



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

1959 · 50 · 2009

FOURTH SECTION

CASE OF HALILOVIĆ v. BOSNIA AND HERZEGOVINA

(Application no. 23968/05)

JUDGMENT

STRASBOURG

24 November 2009

FINAL

01/03/2010

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 Halilović 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 Section Registrar*,

Having deliberated in private on 3 November 2009,

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

PROCEDURE

1. The case originated in an application (no. 23968/05) 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 a citizen of Bosnia and Herzegovina, Mr Mirsad Halilović (“the applicant”), on 23 June 2005.

2. The applicant, who had been granted legal aid, was represented by Ms M. Grizović, a lawyer practising in Zenica. The Government of Bosnia and Herzegovina (“the Government”) were represented by their Agent, Ms M. Mijić.

3. On 9 December 2008 the Court decided to communicate to the Government the complaints about the conditions and lawfulness of the applicant's detention, and declared the remainder of the application inadmissible. It also decided to examine the merits of these complaints at the same time as their admissibility (Article 29 § 3) and to give priority to the application in accordance with Rule 41 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1968.

5. On 11 October 2004 he attempted to kill O.A. under the delusion that he was persecuting him.

6. On 29 March 2005 the Zenica Cantonal Court found the applicant not guilty by reason of insanity (paranoid schizophrenia) and referred the case to the Social Work Centre in Tešanj. The judgment took effect on 12 May 2005.

7. On 17 May 2005 the Zenica Cantonal Court provisionally placed the applicant in Zenica Prison Forensic Psychiatric Annex, pending a decision of the Social Work Centre in Tešanj.

8. On 16 June 2005 the Social Work Centre in Tešanj decided that the applicant should remain indefinitely in Zenica Prison Forensic Psychiatric Annex under the Mental Health Act. The applicant appealed to the Cantonal Ministry for Social Affairs in Zenica pursuant to the instructions of the Social Work Centre. On 31 October 2005 the file was transferred to the Ministry of Social Affairs of the Federation of Bosnia and Herzegovina and on 23 November 2005 to the Ministry of Justice of the Federation of Bosnia and Herzegovina, where it remains.

9. The applicant lodged two applications with the Constitutional Court of Bosnia and Herzegovina. The first application was dismissed on 21 December 2006 as having been lodged out of time (more than 60 days after the effective date of the judgment of 29 March 2005) and the second one was dismissed on 14 July 2008 because of the applicant's failure to substantiate his case and provide a copy of the judgment of 29 March 2005.

10. On 12 May 2009 the Forensic Psychiatric Annex was relocated to one of the renovated facilities in Zenica Prison which contains seven dormitories of three beds. While the applicant was treated in a civil hospital from 17 April until 22 May 2009 and has been on home leave since then, the administrative decision of 16 June 2005 remains in effect and the applicant therefore has to report regularly to the prison authorities.

II. RELEVANT INTERNATIONAL LAW AND PRACTICE

11. The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment provides non-judicial preventive machinery for the protection of 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 (CPT). The CPT periodically draws up reports on individual States, which are strictly confidential. Nevertheless, if a State 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. The State itself may at any time request publication of the CPT's report, together with its comments.

12. The relevant part of the CPT's report on the visit to Bosnia and Herzegovina carried out from 27 April to 9 May 2003 reads as follows:

“70. ... 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.

...

84. Zenica Prison Forensic Psychiatric Annexe opened as a temporary accommodation for forensic psychiatric patients in 1996. It is the only closed forensic psychiatric unit on the territory of the Federation [of Bosnia and Herzegovina]. With an official capacity of 64 beds, it is located on the first floor of Pavilion IV; at the time of the visit, it was accommodating 69 patients.

...

85. According to the Prison Director, himself a doctor and psychiatrist, the Forensic Psychiatric Annexe is 'a huge problem which remains unsolved since 1996'. The Director explained that 'this temporary facility offered conditions which are worse than the conditions for the ordinary prisoners in the other parts of the establishment', a situation that he described as 'absurd'. He stated that, 'on principle, the Forensic Psychiatric Annexe should not be located within a high security prison'.

