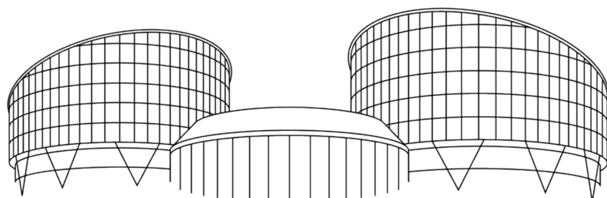

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

1959 · 50 · 2009

FIRST SECTION

CASE OF DOLENEC v. CROATIA

(Application no. 25282/06)

JUDGMENT

STRASBOURG

26 November 2009

FINAL

26/02/2010

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 Dolenec v. Croatia**,**

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

Christos Rozakis, *President,*
Nina Vajić,
Khanlar Hajiyev,
Dean Spielmann,
Sverre Erik Jebens,
Giorgio Malinverni,
George Nicolaou, *judges,*
and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 5 November 2009,

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

PROCEDURE

1. The case originated in an application (no. 25282/06) against the Republic of Croatia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Croatian national, Mr Branko Dolenec (“the applicant”), on 19 May 2006.

2. The applicant, who had been granted legal aid, was represented by Mr M. Ramušćak, a lawyer practising in Varaždin. The Croatian Government (“the Government”) were represented by their Agent, Mrs Š. Stažnik.

3. On 11 December 2007 and 17 December 2008 the President of the First Section decided to communicate the complaints under Article 3 of the Convention concerning the general conditions of the applicant's detention, the alleged lack of adequate medical care and the alleged attacks on the applicant by prison personnel; the complaints under Article 5 §§ 1 and 3 of the Convention concerning the applicant's deprivation of liberty between 2 and 30 March 2005; the complaint under Article 8 of the Convention concerning the applicant's allegations that he was placed in a cell with smokers; the complaints under Article 6 § 3 (b) and (c) concerning his inability to engage the services of a defence counsel at the hearing held on 1 April 2005 and afterwards and the alleged lack of possibility to consult the case file to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1967 and is at present serving a prison term in Gospić Prison.

1. Criminal proceedings against the applicant

5. On an unspecified date an investigation was opened in respect of the applicant, who was suspected of having committed a number of thefts and aggravated thefts.

6. On 20 February 2004 a Varaždin County Court investigating judge (*istražni sudac Županijskog suda u Varaždinu*) issued a warrant for the search of the applicant's flat. The search was carried out by the police on 23 February 2004 and a number of items were seized.

7. The applicant was arrested on 23 February 2004 at 10 p.m. but was released on 24 February 2004 at 6.00 p.m.

8. On 1 March 2004 the applicant was indicted in the Prelog Municipal Court (*Općinski sud u Prelogu*) on numerous counts of theft and aggravated theft. He was represented in these proceedings by an officially appointed defence counsel.

9. He was arrested again on 2 March 2004 and placed in pre-trial detention in Varaždin Prison (*Zatvor Varaždin*) and later on in other prison facilities (see below).

10. During the criminal proceedings against him, the applicant was examined by a psychiatrist and, in a psychiatric report of 16 May 2004, it was established that the applicant suffered from post-traumatic stress disorder (PTSD).

11. In a judgment of the Prelog Municipal Court of 26 August 2004 the applicant was found guilty of twenty counts of theft and aggravated theft and sentenced to six years and six months' imprisonment. The applicant appealed against the judgment to the Čakovec County Court (*Županijski sud u Čakovcu*) complaining about the outcome of the proceedings and also that his defence rights had been violated in that he had not been informed of the hearings in time to prepare his defence and that he had not had sufficient contact with the officially appointed defence counsel.

12. On 1 October 2004 the applicant was taken to the Prelog Municipal Court, where he examined the case file. His request that certain documents be copied for him was complied with.

13. The first-instance judgment of 26 August 2004 was quashed on 14 January 2005 by the Čakovec County Court which extended the applicant's detention at the same time. The first-instance judgment was quashed, *inter alia*, on the grounds that the applicant had not been informed of the hearings in time to prepare his defence and that he had not had sufficient contact with the officially appointed defence counsel.

14. On 30 January 2005 the applicant lodged a request with the Prelog Municipal Court seeking permission to contact his officially appointed defence counsel and some other persons. On 2 February the Municipal Court allowed the applicant unrestricted telephone communication with his defence counsel.

15. At a hearing held on 3 February 2005 the applicant challenged the presiding judge for bias. The defence counsel opposed the challenge. The hearing was adjourned pending the decision on the applicant's objection. In his submission of the same date the defence counsel requested to be relieved of his duties.

16. On 4 February 2005 the President of the Prelog Municipal Court dismissed the applicant's challenge to the presiding judge as unfounded. On the same day the presiding judge relieved the officially appointed defence counsel of his duties and the president of the court appointed a new defence counsel. The applicant was allowed unrestricted telephone communication with his new counsel.

17. On 14 February 2005 the applicant informed the presiding judge that his attempts to contact his newly appointed defence counsel had remained unsuccessful, since there had been no answer to his calls, and requested a visit from his defence counsel in prison since the next hearing had been scheduled for 17 February 2005. On the same day the presiding judge allowed an unlimited number of visits to the applicant's sister and mother but made no decision about the request concerning the defence counsel. However, the hearing scheduled for 17 February 2005 was adjourned on the oral request of the defence counsel, in order to prepare the defence. The next hearing was scheduled for 10 March 2005.

18. In the meantime, on 11 February 2005, the Prelog Municipal Court further extended the applicant's detention. A subsequent request by the applicant that his detention be lifted was dismissed on 23 March 2005 by the Prelog Municipal Court. The applicant appealed against this decision.

19. On 7 March 2005 the applicant lodged a request with the presiding judge for leave to consult the case file. He alleged that on 1 October 2004, when he had been brought to the Prelog Municipal Court, he had not had sufficient time to consult the entire file and that not all copies he had requested had been given to him and that at that time the case file had not yet been completed. This request remained unanswered.

20. At the beginning of the hearing of 10 March 2005 the applicant insulted the presiding judge and was removed from the courtroom, followed by his defence counsel. Soon afterwards counsel returned and challenged the presiding judge, and the hearing was adjourned. On 14 March 2005 the President of the Prelog Municipal Court dismissed the challenge as unfounded.

21. Upon the appeal by the applicant against the decision of 23 March 2005, on 30 March 2005 the Čakovec County Court quashed the first-instance decision and ordered the applicant's immediate release. It found that, pursuant to the relevant provisions of the Criminal Procedure Act, the

statutory time-limit for the applicant's detention had expired on 2 March 2005 and that therefore there had been no grounds for keeping him in detention after that date.

22. The applicant was released on 30 March 2005. On 31 March 2005 the presiding judge relieved the applicant's officially appointed defence counsel of his duties.

23. The next hearing before the Prelog Municipal Court was held on 1 April 2005. The applicant was present in person, but legally unrepresented. The transcript of the hearing shows that the applicant expressly stated that he did not want a defence counsel and decided to remain silent. The applicant did not sign the transcript of the hearing. In a judgment adopted on the same day, the first-instance court again found the applicant guilty of twenty counts of theft and aggravated theft and sentenced him to six years and six months' imprisonment. Immediately after the hearing the applicant was detained and placed in Varaždin Prison. On the same day the same defence counsel was officially assigned to the applicant.

24. The applicant appealed against the first-instance judgment on 4 and 22 April 2005, alleging that his defence rights had been violated in that he had not been given an opportunity to consult the case file. He alleged that on 1 October 2004 he had been brought to the Prelog Municipal Court in order to consult the case file. However, owing to the large volume of documents in the case file, the time allowed for that purpose had not permitted him to consult all the documents he had wished to. It had therefore been agreed that the requested documents would be copied and sent to him in prison. However, this request had only partially been complied with and he had never had an opportunity to read the whole case file. He further alleged that he had complained about this at the hearing held on 1 April 2005 but that his allegations had been ignored. He further complained that the search of his premises had been carried out in contravention of the relevant provisions of the Code of Criminal Procedure because the requirement that two witnesses be constantly present had not been complied with. He also complained about the qualification of some of the offences as aggravated theft instead of theft and about the severity of the sentence.

25. On 18 April 2005 the officially appointed defence counsel also lodged an appeal, referring to the factual findings of the first-instance court.

26. On an unspecified date the applicant asked the Prelog Municipal Court if he could consult the case file. In its letter of 28 April 2005 addressed to the Head of Prison Administration at the Ministry of Justice, a copy of which was also forwarded to the applicant, the president of that court allowed the applicant's request. The applicant then requested that a date be fixed for consulting the case file. The President of the Prelog Municipal Court replied that the consultation was not possible because the case had been forwarded to the Čakovec County Court upon an appeal against the first-instance judgment. In a letter of 13 May 2005 a judge of the

same court informed the applicant that his request had been granted and that the case file had been forwarded to the Čakovec County Court.

27. On 17 May 2005 the Čakovec County Court allowed the applicant's appeal in the part concerning the qualification of certain offences and reduced the sentence to six years and four months' imprisonment while dismissing the remainder of his complaints. The relevant parts of the appeal judgment read as follows:

"In his personal appeal the defendant complains of serious breaches of the provisions regulating criminal proceedings, [these being] his inability to consult the case file; reliance of the impugned judgment on evidence under Article 9, paragraph 2, of the Code of Criminal Procedure, namely, the written record of the search of his flat and other premises, and the allegation that the identification of items (as potential evidence) by the injured parties had not been carried out in accordance with Article 243 (a) of the Code of Criminal Procedure.

The officially appointed defence counsel also alleges in his appeal that there was a serious breach of the provisions regulating criminal proceedings in the reliance of the first-instance judgment on illegally obtained evidence, because the search of the defendant's premises had been carried out without the simultaneous presence of two witnesses.

