



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

FIRST SECTION

**CASE OF PILČIĆ v. CROATIA**

*(Application no. 33138/06)*

JUDGMENT

STRASBOURG

17 January 2008

**FINAL**

***17/04/2008***

*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 Pilčić v. Croatia,**

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

Christos Rozakis, *President*,

Loukis Loucaides,

Nina Vajić,

Anatoli Kovler,

Elisabeth Steiner,

Sverre Erik Jebens,

Giorgio Malinverni, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 11 December 2007,

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

## PROCEDURE

1. The case originated in an application (no. 33138/06) 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 Pilčić (“the applicant”), on 12 July 2006.

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

3. On 12 March 2007 the Court decided to give notice of the application to the Government. 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 1951 and is presently serving a prison sentence in Lepogalva State Prison.

5. Following the institution of criminal proceedings against the applicant, he was apprehended on 31 July 2001 and placed in pre-trial detention in Zagreb County Prison (*Okružni zatvor Zagreb*), where he had

stayed until 24 February 2003. After that date, having being convicted of murder, attempted murder, forgery and robbery, he was sent to serve the remainder of his sentence of thirty years and six months' imprisonment in Lepoglava State Prison.

*1. The applicant's health condition*

6. According to medical documentation submitted by the parties, the applicant suffers from kidney stones, varicose veins, liver damage and a number of spinal ailments such as scoliosis (curvature of the spine), lordosis (inward curve of the lower back), discopathy (cervical disc injury) and discarthrosis (structural and functional failure of the discal joint).

7. The applicant's medical record, kept in Lepoglava State Prison, and additional medical documentation submitted by the parties provides the following information:

8. A copy of a medical report drafted at Zagreb Prison Hospital on 24 January 2002 specifies that the applicant was suffering from one stone in his right ureter (ureters are ducts that carry urine from the kidneys to the urinary bladder) measuring about 3-4 millimetres, and two stones in his left kidney, each measuring about 1.5 centimetres. It was recommended that the applicant be given painkillers and be seen by a urologist.

9. After being incarcerated in Lepoglava State Prison the applicant was seen by a prison doctor for his kidney and spinal ailments on five occasions during the period from 28 February to 28 May 2003. The applicant was regularly given urological tea for his kidney ailment and, in addition, on each occasion he was given various spasmolytics to prevent or relieve spasms. For the pain associated with his spinal ailments, the applicant was prescribed painkillers, including two different types of soothing gels. On 28 May 2003 the applicant was seen by a urologist in Varaždin, who found a stone in the applicant's left kidney and recommended his hospitalisation.

10. From 29 May to 4 July 2003 the applicant was hospitalised in Zagreb Prison Hospital, where a medical report was drafted, specifying that the applicant was suffering from three stones in his left kidney, measuring 1 centimetre each. It was recommended that surgery be carried out. The report notes that the applicant had been put on the waiting list of the Rebro Hospital in Zagreb and that the exact date of the operation was yet to be determined.

11. From his return to Lepoglava State Prison in July 2003 until 26 September 2005 the applicant was seen by the prison doctor on sixty-five occasions; on twenty of these he was given spasmolytics for the pain associated with his kidney ailment. He was also regularly given urological tea as well as painkillers for his spinal ailment.

12. The applicant was again hospitalised in Zagreb Prison Hospital from 26 to 30 September 2005. A medical report of 30 September 2005 specifies that the kidney stones from which the applicant was suffering required

surgery, although not urgently, as they could not be treated by ultrasound waves (lithotripsy).

13. From his return to the prison until 31 March 2006 the applicant was seen by the prison doctor on twenty-nine occasions. Within that period he was given spasmolytics for the pain associated with his kidney ailment on fourteen occasions. On 4 November 2005 the applicant underwent urological tests in the Zagreb Prison Hospital laboratory. On 17 November 2005 the applicant refused to go to Zagreb Prison Hospital. On 20 February 2006 a nurse from the prison reported that, during a telephone conversation with a surgeon from Zagreb Prison Hospital, she had been told that the applicant should not be sent there because they were not going to carry out the surgery. On 2 March 2006 the applicant again underwent urological tests in Zagreb Prison Hospital.

14. On 31 March 2006 the applicant was seen by a urologist in Varaždin Hospital. The diagnosis of kidney stones was confirmed and surgery in this respect was recommended, although not urgently.

15. From his return to the prison until 26 October 2006 the applicant was seen by the prison doctor on thirty-four occasions. Within that period he was given spasmolytics for his kidney ailment on six occasions. On several occasions he asked that the recommended surgery in connection with his kidney ailment be carried out.