...

87. With regard to material conditions, the 69 patients held in the Annexe at the time of the visit were accommodated in two large rooms (some 110 m² each, respectively with 35 and 31 beds, including bunk beds) and one small room (19 m²; 6 beds, 2 of them bunk), the latter holding 'privileged' patients. It is clear from the above that living space per patient was grossly insufficient at the time of the visit and several patients routinely asked the staff to be transferred into the isolation/seclusion room (8 m²) to gain some private space. Over and above the issue of overcrowding, the CPT must stress that large capacity dormitories are not conducive to the health needs of patients. Provision of accommodation structures based on small groups is a crucial factor in preserving/restoring patients' dignity, and also a key element of any policy for the psychological and social rehabilitation of patients.

88. Bedding, access to natural light and ventilation were globally satisfactory. There was also a relatively large dining area, used as a television/day room. However, the general level of maintenance and hygiene in the Annexe was poor. The patient's bathroom area (only one shower, two floor toilets and one long basin) was particularly filthy and unhygienic. Further, the delegation was informed, both by patients and staff, that the heating system in winter was deficient.

To sum up, the material conditions within which the patients were held did not meet hospital standards, in particular as regards hygiene. In addition, the very nature of the facilities in the Annexe left no scope for grouping patients with similar problems/strengths (e.g. acute ward, rehabilitation, etc.) or organising occupational activities, a situation the delegation found detrimental to the patients' treatment, a conclusion fully shared by both the visiting psychiatrist and the Prison Director.

89. At the time of the visit, staff at the Annexe consisted of one visiting psychiatrist (three mornings - 3 to 4 hours - a week), one head nurse and four nurses (the latter on 12 hour shifts), as well as one occupational therapist (in the absence of appropriate facilities for occupational therapy activities, the 'occupational therapist' assisted the nurses on the morning shift). The head nurse, another nurse, the occupational therapist

and a prison officer were present in the Annexe during the morning shift on weekdays, and a nurse and a prison officer at night and weekends (at night and during weekends, the nurse was also responsible for covering the prison medical unit). The delegation was further informed that posts for one full-time psychiatrist, one psychologist and one social worker were vacant.

In the CPT's opinion, such staffing levels are totally inadequate to provide an appropriate quality of care to some 70 chronic psychiatric patients, some of whom were disturbed or requiring constant nursing care (geriatric patients/incontinent patients). In addition, nursing staff cover as low as that observed during the visit rendered vulnerable patients even less able to protect themselves, in particular against episodes of inter-patient violence.

90. A very limited number of patients had access to some organised activity; they regularly visited the Prison's training facility (e.g. Information Technology) and followed language courses. In contrast, the vast majority of patients spent their day in total idleness, with no activities apart from cleaning duties, watching television, playing chess or reading. On a more positive note, patients had the exclusive use of a large walled garden/walking area equipped with seats and benches (though no shelter against inclement weather). Patients whose state of health permitted were allowed two hours outdoor exercise every day, plus one additional hour in the main prison 'hard surface' recreation ground.

91. Treatment was limited to pharmacotherapy. Haloperidol and fluphenazine depot were mostly used. Clozapine was also available; in this context, the delegation noted that there was no facility for routine blood monitoring of the patients on clozapine. This facility should be guaranteed in order to safeguard the patient's physical safety. As for [electroconvulsive therapy], the delegation was informed that it had been abandoned a long time ago.

Medical files were kept for each patient and medical confidentiality was guaranteed. However, it was clear that no individualised treatment plans supported by a multidisciplinary team were implemented at the Annexe.

...

94. Facilities offered to patients for contacts with the outside world were very good. Nearly all patients received visits in a dedicated visit area and access to a telephone was available. The delegation noted that unsupervised visits (including with spouses) were also possible.

...