The search of the defendant's flat and other premises at the address Donji Kraljevec, Gornji kraj no. 13, was carried out by the police pursuant to search warrant no. Kir-75/04-02, issued by a Varaždin County Court investigating judge on 20 February 2004 and served on the defendant beforehand, as can be seen from a receipt on page 18 of the first-instance [court] case file. The report of the search of the [defendant's] flat and other premises of 23 February 2004 shows that the search was carried out in the presence of the defendant and two witnesses. On that occasion objects, which were enumerated in the certificates on temporarily seized items, were found and temporarily seized from the defendant. The defendant's assertion that the witnesses were not simultaneously and continually present during the search is unfounded and uncorroborated, since neither the defendant nor the present witnesses put forward any objections. As the search was carried out in compliance with Articles 211 and 214 of the Code of Criminal Procedure, the report in question and the certificates regarding the items temporarily seized from the defendant constitute fully valid and legal evidence.

The defendant's assertion that the first-instance court breached the provisions of the Code of Criminal Procedure [regulating] identification of certain objects in that the injured parties were shown the objects for identification without previously being asked to describe those objects is unfounded. Article 243(a) of the Code of Criminal Procedure requires that a defendant or a witness be asked beforehand to describe a person or an object [to be identified] and describe their distinguishing marks only when necessary; following which the person or the object [to be identified] are to be shown to the defendant or a witness, together with other persons unknown to them, or with similar objects. It follows that this provision does not oblige the court or the police authorities to present the persons identifying [objects as potential evidence] with similar objects at each instance but [this requirement applies] only where possible. In the present case, where a large number of different objects were [to be identified], the police officers were not obliged to act in the manner the defendant argued they were in his appeal and therefore, in the view of this court, the identification of objects [as potential evidence] was carried out in accordance with the law. Therefore, the reports on identification in the present case constitute valid evidence, especially since some of the injured parties emphatically stated at the main

hearing that the objects they had been presented with were theirs, which in any event – save for a few of [these objects] – the defendant did not deny in his initial defence.

As regards the [alleged] inability of the defendant to consult the case file, it is to be noted that the [documents] from the case file show that the first-instance court allowed the defendant to consult the case file on 1 October 2004 (page 520) and that the requested copies of material evidence were served on the defendant in detention on 14 October 2005 (page 572).

The defendant complains that his written request of 7 March 2005 to consult the case file while he was in detention was not granted.

On the basis of the above [considerations], this court considers that in the present case there was no breach of Article 367, paragraph 3, of the Code of Criminal Procedure, since the defendant regularly attended the hearings, where he was able to consult the case file, copy the documents thereof and [examine] the objects aimed at establishing the facts of the case. Furthermore, during practically the entire first-instance proceedings the defendant had an officially appointed defence counsel. Thus, this court finds that there was no breach of his defence rights within the meaning of Article 367, paragraph 3, of the Code of Criminal Procedure.

...

As regards the [allegations] that the facts of the case were wrongly established and incomplete, both appeals allege the same fact: that the first-instance court's refusal to hear evidence from the witnesses to the search resulted in a failure to establish whether the search of the applicant's house and adjoining courtyard had been carried out in accordance with the law.

This court considers that the first-instance court correctly and completely established all the relevant facts, including those concerning the question whether the carrying out of the search on the applicant's flat and other premises was in accordance with the law. In this connection the first-instance court gave valid reasons for its decision not to accept the above-mentioned defendant's request [that two witnesses be heard], which reasons this court entirely endorses ...”

28. The applicant then lodged a request for extraordinary review of a final judgment.

29. In response to repeated requests by the applicant to consult the case file, the President of the Municipal Court informed him in a letter of 7 November 2005 that his request could not be granted because the case file had been forwarded to the Supreme Court.

30. On 22 November 2005 the Supreme Court (*Vrhovni sud Republike Hrvatske*) dismissed the applicant's request for extraordinary review of a final judgment. The relevant parts of the judgment read as follows:

“.. the defendant ... alleges that the impugned judgment rests on unlawfully obtained evidence, namely the report on the search of his flat, and that his defence rights were violated because he was not allowed to consult the case file before presenting his defence.

...

The report on the search of the [defendant's] flat and other premises shows that the search was carried out pursuant to Varaždin County Court search warrant no. Kir

75/04-2 of 20 February 2004; and that two witnesses were present who were instructed at the outset to observe the procedure for carrying out [the search] and informed of their right to make objections before signing the report if they considered its contents to be inaccurate. The defendant was also present. All of these persons signed the report after it had been read to them, without making any objections, thus expressing their agreement with the content of the report.

Such a report is lawful evidence because it shows that the search was carried out in accordance with Articles 213 and 214 of the Code of Criminal Procedure.

The defendant's assertion that the witnesses were not constantly present during the search is an objection to the established facts and cannot be accepted as a valid ground for lodging this extraordinary remedy.

This court may consider the veracity of decisive facts only if a suspicion in that regard arises when it examines a request lodged under Article 427 of the Code of Criminal Procedure. In the present case, bearing in mind the content of the report on the search of the [defendant's] flat and other premises, this panel does not find any reasons to suspect that the search was not carried out in accordance with Articles 213 and 214 of the Code of Criminal Procedure.

Under Article 427(3) a request for extraordinary review of a final judgment may also be lodged [on the allegation that] the defendant's rights were violated at a main hearing.

At the main hearing held on 1 April 2005, when the first-instance judgment was adopted and pronounced, the defendant's rights were not violated. The transcript of the hearing shows that the hearing started anew with a deputy State Attorney reading out the indictment. The defendant was informed of his right to a defence counsel under Article 320, paragraphs 2 and 4, of the Code of Criminal Procedure, but he decided neither to exercise that right nor to present his defence, and remained silent.

The defendant did not object to the procedure followed by the court or ask for the hearing to be adjourned in order to prepare his defence.

The defendant's allegation that the court denied him the right to consult the case file while in detention is irrelevant for the examination of this request because he was informed of his rights at the main hearing, after which he chose not to submit his defence.

...”

31. In reply to a further request to consult the case file, lodged by the applicant on 23 January 2006, the President of the Prelog Municipal Court informed the applicant that his request could not be granted because the case file had been forwarded to the Varaždin Municipal Court (*Općinski sud u Varaždinu*).

32. A constitutional complaint subsequently lodged by the applicant was declared inadmissible on 23 February 2006 by the Constitutional Court (*Ustavni sud Republike Hrvatske*) on the grounds that the impugned decision, namely the Supreme Court's judgment of 22 November 2005, had not concerned the merits of the case. The relevant part of the decision reads:

> “In accordance with [section 62 of the Constitutional Court Act], only a decision in which a competent court has decided on the merits of a case, namely, on the suspicion or indictment in respect of a criminal offence committed by the applicant, is an individual act within the meaning of section 62(1) of the Constitutional Court Act in respect of which the Constitutional Court, in proceedings instituted upon a constitutional complaint, is competent to protect human rights and fundamental freedoms of the applicant guaranteed by the Constitution of the Republic of Croatia.
>
> In the proceedings before the Constitutional Court it has been established that the impugned judgment of the Supreme Court of the Republic of Croatia no. Kr-83/05 of 22 November 2005 is not an individual act within the meaning of section 62(1) of the Constitutional Court Act in respect of which the Constitutional Court is competent to give constitutional protection to the applicant.”

2. Conditions of the applicant's detention

33. The medical documentation submitted by the parties shows that the applicant has been diagnosed as suffering from PTSD and a personality disorder.

The applicant's stay in Varaždin Prison

34. The applicant was arrested on 23 February 2004 at 10 p.m. and released on 24 February 2004 at 6.00 p.m. He was arrested again on 2 March 2004 and placed in pre-trial detention in Varaždin Prison. As to the latter, the applicant alleges that the cells were overcrowded, that he was placed in a smoking cell and that he was only allowed to spend fifteen to twenty minutes a day in the fresh air. On 11 June 2004 the applicant was transferred to Zagreb Prison Hospital further to his complaint that he suffered from being placed in a cell with smokers. The discharge letter of 15 June 2004 shows that no lung disease had been established. The applicant was returned to Varaždin Prison.

35. In a complaint of 7 July 2004 addressed to the Prison Administration of the Ministry of Justice (*Uprava za zatvorski sustav Ministartsva pravosuđa*), the applicant complained about his placement in a cell with smokers. In a letter of 12 July 2007 of the Varaždin Prison authorities, addressed to the above Administration, it was explained that, owing to overcrowded conditions in that prison, it was not possible to place the applicant in a cell with non-smokers only. This information was forwarded to the applicant in a letter of the Prison Administration of the Ministry of Justice of 16 July 2004.

36. In his complaint of 12 October 2004 addressed to the Varaždin County Court, the applicant complained, *inter alia*, about the conditions in detention and, in particular, that he was placed in a cell with smokers and was allowed only fifteen to twenty minutes daily outdoor exercise. The applicant's complaints remained unanswered.

37. In October 2004 the applicant was released.

38. The applicant was again detained in January 2005 and placed in Varaždin Prison until 30 March 2005, when he was released.

39. On 1 April 2005, after his conviction by the Prelog Municipal Court, the applicant was arrested and again placed in Varaždin Prison. He was placed in cell no. 15, measuring 10.26 square metres, together with one other inmate, a non-smoker.

40. On 1 May 2005 the applicant made a commotion in his cell by banging chairs and his bed and verbally insulting the prison personnel. He was taken out of his cell and strapped down in a special cell. There is no written record of this measure or its exact duration.

