatian Constitution (*Ustav Republike Hrvatske*) provides:

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

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, and 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 about 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.”

ACCOMODATION, 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.”

Section 77

“1. The penitentiary or prison shall supply the inmates with underwear, clothes and bed linen appropriate to the climatic conditions.”

Section 78

“3. Inmates shall be served at least three meals daily with a caloric value of at least 3,000 kcal per day. The content and the nutritional value of the food shall be supervised by a doctor or other medically qualified person.”

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...”

2. Relevant reports

32. The relevant part of the Report on the Minister of Justice's visit to Požega Penitentiary on 7 April 2006, published on the Ministry of Justice official internet page, reads as follows:

“...Minister of Justice was informed about the situation in the Požega Penitentiary by its director Slavko Orešković. 'Our needs are fairly high as the roof, outer walls and installations are in need of repair as well as the other things, for which we would need about two million kunas' said Orešković.”

33. The relevant part of the Government's Report on the State and Operation of Prisons, Penitentiaries and Correctional Institutions in 2005 submitted to Parliament on 21 December 2006 (*Izvješće o stanju i radu kaznionica, zatvora i odgojnih zavoda za 2005. godinu, koji je predsjedniku Hrvatskoga sabora dostavila Vlada Republike Hrvatske, aktom od 21. prosinca 2006. godine*) reads as follows:

“... state of repair of the buildings of the Zagreb Prison Hospital and the Požega Women's Penitentiary is highly unsatisfactory as regards the mains installations (gas, water, electricity, canalisation/sewage), construction of buildings (unsafe static, woodwork falling apart, the state of repair of the roof) ...”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

34. The applicant complained about the conditions of her two separate prison terms.

a. She complained firstly about the conditions of her stay in Požega Penitentiary and the prison hospital from 10 January to 29 August 2003.

b. Secondly, she complained about the general conditions in Požega Penitentiary during her second stay there from May 2005 onwards. She complained, in particular, about the lack of adequate medical treatment and necessary medical check-ups for her illness (chronic hepatitis), the lack of adequate diet in this respect, and the lack of sufficient opportunity to take necessary rest, due to which she had lost control over her health condition resulting in feelings of anxiety, hopelessness and depression. She 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.”

35. The Government contested the applicant's arguments.

A. Admissibility

1. The applicant's stay in Požega Penitentiary and the Zagreb Prison Hospital from 10 January to 29 August 2003

36. The Court notes that the applicant was released on 29 August 2003, and that her first letter to the Court was sent on 28 April 2004.

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

2. The applicant's stay in Požega Penitentiary from May 2005 onwards

38. The Government requested the Court to declare this complaint inadmissible for failure to exhaust domestic remedies. They submitted that, under sections 15 and 17 of the Enforcement of Prison Sentences Act, the applicant could have lodged a complaint about the general conditions of her detention and the alleged lack of adequate medical treatment. However, she had not lodged such a complaint either with the prison authorities, the Central Prison Administration, or the judge responsible for the execution of sentences.

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

40. The Court notes that the documents submitted by the parties show that the Ministry of Justice, Central Prison Administration, in its letter of 5 September 2005 to the applicant, acknowledged that the applicant had lodged a complaint whereby she expressed dissatisfaction with her accommodation and the lack of adequate health care (see paragraph 29 above). Furthermore, the Government submitted a copy of the applicant's complaint lodged with the Požega County Court judge responsible for the execution of sentences on 28 September 2005 whereby she expressly complained that she suffered from chronic hepatitis and that, due to her illness, she was not able to comply with the prison regime. The Court considers that these documents clearly show that the applicant used the remedies at her disposal and thus made the domestic authorities sufficiently aware of her grievances. However, her complaints remained unanswered since the judge did not adopt a formal decision on her complaints (see paragraph 30 above). In these circumstances the applicant could not make

use of the possibility to appeal. Thus, the Government's objection must be rejected.

41. The Court further 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 ground. It must therefore be declared admissible.

B. Merits

1. General principles enshrined in the case-law

42. The Court reiterates that Article 3 of the Convention enshrines one of the most fundamental values of a democratic society. It prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the circumstances and the victim's behaviour (see *Labita v. Italy*, judgment of 6 April 2000, *Reports of Judgments and Decisions* 2000-IV, § 119).

43. According to the Court's case-law, ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3 of the Convention. The assessment of this minimum level is relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim (see, among other authorities, *Ireland v. the United Kingdom*, judgment of 18 January 1978, Series A no. 25, p. 65, § 162). Although the purpose of such treatment is a factor to be taken into account, in particular the question of whether it was intended to humiliate or debase the victim, the absence of any such purpose does not inevitably lead to a finding that there has been no violation of Article 3 (*Peers v. Greece*, no. 28524/95, § 74, ECHR 2001-III, and *Valašinas v. Lithuania*, no. 44558/98, § 101, ECHR 2001-VIII).