96. The delegation was informed that there was unanimous agreement within the psychiatric and prison system, as well as at a political level, that 'this group of forensic psychiatric patients required hospital conditions and that the treatment and conditions in the Zenica Prison Forensic Psychiatric Annexe were not acceptable'. The delegation was further informed that the Ministry of Justice of the Federation had allocated 3,000,000 convertible marks in 2002 to allow relocation of the forensic psychiatric annexe and provision of proper facilities. However, this decision was not implemented, as no municipalities within the Federation were ready to accept such a facility on their territory. At the time of the visit, the situation was still unresolved.

97. At the final talks held in Sarajevo in May 2003, the delegation clearly indicated that 'placing mentally disordered patients in 30-bed, overcrowded dormitories in an essentially custodial environment can no longer be tolerated' and expressed its support for the initiative taken by the authorities in 2002 to finance the renovation and relocation programme aimed at remedying the situation, and involving the health authorities to a much greater extent. The delegation asked to receive within three months further information on this issue, including realistically achievable objectives to resolve this urgent matter.

98. On 1 October 2003, the authorities provided the following information to the CPT.

After the CPT's visit, an expert team was set up under the Ministry of Health, which carried out an inspection at Zenica Prison Forensic Psychiatric Annexe. Its findings fully confirm the observations of the CPT's delegation (overcrowded dormitories and lack of space in general, lack of nursing staff, no adequate treatment for the patients, very poor hygiene and deficient heating, etc.). The expert team came to the conclusion that 'conditions for patients [were] extremely inhuman and untenable' and that measures had to be taken urgently to remedy the situation.

In response to this report, the Ministry of Justice and the Ministry of Health of the Federation decided to implement the following urgent measures until a new place is found to relocate the forensic psychiatric institution: improvement of hygiene; reduction of the number of beds in the dormitories; drafting of specific house rules for the Annexe; setting up a register on cases of use of force/restraint; 'self-defence' training for staff.

99. The CPT welcomes the efforts made by the authorities to solve, on an urgent basis, some serious deficiencies observed during the visit of its delegation and would like to receive updated information on the progress made in this domain.

However, as the authorities themselves acknowledge, this state of affairs cannot be prolonged further. The Committee therefore recommends that the authorities provide within three months a workable strategy to facilitate the relocation of the Forensic Psychiatric Annexe to a site which could offer the potential to remedy the numerous shortcomings observed by the CPT's delegation.

100. Until this relocation becomes a reality, and in addition to the measures already announced above (cf. paragraph 98), the CPT recommends that the authorities take the following immediate steps:

- to fill the three vacant posts (full time psychiatrist, psychologist and social worker);
- to substantially reinforce the nursing team with properly trained staff;
- to considerably increase the number of patients benefiting from occupational activities;
- to establish an individual treatment plan for each patient, based on a multidisciplinary approach;

- to provide a facility for routine blood monitoring of patients on clozapine, with a view to guaranteeing their physical safety;

- to establish a written policy on the use of isolation/means of restraint in accordance with the criteria set out by the CPT (CPT/Inf (98) 12, paragraphs 47-50).

As regards material conditions, the CPT recommends that the Annexe be provided with adequate heating in the winter and that supplementary shower facilities be at the patients' disposal. The outdoor exercise facility should also offer, as far as possible, shelter from inclement weather.

...”

13. In its preliminary observations on a visit to Bosnia and Herzegovina carried out from 19 to 30 March 2007, the CPT noted that although Zenica Prison Forensic Psychiatric Annex was less crowded than during previous visits, the material conditions had continued to deteriorate and remained wholly unacceptable for a health-care institution.

III. RELEVANT DOMESTIC LAW AND PRACTICE

14. The relevant domestic law and practice have been outlined in *Tokić and Others v. Bosnia and Herzegovina*, nos. 12455/04, 14140/05, 12906/06 and 26028/06, §§ 49-53, 8 July 2008. Article 410 of the Code of Criminal Procedure of the Federation of Bosnia and Herzegovina 2003¹ has since been amended. It now provides that if an offender has been found not guilty by reason of insanity, the competent criminal court will order his or her compulsory confinement in a psychiatric hospital for a maximum period of six months and refer the case directly to the competent civil court. Such cases used to be referred to the Social Work Centres which, however, systematically failed to refer them to the civil courts and themselves made the decision whether to place an offender in psychiatric detention (this indeed happened in the present case).