16. The applicant was again hospitalised in Zagreb Prison Hospital from 26 October to 17 November 2006. A report drawn on the latter date specifies that the applicant was suffering from kidney stones and that there was no possibility of carrying out the relevant operation in the Zagreb Prison Hospital; it could only be carried out in an ordinary hospital. The applicant had been offered surgery for his varicose veins in Zagreb Prison Hospital, which he had refused, insisting on his return to the prison.

17. On his return to the prison the applicant was seen by the prison doctor on twenty-six occasions, mostly in connection with his spinal ailment. On one occasion he was given spasmolytics for his kidney ailment. He was prescribed a supplementary diet (*pojačani obrok*) from 1 December 2006 until 1 February 2007 and from 4 May to 1 August 2007.

## *2. Remedies used by the applicant*

18. On 30 August 2006 the applicant petitioned both the Varaždin County Court judge responsible for the execution of sentences and the Head Office of the Prison Administration complaining about the lack of adequate medical care for his various health problems, including those mentioned in paragraph 6 above.

19. The Head Office of the Prison Administration replied to the applicant's allegations by a letter of 12 December 2006, the relevant parts of which read as follows:

“...

Your medical record shows that since your arrival at Lepoglava State Prison on 24 February 2003, you have received regular treatment by the prison doctor.

On 28 February 2003 it was noted that you suffered from kidney stones and were on that account twice hospitalised in [Zagreb] Prison Hospital. It was further noted that you suffered from back-pain and varicose veins on your right shin. During your hospitalisation from 29 May to 4 July 2003 it was recommended that surgery be carried out and you were put on the waiting list of the Rebro Hospital in Zagreb.

Owing to frequent pain in the kidney area you were again hospitalised in [Zagreb] Prison Hospital from 26 to 30 September 2005 where a specialist established that your kidney stones could be treated by ultrasound.

You continued to receive regular treatment by the prison doctor and were prescribed adequate medical therapy. On 17 November 2005 you refused to be hospitalised and said that you would report when you wished to be hospitalised. Since you had refused hospitalisation, on 20 February 2006 it was communicated from [Zagreb] Prison Hospital that you were not going to be operated and it was recommended further that you be seen by a urologist in Varaždin. A prescription was issued for consultation with a urologist and prior laboratory tests. Laboratory tests showed the presence of blood in urine and signs of liver damage.

On 31 March 2006 you were seen by a urologist who found alterations in your kidneys, but established no need for an urgent surgical intervention. A CT [computer tomography] of your abdomen was planned and carried out on 20 April 2006. It showed no pathological alterations. You were twice seen by an internist in Lepoglava [State] Prison, who recommended that arrangements be made between the prison authorities and [Zagreb] Prison Hospital.

On 21 June 2006 you were sent for an X-ray examination in connection with frequent back-pain. Discopathy and discarthrosis were diagnosed. Deforming spondylosis was in an advanced stage. On 16 October 2006 a prescription for your hospitalisation in [Zagreb] Prison Hospital was issued, but you refused hospitalisation. Owing to frequent pain in your left kidney and your back you agreed to be hospitalised in [Zagreb] Prison Hospital from 26 October to 17 November 2006, when laboratory tests were carried out as well as an ultrasound examination of your liver, cholecyst, bile ducts, pancreas, spleen and kidneys. An X-ray examination showed that your heart and lungs were healthy. An X-ray examination of your abdomen showed two round calcareous shadows in the lower pole of your left kidney, which was an indication of the [presence of] stones. Laboratory tests showed further even and sufficient urinary flow in both kidneys. The ureters had adequate flow, lumen width and porosity; the urinary bladder was normal. The previously recommended surgery, despite having been scheduled for your stay at the hospital, was not carried out.

Possible surgery on your varicose veins was not carried out since you refused it, and you were returned to the prison at your request.

A CT [computer tomography] of your spine was recommended and the exact date was to be determined. A prescription in that respect was issued on 20 November 2006.

In our opinion, regular [medical] checks are needed in the Lepoglava [State] Prison infirmary as well as regular intake of the prescribed therapy, and an arrangement for another hospitalisation in [Zagreb] Prison Hospital is soon to take place with a view to carrying out the surgery for your kidney stones.

In view of the above [considerations] it has been established that you received adequate medical care in Lepoglava [State] Prison.”

20. The judge responsible for the execution of sentences likewise answered the applicant's allegation by a letter of 13 December 2006, the relevant parts of which read as follows:

“As to your complaint lodged on 31 August 2006 ... concerning your allegations that you had been denied hospital treatment in connection with a number of diseases ... I reply as follows:

...

