



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

FOURTH SECTION

**CASE OF RODIĆ AND 3 OTHERS v. BOSNIA AND
HERZEGOVINA**

(Application no. 22893/05)

JUDGMENT

STRASBOURG

27 May 2008

FINAL

01/12/2008

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 Rodić and 3 Others v. Bosnia and Herzegovina,

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

Nicolas Bratza, *President*,

Lech Garlicki,

Ljiljana Mijović,

David Thór Björgvinsson,

Ján Šikuta,

Päivi Hirvelä,

Mihai Poalelungi, *judges*,

and Fatoş Aracı, *Deputy Registrar*,

Having deliberated in private on 6 May 2008,

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

PROCEDURE

1. The case originated in an application (no. 22893/05) against Bosnia and Herzegovina lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by three citizens of Bosnia and Herzegovina, Mr Milorad Rodić, Mr Vlastimir Pušara and Mr Zoran Knežević, and a citizen of Bosnia and Herzegovina and Croatia, Mr Ivan Baković (“the applicants”), on 22 June 2005.

2. The applicants, who had been granted legal aid, were represented by Mr Z. Malešević, a lawyer practising in Banja Luka. The Government of Bosnia and Herzegovina (“the Government”) were represented by their Deputy Agent, Ms Z. Ibrahimović.

3. The applicants alleged, relying in this connection on Articles 2 and 3 of the Convention, that they had been persecuted by their fellow prisoners from the time of their arrival in Zenica Prison until they were provided with separate accommodation in the Zenica Prison hospital unit. They further alleged that the conditions of their detention in the hospital unit had violated Article 3 of the Convention. Lastly, they alleged that there had been no “effective remedy before a national authority” for their complaints under Articles 2 and 3 as required by Article 13 of the Convention.

4. On 24 June 2005 (in respect of Mr Rodić) and on 29 June 2005 (in respect of the three other applicants), the President of the Fourth Section of the Court decided, under Rule 39 of the Rules of Court, to invite the applicants to discontinue their hunger strike. On 1 July 2005 the applicants complied with the interim measures under Rule 39. On 13 September 2005 the President further decided to give priority to the application in accordance with Rule 41 of the Rules of Court.

5. On 17 January 2006 the Court decided to give notice of the application to the Government. On 6 October 2007, 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

6. The applicants were born in 1946, 1953, 1966 and 1972 respectively. They are currently detained in Mostar Prison in Bosnia and Herzegovina.

7. On different dates the applicants were convicted of war crimes perpetrated against Bosniac (at the time, Bosnian Muslim) civilians during the 1992-95 war in Bosnia and Herzegovina. They were committed to Zenica Prison on 16 August 2004 (Mr Rodić), on 4 February 2005 (Mr Pušara), on 10 May 2005 (Mr Knežević) and on 12 October 2004 (Mr Baković). Zenica Prison is the only maximum-security prison in the Federation of Bosnia and Herzegovina (a constituent Entity of Bosnia and Herzegovina). Its population is mostly made up of Bosniacs (approximately 90 per cent).

8. On 7 March 2005 Mr Pušara asked to be transferred to Foča Prison, in the Republika Srpska (the other constituent Entity of Bosnia and Herzegovina), in order to be closer to his family. On 28 March 2005 the Ministry of Justice of the Federation of Bosnia and Herzegovina (“the Federation Ministry”) informed him that a prison transfer between the two Entities was not allowed.

9. On 2 May 2005 at 6 p.m. offensive graffiti referring to Mr Rodić and Mr Baković were discovered in the prison canteen. Those responsible for the graffiti were never identified.

10. On 19 May 2005 the Federation Ministry informed Mr Knežević also that a prison transfer between the two Entities was not allowed.

11. On 4 June 2005 at 9 p.m., following the screening of a video which showed a 1995 killing of Bosniacs from Srebrenica, another prisoner, N.F., lured Mr Pušara into his cell and punched him in the eye with a clenched fist. On 7 June 2005 Mr Pušara was treated in a civil hospital in Zenica. According to an official report, the attack was ethnically motivated, the attacker had a piece of glass in his hand and the consequences could have been more serious had it not been for the intervention of another prisoner.

12. On 5 June 2005 at 4 p.m. another prisoner, J.H., attacked Mr Baković in the prison canteen. The prison guards intervened after

Mr Baković had received several blows to the head. He was treated in a civil hospital in Zenica on the same day.

13. On 8 June 2005 the applicants declared a hunger strike in order to attract public attention to their situation. They were immediately placed in the Zenica Prison hospital unit.

14. On the same day, the Disciplinary Board of Zenica Prison sentenced N.F. and J.H. to twenty days' solitary confinement in connection with the incidents of 4 and 5 June 2005.

15. On 10 June 2005 the Federation Ministry set up an *ad hoc* commission of independent experts ("the *ad hoc* commission") with a view to investigating the incidents of 4 and 5 June 2005.

16. On 15 June 2005 the Ministry of Justice of Bosnia and Herzegovina ("the State Ministry") ordered the applicants' transfer to Istočno Sarajevo Prison, in the Republika Srpska, for security reasons.

17. On 19 June 2005 the *ad hoc* commission issued its final report. It referred to prison records showing that the prison management had been aware of the need to protect the applicants from the time of their arrival in Zenica Prison. The prison management confirmed to the *ad hoc* commission that special measures had indeed been considered, but that it had been unable to introduce any such measures because of the lack of prison staff, the lack of space (80 prisoners more than the prison's official capacity), the lack of another maximum-security prison in the Federation of Bosnia and Herzegovina and the fact that prison transfers between the Entities were not envisaged. Seven other prisoners detained in Zenica Prison (six Bosniacs and one Serb), who had also been convicted of war crimes, testified before the *ad hoc* commission, claiming that the applicants had good reasons to fear for their lives. The witness of Serb origin, D.S., maintained that he had also been and still was subjected to persecution by his fellow prisoners because of the nature of his offence. The report criticised the prison authorities for their failure to duly protect the applicants.

18. On 21 June 2005 the Federation Ministry ordered that the applicants remain in Zenica Prison, in its hospital unit, until further notice.

19. On 23 June 2005 Zenica Prison entrusted a four-member team (which included three medical doctors) with the monitoring of the applicants' state of health (because of their hunger strike).

20. On 1 July 2005 the applicants discontinued their hunger strike in compliance with the interim measures indicated by the Court (see paragraph 4 above).

21. On 18 July 2005 a delegation of the Parliamentary Assembly of Bosnia and Herzegovina visited Zenica Prison and interviewed the prison management and the applicants. The prison management maintained that the separation of prisoners according to the nature of their offences was not feasible. The applicants, for their part, accused the prison staff of being uncaring. Two reports based on the above interviews were submitted to the

Parliamentary Assembly of Bosnia and Herzegovina: on 27 July 2005 and on 16 September 2005. The first report required, without going into any details, that the applicants' human rights be secured. The second report required, among other things, that equality of conditions between the applicants and other prisoners be secured or, if this was impossible, that the applicants be transferred to another prison.