¹ *Zakon o krivičnom postupku Federacije Bosne i Hercegovine*, published in the Official Gazette of the Federation of Bosnia and Herzegovina no. 35/03 of 28 July 2003, amendments published in Official Gazette nos. 37/03 of 31 July 2003, 56/03 of 14 November 2003, 78/04 of 31 December 2004, 28/05 of 11 May 2005, 55/06 of 20 September 2006, 27/07 of 18 April 2007, 53/07 of 8 August 2007 and 9/09 of 11 February 2009.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

15. The applicant complained, in general terms, that the conditions of detention in Zenica Prison Forensic Psychiatric Annex, before the relocation of the Annex to a renovated facility on 12 May 2009, constituted treatment contrary to Article 3 of the Convention, which reads as follows:

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

16. The Government described the material conditions as follows: prior to its relocation to a renovated facility, Zenica Prison Forensic Psychiatric Annex consisted of two large dormitories (some 110 m² each), one small room (19 m²), a relatively large dining area (used as a television/day room) and a bathroom area (with three toilets and a shower); in January 2009, it accommodated 24 patients altogether and the applicant shared one of the large dormitories with eleven other persons; the patients were allowed two hours' outdoor exercise every day, plus four additional hours in the recreation ground; they were also allowed visits and home leave. The Government submitted that the applicant received adequate psychiatric treatment, based on an individual plan, by two visiting psychiatrists (present at the premises for three half-days a week) and referred to an expert report of February 2008 indicating the improvement of the applicant's mental health. Lastly, the Government underlined that routine blood testing of patients on clozapine was provided, as the CPT had requested, in a civil hospital.

17. For the general principles concerning the conditions of detention see *Rodić and Others v. Bosnia and Herzegovina*, no. 22893/05, § 67, 27 May 2008.

18. It has not been disputed before the Court that Zenica Prison Forensic Psychiatric Annex was overcrowded when the CPT carried out its visit in 2003. However, it transpires from the documents in the file that the number of patients has gradually decreased from 69 (in May 2003) to 24 (in January 2009) and that the applicant had more than 4 m² of personal space (the minimum space requirement which the CPT indicated in paragraph 70 of its report on its visit to Bosnia and Herzegovina) throughout the period under consideration. Furthermore, the applicant had an appropriate amount of daily time outside the dormitory and there is no indication of any deficiencies as regards his access to the communal sanitation facilities (including at night), natural light, ventilation or artificial lighting. It is true that the CPT noted some deficiencies in 2003 regarding the heating system and the general level of maintenance and hygiene in the Annex, but the

Government immediately agreed to remedy them. In the absence of any evidence to the contrary in its possession, the Court sees no reason to doubt that this had indeed been done by the time the applicant arrived at the Annex.

As regards the medical treatment provided to the applicant, the Court recalls that the lack of appropriate medical care may amount to a breach of Article 3 (see *Dybeku v. Albania*, no. 41153/06, § 41, 18 December 2007). Furthermore, the feeling of inferiority and powerlessness which is typical of persons who suffer from a mental disorder calls for increased vigilance in reviewing whether the Convention has been complied with (*ibid.*, § 47). However, unlike in *Dybeku* where the applicant was treated like other inmates, notwithstanding his suffering from chronic paranoid schizophrenia, which together with entirely inappropriate material conditions clearly had a detrimental effect on his health and well-being, the applicant in the present case shared one of the dormitories in Zenica Prison Forensic Psychiatric Annex with other psychiatric patients and received a regular psychiatric treatment. Moreover, although the general conditions in the Annex were unsatisfactory in terms of the hospital standards (as noted by the CPT), the applicant's mental health improved during his detention therein, as evidenced by a recent expert report submitted by the Government.