The medical documentation submitted shows that, as early as 2003, you were hospitalised in [Zagreb] Prison Hospital in connection with kidney stones, pain in the back and varicose veins on your right shin. It was recommended that surgery be carried out, you were put on the waiting list of the Rebro Hospital [in Zagreb] and that the exact date of the operation was to be communicated. Owing to repeated pain in the kidney area and in order to continue the treatment, in 2005 it was established that the stones were to be broken by ultrasound. You then reported to the Lepoglava [State] Prison infirmary and received regular therapy for pain. On 17 November 2005 you were offered hospitalisation. However, it was communicated from Zagreb Prison Hospital not to send you there because you were not to be operated. On 31 March 2006 you were seen by a urologist in Varaždin, who established the cause of your kidney ailment and indicated that there was no need for urgent surgery. After that arrangements for your hospitalisation in [Zagreb] Prison Hospital took place and you were hospitalised from 26 October to 17 November 2006. There you were examined and laboratory [tests] showed toxic damage to your liver and the presence of stones in your kidneys. An x-ray showed that your heart and lungs were healthy and that you had so-called nephroliths in your kidneys.

According to [Zagreb] Prison Hospital, all treatment available there had been exhausted and in order to continue your treatment in an outside hospital it was necessary for an agreement to be reached between the prison and the hospital. There was a possibility that surgery be carried out in [Zagreb] Prison Hospital at the same time as surgery for your varicose veins, which you declined. You were returned to the prison where it was recommended that a CT [computer tomography] of lumbosacral spine be carried out, and a prescription was issued in that connection on 20 November 2006. The doctor also recommended regular checks in the prison infirmary and regular intake of prescribed therapy, and that an arrangement be made between the prison and the [Zagreb] Prison Hospital for your hospitalisation and eventual surgery for the kidney stones.

Therefore, your complaints concerning the alleged denial of hospital treatment are unfounded because the medical documentation shows that care was taken of your [need for] ambulant and hospital treatment. Your allegations concerning the prison authorities' hatred towards you are entirely unfounded.

...”

21. The applicant also submitted a copy of a letter of 15 September 2006 drafted by the registry of the Constitutional Court, stating that his application lodged with that court on 12 September 2006 had not been suitable for examination.

## II. RELEVANT DOMESTIC LAW

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, while 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.”

## HEALTH PROTECTION

**Section 103**

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

## II. COUNCIL OF EUROPE SOURCES

## 24. The Committee of Ministers

Recommendation No. Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules (adopted by the Committee of Ministers on 11 January 2006 at the 952nd meeting of the Ministers' Deputies):

Section 46.1 of the recommendation provides as follows:

“Sick prisoners who require specialist treatment shall be transferred to specialised institutions or to civil hospitals, when such treatment is not available in prison.”

## THE LAW

## I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

25. The applicant complained that the Lepoglava State Prison authorities had failed to ensure adequate medical care for his health problems. He relied on Article 3 of the Convention, which provides:

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

26. The Government contested that argument.

**A. Admissibility**

27. The Government requested the Court to declare the application inadmissible for failure to exhaust domestic remedies. They submitted that the applicant had failed to lodge a constitutional complaint about the failure to provide adequate medical treatment for his ailments.

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

29. 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).

30. Turning to the present case, the Court observes at the outset that the letter of 15 September 2006 sent to the applicant by the registry of the Constitutional Court confirms that the applicant had filed an application with that court, though it did not specify the content of that application and the exact reason for that court's finding that the application had not been suitable for examination (see § 21 above). Without assessing whether the applicant did or did not in fact file a constitutional complaint about the alleged lack of adequate medical treatment provided to him by the Lepoglava State Prison authorities, the Court observes further 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.

31. The Court finds that, by complaining to the competent judge for the execution of sentences and to the Head Office of the Prison Administration, the applicant made adequate use of the remedies provided for in domestic law that were at his disposal in respect of his complaint concerning the lack of adequate medical assistance. In particular, the Court points out that although under relevant domestic law there existed a possibility of lodging an appeal against a decision of the judge responsible for the execution of sentences with a three-member panel of a competent County Court, the applicant was not in a position to make use of such an appeal because the competent judge responsible for the execution of sentences answered the applicant's complaint by letter and not in a decision and that it is impossible to lodge an appeal against a letter. Accordingly, the application cannot be dismissed for failure to exhaust domestic remedies.

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

## **B. Merits**

33. As to the merits of the application, the Government submitted that the alleged failure to provide adequate medical treatment for the applicant's ailments did not satisfy the minimal level of severity requirement under Article 3 of the Convention. They further argued that the applicant had been receiving proper treatment both by the Lepoglava State Prison physician and during his stay at Zagreb Prison Hospital. They also contended that the applicant had refused hospitalisation on three occasions, namely on 17 November 2005 and 16 October and 17 November 2006.