22. On 18 July 2005 the Disciplinary Board of Zenica Prison found M.H. guilty of an offence against prison discipline (incitement to the attacks on the applicants of 4 and 5 June 2005) and sentenced him to fifteen days' solitary confinement. Furthermore, the prison management filed criminal charges against M.H.

23. On 12 August 2005 the applicants complained to the Constitutional Court of Bosnia and Herzegovina ("the Constitutional Court") about the failure to enforce the decision of 15 June 2005 ordering their transfer to another prison (under Article 6 of the Convention) and about the conditions of their detention in Zenica Prison (under Article 3 of the Convention). They also applied for interim measures (pursuant to Rule 77 of the Constitutional Court's Rules).

24. On 24 November 2005 Mr Baković was transferred to another prison in the Federation of Bosnia and Herzegovina, namely Mostar Prison.

25. On 28 November 2005 the three applicants who had remained in Zenica Prison declared a new hunger strike protesting against the conditions of their detention in the hospital unit. On 30 November 2005 a team appointed by the prison management met with them. It would appear that the applicants acknowledged that some outstanding problems had meanwhile been resolved. However, they did not discontinue their hunger strike until 9 December 2005.

26. On 14 December 2005 Mr Rodić was transferred to Mostar Prison.

27. On 20 December 2005 the Constitutional Court decided not to apply interim measures in the present case.

28. On 20 September 2006 the Constitutional Court decided that it lacked subject-matter jurisdiction to examine the complaint about non-enforcement of the decision of the State Ministry of 15 June 2005, as the impugned decision concerned neither the applicants' "civil rights" nor a "criminal charge" against them. As to the complaint about the conditions of the applicants' detention, the Constitutional Court deemed that the applicants should have petitioned prison inspectors before addressing the Constitutional Court, and dismissed the complaint on non-exhaustion grounds.

29. On 19 October 2006 the remaining two applicants were also transferred to Mostar Prison.

II. RELEVANT LAW AND PRACTICE

A. European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

30. The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment provides non-judicial preventive machinery to protect persons deprived of their liberty. It is based on a system of visits by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (“the CPT”).

31. During its years of activity in the field, the CPT has developed standards relating to the treatment of persons deprived of their liberty. The following are its standards concerning inter-prisoner violence (see the CPT standards, document no. CPT/Inf/E (2002) 1 - Rev. 2006, p. 23):

“The duty of care which is owed by custodial staff to those in their charge includes the responsibility to protect them from other inmates who wish to cause them harm. In fact, violent incidents among prisoners are a regular occurrence in all prison systems; they involve a wide range of phenomena, from subtle forms of harassment to unconcealed intimidation and serious physical attacks.

Tackling the phenomenon of inter-prisoner violence requires that prison staff be placed in a position, including in terms of staffing levels, to exercise their authority and their supervisory tasks in an appropriate manner. Prison staff must be alert to signs of trouble and be both resolved and properly trained to intervene when necessary. The existence of positive relations between staff and prisoners, based on the notions of secure custody and care, is a decisive factor in this context; this will depend in large measure on staff possessing appropriate interpersonal communication skills. Further, management must be prepared fully to support staff in the exercise of their authority. Specific security measures adapted to the particular characteristics of the situation encountered (including effective search procedures) may well be required; however, such measures can never be more than an adjunct to the above-mentioned basic imperatives. In addition, the prison system needs to address the issue of the appropriate classification and distribution of prisoners.

Prisoners suspected or convicted of sexual offences are at a particularly high risk of being assaulted by other prisoners. Preventing such acts will always pose a difficult challenge. The solution that is often adopted is to separate such prisoners from the rest of the prison population. However, the prisoners concerned may pay a heavy price for their – relative – security, in terms of much more limited activities programmes than those available under the normal prison regime. Another approach is to disperse prisoners suspected or convicted of sexual offences throughout the prison concerned. If such an approach is to succeed, the necessary environment for the proper integration of such prisoners into ordinary cell blocks must be guaranteed; in particular, the prison staff must be sincerely committed to dealing firmly with any signs of hostility or persecution. A third approach can consist of transferring prisoners to another establishment, accompanied by measures aimed at concealing the nature of their offence. Each of these policies has its advantages and disadvantages, and the CPT does not seek to promote a given approach as opposed to another. Indeed, the

decision on which policy to apply will mainly depend on the particular circumstances of each case.”

32. Besides its yearly general reports which are always public, the CPT periodically draws up reports on individual States, which are strictly confidential. Nevertheless, if a country fails to cooperate or refuses to improve the situation in the light of the CPT’s recommendations, the CPT may decide to make a public statement. Of course, the State itself may at any time request publication of the CPT’s report, together with its comments.

33. On 21 December 2004 the *Report on the visit to Bosnia and Herzegovina carried out by the CPT from 27 April to 9 May 2003* was published, further to the request of Bosnia and Herzegovina. The following are its relevant parts:

“...

57. Inadequate staffing levels constitute a major problem throughout the prison system of Bosnia and Herzegovina... Deficiencies were also observed at Zenica Prison, where only 24 prison officers were present from 3 p.m. to 7 a.m. for a population of 613 prisoners. Consequently, a number of prison officers in different establishments indicated that they frequently felt that their own security was compromised.

58. The CPT recommends that the relevant authorities conduct a review, without delay, of current staffing arrangements in all prison establishments throughout Bosnia and Herzegovina. The objective should be to ensure that the number of prison officers employed is sufficient to guarantee both staff safety and the physical and mental integrity of inmates.

...

63. Material conditions varied in different parts of Zenica Prison...

Newly-arrived sentenced male prisoners spent the initial period (anywhere from four days to a month) in a distinct reception section containing three dormitories, which were furnished only with bunk beds and imparted a rather austere appearance. Though their occupancy levels were acceptable at the time of the visit, the dormitories would be overcrowded if all of the bunk beds were full.

After the reception period, prisoners were allocated to Pavilions I or III.

64. Pavilion I was the largest within the prison complex (official capacity: 320; 312 occupants at the time of the visit). It was divided into seven large multi-occupancy units (“*kolektive*”), each containing from three to fifteen dormitories, which could accommodate anywhere from two to twenty persons; in contrast, the dormitories in a renovated unit (I-7) were designed for two to four occupants, a far preferable configuration. In addition to dormitories, the units comprised living areas and sanitary facilities. Furnishings were on the whole suitable and included lockers, as well as bunk beds, tables and chairs. However, the unrenovated areas were quite dilapidated, and the damage from the February 2003 riot was evident on the roofs and in the

broken windowpanes. Further, Unit I-1, which was used to accommodate older prisoners (over the age of 45), was overcrowded, there being 58 occupants (allocated between three dormitories) for an official capacity of 46. Its living area/television room, equipped solely with a few rows of benches, imparted a rough, worn impression.