41. During an outdoor walk on 13 May 2005 an attempt by the applicant to hit another inmate was prevented by a prison guard. The applicant was strapped down in a special cell and returned to his regular cell the same day. There is no written record of this measure or its exact duration. The same day the applicant attempted to attack a prison guard. As a consequence, he was strapped to his bed. There is no written record of this measure or its exact duration. Furthermore, the same day the applicant was transferred to Zagreb Prison Hospital. The relevant part of the discharge letter of 25 May 2005 reads:

> "The patient was brought from Varaždin Prison in reactive exacerbation of his mental condition. He was agitated on arrival, with no manifest psychotic or suicidal symptoms. He said that he had been refusing food since 12 May.
>
> ... He has continued to refuse food until 23 May, but has been taking liquids and vitamin pills. He has not received any other treatment. He is in a good general condition ... Elements of PTSD. Depressive-paranoid syndrome. Histrionic personality. ...
>
> Recommended treatment: Apaurin ..., psychiatric supervision and more intensive engagement on the part of the treatment services."

42. He was returned to Varaždin Prison to the same cell. The medical record shows that he refused food from 12 to 23 May 2005, but did take liquids and vitamin pills.

43. On 8 June 2005, following an incident in which the applicant started breaking furniture in his cell, he was sent to the prison doctor. However, he verbally insulted the doctor and other medical personnel and was strapped down in cell no. 16. There is no written record of this measure or its exact duration.

The applicant's stay in Zagreb Prison from 13 June to 6 July 2005

44. On 13 June 2005 the applicant was transferred to Zagreb Prison, where he was placed in the Department for Diagnostics and Programming (*Odjel za dijagnostiku i programiranje*). A report on the general examination of the applicant, in so far as relevant, reads as follows:

> "...
>
> DIAGNOSTIC INFORMATION
>
> In the intellectual capacity tests his results are above average. He adequately cooperates during the interview, apologising for having to go on a hunger strike in

order to safeguard his rights. Actually, he is highly anxious and over-sensitive, everything bothers him. In terms of his personality, he is impulsive and emotionally unstable. He easily loses control of his behaviour and acts in an emotionally impulsive and inadequate manner. The low tolerance of frustrations is evident, which leads to irritability and accentuated touchiness. His tendency to react aggressively is marked and he has a significantly lowered capacity to maintain self-control and self-protection, which makes him prone to undertake activities involving a high level of risk. He has no insight into his motives and feelings and is uncritical. The likelihood that he will reoffend is high.

...

WORKING CAPACITY

He is capable for all types of work without restrictions.

PROPOSAL AS TO THE INDIVIDUAL PROGRAMME FOR THE ENFORCEMNT OF THE PRISON TERM

The prison term is to be continued in closed conditions. It is to be expected that his behaviour will be excessive (conflicts, disobedience, refusal of food ...). He may be assigned to a work place according to the needs of the institution. Psychiatric supervision as needed.”

RECOMMENDATION OF THE INSTITUTION WHERE THE PRISON TERM IS TO BE CONTINUED

Lepoglava State Prison”

45. The relevant part of the applicant's medical record during his stay in Zagreb Prison reads:

“13 June 2005 ...

In May 2005 [he was] treated at the psychiatric ward of Zagreb Prison Hospital. Pharmacotherapy: Apaurin... At present [he is] agitated, complaining of chest pain ...

Treatment: Apaurin ..., Fluzepan ...

...”

46. On 6 July 2005 the applicant was transferred to Lepoglava State Prison.

The applicant's stay in Lepoglava State Prison from 6 July 2005 to 14 October 2006

47. From July to September 2005 the applicant was placed in cell no. 5, measuring 9.12 square metres, together with three other inmates. Adjacent to the cell and for the exclusive use of the inmates occupying the cell was a tiled area measuring 2.15 square metres. From September to December 2005 the applicant was placed in cell no. 9, measuring 9.82 square metres, together with three other inmates. He was able to use a bathroom and toilet area measuring 20.9 square metres.

48. On 1 September 2005 the applicant petitioned the Varaždin County Court judge responsible for the execution of sentences (*sudac izvršenja Županijskog suda u Varaždinu*), complaining about conditions in Lepoglava State Prison. He explained that he had been continually placed in a cell with smokers and that he was detained in overcrowded conditions. He further complained that he had not been receiving any treatment for his psychiatric ailments, in particular the PTSD, and that he was being given no psychiatric treatment at all. He also complained that the examination by a doctor, who had seen him on 8 July 2005 in order to establish his fitness to work in prison, had lasted two minutes. In a letter of 11 October 2005 the judge found that the applicant was allowed to use some of his personal items, that he had complained about his placement in a smoking cell, that he had adequate medical care, and that he had been on hunger strike between 2 and 14 September 2005.

49. Although upon his arrival the applicant was assigned to a non-working group, there were subsequently several attempts to include him in working activities. For a month, starting on 28 October 2005, the applicant worked in a storehouse. Since his work there was found to be unsatisfactory, on 30 November 2005 he was offered work in a therapeutic workshop and placement in a non-smoking cell. However, the applicant refused this offer.

50. On 2 December 2005 the applicant was placed in the Department with increased supervision for a period of three months.

51. From 7 to 20 December 2005 the applicant was on hunger strike. He was subsequently returned to work in a storehouse.

52. On 7 December 2005 the applicant again complained to the Varaždin County Court judge responsible for the execution of sentences about the conditions in prison. The report of the Lepoglava State Prison authorities of 13 December 2005 state, *inter alia*, that the applicant had been included in the programme for persons suffering from PTSD, without any further details. The applicant's complaints remained unanswered by the competent judge.

53. On an unspecified date the applicant complained about the prison conditions and in particular the lack of adequate medical treatment to the Ministry of Justice. On 2 February 2006 the Ministry asked the Lepoglava Prison authorities to submit their report on the matter. The report of 24 February 2006, in so far as relevant, reads as follows:

> "Upon his arrival at the prison the inmate was assigned to a non-working group, and involved in leisure activities and the programme for persons suffering from PTSD as well as to the programme for a computer operator...
>
> The prison doctor saw him on twenty-three occasions and he was twice examined by a psychiatrist. His diagnosis includes depression, paranoia, elements of PTSD and low tolerance towards frustrations. He has regularly been receiving sleeping pills and tranquilisers (Apaurin and Cerson)...."

It was also stated that the applicant had worked for a certain period but had stopped, owing to some conflicts. The applicant sent his reply to the

report, in which he stated that he had actually seen a psychiatrist on three or even four occasions, but each time at his insistence although a discharge letter from Zagreb Prison Hospital of 25 May 2005 requested that he receive regular psychiatric supervision. He further asserted that he had not been able to attend group therapy sessions for persons suffering from PTSD because he had had no access to information about the time of these sessions. No decision was taken upon the applicant's complaint.

54. In April and May 2006 the applicant had a number of arguments with other inmates, which culminated on 10 May 2006 in a fight with another inmate. The applicant was transferred to the Department with increased supervision, owing to which he refused to take food. He also refused a psychiatric examination scheduled for 11 May 2006.

55. In his appeal of 16 May 2006 against a decision of the Lepoglava State Prison authorities to place him in a Strict Supervision Department, addressed to the Varaždin County Court judge responsible for the execution of sentences, the applicant complained, *inter alia*, that he had not been regularly receiving the prescribed pharmacotherapy. He also alleged that on 8 May 2006 he had been attacked by his cellmate, who had allegedly attempted to strangle him. The applicant further complained that he had been forced to share the cell with that inmate although he had complained to the prison authorities that later on that inmate had threatened him and had been allowed to keep a knife in the cell. The applicant also alleged that on 9 May 2006 he had been denied the prescribed pharmacotherapy and had therefore asked one of the guards to take him to the medical ward. The guard, however, had refused and threatened to crush the applicant, following which the applicant had inflicted self-injuries by cutting his veins, whereupon he had been taken to the medical ward within the prison. The applicant also alleged that on 10 May 2006, during breakfast, he had been attacked by another inmate who bit his finger. In the report of 26 May 2006, addressed to the judge responsible for the execution of sentences, the Lepoglava State Prison authorities stated that the applicant had not complied with the House Rules for a longer period. A report of the incident of 10 May 2006 was enclosed. This report stated that on 10 May 2006 during breakfast the applicant had thrown a plate at inmate M.B., who had been washing the dishes, whereupon M.B. had jumped on the applicant and bit his finger. The applicant had been taken to the medical ward, while M.B. had no injuries. The report did not address any of the incidents described by the applicant. The competent judge did not answer the applicant's complaint.

56. On 30 May 2006 the applicant wrote to the Ombudsman's Office (*Pučki pravobranitelj*). In a letter of 6 June 2006 addressed to the Head of the Prison Administration, the Deputy Ombudsman reiterated the applicant's allegations that he had been attacked by other inmates on two occasions at the beginning of May and that no steps had been taken against the perpetrators, as well as further allegations that the applicant, although

suffering from PTSD, had not received any treatment for over a month and had been placed in a smoking cell.

57. From 30 May to 21 June 2006 the applicant was transferred to Zagreb Prison Hospital. The relevant part of the discharge letter of 21 June 2006 reads:

> "The patient was admitted due to the hunger strike he had started on 10 May 2006 because he had been dissatisfied with his treatment in prison.
>
> ...
>
> During the first days of his hospitalisation the patient refused food, and [he was] hostile and manipulative; on several occasions during the interviews with a psychiatrist he requested a solution to his problems in connection with the conditions in the prison, being unwilling to correct his behaviour.
>
> ...
>
> While in hospital the patient started to take food. He is discharged in a partially better condition ..."

58. During the period the applicant spent in Lepoglava State Prison in May and June 2006 he was placed in cell no. 4, measuring 10.13 square metres, together with one other inmate, and sharing an adjacent toilet area of 1.79 square metres. From June to September 2006 the applicant was placed in cell no. 1, measuring 13.72 square metres, together with three other inmates, also sharing an adjacent toilet area of 2.3 square metres. During this period the applicant spent two non-consecutive days in solitary confinement in a cell (no. 13) measuring 8.97 square metres.