44. The Court has consistently stressed that the suffering and humiliation involved must in any event exceed the inevitable element of suffering or humiliation connected with a legitimate deprivation of liberty. Nevertheless, in the light of Article 3 of the Convention, the State must ensure that a person is detained under conditions which are compatible with respect for human dignity, that the manner and method of the execution of the measure do not subject the individual to distress or hardship exceeding the unavoidable level of suffering inherent in detention, and that, given the practical demands of imprisonment, the person's health and well-being are adequately secured (see *Kudła v. Poland* [GC], no. 30210/96, §§ 92-94, ECHR 2000-XI), with the provision of the requisite medical assistance and treatment (see, *mutatis mutandis*, *Aerts v. Belgium*, judgment of 30 July 1998, *Reports* 1998-V, p. 1966, §§ 64 et seq.). When assessing conditions of detention, account has to be taken of the cumulative effects of these

conditions, as well as the specific allegations made by the applicant (see *Dougoz v. Greece*, no. 40907/98, § 46, ECHR 2001-II).

45. In exceptional cases, where the state of a detainee's health is absolutely incompatible with the detention, Article 3 may require the release of such person under certain conditions (see *Papon v. France (no. 1)* (dec.), no. 64666/01, CEDH 2001-VI, and *Priebke v. Italy* (dec.), no. 48799/99, 5 April 2001). There are three particular elements to be considered in relation to the compatibility of the applicant's health with her stay in detention: (a) the medical condition of the prisoner, (b) the adequacy of the medical assistance and care provided in detention and (c) the advisability of maintaining the detention measure in view of the state of health of the applicant (see *Mouisel v. France*, no. 67263/01, §§ 40-42, ECHR 2002-IX).

46. However, Article 3 cannot be construed as laying down a general obligation to release detainees on health grounds. It rather imposes an obligation on the State to protect the physical well-being of persons deprived of their liberty. The Court accepts that the medical assistance available in prison hospitals may not always be at the same level as in the best medical institutions for the general public. Nevertheless, the State must ensure that the health and well-being of detainees are adequately secured by, among other things, providing them with the requisite medical assistance (see *Kudla*, cited above, § 94, ECHR 2000-XI; see also *Hurtado v. Switzerland*, judgment of 28 January 1994, Series A no. 280-A, opinion of the Commission, pp. 15-16, § 79, and *Kalashnikov v. Russia*, no. 47095/99, §§ 95 and 100, ECHR 2002-VI). Furthermore, if the authorities decide to place and maintain a seriously ill person in detention, they shall demonstrate special care in guaranteeing such conditions of detention that correspond to his special needs resulting from his disability (see *Farbtuhs v. Latvia*, no. 4672/02, § 56, 2 December 2004)

2. Scope of the issues for consideration

47. The Court notes that the applicant's complaints under Article 3 of the Convention mainly concern two issues:

- *first*, whether the conditions of the applicant's detention were compatible with that provision; and
- *second*, whether the applicant was provided with the necessary medical treatment and assistance.

The Court has, however, examined these issues together.

a. The parties' submissions

48. The Government did not comment on all of the applicant's complaints under Article 3 of the Convention. Instead, they commented only on a few issues she raised, concentrating mainly on the applicant's attitude towards her prison sentence and the prison environment (see paragraphs 25 and 26 above). In particular they submitted that the

penitentiary premises were adequately furnished, ventilated and clean; the inmates' hygienic needs were satisfactorily ensured; the time was adequately organised both for working and non-working inmates; the penitentiary had a library, a fitness hall and computer equipment; and the applicant was provided with an adequate diet and medical assistance (see paragraph 27 above).

49. In support of their submissions the Government forwarded to the Court a number of photographs allegedly taken on the premises of Požega Penitentiary on an unspecified date. The photographs depict a courtyard and inner premises such as the sleeping areas, dining room, toilets, showers and halls.

50. The applicant maintained her allegations. She claimed that her description of the conditions of detention was accurate (see paragraphs 17 and 18 above). She claimed that she received no adequate medical treatment for her disease and that she had been subjected to unnecessary hardships incompatible with her state of health (see paragraphs 19-22 above).

b. The Court's assessment

51. The Government did not appear to dispute that the applicant suffered from a very serious form of chronic hepatitis – a potentially fatal disease – and that during her second stay in Požega Penitentiary from May 2005 onwards, she had not been seen by a hepatologist, a specialist for her disease. It is further undisputed that the only medical assistance provided to the applicant in respect of her chronic hepatitis was a test done on 4 January 2006 which confirmed that she had contracted the hepatitis C virus and showed the number of viruses in her blood.