65. Pavilion III (official capacity: 63; 42 occupants at the time of the visit) comprised thirteen dormitories. Its refurbishment had just commenced and the material conditions were similar to those observed in the unrenovated parts of Pavilion I.

66. The recently-renovated Pavilion V (official capacity: 118; 94 occupants at the time of the visit) was separated from the other parts of the prison by a gate; it comprised three units and was in a good state of maintenance and repair. The Pavilion accommodated prisoners who had demonstrated good behaviour, and one of its units (capacity: 35) was used for placement of minors and young adults as well as older inmates; though they slept in separate dormitories, those categories of prisoners were invariably associating with each other (cf. in this regard paragraphs 53, 55, and 105).

67. The two-storey Pavilion II offered cell-type accommodation with integral sanitation; with an official capacity of 88, it had 72 occupants at the time of the visit. The ground floor was used to accommodate remand prisoners and administrative detainees; the first floor held the prisoners undergoing segregation (“*usamljenje*”) or increased supervision (“*pojačan tretman*”), or solitary confinement (“*samica*”) as a disciplinary sanction. Most of the cells on each floor measured 10 m² and were used for single or double occupancy (even if its occupants were formally undergoing “solitary” confinement). The exception was a multi-occupancy cell located on the first floor, used for “increased supervision” placements. It measured 21 m² and was accommodating up to 4 prisoners at the time of the visit, which is an acceptable occupancy level. However, the cell was equipped with 8 beds; it is not sufficiently large for such a number of prisoners.

The delegation observed two serious shortcomings in the segregation and disciplinary cells: certain of them had only one bed for two occupants and the toilets were not partitioned (in contrast with the cells on the ground floor). This meant in practice that inmates were sleeping on mattresses placed on the floor, and were obliged to comply with the needs of nature in full view of their cellmates. Such a situation is totally unacceptable.

68. Pavilion II also contained five cells (three on the ground floor and two on the first floor) used for placement of inmates in a state of agitation; one of them was a padded cell (N° 10, on the ground floor). Sheets of paper bearing the inscription “Cell under video surveillance” were attached with tape to the doors of three of the cells (N° 10, on the ground floor, and Nos. 31 and 32, on the first floor); however, given that no monitors had been supplied, there was no operational video surveillance system. Except for an unpartitioned lavatory, the cells were devoid of furnishings or fixtures; staff indicated that mattresses were provided if persons were placed in the cells. As already indicated, metal panels covering the windows in four of the cells had apparently been removed a few days prior to the visit; however, one of the cells (N° 29) still had such a panel, blocking access to natural light. Having regard to the other information gathered during the visit concerning these cells (cf. paragraph 46), the CPT recommends that immediate steps be taken to ensure that prisoners are never placed in a dark cell for any length of time whatsoever (cf. in this regard Rule 37 of

the European Prison Rules); further, the metal panel covering the window in cell N° 29 should be removed forthwith.

69. In the course of a brief visit to the semi-open sections (Pavilions VI and VII), the delegation observed that the material conditions offered to inmates were of a good standard.

70. To sum up, serious shortcomings in terms of material conditions of detention – due to an inadequate infrastructure or to a deterioration of the premises (often exacerbated by overcrowding) – were present in varying degrees in the establishments visited.

As a priority, the CPT recommends that serious efforts be made to reduce occupancy levels in prisons; the aim should be to provide a minimum of 4 m² of space per person. Further, any cells measuring less than 6 m² should be taken out of service as prisoner accommodation. Where necessary, the partitioning of toilet facilities in multi-occupancy cells should also be improved...

...

73. At the time of the visit, some 60 % of the sentenced prisoners (370 out of 586) at Zenica Prison worked in industrial (different types of metalwork, employing up to 200 inmates) or agricultural settings and in general services (kitchen, bakery, laundry, canteen, audio/video broadcasting within the prison, maintenance and gardening, car repairs). The establishment's industrial workshops were dusty relics of another era, equipped with crumbling, outdated machinery, and providing a hazardous work environment. In contrast, working conditions in the other facilities were satisfactory.

A large area with a hard surface was available for sports such as football and basketball; however, at least at the time of the visit, no such games were organised. Instead, inmates were found to be standing or wandering around the sports area in large groups. Prison management indicated that other sports and recreational activities were also offered to sentenced inmates (including bowling, boxing, table tennis, karate, chess, painting, woodcarving, and other crafts), and that occasional film projections and live musical/variety performances (staged by prisoners) were organised in a theatre located in Pavilion I.

A limited number of inmates took part in educational activities...

74. The fact that Zenica Prison is the only closed prison in the Federation undoubtedly creates obstacles to the delivery of differentiated regimes and treatment programmes tailored to individual inmates and corresponding to variables such as the type of offending behaviour, length of sentence, etc. In this context, the delegation found that there was a lack of differentiation of regimes/treatment programmes for different categories of sentenced prisoners at the establishment or, indeed, a proper system for classification/allocation. As far as the delegation was able to ascertain, a coherent policy for the execution of sentences – including a policy for early release and the provision of social support to prisoners – was absent. Further, the role envisaged for the educators was less than proactive.

The CPT invites the relevant authorities to develop programmes tailored to the profile of different types of prisoners, in light of the foregoing remarks.

75. To sum up, although sentenced prisoners at Zenica Prison did have an appropriate amount of daily time outside their units, there remained a gap between the aspirations professed by management and staff and the programmes of activities which were actually being delivered to many of them; about a third did not benefit from a positive regime which might encourage them to address their offending behaviour. The CPT recommends that the relevant authorities take the necessary steps to ensure that all prisoners at Zenica Prison have access to an appropriate range of work, educational, sports and recreational activities.

...

78. The standard of health care facilities varied widely; they were excellent in Mostar and generally very good in Banja Luka, but were poor in Zenica and [Istočno] Sarajevo Prisons...

The CPT recommends that the health care facilities at Zenica and [Istočno] Sarajevo Prisons be upgraded.

...”

34. On 16 July 2007 the CPT published its *Preliminary observations made by the delegation of the CPT which visited Bosnia and Herzegovina from 19 to 30 March 2007*, further to the request of Bosnia and Herzegovina. Its relevant part reads as follows:

“... [L]et me stress that co-operation also entails making concerted efforts to comply with the recommendations made by the CPT following its previous visits. In this respect, the delegation was concerned to find that no fundamental measures had been taken to improve the situation in the prisons visited or as regards forensic psychiatric patients. This clear lack of co-operation means that, if there is no prompt reaction by the authorities, the Committee may have no other choice than to consider initiating the procedure for making a public statement under Article 10, paragraph 2, of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment...”