59. On 1 August 2006 the applicant again petitioned the Varaždin County Court judge responsible for the execution of sentences, complaining about being placed in a smoking cell. The judge replied in a letter of 11 September 2006 that the applicant's transfer to another prison would be considered.

60. On 18 September 2006 an incident involving the use of force against the applicant occurred. The two guards involved in the incident gave oral statements on the same day to the Head of Security Division within the prison. These statements and several written reports of 18 and 19 September 2006 by the Lepoglava State Prison personnel, submitted to the prison governor, all concur that on 18 September 2006 at 12.50 p.m. the applicant had started to shout at some of them and requested to be immediately taken to the prison doctor. One of the prison guards had asked him to wait since the doctor had been with another inmate, but he had continued to shout and hit the walls and metal bars. After he had ignored warnings to calm down, he had lifted a chair and thrown it at the prison guards and continued throwing objects. Another guard had arrived, whereupon one of the guards had taken the applicant by the left hand and the other by the right hand, twisted them behind the applicant's back and handcuffed him. The applicant had continued to utter shouts and threats and had therefore been taken to a

special cell where he had been strapped down. He had also refused the prison doctor's attempt to examine him.

61. Further to these reports the Government submitted that the applicant had refused to be examined by the prison doctor or to give a statement about the incident. The Head of Security Division heard the two guards involved in the incident separately. In the next two days the applicant again refused to see the prison doctor. One of the guards made a report on the applicant's refusal to see the prison doctor on 19 and 20 September 2006.

62. From 20 to 29 September 2006 the applicant was placed in Zagreb Prison Hospital. The relevant part of the discharge letter of 27 September 2006 reads:

> "The patient was admitted because of suicide threats.
>
> ... He expressed dissatisfaction with his treatment in the prison.
>
> During hospitalisation he has been calm, neither suicidal nor productive. He has refused food in order to have his paramedical problems resolved. He does not consider himself as ill. He insists on being discharged.
>
> ...
>
> Since the patient is not in vital danger, [and he is] productive, against suicide, he is to be discharged and it is recommended that he be placed in a day-care department."

63. Meanwhile, on 25 September 2006 the applicant again petitioned the Varaždin County Court judge responsible for the execution of sentences, complaining about his placement in a smoking cell. He also referred to the incident of 18 September 2006, alleging that he had been beaten up while in solitary confinement and that his request to see the prison doctor had been ignored. On 6 October 2006 the judge asked the Lepoglava State Prison authorities whether it was possible to place the applicant in another penal institution. The applicant's allegations about the attack of 18 September 2006 were ignored.

64. During the periods when the applicant did not work his daily regime was as follows:

7 a.m. – 7.30 a.m. – wake up, personal hygiene, cleaning of cells

7.30 a.m. – 7.45. a.m. – distribution of medicines

7.45 a.m. – 8.15 a.m. – breakfast

8.15 a.m. – 9.45 a.m. – outdoor exercise, stay in cells or TV-room, making telephone calls

11.30 a.m. – 11.45 a.m. – medical treatment

11.45 a.m. – 12. 15. p.m. – lunch

12.15 p.m. – 2.00 p.m. – outdoor exercise, sport activities

2.00 p.m. – 3.00 p.m. – return to cells, washing and personal hygiene

3.00 p.m. – 5.00 p.m. – stay in cell or in TV-room or making telephone calls

5.00 p.m. – 5.15 p.m. – distribution of medicines

5.15 p.m. – 5.45 p.m. – dinner

5.45 p.m. – 7.00 p.m. – stay in cell or TV-room
7.00 p.m. – line-up
7.00 p.m. – 7.30 p.m. – cleaning of corridors, stairs, sanitary facilities and disposal of garbage
8.00 p.m. – optional stay in cells
9.00 p.m. – lights out
10.45 p.m. – television sets switched off

65. During the period the applicant worked his daily regime was as follows:

6.00 a.m. – 6.30 a.m. – wake up, personal hygiene, cleaning of cells, distribution of medicines
6.30 a.m. – 6.50 – a.m. – breakfast
6.50 a.m. – 7.00 a.m. – departure for work
7.00 a.m. – 3.00 p.m. – work (with a meal break from 10.00 a.m. to 10.30 a.m.)
3.p.m. – 5.15. p.m. – lunch, outdoor exercise, optional stay in cell or TV-room, washing, making telephone calls
5.30 p.m. – 6.00 p.m. – distribution of medicines, personal hygiene
7.00 p.m. – line-up
7.00 p.m. – optional stay in TV-room
8.00 p.m. – optional stay in cell
9.00 p.m. – lights out
10.45 p.m. - television sets switched off

66. During his stay at the Department with increased supervision the applicant's daily regime was as follows:

6.00 a.m. – 8.00 a.m. – wake up, personal hygiene, cleaning of cells
8.00 a.m. – 8.15. a.m. – distribution of medicines
8.15 a.m. – 8.45 a.m. – breakfast
8.45 a.m. – 9.a.m. – personal hygiene
9.00 a.m. – 11.00 a.m. – outdoor exercise for one group while the other group stays in TV-room
11.00 a.m. – 11.45. a.m. – personal hygiene of the group that went outdoors
11.45 a.m. – noon – distribution of medicines
Noon – 12.30 p.m. – lunch
1.00 p.m. – 2.00 p.m. – personal hygiene
1.00 p.m. – 2.00 p.m. – stay in cells
2.00 p.m. – 4.00 p.m. – outdoor exercise for one group while the other group stays in TV-room
4.00 p.m. – 5.00 p.m. – personal hygiene of the group which went outdoors
5.00 p.m. – 5.45 p.m. – stay in cells
6.00 p.m. – 6.30 p.m. – dinner
6.30 p.m. – 7.00 p.m. – personal hygiene
7.00 p.m. – line up

7.00 p.m. – 7.30 p.m. – cleaning of corridors, stairs, sanitary facilities and disposal of garbage

8.00 p.m. – optional stay in cells

9.00 p.m. –lights out

10.45 p.m. – television sets switched off

67. The Government submitted that at his arrival at Lepoglava State Prison the applicant had been included in the programme for prisoners suffering from PTSD and that in addition he had been continuously monitored by a psychiatrist. Later on, owing to the applicant's ill-adapted behaviour and conflicts with other prisoners he had been offered the possibility of joining a different therapy workshop, which he had refused. The Government did not specify, however, the dates of the applicant's group or individual therapy sessions.

68. The Government submitted the Lepoglava State Prison programme of therapy for inmates suffering from PTSD. The programme included one-hour weekly meetings of three small groups (five to twelve persons) who met on their own in order to discuss their problems. Each group was led by a member of the prison personnel. The qualifications or occupation of these persons was not specified; nor was it specified whether they attended the group meetings or not. The therapists met once a month with two psychiatrists in and outside the prison clinic and once a month in the prison. Participation in therapy groups was voluntary.

69. The relevant part of the applicant's medical record during his stay in Lepoglava State Prison reads:

> "1 September 2005
>
> Psychiatric examination at the medical ward of Lepoglava State Prison. During the current examination he is neither psychotic nor suicidal. He says that he has not been taking food for a week. He asks to be placed in a non-smoking cell and to be given treatment for headaches and sleep deprivation.
>
> Treatment: Fortevit ..., Apaurin ..., Fluzepan
>
> ...
>
> 7 December 2005
>
> Psychiatric examination: conscious, well-orientated, no signs of psychosis, [he] is not suicidal, [he is] very tense, has very low level of tolerance towards frustrations
>
> ...
>
> 20 April 2006
>
> He saw a psychiatrist at the medical ward of the Lepoglava State Prison.
>
> Treatment: Apaurin ..., Sanval ...
>
> He is currently on hunger strike.

...

10 May 2006

Alleges fight with another inmate, who allegedly bit his finger.

D[ia]g[nosis]: Vulnus morsum? [a wound by biting]? Indicis m.l.sin. [marks on middle left finger], Regio ph. Medialis [middle zone].

Alleges that he will go on hunger strike.

...

20 July 2006

Psychiatric examination: [he is] neither psychotic nor suicidal, [he is] anxious, tense with low level of tolerance, allegedly worried, asks for hospitalisation which is unfounded.

...

20 July 2006

Hospitalisation was ordered, but he refused to go to Zagreb Prison Hospital.

...

He returned to the medical ward at 5.40 p.m., revolted, wanting to go to the hospital today although at 2 p.m. he had refused it. He took out a razor blade and made a few cuts on the surface of his left forearm. ...

[He] made threats of inflicting further self-injuries if not taken to the hospital today. Hospitalisation was ordered, but there was no capacity in the hospital to admit him. ...

21 July 2006

Sent to Zagreb Prison Hospital.

24 July 2006

The admission report from Zagreb Prison Hospital of 21 July 2007: '... [the patient] is shouting, threatening to beat other patients, asking to be placed in a non-smoking room, making threats against the hospital personnel because there is only one bed available and there is no separate room for non-smokers. He does not want to stay in the hospital because he cannot get desired accommodation. He refuses to take Apaurin in his veins. He is very unpleasant, uttering threats and blackmail. Since his condition is not life-threatening and given that the patient is refusing the treatment offered, he shall be returned to prison.

Started eating so as not to be removed form Division 8 of the Prison.

...

18 September 2006

... he has been placed in solitary confinement, handcuffed to a bed. He is anxious, verbally aggressive, dissatisfied with being handcuffed, bangs on the bed with his handcuffs and asks to be released. [He] is not psychotic or suicidal ... It has not been possible to examine him because he is very restless and is banging on the bed with his handcuffs, so that it has not been possible to approach the inmate in bed.

5 October 2006

[He] refused to see a psychiatrist.

...”