52. The Court notes that chronic hepatitis is an illness that primarily attacks the liver and with time can lead to liver cirrhosis, liver cancer and death. In this connection the Court considers that it is essential that the applicant undergo an adequate assessment of her current health state in order to be provided with adequate treatment. Such an assessment could be obtained from a liver biopsy and relevant blood tests. However, the applicant has not been provided with appropriate diagnostic treatment and has been left without relevant information in respect of her illness, thus keeping her in dark about her health condition and depriving her of any control over it, which must have caused her perpetual anguish and fear. In this respect the Court considers irrelevant the Government's submission that the applicant had seen a prison doctor on more than fifty occasions since these visits did not provide the applicant with the medical care and assistance indispensable for her particular health condition. As a consequence of the lack of adequate medical examinations, due to which the exact effect of chronic hepatitis on the applicant's health has not been established, the applicant cannot have been provided with proper medical assistance.

53. Furthermore, although chronic hepatitis is associated with constant exhaustion and reduced physical ability, the applicant has been obliged to line up every day in the penitentiary's courtyard, irrespective of the weather conditions. She has also been unable to rest when she has felt weak without obtaining a special permit from the prison doctor each time, which explains the large number of visits that the applicant has made to him. In the Court's view, such additional hardship placed on the applicant in her present state of health has been unnecessary and has gone beyond the inevitable element of suffering or humiliation connected with a legitimate deprivation of liberty.

54. As to the conditions of detention, the excessive number of persons in the cell and the lack of proper hygiene, heating or appropriate clean bedding, plus the general state of repair, the Court has examined them as a whole on the basis of the applicant's submissions and the lack of relevant comments from the Government.

55. The Court notes that the Government have sent, in support of their submissions, some photographs allegedly showing the conditions of detention in Požega Penitentiary. Since it is impossible to ascertain when and in what circumstances these images were created, the Court does not consider it possible to take them into consideration.

56. One of the characteristics of the applicant's detention that requires examination is her allegation that the cells were overpopulated. She submitted that she had been placed in a cell measuring 12 square metres with five other inmates. The Government have submitted that the penitentiary was able to accommodate 157 inmates, whereas on 5 October there had been 72 inmates, but as they have not provided any further details of the applicant's current circumstances they have failed to refute her allegations. It follows that the applicant has been confined to a space measuring 2.4 square metres.

57. In this connection the Court recalls that the European Committee for the Prevention of Torture and Inhuman or Degrading treatment or punishment (CPT) has set 4 sq.m per prisoner as an appropriate, desirable guideline for a detention cell (see, for example, the CPT Report on its visit to Latvia in 2002 – CPT/Inf (2005) 8, § 65). This approach has been confirmed by the Court's case law. The Court recalls that in the *Peers* case a cell of 7 sq. m for two inmates was noted as a relevant aspect in finding a violation of Article 3, albeit that in that case the space factor was coupled with an established lack of ventilation and lighting (see *Peers v. Greece*, no. 28524/95, §§ 70–72, ECHR 2001-III). In the *Kalashnikov* case the applicant had been confined to a space measuring less than 2 sq. m. In that case the Court held that such a degree of overcrowding raised in itself an issue under Article 3 of the Convention (see *Kalashnikov v. Russia*, no. 47095/99, §§ 96–97, ECHR 2002-VI). The Court reached a similar conclusion in the *Labzov* case, where the applicant was afforded less than 1 sq. m of personal space during his 35-day period of detention (see *Labzov v. Russia*,

no. 62208/00, §§ 41-49, 16 June 2005), and in the *Mayzit* case, where the applicant was afforded less than 2 sq. m during nine months of his detention (see *Mayzit v. Russia*, no. 63378/00, § 40, 20 January 2005).

58. By contrast, in some other cases no violation of Article 3 was found, as the restricted space in the sleeping facilities was compensated for by the freedom of movement enjoyed by the detainees during the day time (see *Valašinas*, cited above, §§ 103, 107, and *Nurmagomedov v. Russia* (dec.), no. 30138/02, 16 September 2004).

59. As regards the question of how many hours per day the applicant was confined to her cell, the Court observes first that the applicant's illness requires her to take frequent rests, thus necessitating her prolonged stay in her cell. Therefore, the actual prison regime in this respect is of no relevance for the applicant's situation. The Court also takes note of the applicant's allegations, uncontested by the Government, that the beds were old and partly broken, the mattresses were torn and soiled and that another inmate in the same cell who took heavy sedatives soiled her bed almost every night, which created an unbearable smell in the cell. In these circumstances, the Court considers that the lack of space combined with these additional factors weighs heavily as an aspect to be taken into account for the purpose of establishing whether the impugned conditions of detention were "degrading" from the standpoint of Article 3.