The delegation is also seriously concerned about the inter-prisoner violence that appears to be prevalent in the prisons visited. In Zenica Prison, it heard about a number of incidents of inter-prisoner violence, which in at least one instance included one inmate being ordered to kill another prisoner. Not surprisingly, certain prisoners appeared to be fearful for their safety...

In all prisons visited, there was a lack of appropriate accommodation both for vulnerable prisoners and for those requiring increased levels of security. In Zenica Prison, a unit was under construction for the separate accommodation of vulnerable prisoners and plans to transform the forensic psychiatric annexe into a high security unit were being mooted. In Foča Prison, work was already underway to create a high security unit. Such units are sorely needed; there are currently no safe and secure facilities in which to hold dangerous prisoners at either State or Entity level, as the findings from this visit illustrate all too clearly...

Other issues such as activities for prisoners, health care services, staffing, complaints and inspections will be elaborated upon in the visit report...”

B. Constitution of Bosnia and Herzegovina

35. The Constitution entered into force on 14 December 1995, as part of the General Framework Agreement for Peace in Bosnia and Herzegovina. It provides for the direct application of the European Convention on Human Rights in Bosnia and Herzegovina and for the Convention to take precedence over all other law (Article II § 2 of the Constitution). Furthermore, the entire State apparatus (“Bosnia and Herzegovina, and all courts, agencies, governmental organs, and instrumentalities operated by or within the Entities”) is under a duty to “apply and conform to” that Convention (Article II § 6 of the Constitution).

36. The Constitutional Court of Bosnia and Herzegovina was set up pursuant to the Constitution. It has jurisdiction to deal with practically any allegation of a breach of the European Convention on Human Rights. It may award compensation for non-pecuniary damage and adopt any interim measure it deems necessary (Rules 76 § 2 and 77 of the Constitutional Court’s Rules – *Pravila Ustavnog suda Bosne i Hercegovine*; published in the Official Gazette of Bosnia and Herzegovina (“OG BH”) no. 60/05 of 30 August 2005; amendments published in OG BH 76/05 of 31 October 2005).

C. Relevant domestic law and practice

1. Execution of Criminal Sanctions Act 1998 (Zakon o izvršenju krivičnih sankcija u Federaciji Bosne i Hercegovine; published in the Official Gazette of the Federation of Bosnia and Herzegovina (“OG FBH”) no. 44/98 of 23 November 1998; amendments published in OG FBH no. 42/99 of 19 October 1999)

37. This Act has been in force since 1 December 1998. The relevant parts read as follows:

Section 92

“Every inmate is entitled to lodge a complaint with the Ministry [of Justice of the Federation of Bosnia and Herzegovina] ... against members of prison staff alleging a violation of his or her rights.”

Section 152

“In order to ensure a uniform system of execution of prison sentences ... the Ministry [of Justice of the Federation of Bosnia and Herzegovina] shall supervise prisons.

Supervision of the execution of prison sentences shall include the following in particular: the lawful and proper treatment of inmates, supervision of the work and

structure of prisons, the manner of corrective training of inmates, conditions regarding security and self-protection, the work of the security unit, business operations, the manner of implementation of health protection and hygiene measures, inmates' food and clothing and requirements concerning [material conditions].

The supervision referred to in paragraph 2 above shall be performed by [inspectors].

While conducting inspections, the inspectors referred to in paragraph 3 above shall be accorded the same rights, duties and responsibilities as those accorded to the inspectors of the administrative bodies of the Federation of Bosnia and Herzegovina, unless otherwise determined in this Act."

Section 153

"A written report shall be made every time an inspection is carried out. It shall set specific time-limits for rectification of any irregularities and for general improvements if necessary.

The report shall be delivered to the prison governor.

The prison shall comply with any measures ordered.

The prison shall be entitled to lodge objections against any measures ordered, within eight days of receipt of the report."

38. It would appear that there are two prison inspector posts in the Federation of Bosnia and Herzegovina and four in the Republika Srpska (see the Functional Review of the Bosnia and Herzegovina Justice Sector carried out under the auspices of the European Commission in March 2005, pp. 122-23).

2. Administrative Bodies in the Federation of Bosnia and Herzegovina Act 2005 (Zakon o organizaciji organa uprave u Federaciji Bosne i Hercegovine; published in OG FBH no. 35/05 of 20 June 2005)

39. This Act has been in force since 28 June 2005. It sets out further provisions concerning the rights, duties and responsibilities of inspectors. In accordance with section 121 of this Act, every person (natural or legal) is entitled to petition an inspector, who must act upon the petition within fifteen days. The authorities (including the police) and every inspected establishment are obliged to fully cooperate with inspectors (section 122 of the Act). When an irregularity has been found, inspectors will order that it be rectified and set a deadline; they may also impose a fine and/or initiate administrative or criminal proceedings where appropriate (section 125 of the Act). Interim measures may also be ordered (section 130 of the Act).

3. *Civil Obligations Act 1978 (Zakon o obligacionim odnosima; published in the Official Gazette of the Socialist Federal Republic of Yugoslavia (“OG SFRY”) no. 29/78; amendments published in OG SFRY nos. 39/85, 45/89 and 57/89, the Official Gazette of the Republic of Bosnia and Herzegovina nos. 2/92 of 11 April 1992, 13/93 of 7 June 1993 and 13/94 of 9 June 1994, and OG FBH no. 29/03 of 30 June 2003)*

40. This Act regulates, *inter alia*, the law of tort. The main remedy for a tort is an action for damages, but in some cases a permanent injunction can be obtained to prevent repetition of the injury. The following are the relevant provisions of this Act:

Section 157

“1. All persons shall be entitled to request the court or other competent body to order the cessation of an action which violates their personal integrity, private and family life or other personal rights.

2. In the event of a breach of the order for cessation, the court or other competent body may order that a sum of money (either a lump sum or a sum varying according to the duration of the breach) be paid to the injured person.”

Section 172(1)

“A legal person shall be liable for the torts committed *vis-à-vis* a third party by its organs in the course of, or in connection with, the exercise of their functions.”

Section 199

“In the event of a violation of personal rights the court may order ... any form of redress which may be capable of achieving the aim of non-pecuniary damages.”

Section 200(1)

“The court shall award non-pecuniary damages for physical pain, mental anguish caused by reduced vital activities, disfigurement, loss of reputation, violations of freedom or personal rights or the death of a close person and/or for fear, if such award is justified under the circumstances of the case (given, in particular, the intensity and duration of the pain, anguish or fear) and irrespective of any award of pecuniary damages.”