70. On 14 October 2006 the applicant was transferred to Gospić Prison.

The applicant's stay in Gospić Prison from 14 October 2006 to 6 January 2007

71. The applicant was placed, together with one other inmate, in a cell measuring 13.13 square metres with an adjacent toilet area measuring 3.2 square metres. The cell was furnished with two beds, two cupboards, a table and two chairs. A bathroom was available to the applicant the whole day. He did not work.

72. During his stay in this prison the applicant did not work and did not receive any treatment for his PTSD. His daily regime was as follows:

6.30 a.m. – wake up
6.30 – 7.00 a.m. – personal hygiene
7.00 – 7.30 p.m. – breakfast
7.30 – 8.30 – possibility to see prison doctor
One hour between 8.30 a.m. and 1.00 p.m. – outdoor exercise
1.00 p.m. – 1.30 p.m. – lunch
One hour between 1.30 p.m. – 5.00 p.m. – exercise in the sports hall
3.00 p.m. – 6.00 p.m. – leisure time, one-hour outdoor exercise
6.00 p.m. – 6.30 p.m. – dinner
6.30 p.m. – 8.00 p.m. – leisure time
8.00 p.m. – 10.00 p.m. – stay in TV-room or reading
10.00 p.m. – bed-time

73. On 6 November 2006 the applicant complained to the Head of the Prison Administration about the conditions in prison. He was answered in a letter of 30 November 2006 stating that his treatment had been humane, professional and in accordance with the legislative standards.

74. On 6 January 2007 the applicant was transferred to Pula Prison

The applicant's stay in Pula Prison from 6 January to 5 November 2007

75. Initially, he was placed, together with another inmate, a non-smoker, in a cell measuring 10.2 square metres, furnished with two beds, two cupboards, a table and two chairs, with an adjacent toilet area measuring 3.98 square metres. The cell was heated by a radiator. The applicant did not work, had the possibility of spending time outdoors every day between noon and 2 p.m. and again between 6.30 p.m. and 8.30 p.m. During his leisure time the applicant was involved in the computer group.

76. On 21 January 2007 an incident occurred involving the use of force against the applicant. According to the Government, at 8 p.m. that day two prison guards, E.L. and I.O., were distributing pharmacotherapy to the inmates in their cells. The applicant had refused to take the prescribed medication. At 10 p.m. he had taken the prescribed medication but also asked for the medicine he had refused to take at 8 p.m.. His request had been refused. After the guards in charge had left his cell the applicant had started shouting and banging. The guards had returned and the applicant had made an attempt to kick one of them. The guards had taken the applicant, pushed him to the floor and handcuffed his hands behind his back. The applicant had continued resisting, hitting and shouting. Two other guards had arrived and the applicant was tied down in a separate cell. One of the guards had noticed a laceration next to the applicant's right eye and asked if he wished to see the prison doctor, which the applicant had refused, demanding to see a psychiatrist. He also refused to sign the report on the incident and the statement that he had not wished to see the prison doctor.

77. On the same day the guard on duty, N.B., made a report on the incident, which was submitted to the Head of Security. The guards E.I. and I.O. also made their reports on the incident. On 24 January E.I. and I.O. gave their oral statements to the officer in charge.

78. On an unspecified date the applicant wrote to the Ministry of Family, War Veterans and Inter-Generational Solidarity, which forwarded his complaint about the conditions in Pula Prison to the Head of the Prison Administration on 26 January 2007. The complaint remained unanswered.

79. On 8 February 2007 the applicant was transferred to a single occupancy cell measuring 8.73 square metres, with an adjacent toilet area. According to the Government, the cell had a window measuring 0.9 square metres and was heated by a radiator. The applicant was provided with a television set. He was able to use a common bathroom on request.

80. On 17 February 2007 another incident occurred. According to the applicant, he had been placed in solitary confinement and one of the guards thumped him several times on the left side of his chest.

81. On 21 and 22 February the applicant was examined by a doctor. The relevant part of the medical report reads:

> "21 February 2007
>
> [The inmate is] complaining about pain in the left hemithorax, trauma not excluded. I have not found visible signs of trauma or haematoma. While breathing he spares left side, pain on palpation of left upper ribs. Sent for an X-ray.
>
> 22 February 2007
>
> Pain in the left-rib area. The X-ray examination shows that there are no signs of rib-related trauma or lung alteration. He does not present allergy to medication."

82. On 26 February 2007 the applicant was heard by a judge responsible for the execution of sentences of the Pula County Court. He stated that on 21 January 2007 at around 8 p.m. two prison guards, I.O. and E.L., had been

administering pharmacotherapy to the inmates in Pula Prison. The applicant had complained that he had to take his therapy at 10 p.m. The guards had replied that they would make a note that the applicant had refused therapy. The applicant had then opened a cupboard in his cell in order to show them his medical documentation confirming his allegations. Since the guards had left, the applicant had stamped in order to make them return since there was no other way of drawing their attention. The guards had returned and opened the applicant's cell. One of them had stamped on the applicant's foot and the other had hit him in the head, while shouting at him. He further stated that, on 17 February 2007, while he had been placed in solitary confinement, four guards had arrived and strapped him to the bed, which he had not resisted. One of the guards had hit him several times on the left side of his body. The applicant had begged him to stop since he had heart problems. The same guard had also threatened to leave the applicant strapped down for twenty-four hours.

83. The Pula Prison authorities filed a report with the Pula County Court on 9 March 2007. The relevant part of the report reads:

> "...
>
> We have already examined the allegations of the said inmate about the acts of the prison guards of 21 January 2007. The guards involved made their reports and also gave their oral statements. The inmate Branko Dolenec was also interviewed.
>
> It has been established that the guards acted in accordance with the law and that the inmate Branko Dolenec had attempted to diminish his responsibility by saying that he had not been given the prescribed treatment at the right time. He did not wish to give a written statement of the incident. Disciplinary proceedings have been instituted against the inmate Branko Dolenec for disciplinary offences under section 145(2)(8) and 145(3)(8) of the Enforcement of Prison Sentences Act in respect of which there is a reasonable suspicion that he committed them on 21 January 2007 to the detriment of the guards about whose acts he was complaining.
>
> It is true that on 17 February 2007 a special measure of keeping order and security under section 135(6) was applied because there was a danger that he would inflict self-injuries. Beforehand, on the same day he had threatened to inflict self-injuries and repeated warnings had produced no results. In accordance with section 138(2), the applied measure lasted from 8.25 a.m. to 6 p.m. We have no information that on that occasion any of the guards used force against the inmate, or that anyone threatened to keep him tied down for twenty-four hours.
>
> ..."

84. In a letter of 23 March 2007 the judge responsible for the execution of sentences of the Pula County Court replied to the applicant that the report submitted by the prison authorities showed that on 21 January 2007 the prison guards had acted in accordance with the law and that on 17 February 2007 he had been placed in solitary confinement because he had threatened to inflict self-injuries and that neither coercive measures had been applied not any threats made against him. The relevant part of the letter reads:

"As regards the event of 21 January 2007, according to the report of the Pula Prison Administration, the guards acted in accordance with the law while you, in order to diminish your personal responsibility, asserted that you had not received the prescribed medication at the right time.

...

Furthermore, the information submitted by Pula Prison does not show any indication that on 17 February 2007 any force was used against you or that any of the prison personnel threatened to tie you down for twenty-four hours."

85. On 27 March 2007 the applicant objected to the findings of the judge responsible for the execution of sentences and reiterated that on 17 February 2007 he had been strapped down for twelve hours in solitary confinement and beaten up by a prison guard. He further complained of lack of treatment for PTSD. On 16 May 2007 the judge replied to the applicant by letter, stating that his objections were unfounded.

86. On 24 May 2007 the applicant was assigned to work in the prison shop. According to the Government, until 6 August 2007 his comportment was fully satisfactory, when he suddenly started to verbally insult the prison personnel and other inmates. Owing to such frequent incidents and his exacerbated psychiatric condition, on 24 August 2007 he had again been assigned to a non-working group.

87. From 24 September to 3 October 2007 the applicant worked in the prison library. On the latter date he again started verbally insulting and attempting to physically attack the prison personnel because he was dissatisfied with the prospect of being placed in a cell with another inmate.

88. On 4 October 2007, owing to his worsening psychiatric condition and the self-infliction of injuries, the applicant was transferred to Zagreb Prison Hospital. The relevant part of the discharge letter of 18 October 2007 reads as follows:

"Diagnosis: Personality disorder

PTSD

The patient was admitted ... because of self-inflicted injuries. On arrival he was upset and in corresponding mood, with accelerated and widened thought processes, querulous and with a number of projections but without clear psychotic indications. He did not show aggressive or further auto-aggressive drives. His complaints about his treatment in Pula Prison included allegations that he had been placed in the pre-trial detention ward in a cell with smokers. He also asserted that he had been beaten up a few days prior to his arrival at the hospital. Lacerations and older haematomas on his back and a haematoma in regression on his thigh were visible on arrival. There were no visible injuries to his head.

During his stay in the hospital he was demanding, querulous, upset, constantly insisting on the alleged injustice done to him. There were no psychotic signs or aggressive or auto-aggressive drives. Only after his treatment had been altered did he become somewhat calmer and more willing to co-operate, although still persisting in his demand for "the just".

...

There are no indications for hospital treatment. Placement in a calmer and non-smoking cell is recommended together with stricter supervision and stronger efforts on the part of the treatment services as well as regular pharmacotherapy: Haldol ..., Akineton ..., Fluzepan ... and Brufen ... with regular psychiatric supervision, starting in two weeks."

89. On 19 October 2007 the applicant was returned to Pula Prison and placed in a single-occupancy cell identical to the one in which he had stayed prior to his transfer to the hospital. The Government submitted that although there had been group therapy for inmates suffering from PTSD in Pula Prison since 5 October 2007, the applicant, owing to his mental condition which included impulsive behaviour, emotional instability and tendency towards aggressive behaviour, had not been included in that therapy. However, they submitted that psychiatric supervision had been carried out as needed, without any further details.