34. The applicant argued that he had seriously suffered as a result of the lack of adequate medical treatment for his condition. He further stressed that surgery related to his kidney ailment had never been offered and that the surgery he had refused had concerned only his varicose veins.

35. 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).

36. 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, §§ 91-94, ECHR 2000-XI).

37. As to the present case, the Court notes at the outset that it is undisputed that the applicant has been suffering from various ailments, including kidney stones, ever since January 2002. The Court considers that the applicant's medical problems, other than the kidney stones, have been adequately addressed by providing painkillers and offering him the possibility of surgery for his varicose veins. In this respect the Court also notes that no further recommendations were made with regard to these ailments.

38. As to the applicant's problem with regard to kidney stones, the Court notes that the medical documentation submitted by the Government shows that the applicant was given spasmolytics for the purpose of relieving him of the pain associated with his kidney ailment on forty-six occasions in the period from 28 February 2003 to 1 August 2007. The Court is thus persuaded that the applicant has occasionally suffered from considerable pain as a result of having a number of stones in his left kidney and right ureter, the only pain relief associated with that ailment being administration of painkillers by the prison physician.

39. As regards the adequacy of the medical care provided to the applicant in this respect, the Court firstly stresses that it is not in a position to make an independent assessment as to the necessity of surgery in connection with the applicant's kidney ailment. However, it notes that doctors in Zagreb Prison Hospital established that even if an operation was not urgent the applicant's kidney condition could be properly removed only by way of surgery. However, that recommendation has never been followed up. Therefore, the Court is not convinced by the Government's submissions.

40. As to the Government's contention that the applicant had refused the hospitalisation offered, the Court notes that the only hospitalisation provided for was in Zagreb Prison Hospital, although it had been clearly established that the recommended surgery could not be carried out in that hospital (see paragraphs 13 and 16 above). The medical documentation submitted shows that the surgery expressly refused by the applicant concerned his varicose veins (see paragraph 16 above).

41. An important factor to be taken into consideration is the time the applicant has spent in detention without surgery for his kidney condition. In this respect the Court notes that the relevant domestic authorities, namely the personnel of Zagreb County Prison, Zagreb Prison Hospital and Lepoglava State Prison, were undoubtedly aware of the applicant's kidney ailment since January 2002, when the first medical report to that effect was drafted. The Court notes however that the Government failed to submit any indication that the Lepoglava Prison or some other authorities undertook any relevant steps to ensure that the surgery recommended in 2003 (see paragraph 12 above) for the applicant's kidney ailment would actually be carried out. In this respect the Court accepts that having surgery carried out in an ordinary hospital on a person serving a prison sentence after having being convicted of serious crimes presents a security risk and might therefore involve a certain degree of associated operational problems, which may cause some delay. However, the medical documentation submitted shows that the relevant authorities, namely the Zagreb Prison Hospital and the Lepoglava State Prison personnel have been aware since July 2003 that the surgery in question was recommended; during a period of more than four years, no steps were taken to have the surgery carried out. In this connection the Court does not consider relevant the Government's

submission that the applicant had been put on the Rebro Hospital waiting list, because there is no mention of any date or even an approximate term within which the actual surgery would take place. Putting the applicant on a waiting list and then failing to ensure that specific and genuine steps be taken over a long period of several years shows that the doctors' recommendation in connection with the applicant's kidney ailment has not been followed up in an adequate manner.

42. The Court considers that by leaving the applicant to suffer considerable occasional pain for a prolonged period of time without a foreseeable prospect of being permanently relieved of his kidney ailment, on account of the Lepoglava State Prison authorities' failure to follow up the applicant's illness and to organise the recommended surgery, the prison authorities failed in fulfilling their obligation to provide the applicant with required medical treatment. In the circumstances of the present case and in particular in view of the substantial duration of the applicant's prison term, such a failure on the part of the domestic authorities is found to go beyond the threshold of severity required under Article 3 of the Convention and constitutes inhuman and degrading treatment within the meaning of Article 3 of the Convention.

43. The Court therefore finds that there has been a violation of that provision.

## II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

44. 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

45. The applicant claimed 100,000 euros (EUR) in respect of non-pecuniary damage.

46. The Government deemed the requested amount excessive.

47. 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 his prison term the applicant has not received adequate medical treatment. That fact has indisputably caused him some physical and mental suffering. Consequently, ruling on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant EUR 2,000 under this head, plus any tax that may be chargeable.

## **B. Costs and expenses**

48. The applicant did not submit a claim for any costs and expenses incurred. Accordingly, the Court considers that there is no call to award him any sum on that account.

## **C. Default interest**

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

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

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of 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, EUR 2,000 (two thousand euros) in respect of non-pecuniary damage, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable;
  - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount 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 17 January 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN  
Registrar

Christos ROZAKIS  
President