4. Civil Proceedings Act 2003 (Zakon o parničnom postupku; published in OG FBH no. 53/03 of 28 October 2003; amendments published in OG FBH no. 73/05 of 28 December 2005 and 19/06 of 19 April 2006)

41. This Act has been in force since 5 November 2003. It provides for the possibility of seeking a temporary injunction pending court proceedings, or even regardless of the existence of court proceedings, under certain conditions (sections 268-90 of the Act). Section 273(1), in its relevant part, reads as follows:

“For the protection of rights or the *status quo*, the following measures may be ordered:

1. an order addressed to the other party that either prohibits that party from performing a certain action or orders it to carry out a certain action in order to protect the *status quo* or to prevent any damage;

...5. any other necessary measures.”

D. Relevant reports of non-governmental organisations

1. Helsinki Committee for Human Rights in Bosnia and Herzegovina

42. The Helsinki Committee for Human Rights in Bosnia and Herzegovina is a member of the International Helsinki Federation (an international non-governmental organisation which has participatory status with the Council of Europe).

43. The following is the relevant part of its 2002 report on the state of human rights in Bosnia and Herzegovina:

“Following a monitoring of the Helsinki Committee for Human Rights in Bosnia and Herzegovina on the situation in [prisons], the interest of media and public institutions in this issue has been increased. After contradictory information in the press, the Council of Ministers of Bosnia and Herzegovina, on the basis of the findings of a working group, concluded that convicts [of Bosniac origin] maltreat psychically and physically convicts [of Croat and Serb origin] in Zenica [Prison]. The working group established, *inter alia*, that Darko Radinović, after being systematically maltreated, attempted suicide and finally got mentally ill. The UN Mission confirmed that a convict Milomir Tepeš, when asleep, was beaten up with chains and lock. On the occasion of torture in Zenica [Prison], the Council of Ministers initiated an agreement between the Entities on eventual transfer of convicts to other [prisons]. Thus we are on the way of having ethnically cleansed prisons as well.

A [parliamentary] commission of the House of Representatives of the Parliament of Bosnia and Herzegovina asked from the Ministry of Justice of the Federation of Bosnia and Herzegovina to establish the circumstances under which convicts of [Croat origin], Catholics, converted to Islam in Zenica [Prison], following an

allegation that they did it under duress. However, the prison management claims that there was only one voluntary conversion to Islam.”

44. The relevant parts of the Committee’s 2005 report on the state of human rights in Bosnia and Herzegovina read as follows:

“Inter-ethnic relations remain encumbered by attempts of ruling nationalistic parties, primarily the SDA, HDZ and SDS, to maintain ethnic homogeneity. By nourishing fears from the others, insisting on the thesis that other two ethnic groups endanger status of their own nation, these parties manage to keep themselves in power.

Even though the Constitutional Court of Bosnia and Herzegovina passed the decision on the equality of the Serbs, Croats and Bosniacs as constituent peoples across Bosnia and Herzegovina, there is still a strongly expressed wish to establish domination of one ethnic group over the others in areas where it has demographic and political supremacy. Conservation of aggressive nationalism is helped by the fact that criminal laws do not foresee any sanctions against these deeds. Prosecutor’s offices do not react on these occurrences or on those of anti-Semitism, racism and xenophobia, which encourage extreme nationalism.

Fragile inter-ethnic relations are additionally encumbered by the occurrences of ethnically motivated violence and even terrorism.

...

The said as well as many other similar events help to sustain inter-national tensions and fear and prevent the normalisation of the situation in the country. It is concerning that the police very rarely reveal perpetrators of these crimes. Even if the perpetrators become known courts either set them free or punish symbolically which encourages perpetrators.”

2. *Amnesty International*

45. Amnesty International is an international non-governmental organisation which has participatory status with the Council of Europe. On 6 February 2008 it published a report on Bosnia and Herzegovina (“Better keep quiet: ill-treatment by the police and in prisons” – document no. EUR/63/001/2008). The relevant part reads as follows (p. 43):

“In addition to an independent human rights institution, a functioning system of prison inspections can provide another level of accountability for prison staff and a way for the competent authorities to monitor the situation in prisons. It is a matter of serious concern, therefore, that in the Federation of Bosnia and Herzegovina no such system is functioning. The prison management of all establishments in the Federation of Bosnia and Herzegovina visited by Amnesty International informed the organization that no inspection of their prisons had been carried out for a number of years, because the two posts of prison inspectors at the Ministry of Justice of the Federation of Bosnia and Herzegovina have been vacant. In these prisons, inspections by the [State] Ministry of Justice take place only with regard to the situation of a small number of prisoners sentenced by the [State] Court and serving their sentence in prisons [situated in the Federation of Bosnia and Herzegovina]. The Ministry of Justice of the Federation of Bosnia and Herzegovina confirmed that, since mid-2004, no prison inspectors have been employed at [that] Ministry. Moreover, Amnesty

International was informed that [that] Ministry currently employs only one person, at the Assistant Minister level, in its Office for the Execution of Criminal Sanctions, responsible for supervising eight prisons. In contrast, a system of prison inspections appeared to be in place and functioning in the Republika Srpska.”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

46. The applicants complained that the authorities had failed to protect them from persecution by their fellow prisoners (including the attacks of 4 and 5 June 2005). They relied on Article 2, the first paragraph of which provides:

“Everyone’s right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.”

47. The Government invited the Court to reject this complaint as manifestly ill-founded.

48. The Court has already emphasised in previous cases that persons in custody are in a vulnerable position and that the authorities are under a duty to protect them (see *Keenan v. the United Kingdom*, no. 27229/95, § 91, ECHR 2001-III). However, it is only in exceptional circumstances that a physical attack by agents of the State or by third parties which does not result in death may disclose a breach of Article 2 (see, *mutatis mutandis*, *Makaratzis v. Greece* [GC], no. 50385/99, § 51, ECHR 2004-XI).

49. Even assuming that Article 2 could be applicable in the present case in view of the nature and degree of the force used against the applicants, the facts of the case do not disclose any failure by the authorities to protect the applicants’ right to life. This complaint is therefore manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected under Article 35 § 4.