90. The relevant part of the applicant's medical record during his stay in Pula Prison reads:

"24 April 2007

An interview. [He] announces a hunger strike as of today and [expresses an intention to inflict] self-injuries. [He is] upset, communication is not possible ...

Stricter supervision measures for seven days [are recommended]. Therapy: none.

...

24 August 2007

At 4 a.m. today he was taken to a psychiatrist at Pula General Hospital ... Hospitalisation in the Psychiatric Ward of Zagreb Prison Hospital was recommended. Treatment: Apaurin ..., Fluzepan ...

He could not be admitted to Zagreb Prison Hospital owing to the lack of space. He was calm during the second interview [with a psychiatrist], there was no further indication for hospitalisation in Zagreb Prison Hospital. Placement in a separate non-smoking cell was recommended.

...

4 October 2007

Yesterday [he inflicted] self-injuries ... [there is] redness on his neck and back and several lacerations measuring approximately 2 cm, haematoma measuring 2 to 8 cm. [He is] upset, tense, anxious, expresses suicidal thoughts and intentions. Given Prazine ... and it was recommended [to take him to] the Psychiatric Ward of Zagreb Prison Hospital.

25 October 2007

[He] is not taking the treatment prescribed.

...”

91. On 5 November 2007 the applicant was transferred back to Lepoglava State Prison.

The applicant's stay in Lepoglava State Prison from 5 November 2007 to an unspecified date in 2008

92. The relevant part of the applicant's medical record during his second stay in Lepoglava State Prison reads:

“16 November 2007

Psychiatric examination in Lepoglava State Prison: [he is] conscious, well orientated, [he is] not suicidal, [there are] no signs of psychosis, [there is] low frustration tolerance, [he is] dissatisfied with his placement, treatment and other. Placement in a smaller, non-smoking cell is recommended. [He] refuses the treatment offered (Haldol). Treatment: Apaurin ..., Fluzepan ..., stronger involvement on the part of the treatment services. D[ia]g[nosis]: Personality disorder, PTSD. [Next] check in a month.

...

28 November 2007

Psychiatric examination in Lepoglava State Prison by a psychiatrist from Zagreb Prison Hospital.... Placement in a smaller non-smoking cell is recommended.... Patient [is] motivated to work. It is recommended that he works if possible, which would also be curative. Psychiatric supervision as needed. D[i]g[anosis]: the same. Treatment: the same. ...

...

4 December 2007

Psychiatric examination in Lepoglava State Prison ... Allegedly the patient is not eating because the recommendations by psychiatrists have not been followed. We request that these recommendations be followed. On examination he is neither psychotic nor suicidal. Psychiatric supervision as needed.

...

18 December 2007

Psychiatric examination in Lepoglava State Prison ... tolerance towards frustrations still low, [he is] dissatisfied with treatment, [but is] motivated to work. Placement in a smaller, non-smoking cell is recommended as well as including him in the PTSD group.

Treatment: Apaurin ..., Sanval ...

Psychiatric supervision as needed.

...

15 January 2008

> Psychiatric examination in Lepoglava State Prison ... somewhat better in view of his new job and a smaller cell, which had so far been the biggest problem. Ventilation interview. Treatment: Apaurin ..., Sanval."

The applicant's further transfers

93. On an unspecified date in 2008 the applicant was transferred to Varaždin Prison where he stayed until 27 April 2009 when he was transferred to Zadar Prison. On 8 June 2009 he was transferred to Pula Prison and on 28 July 2009 to Zagreb Prison.

3. Civil proceedings instituted by the applicant against the State

94. As to the twenty-eight days of his unlawful detention between 2 and 30 March 2005, on 28 October 2005 the applicant applied to the Ministry of Justice (*Ministarstvo Pravosuđa*) for compensation in the sum of 500 Croatian kunas (HRK) per day and HRK 5,500 for lost earnings. Since he received no reply, the applicant brought a civil action against the State in the Prelog Municipal Court, seeking the above amounts in connection with his unlawful detention. He also complained that since 2 March 2004 he had been detained in inadequate, small and overcrowded cells and only allowed to spend fifteen to twenty minutes a day in the fresh air, and also that he had been detained with smokers, minors and convicts between 14 July and 26 September 2004. He further complained of inadequate conditions in the prison hospital and Lepoglava State Prison, as well as inadequate medical care. In this connection he alleged that he had not been provided with eye glasses and that an examination of his head had been carried out late, while an examination of his spine had not been carried out at all, and that he had not been provided with the requisite psychiatric treatment although he suffered from PTSD. He also alleged that he had been strapped to his bed and forced to spend long periods confined in the same room with smokers, all of which resulted in immense physical and mental suffering. The applicant complained in addition that he had had no opportunity to consult the case file during the criminal proceedings against him. He sought HRK 469,500 under all the above heads.

95. On 24 April 2006 the Prelog Municipal Court declared the applicant's action inadmissible on the grounds that he had failed to firstly seek compensation with the competent State Attorney's Office. The first-instance decision was quashed by the Čakovec County Court and the case was remitted to the Municipal Court for fresh examination. On 7 November 2008 the Municipal Court again declared the applicant's claim inadmissible on the same grounds. The applicant lodged an appeal and the appeal proceedings are still pending.

II. RELEVANT DOMESTIC LAW

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

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

97. The relevant part of section 62 of the Constitutional Court Act (Official Gazette no. 49/2002, of 3 May 2002, *Ustavni zakon o Ustavnom sudu Republike Hrvatske*) reads as follows:

Section 62

"1. Anyone may lodge a constitutional complaint with the Constitutional Court if he or she deems that the individual act of a state body, a body of local and regional self-government, or a legal person with public authority, which has determined his or her rights and obligations, or a suspicion or accusation of a criminal act, has violated his or her human rights or fundamental freedoms or his or her right to local and regional self-government guaranteed by the Constitution (hereinafter: constitutional right) ...

2. If there is provision for another legal remedy in respect of a violation of the constitutional rights [complained of], a constitutional complaint may be lodged only after this remedy has been exhausted.

..."

98. The relevant part of the Code of Criminal Procedure (Official Gazette nos. 62/2003 – *Zakon o kaznenom postupku*) provides as follows:

Article 4

"(1) The defendant shall be informed of any charge against him and the grounds thereof from the time of the first interview.

(2) The defendant shall have the opportunity to give his or her statement on all incriminating facts and evidence, as well as facts and evidence favourable to him.

(3) The defendant is obliged neither to present his or her defence nor to answer any question. It is forbidden and punishable to extort a confession or any other statement from the defendant or any other person participating in the proceedings."

Article 5

"(1) The defendant has the right to defend himself or herself in person or through legal counsel of his or her own choosing from among the members of the Bar. Where prescribed by this Code, defence counsel shall be officially appointed in order to ensure [the right to] defence of a defendant who has declined to appoint a defence counsel.

(2) Under the conditions set out in this Code, a defendant who, owing to the lack of means to pay for legal assistance, has not chosen a defence counsel shall be provided, at his or her request, with a defence counsel at the expense of the court [conducting the proceedings].

(3) The court or another authority participating in the proceedings shall inform the defendant of his or her right to a defence counsel from the time of the first interview.

(4) The defendant shall have adequate time and facilities for the preparation of his or her defence."

Article 13

"The court [conducting the criminal proceedings] shall inform a defendant ... of his or her rights guaranteed under this Code and the consequences of failure to undertake a step required therein."

Article 65

"A defendant in pre-trial detention shall have access to a defence counsel as soon as a decision [to place him or her in] detention has been adopted and as long as the detention lasts."

Article 104

"(1) Detention may be imposed only if the same purpose cannot be achieved by another [preventive] measure.

(2) Detention shall be lifted and the detainee released as soon as the grounds for detention cease to exist.

(3) When deciding on detention, in particular its duration, the court shall take into consideration the proportionality between the gravity of the offence, the sentence which ... may be expected to be imposed, and the need to order and determine the duration of detention.

(4) The judicial authorities conducting the criminal proceedings shall proceed with particular urgency when the defendant is in detention and shall review of their own motion whether the grounds and legal conditions for detention have ceased to exist, in which case the detention measure shall immediately be lifted."

Article 105

"(1) Where a reasonable suspicion exists that a person has committed an offence, that person may be placed in detention:

..."

The relevant provisions regulating the duration of detention read as follows:

Article 110 provides, *inter alia*, that detention ordered by an investigating judge may last one month and may be extended, for justified reasons, by a three-member judicial panel for two more months and after that for another three months. However, the maximum duration of detention during investigation shall not exceed six months.

Article 111 provides, *inter alia*, that following indictment detention may last until the judgment becomes final and after that until the decision imposing a prison sentence becomes final. In that period a judicial panel of three members shall assess every two months whether the conditions for detention still exist.

Article 114

"(1) Prior to adoption of the first-instance judgment pre-trial detention may last for a maximum of:

...

2. one year for offences carrying a sentence of a statutory maximum of five years' imprisonment;

...

(2) In cases where a judgment has been adopted but has not yet become operative, the maximum term of pre-trial detention may be extended for one sixth of the term referred to in subparagraphs 1 to 3 of paragraph 1 of this provision until the judgment becomes final, and for one fourth of the term referred to in subparagraphs 4 and 5 of paragraph 1 of this provision.

(3) Where the first-instance judgment has been quashed on appeal, following an application by the State Attorney and where important reasons exist, the Supreme Court may extend the term of detention referred to in subparagraphs 1 to 3 of paragraph 1 of this provision for another six months and the term referred to in subparagraphs 4 and 5 of paragraph 1 of this provision for another year.

(4) Following the adoption of the second-instance judgment against which an appeal is allowed, detention may last until the judgment becomes final, for a maximum period of three months.