60. As to the sanitary conditions, the Court notes that the Government did not expressly contest the applicant's allegations that there were approximately two toilets on average for thirty inmates and that she had occasionally been sent to take a shower in the basement where the showers were mouldy and mice, cockroaches, rats and cats were often running around.

61. As to the general state of repair, the Court notes that the applicant's allegations that the buildings were old and in a very bad state of repair, including malfunctioning heating facilities and damaged roofing which resulted in the prison premises being cold and rain leaking into them, are corroborated by the Government's Report of 21 December 2006 (see paragraph 33 above).

The Court considers that these facts demonstrate that the applicant has been detained in an unsanitary and unsafe environment.

62. As to the Government's contentions regarding the applicant's behaviour and attitude, the Court reiterates that it does not accept the argument that the conditions of imprisonment could be determined according to whether an inmate showed a passive attitude and lacked initiative to participate in the prison activities, since all inmates should be afforded prison conditions which are in conformity with Article 3 of the Convention (see, *mutatis mutandis*, *Cenbauer v. Croatia*, no. 73786/01, § 47, ECHR 2006-...).

63. In the Court's view, the lack of requisite medical care and assistance for the applicant's chronic hepatitis coupled with the prison conditions which the applicant has so far had to endure for more than two years diminished the applicant's human dignity and aroused in her feelings of anguish and inferiority capable of humiliating and debasing her and possibly breaking her physical or moral resistance. In the light of the above, the Court considers that the nature, duration and severity of the ill-treatment to which the applicant was subjected and the cumulative negative effects on her health can qualify the treatment to which she was subjected as inhuman and degrading (see *Egmez v. Cyprus*, no. 30873/96, § 77, ECHR 2000-XII; *Labzov v. Russia*, cited above, § 45; *Mayzit v. Russia*, cited above, § 42; and *Koval v. Ukraine*, no. 65550/01, § 82, 19 October 2006).

64. There has accordingly been a violation of Article 3 of the Convention in the circumstances of the present case.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

65. The applicant further complained about the opening of all her correspondence by the prison authorities and about the supervision of all her telephone calls both during her stay in the Remetinec Detention Centre and her stay in Požega Penitentiary. She 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.”

66. The Government contested that argument and also submitted that the applicant had not exhausted domestic remedies because she had not addressed this complaint to the domestic authorities such as the Požega Prison administration or the judge responsible for the execution of sentences.

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

68. The Court notes that the applicant did not address a complaint concerning the opening of her correspondence and screening of her telephone conversations to any domestic authority, although under section 15(2) of the Enforcement of Prison Sentences Act she could have lodged such a complaint with either a prison governor, a judge responsible for the execution of sentences or the Head Office of the Prison Administration.

69. 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

70. The applicant also complained under Article 4 of Protocol No. 7 that she had been convicted twice for the same offence. Lastly, she invoked Articles 5, 6 and 7 of the Convention, Article 1 of Protocol No. 4 and Article 2 of Protocol No. 7 without further substantiation.

71. 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 manifestly ill-founded and must be rejected pursuant to Article 35 § 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

72. 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

73. The applicant claimed 110,000 euros (EUR) in respect of non-pecuniary damage.

74. The Government made no comments in this respect.

75. The Court notes that it has found that the applicant's rights guaranteed by Article 3 of the Convention have been violated. In particular, it has found that while serving her prison term the applicant has not received adequate medical treatment and has been held in unsanitary and unsafe conditions. That fact has indisputably caused her severe physical and mental suffering over a long period of time (more than two years). Consequently, ruling on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant EUR 15,000 (fifteen thousand euros) under this head, plus any tax that may be chargeable.

B. Costs and expenses

76. The applicant, who was granted legal aid, also asked the Court to award her the expenses of representation in the proceedings before it in an amount determined in accordance with the Court's case-law.

77. The Government made no comments in this respect.

78. According to the Court's case-law, an applicant is entitled to reimbursement of her costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 3,200 in respect of the Convention proceedings in addition to the amount already granted for legal aid plus any tax that may be chargeable on that amount.

C. Default interest

79. 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 complaint concerning the conditions of the applicant's detention in Požega Penitentiary from May 2005 onwards admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 3 of the Convention;
3. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from 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 the national currency of the respondent State at the rate applicable at the date of settlement:
 - (i) EUR 15,000 (fifteen thousand euros) in respect of non-pecuniary damage;
 - (ii) EUR 3,200 (three thousand two hundred euros) in respect of costs and expenses;
 - (iii) any tax that may be chargeable on the above amounts;
 - (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;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 12 July 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President