II. ALLEGED VIOLATIONS OF ARTICLE 3 OF THE CONVENTION

50. The applicants raised two distinct complaints under Article 3. First, they complained that the authorities had failed to protect them from persecution by their fellow prisoners in the period from their arrival in Zenica Prison until they were provided with separate accommodation in the Zenica Prison hospital unit. Secondly, they complained about the conditions of their detention in the hospital unit. Article 3 reads as follows:

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

A. Admissibility

51. The Government maintained, in their written observations of 31 March 2006, that the merits of the applicants' complaints under Article 3 should not be examined by the Court because of the applicants' failure to exhaust all effective domestic remedies as required by Article 35 § 1 of the Convention. The Government submitted that the proceedings before the Constitutional Court (which were still pending at the time) were sufficient to afford redress for the alleged breaches. In addition, the applicants could have obtained an injunction (temporary or permanent) and damages in the civil courts. In that connection, the Government indicated a number of cases in which public authorities had been held liable under the Civil Obligations Act 1978 for torts committed by their organs against third parties. They included a final judgment of the Court of Appeal of the Brčko District of Bosnia and Herzegovina of 17 February 2004 (case no. GŽ. 43/04) holding the Federation of Bosnia and Herzegovina civilly liable for a death caused by a member of its armed forces in the course of the exercise of his duties. In another concluded case, a public hospital had been held civilly liable for negligence on account of the death of a patient who fell from his bed (judgment no. GŽ. 213/03 of the Bihać Cantonal Court of 4 May 2005). In their subsequent submissions, the Government enclosed a copy of the Constitutional Court's decision of 20 September 2006 dismissing the applicants' case on procedural grounds (see paragraph 28 above).

52. The applicants raised doubts as to the effectiveness of the domestic legal system with regard to their complaints. In particular, they argued that a civil lawsuit did not offer reasonable prospects of success given the embryonic nature of the domestic case-law in this area.

53. The Court reiterates that the rule of exhaustion of domestic remedies referred to in Article 35 § 1 of the Convention requires applicants first to use the remedies provided by the national legal system, thus dispensing States from answering before the European Court for their acts before they have had an opportunity to put matters right through their own legal system. The rule is based on the assumption that the domestic system provides an effective remedy in respect of the alleged breach. The burden of proof is on the Government claiming non-exhaustion to satisfy the Court that an effective remedy was available in theory and in practice at the relevant time; that is to say, that the remedy was accessible, capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success. However, once this burden of proof has been satisfied it falls to the applicant to establish that the remedy advanced by the Government was in fact exhausted or was for some reason inadequate and ineffective in the

particular circumstances of the case or that there existed special circumstances absolving him or her from the requirement (see *Mirazović v. Bosnia and Herzegovina* (dec.), no. 13628/03, 6 May 2006).

54. The Court has long stated that a mere doubt as to the prospects of success is not sufficient to exempt an applicant from submitting a complaint to the competent authority (see *Elsanova v. Russia* (dec.), no. 57952/00, 15 November 2005). Furthermore, the effectiveness of a remedy does not depend on the certainty of a favourable outcome for the applicant. Nor does the authority before which the remedy is pursued necessarily have to be a judicial authority; but if it is not, its powers and the guarantees which it affords are relevant in determining whether the remedy before it is effective (see *Ramirez Sanchez v. France* [GC], no. 59450/00, § 159, ECHR 2006-...).

55. In the case at hand, the Court has to determine whether or not a petition to prison inspectors, an application for damages or an injunction in the civil courts and a constitutional appeal, taken separately or together, can be considered effective legal remedies within the meaning of Article 35 § 1 of the Convention.

1. Petition to prison inspectors

56. Prison inspectors attached to the Ministry of Justice of the Federation of Bosnia and Herzegovina have the mandate to supervise the treatment of prisoners and material conditions in Zenica Prison. Once petitioned, inspectors are obliged to carry out an inspection, to take any appropriate action and to inform the petitioner about the action taken within fifteen days of the date of petition. Prison inspectors are guaranteed full access to the prison premises and to all documents, prison staff and prisoners. They may take any necessary steps to rectify an irregularity. Their orders, including any orders for interim measures, have to be implemented within a set time-limit. Furthermore, prison inspectors may impose a fine and/or initiate administrative or criminal proceedings where appropriate. While performing their duties, prison inspectors must comply with the European Convention on Human Rights, even if the domestic legislation is not fully in line with that Convention (see paragraph 35 above).

57. It is true that a prison inspector is not a judicial authority, but this does not, of itself, render a petition to such an inspector ineffective (see *Boyle and Rice v. the United Kingdom*, judgment of 27 April 1988, Series A no. 131, § 65, and *Cenbauer v. Croatia* (dec.), no. 73786/01, 5 February 2004). The Court considers it crucial that prison inspectors must act upon any petition and that their orders are legally binding. Furthermore, the conduct of prison inspectors is subject to review by the Constitutional Court, which makes its own assessment of the situation complained of in the light of all the material in its possession (Rule 15 of the Constitutional

Court's Rules). The Constitutional Court may also request an expert opinion (*ibid*).

58. While a petition to prison inspectors, in combination with a constitutional appeal, is capable of providing redress for the alleged breaches, the Government failed to demonstrate that it offered reasonable prospects of success: they were unable to produce a single report prepared by prison inspectors attached to the Ministry of Justice of the Federation of Bosnia and Herzegovina following a prisoner's petition. Indeed, it would appear that the system of prison inspections has not been functioning in the Federation of Bosnia and Herzegovina since 2004 (see paragraph 45 above).

The Court therefore concludes that, as matters stand, a petition to a prison inspector attached to the Ministry of Justice of the Federation of Bosnia and Herzegovina does not constitute an effective remedy for the alleged breaches.

2. Application for damages and an injunction in the civil courts

59. As a matter of domestic law, a person who claims that public authorities or private individuals have violated his or her personal integrity, privacy or other personal rights may seek damages and/or an injunction (both temporary and permanent) in the civil courts in accordance with the general law of tort (see paragraphs 40-41 above).

60. As to the effectiveness of that remedy in the case of prisoners, the Government failed to provide any examples of cases in which an application for an injunction (either temporary or permanent) had been granted. Even assuming that an application for damages offered reasonable prospects of success in this context (although the domestic judgments to which the Government referred do not directly concern prisoners), the Court observes that an award of damages alone, in the absence of other measures, cannot constitute appropriate and sufficient redress for the alleged breaches (see the admissibility decision in *Cenbauer*, cited above).

Accordingly, the applicants were not required to make use of that remedy.

3. Constitutional appeal

61. The Court has established above that a petition to prison inspectors attached to the Ministry of Justice of the Federation of Bosnia and Herzegovina is not an effective remedy (see paragraphs 56-58 above). As it is undisputed that the Constitutional Court deals with complaints about conditions of detention only if prison inspectors have been petitioned beforehand (indeed, the Constitutional Court applied the same criterion in the present case), the Court considers that a constitutional appeal cannot be regarded as an effective remedy for the purposes of Article 35 § 1 of the Convention in respect of the alleged breaches.

Therefore, the Court will not dismiss the present application on account of the applicants' failure to apply to the Constitutional Court in the proper manner.

4. Conclusion

62. For the reasons outlined above, the Government's objection is dismissed.

63. The Court notes that the applicants' complaints under Article 3 are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible. In accordance with its decision to apply Article 29 § 3 of the Convention (see paragraph 5 above), the Court will immediately consider the merits of the complaints.