(5) A defendant placed in detention and sentenced to a prison term by a final judgment shall stay in detention until he is sent to prison, but for no longer than the duration of his prison term."

Article 164

"...

(5) The defendant has the right to consult and copy the case file and items intended for the assessment of facts in the proceedings.

..."

Article 425

"(1) A defendant finally sentenced to a prison term ... may lodge a request for extraordinary review of a final judgment on account of infringements of laws in circumstances prescribed by this Act.

..."

Article 427

A request for extraordinary review of a final judgment may be lodged on account of:

...

3. infringement of the defence rights at the main hearing ...

Article 498

“Compensation may be awarded to a person who

...

3. owing to an error or unlawful action by a State authority ... has been kept in detention after the statutory time-limit had expired ...”

99. Article 217 of the Criminal Code (*Osnovni krivični zakon*, Official Gazette nos. 110/1997, 28/1998, 50/2000, 129/2000, 51/2001 and 111/2003), imposes, *inter alia*, a sentence of up to five years' imprisonment for aggravated theft.

100. The relevant part of section 186(a) of the Civil Procedure Act (*Zakon o parničnom postupku*, Official Gazette nos. 53/91, 91/92, 58/93, 112/99, 88/01 and 117/03 reads as follows:

“A person intending to bring a civil suit against the Republic of Croatia shall first submit a request for a settlement to the competent State Attorney's Office.

...

Where the request has been refused or no decision has been taken within three months of its submission, the person concerned may file an action with the competent court.

...”

101. The relevant provisions of the Enforcement of Prison Sentences Act (*Zakon o izvršavanju kazne zatvora*, Official Gazette nos. 128/1999 and 190/2003) read as follows:

PURPOSE OF A PRISON TERM

Section 2

“The main purpose of a prison term, apart from humane treatment and respect for personal integrity of a person serving a prison term ... is development of his or her capacity for life after release in accordance with the laws and general customs of society.”

PREPARATION FOR RELEASE AND ASSISTANCE AFTER RELEASE

Section 13

“During the enforcement of a prison sentence a penitentiary or prison shall, together with the institutions and other legal entities in charge of assistance after release, ensure that a prisoner is prepared for his or her release [from prison].”

COMPLAINTS

Section 15

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

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

JUDICIAL PROTECTION AGAINST ACTS AND DECISIONS OF THE PRISON ADMINISTRATION

Section 17

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

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

INDIVIDUAL PROGRAMME FOR THE ENFORCEMENT OF A PRISON TERM

Section 69

(1) The individual programme for the enforcement of a prison term (hereinafter “the enforcement programme”) consists of a combination of pedagogical, working, leisure, health, psychological and safety acts and measures aimed at organising the time spent during the prison term according to the character traits and needs of a prisoner and the type and facilities of a particular penitentiary or prison. The enforcement programme shall be designed with a view to fulfilling the purposes of a prison term under section 7 of this Act.

(2) The enforcement programme shall be devised by a prison governor on the proposal of a penitentiary or a prison's expert team ...

(3) The enforcement programme shall contain information on ... special procedures (... psychological and psychiatric assistance ... special security measures ...)

...”

HEALTH PROTECTION

Section 103

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

OBLIGATORY MEDICAL EXAMINATION

Section 104

"...

(2) A doctor shall examine a sick or injured inmate ... and undertake all measures necessary to prevent or cure the illness and to prevent deterioration of the inmate's health."

SPECIALIST EXAMINATION

Section 107

"(1) An inmate has the right to seek a specialist examination if such an examination has not been ordered by a prison doctor.

..."

III. RELEVANT COUNCIL OF EUROPE DOCUMENTS

102. The relevant part of the Report to the Croatian Government on the visit to Croatia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment from 4 to 14 May 2007 reads:

"84. The provision of adequate psychiatric care was problematic at Lepoglava Prison. Efforts to employ a full-time psychiatrist had not been successful, due to the fact that remuneration and other working conditions fell short of those offered in health establishments; instead, two psychiatrists attended the establishment for a total of six hours a week, and a third from Zagreb Prison Hospital was involved in various programmes for different categories of patients (e.g. drug-addicts, inmates with post-traumatic-stress-disorder (PTSD), sexual offenders).

The CPT recommends that steps be taken to:

- significantly increase the hours of attendance of psychiatrists at Lepoglava Prison;

- ensure that prisoners at Lepoglava, Osijek and Rijeka Prisons benefit from the services of a psychologist."

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLE 3 and 8 OF THE CONVENTION

103. The applicant complained about the general conditions of his detention in various prisons and alleged that the prison authorities had failed to secure him adequate medical care for his psychiatric condition, in particular PTSD. He further complained that on several occasions he had been attacked by prison personnel and other inmates and that no steps had been taken in this respect. The applicant also complained of the fact that he had been placed in a cell with smokers. He relied on Articles 3 and 8 of the Convention, which reads as follows:

Article 3

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

Article 8

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

104. The Government contested these arguments.

A. Admissibility

1. The applicant's stay in Varaždin Prison from March 2004 to 30 March 2005 and in Zagreb Prison from 13 June to 6 July 2005

105. The Government firstly argued that in respect of the period the applicant had spent in Varaždin Prison from March 2004 until 30 March 2005 the application had been lodged with the Court outside the six-month time-limit.

106. The applicant made no comments.

107. The Court notes that the applicant's first pre-trial detention in Varaždin Prison ended on 30 March 2005, when he was released. Thus, the six-month period in respect of the conditions of the applicant's detention in that period started to run on 31 March 2005. As regards the applicant's stay in Zagreb Prison, the Court notes that it ended on 6 July 2005.

108. However, the applicant lodged his application with the Court on 19 May 2006, more than six months later.

109. It follows that the part of the application concerning the applicant's complaints about this stay in Varaždin Prison from March 2004 to 30 March 2005 and in Zagreb Prison from 13 June to 6 July 2005 has been introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

2. The applicant's detention from 6 July 2005 to 5 November 2007

110. The Government requested the Court to declare the complaints under Article 3 of the Convention inadmissible for failure to exhaust domestic remedies. They submitted that the 1999 Enforcement of Prison Sentences Act envisaged a number of remedies for the protection of the rights of persons deprived of liberty, including judicial protection against proceedings and decisions of the prison administration. The applicant should have firstly addressed his complaints to the prison administration. The applicant had, however, addressed only some of his complaints directly to a judge responsible for the execution of sentences.

111. The applicant argued that he had exhausted all available remedies.

112. According to the Court's established case-law, where an applicant has a choice of domestic remedies, it is sufficient for the purposes of the rule of exhaustion of domestic remedies that that applicant make use of the remedy which is not unreasonable and which is capable of providing redress for the substance of his or her Convention complaints (see, *inter alia*, *Hilal v. the United Kingdom* (dec.), no. 45276/99, 8 February 2000, and *Krumpel and Krumpelová v. Slovakia*, no. 56195/00, § 43, 5 July 2005). Indeed, where an applicant has a choice of remedies and their comparative effectiveness is not obvious, the Court interprets the requirement of exhaustion of domestic remedies in the applicant's favour (see *Budayeva and Others v. Russia*, nos. 15339/02, 21166/02, 20058/02, 11673/02 and 15343/02, § 110, ECHR 2008-... (extracts), and the cases cited therein). Once the applicant has used such a remedy, he or she cannot also be required to have tried others that were also available but probably no more likely to be successful (see *Ivan Vasilev v. Bulgaria*, no. 48130/99, § 56, 12 April 2007 and the cases cited therein).

113. As to the remedies available to the applicant under the Enforcement of Prison Sentences Act, the Court notes that section 5(2) of that Act clearly provides that complaints shall be lodged orally or in writing with a prison governor, a judge responsible for the execution of sentences or the Head Office of the Prison Administration of the Ministry of Justice. It follows that the applicant could have addressed his complaints to any of these authorities (see *Štitić.v. Croatia*, no. 29660/03, § 27, 8 November 2007).

114. In this connection the Court notes that on 1 September and 7 December 2005 the applicant made complaints to the Varaždin County Court judge responsible for the execution of sentences about the conditions in Lepoglava State Prison and the lack of adequate psychiatric treatment.

The latter complaint he repeated to the Ministry of Justice. Again, in his appeal of 16 May 2006 against the decision of the Lepoglava State Prison authorities to place him in a Strict Supervision Department, addressed to the Varaždin County Court judge responsible for the execution of sentences, the applicant complained of the lack of adequate medical treatment and his conflicts with other inmates. The applicant's complaint of 30 May 2006, addressed to the Ombudsman's Office, was forwarded to the Head of Prison Administration. In his further complaint to the Varaždin County Court judge responsible for the execution of sentences, of 25 September 2006, the applicant complained of the use of force against him on 18 September 2006.

115. During his stay in Gospić Prison, on 6 November 2006 the applicant complained to the Head of the Prison Administration.

116. A complaint about conditions in Pula Prison was sent to the Ministry of Family, War Veterans and Inter-Generational Solidarity, which forwarded it to the Head of the Prison Administration on 26 January 2007. The applicant also complained about the incidents in Pula Prison of 21 January and 17 February 2007 in his oral statement given before the Pula County Court judge responsible for the execution of sentences.

117. It follows that the applicant did complain both to the competent judges responsible for the execution of sentences and to the Prison Administration. In the Court's view this choice was in conformity with the domestic legislation. However, the judges did not institute any proceedings upon the applicant's complaints; nor did they issue a decision on them. Instead, they replied to the applicant by letters.

118. The Court finds that the applicant, by complaining to the competent judges responsible for the execution of sentences and the Prison Administration, made adequate use of the remedies provided for in the domestic law that were at his disposal in respect of his complaints concerning the inadequate prison conditions and the lack of adequate medical assistance as well as the alleged attacks on him by the prison guards on three separate occasions. Accordingly, the complaints concerning the applicant's stay in Lepoglava State Prison from 6 July 2005 to 14 October 2006, in Gospić Prison from 14 October 2006 to 6 January 2007 and in Pula Prison from 6 January to 5 November 2007, cannot be dismissed for failure to exhaust domestic remedies (see *Štitić.v. Croatia*, cited above, § 30).