In those circumstances, the applicant cannot argue that his treatment was inhuman or degrading within the meaning of Article 3 (see *Aerts v. Belgium*, 30 July 1998, § 66, *Reports of Judgments and Decisions* 1998-V).

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 VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

19. The applicant further complained that his detention pursuant to an administrative decision was unlawful. He relied on Article 5 § 1 (e) of the Convention, the relevant part of which reads as follows:

“1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

...

(e) the lawful detention ... of persons of unsound mind ...”

A. Admissibility

20. The Government maintained – and the applicant disagreed – that this part of the application should be dismissed on non-exhaustion grounds. First of all, since his appeal against the administrative decision of 16 June 2005

was still pending (see paragraph 8 above), the applicant should have lodged an appeal against the “silence of the administration”. Secondly, the applicant failed to properly apply to the Constitutional Court (see paragraph 9 above).

21. For the general principles concerning the exhaustion of domestic remedies see *Tokić and Others*, cited above, § 59.

22. As regards the first remedy suggested by the Government, the Court notes that on 21 December 2006 the Constitutional Court of Bosnia and Herzegovina held that those who complained of the unlawfulness of their detention in Zenica Prison Forensic Psychiatric Annex had not had an effective remedy at their disposal as from 1 August 2003 besides an appeal to the Constitutional Court itself (see decision AP 2271/05, § 54). The Court does not see any reason to depart from the decision of the Constitutional Court. Since the assessment of whether domestic remedies have been exhausted is normally carried out with reference to the date on which an application was lodged with the Court (see *Pralica v. Bosnia and Herzegovina*, no. 38945/05, § 13, 27 January 2009), which is 23 June 2005 in the present case, the applicant was not required to lodge an appeal against the “silence of the administration”.

As regards the second remedy, it is noted that the Constitutional Court, in the decision mentioned above, ordered some general measures which have not yet been complied with: while the Code of Criminal Procedure has recently been amended (see paragraph 14 above), persons held in Zenica Prison Forensic Psychiatric Annex still have to wait to be transferred to a health-care institution. Having regard also to the applicant's particularly vulnerable position (a psychiatric detainee), the Court considers that the Government's objection cannot be upheld (see also *Tokić and Others*, cited above, § 59).

23. Since this complaint raises questions of fact and law which are sufficiently serious for its determination to depend on an examination of the merits and since no other grounds for declaring it inadmissible have been established, the Court declares this part of the application admissible. In accordance with the decision to apply Article 29 § 3 of the Convention (see paragraph 3 above), the Court will immediately consider the merits.

B. Merits

24. The present case is nearly identical to *Tokić and Others*, in which the Court found a violation of Article 5 § 1 of the Convention. The Government have not put forward any argument which would allow the Court to distinguish these two cases. Since the applicant has been held in psychiatric detention since 16 June 2005 pursuant to an administrative decision, as opposed to a decision of the competent civil court, the Court considers his detention to be unlawful having regard to the authorities' failure to comply

with an essential procedural requirement (see *Tokić and Others*, cited above, §§ 66-67).

There has accordingly been a breach of Article 5 § 1 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

25. 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

26. The applicant claimed 249,550 euros (EUR) in respect of non-pecuniary damage. The Government considered the amount to be excessive.

27. It is clear that the applicant suffered considerable distress as a result of the breach found. Having regard to the amounts awarded in *Tokić and Others* and to the length of the applicant's unlawful detention (already more than four years), the Court awards EUR 22,500 under this head, plus any tax that may be chargeable.

B. Costs and expenses

28. The Court notes that the applicant was granted legal aid under the Court's legal-aid scheme in the amount of EUR 850. He did not claim any additional costs and expenses.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning the lawfulness of the applicant's detention admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 5 § 1 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 22,500 (twenty two thousand five hundred euros), 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 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 24 November 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

Nicolas Bratza
President