B. Merits

1. The period from the applicants' arrival in Zenica Prison until they were provided with separate accommodation in the Zenica Prison hospital unit

64. The applicants alleged that they had been persecuted by their fellow prisoners throughout the period in issue because of their Serb and Croat origin and the nature of their offences (war crimes against Bosniacs). The actual incidents varied from spitting in their food and spilling water on their beds to death threats and beatings. The authorities had allegedly done nothing to ease their situation. In the applicants' opinion, their detention in such conditions amounted to inhuman or degrading treatment or punishment within the meaning of Article 3.

65. The Government argued in favour of the official policy of integration of those convicted of war crimes into the mainstream prison system. They submitted newspaper articles citing politicians and experts arguing strongly against mono-ethnic prisons. While accepting that incidents such as those of 4 and 5 June 2005 might occur from time to time owing to the post-war context, they denied the existence of a pattern of harassment against the applicants or any other prisoners of Serb or Croat origin in Zenica Prison or elsewhere. As to the attacks of 4 and 5 June 2005 specifically, the Government maintained that they could not have been foreseen, let alone prevented.

66. As the Court has held on many occasions, Article 3 enshrines one of the most fundamental values of 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* [GC],

no. 26772/95, § 119, ECHR 2000-IV and *Pantea v. Romania*, no. 33343/96, § 189, ECHR 2003-VI).

67. 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 relative: it depends on all the circumstances of the case, such as the nature and context of the treatment, its duration, its physical and mental effects and, in some instances, the sex, age and state of health of the victim (see *A. v. the United Kingdom*, judgment of 23 September 1998, *Reports* 1998-VI, p. 2699, § 20). In the case of prisoners, the Court has consistently stressed that the Contracting States 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 *Kudla v. Poland* [GC], no. 30210/96, §§ 93-94, ECHR 2000-XI, and *Cenbauer v. Croatia*, no. 73786/01, §§ 43-44, ECHR 2006-...).

68. Turning to the present case, the Court cannot consider that the policy of integration of those convicted of war crimes into the mainstream prison system is inherently inhuman or degrading (see, *mutatis mutandis*, *McQuiston and Others v. the United Kingdom*, no. 11208/84, Commission decision of 4 March 1986, *Decisions and Reports* 46, p. 182). However, it cannot be ruled out that the implementation of that policy may raise issues under Article 3.

69. It is well known that the three main ethnic communities in Bosnia and Herzegovina (Bosniacs, Croats and Serbs) were at war against each other from 1992 until 1995. Because of all the atrocities committed during the war, inter-ethnic relations were still strained and occurrences of ethnically motivated violence were still relatively frequent during the period under examination (see paragraph 44 above).

70. It is relevant to the present case that inter-ethnic relations in Zenica Prison did not remain unaffected. Indeed, serious incidents of ethnically motivated violence directed against prisoners of Serb and Croat origin were reported there (see paragraph 43 above). Taking into consideration also the ethnic composition of the population of Zenica Prison (approximately 90 per cent of prisoners are Bosniacs) and the nature of the applicants' offences (war crimes against Bosniacs), it is clear that the applicants' detention in Zenica Prison entailed a serious risk to their physical well-being.

71. Despite this, the applicants were placed in ordinary cell blocks in Pavilion I (after an initial period of short duration in a reception unit), where they had to share a cell with up to twenty other prisoners and share communal facilities with an even larger number of prisoners (see paragraph 33 above). Furthermore, Zenica Prison was experiencing a serious shortage

of staff during the period under examination (see paragraphs 33 and 34 above). The Court has taken note of the Government's claim that the relevant authorities had no real choice but to place the applicants in ordinary cell blocks in Zenica Prison, given that Zenica Prison was the only maximum-security prison in that part of the country and lacked facilities for separate accommodation of vulnerable prisoners. However, such structural shortcomings are of no relevance to the obligation of the respondent State to adequately secure the well-being of prisoners.

72. The Court lends particular weight to the fact that, notwithstanding the existence of a serious risk to the applicants' physical well-being, no specific security measures were introduced in Zenica Prison for several months. The applicants were provided with separate accommodation in the Zenica Prison hospital unit only after the attacks of 4 and 5 June 2005, their declaration of a hunger strike and the consequent media attention, which occurred almost ten months after the first of the applicants had arrived in Zenica Prison. The Court is satisfied that the prison management was aware of the seriousness of the applicants' situation throughout that period, as shown during the domestic investigations (see paragraph 17 above). The Government's claim to the contrary is thus rejected.

73. The Court concludes that the applicants' physical well-being was not adequately secured in the period from their arrival in Zenica Prison until they were provided with separate accommodation in the Zenica Prison hospital unit (a period which lasted between one and ten months depending on the applicant). Furthermore, the Court considers that the hardship the applicants endured, in particular the constant mental anxiety caused by the threat of physical violence and the anticipation of such (see, *mutatis mutandis*, *Tyrer v. the United Kingdom*, judgment of 25 April 1978, Series A no. 26, pp. 16-17, § 33), must have exceeded the unavoidable level inherent in detention and finds that the resulting suffering went beyond the threshold of severity under Article 3 of the Convention.

There has accordingly been a violation of Article 3 of the Convention in this respect.

2. The conditions of the applicants' detention in the Zenica Prison hospital unit

74. The applicants further complained, in general terms, about the conditions of their detention in the Zenica Prison hospital unit.

75. The Government submitted detailed observations in this connection: the hospital unit was divided into six rooms, each accommodating up to three persons; each applicant was allocated approximately 5.7 m² of personal space; the rooms had windows, measuring approximately 3.4 m², which could be opened to allow fresh air to circulate; artificial lighting and heating were also provided; the applicants had unlimited access to the sanitation facilities (shower and toilets) and drinking water; they were able

to watch television in their rooms and to obtain newspapers; the rooms were regularly cleaned; food was served in the hospital canteen three times a day, always freshly prepared; the applicants were allowed to walk outside in the fresh air every day between 8 a.m. and 10 a.m. and between 2 p.m. and 4 p.m.; and work activities were offered to the applicants. The Government also asked the Court not to confuse the Zenica Prison hospital unit with Zenica Prison Forensic Psychiatric Annex, with which it had dealt in *Hadžić v. Bosnia and Herzegovina* ((dec.), no. 11123/04, 11 October 2005).

76. The general principles concerning the conditions of detention are outlined in paragraph 67 above.

77. The Court notes that the applicants were allocated more than 4 m² of personal space (which is the minimum requirement for a single inmate in multi-occupancy cells under the CPT standards). While their rooms were equipped with neither a toilet nor running water, the Government claimed that the applicants had unlimited access to the communal sanitation facilities (including at night). The applicants did not deny that claim. The applicants did not deny either the adequacy of their access to natural light, ventilation, heating and artificial lighting. It is true that the CPT recommended that the Zenica Prison hospital unit be “upgraded” (see paragraph 33 above), but there is no indication that the facilities in issue were such as to render their use inhuman or degrading within the meaning of Article 3 of the Convention.

78. The Court further observes that, having been under special protection, the applicants could not benefit from the entire range of available work, educational and recreational activities. It must be noted, however, that they were able to watch television and obtain reading materials without restrictions. In addition, the Court considers that they had an appropriate amount of daily time outside the hospital unit. Overall, the Court does not find it established that the conditions of the applicants’ detention in the Zenica Prison hospital unit attained a sufficient level of severity to come within the scope of Article 3 of the Convention.

There has accordingly been no violation of that Article in this respect.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

79. Lastly, the applicants complained under Article 13 of the Convention that they had not had an “effective remedy before a national authority” for their Convention complaints. Article 13 provides:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

A. Admissibility

80. The Government invited the Court to declare this complaint inadmissible as manifestly ill-founded.

81. Article 13 has been consistently interpreted by the Court as requiring a remedy in domestic law only in respect of grievances which can be regarded as “arguable” in terms of the Convention (see, for example, *Powell and Rayner v. the United Kingdom*, judgment of 21 February 1990, Series A no. 172, p. 14, § 31). The criteria for considering a claim as “arguable” cannot be construed differently from the criteria applied when declaring claims “manifestly ill-founded” (see *Powell and Rayner*, cited above, § 33, and *Kienast v. Austria*, no. 23379/94, § 54, 23 January 2003). At the same time, notwithstanding the terms of Article 13 read literally, the existence of an actual breach of another provision of the Convention (a “substantive” provision) is not a prerequisite for the application of Article 13 (see *Klass and Others v. Germany*, judgment of 6 September 1978, Series A no. 28, p. 29, § 64, and *Boyle and Rice*, cited above, p. 23, § 52).

82. Turning to the instant case, the Court considers that since the applicants’ complaint under Article 2 of the Convention has been declared “manifestly ill-founded” (see paragraph 49 above), it cannot be regarded as “arguable” for the purposes of Article 13. The applicants’ complaint under Article 13 taken in conjunction with Article 2 is thus likewise manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected under Article 35 § 4.

83. On the other hand, the Court considers that the applicants’ complaints under Article 3 of the Convention can be regarded as “arguable” for the purposes of Article 13, notwithstanding the fact that it has not found it established that there has been a violation of Article 3 in respect of one of those complaints (the one concerning the conditions of the applicants’ detention in the Zenica Prison hospital unit). It is crucial that the complaint in issue was not declared manifestly ill-founded and that it accordingly necessitated an examination on the merits (see *Çelik and İmret v. Turkey*, no. 44093/98, § 57, 26 October 2004). The applicants’ complaint under Article 13 taken in conjunction with Article 3 must therefore be declared admissible. In accordance with its decision to apply Article 29 § 3 of the Convention (see paragraph 5 above), the Court will immediately consider the merits of the complaint.

B. Merits

84. The parties disagreed as to the effectiveness of the domestic legal system with regard to the applicants’ complaints under Article 3 of the Convention (see paragraphs 51-52 above).

85. On the basis of the evidence adduced in the present case, the Court has found that the applicants had no effective domestic remedy at their disposal for their Article 3 complaints (see paragraphs 56-61 above). The Court concludes, for the same reasons, that there has been a violation of Article 13 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

86. 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

87. The applicants claimed 5,000 euros (EUR) each in respect of pecuniary damage (travel expenses allegedly incurred by their family members in order to visit the applicants in Zenica Prison) and EUR 20,000 each in respect of non-pecuniary damage. The Government considered the amounts claimed to be excessive.

88. The Court does not discern any causal link between the violations found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, the Court accepts that the applicants suffered considerable distress in connection with the violations found. Having regard to the amounts awarded in comparable cases (see *Mayzit v. Russia*, no. 63378/00, §§ 42 and 88, 20 January 2005; *Labzov v. Russia*, no. 62208/00, § 59, 16 June 2005; the judgment in *Cenbauer*, cited above, §§ 52 and 57; and *Benediktov v. Russia*, no. 106/02, § 50, 10 May 2007) and to the length of time between each applicant's arrival in Zenica Prison and their being provided with separate accommodation in the hospital unit, the Court awards Mr Rodić EUR 4,000, Mr Pušara EUR 2,000, Mr Knežević EUR 2,000 and Mr Baković EUR 4,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

89. The applicants also claimed EUR 17,170 for the costs and expenses incurred in the proceedings before the Court. They submitted a relatively detailed bill of costs. The Government considered the amount claimed to be excessive.

90. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown

that these have been actually and necessarily incurred and are also reasonable as to quantum (see, for example, *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 54, ECHR 2000-XI).

91. Notwithstanding the number of applicants and the complexity of the issues examined (the Court had to examine, among other things, the effectiveness of the domestic legal system with regard to complaints about prison conditions, which entailed repeated observations), the Court agrees with the Government that the amount claimed by the applicants is excessive. Having regard to the tariff fixed by the local bar associations, which the Court considers reasonable in the circumstances of this case, the applicants' representative is entitled to approximately EUR 8,000 in total, given that he submitted an initial application in one of the official languages of Bosnia and Herzegovina and, at the request of the Court, five written pleadings in English (see, *mutatis mutandis*, *Šobota-Gajić v. Bosnia and Herzegovina*, no. 27966/06, § 70, 6 November 2007). In addition, the Court awards the sum of EUR 200 for secretarial and other expenses. The amount granted under the Council of Europe's legal aid scheme (EUR 1,700) is to be deducted from the total amount.

92. The applicants should therefore receive, under this head, EUR 6,500, plus any tax that may be chargeable to the applicants.

C. Default interest

93. 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 complaints under Article 3 and Article 13 taken in conjunction with Article 3 admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 3 of the Convention in respect of the period from the applicants' arrival in Zenica Prison until they were provided with separate accommodation in the Zenica Prison hospital unit;
3. *Holds* that there has been no violation of Article 3 of the Convention in respect of the conditions of the applicants' detention in the Zenica Prison hospital unit;

4. *Holds* that there has been a violation of Article 13 of the Convention taken in conjunction with Article 3;
5. *Holds*
 - (a) that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 4,000 (four thousand euros) to Mr Rodić, EUR 2,000 (two thousand euros) to Mr Pušara, EUR 2,000 (two thousand euros) to Mr Knežević and EUR 4,000 (four thousand euros) to Mr Baković, plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into convertible marks at the rate applicable at the date of settlement;
 - (b) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 6,500 (six thousand five hundred euros), plus any tax that may be chargeable to the applicants, in respect of costs and expenses, to be converted into convertible marks at the rate applicable at the date of settlement;
 - (c) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
6. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 27 May 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

Nicolas Bratza
President