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

3. The applicant's further detention from 5 November 2007 on

120. As regards the applicant's stay in various detention facilities after 5 November 2007, the Court notes that the applicant has not shown that he has exhausted available domestic remedies. It follows that this part of the application must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

B. Merits

1. The parties' submissions

121. The applicant made global complaints about his overall detention. He maintained that he had been placed in overcrowded cells, mostly with smokers, although he did not smoke. He further argued that although he had been suffering from post-traumatic stress disorder, he had not received any treatment in this connection. The applicant also alleged that on three separate occasions, namely, on 18 September 2006 and 21 January and 17 February 2007, he had been beaten up by prison personnel and that no adequate steps had been taken by the relevant domestic authorities to investigate these allegations.

122. The Government also submitted global arguments as regards the overall period of the applicant's detention. They argued that the conditions of the applicant's detention had not amounted to inhuman treatment within the meaning of Article 3 of the Convention. They maintained that he had had adequate cell space and that he had been able to have at least two hours' fresh air daily. As regards the working opportunities and leisure activities, the Government submitted that during his detention after conviction the applicant had had a possibility to work and it had depended on him to benefit from it. He had also been able to undergo computer training, watch television or read.

123. As regards the psychiatric treatment, the Government argued that none of the experts had established that the applicant's mental condition had been incompatible with serving a prison term in a regular prison. The applicant had been under constant psychiatric and medical supervision. Whenever his condition had worsened, he had been placed in a hospital or his treatment had been adjusted. He had been administered the prescribed pharmacotherapy. He had been involved in PTSD group-therapy sessions while in Lepoglava State Prison. While in Pula Prison such group sessions had also been provided and the applicant had initially been included. However, owing to his frequent conflicts with other inmates and his general disruptive behaviour his further participation was terminated. There was no indication that his medical condition had worsened during his stay in prison.

124. As regards the alleged assaults on the applicant by the prison personnel, the Government argued that none of them reached the required level of severity under Article 3 of the Convention. On each occasion the use of force against the applicant had been necessary and undertaken solely with the aim of preventing the applicant from attacking others or inflicting self-injuries. On 18 September 2006 the force was used by the prison personnel in order to protect the prison guards from the chair thrown by the applicant at prison guards; that use of force against the applicant had been justified. Although the prison doctor had been immediately summoned, the applicant had refused to be examined. He had made no complaints about the incident. Likewise, as regards the incidents of 21 January and 17 February

2007, the applicant had refused to be examined by a doctor immediately after the incidents and subsequent medical reports showed no injuries on the applicant's body. On each occasion the guards in question were heard by the prison authorities and had made reports on the incidents. As regards the incidents of 21 January and 17 February 2007, the competent judge responsible for the execution of sentences had heard the applicant and obtained the reports from the Pula Prison authorities and concluded that the applicant's allegations were unfounded.

2. *The Court's assessment*

(a) Scope of the issues for consideration

125. The Court notes that the applicant's complaints under Article 3 and 8 of the Convention mainly concern three issues:

- *first*, whether the general conditions of the applicant's detention in various prison facilities were compatible with that provision;
- *second,* whether adequate steps were taken in connection with the applicant's allegations of attacks on him by the prison personnel and other inmates; and
- *third*, whether the applicant received adequate medical care for his psychiatric condition.

126. As regards the first and the third issue, the Court notes that the period to be examined starts with the applicant's first placement in Lepoglava State Prison on 6 July 2005 and ends on 5 November 2007 when he was again transferred from Pula Prison to Lepoglava State Prison. As regards the period of the applicant's detention prior to 6 July 2005, it is to be noted, as concluded above (see paragraph 110) that that part of the application was lodged with the Court out of the six-month time-limit. As regards the period after the applicant was transferred from Pula Prison back to Lepoglava State Prison on 5 November 2007, it is to be noted that the applicant has not exhausted domestic remedies as regards any complaints concerning his detention following that transfer (see paragraph 121 above).

127. Before addressing further issues as to the applicant's above complaints, the Court notes that it is the master of the characterisation to be given in law to the facts of the case; it does not consider itself bound by the characterisation given by an applicant or a government. A complaint is characterised by the facts alleged in it and not merely by the legal grounds or arguments relied on (see *Powell and Rayner v. the United Kingdom*, 21 February 1990, § 29, Series A no. 172, and *Guerra and Others v. Italy*, 19 February 1998, § 44, *Reports* 1998-I).

128. In this connection the Court stresses that its case-law does not exclude that treatment which does not reach the severity of Article 3 may nonetheless breach Article 8 in its private-life aspect where there are sufficiently adverse effects on physical and moral integrity (see *Costello-Roberts v. the United Kingdom*, judgment of 25 March 1993, Series A no. 247-C, § 36). In the present case the Court will consider the applicant's

complaints concerning the general conditions of his detention and the alleged attacks on him under Article 3 of the Convention, while the remaining complaints, concerning the alleged lack of adequate psychiatric treatment, will be examined under Article 8 of the Convention.

A. COMPLAINTS TO BE EXAMINED UNDER ARTICLE 3 OF THE CONVENTION

1. General principles enshrined in the case-law

129. As the Court has held on many occasions, Article 3 of the Convention 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).

130. The Court reiterates that, according to its case-law, 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 level is, in the nature of things, relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim (see *Kudła v. Poland* [GC], no. 30210/96, § 91, ECHR 2000-XI, and *Peers v. Greece*, no. 28524/95, § 67, ECHR 2001-III). Although the purpose of such treatment is a factor to be taken into account, in particular whether it was intended to humiliate or debase the victim, the absence of any such purpose does not inevitably lead to a finding that there has been no violation of Article 3 (ibid., § 74).

2. Application in the present case

a. General conditions of the applicant's detention

131. One of the characteristics of the applicant's detention that requires examination is his allegation that the cells were overpopulated. In this connection the Court observes that the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) has set 4 sq. m per prisoner as an appropriate, desirable guideline for a detention cell (see, for example, the CPT Report on its visit to Latvia in 2002 – CPT/Inf (2005) 8, § 65). This approach has been confirmed by the Court's case-law. The Court notes that in the *Peers* case a cell of 7 sq. m for two inmates was noted as a relevant aspect in finding a violation of Article 3, albeit that in that case the space factor was coupled with an established lack of ventilation and lighting (see *Peers v. Greece*, no. 28524/95, §§ 70–72, ECHR 2001-III). In the *Kalashnikov* case the applicant had been confined to a space measuring less than 2 sq. m. In that case the Court held that such a degree of overcrowding raised in itself an issue under Article 3

of the Convention (see *Kalashnikov v. Russia*, no. 47095/99, §§ 96–97, ECHR 2002-VI). The Court reached a similar conclusion in the *Labzov* case, where the applicant was afforded less than 1 sq. m of personal space during his 35-day period of detention (see *Labzov v. Russia*, no. 62208/00, §§ 41-49, 16 June 2005), and in the *Mayzit* case, where the applicant was afforded less than 2 sq. m during nine months of his detention (see *Mayzit v. Russia*, no. 63378/00, § 40, 20 January 2005).

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

(i) Lepoglava State Prison from 6 July 2005 to October 2006

133. According to the Government from July to September 2005 the applicant shared a cell measuring 9.12 square metres with three other inmates; from September to December 2005 he shared a cell measuring 9.82 square metres with three other inmates; in May and June 2006 he shared a cell measuring 10.13 square metres with one inmate; from July to September 2006 he shared a cell measuring 13.72 square metres with three other inmates. In all cells there was a separate toiled area. No information was submitted either by the Government or the applicant for the period between December 2005 and May 2006. It follows that the applicant was confined in a space below the standards set by the CPT in the following periods: from July to September 2005 the applicant was confined to a space measuring 2.28 square metres; from September to December 2005 to 2.45 square metres; and from July to September 2006 to 3.43 square metres.

134. The applicant's daily regime during the periods when he did not work allowed for his movement out of cell during the entire day save for the period from 10.45 p.m. to 7.00 a.m. During the daytime he was allowed to either stay in the cell or in a TV-room or to make telephone calls. He was also allowed optional outdoor exercise of an hour and a half twice a day. In the periods when he worked, the applicant was allowed out of the cell from 6 a.m. to 10.45 p.m. After his work ended at 3 p.m., the applicant was allowed optional activities until 5.15 p.m., including an outdoor exercise. In the Court's view, the scarce space of the applicant's cells was compensated for by the freedom of movement allowed. The Court finds no other aggravating circumstances of the applicant's detention in Lepoglava State Prison.

135. The fact that, during his incarceration, the applicant was at times placed in cells with smokers cannot in itself amount to treatment contrary to Article 3 of the Convention because no specific consequences have been cited, such as an established serious effect on the applicant's health.

136. The foregoing considerations are sufficient for the Court to conclude that there has been no violation of Article 3 of the Convention on

account of the general conditions of the applicant's detention in Lepoglava State Prison in the period from 6 July 2005 to 14 October 2006.

(ii) Gospić Prison from 14 October 2006 to 6 January 2007

137. From 14 October 2006 to 6 January 2007 the applicant shared a cell measuring 12.12 square metres with one other inmate. Thus, he was confined to personal space measuring 6.06 square metres, which is in conformity with the standards set by the CPT. The Court finds no other aggravating circumstances of the applicant's detention in Gospić Prison.

138. The Court concludes that the information submitted by the applicant does not suffice for it to find a violation of Article 3 of the Convention on account of the general conditions of the applicant's detention in Gospić Prison in the period from 14 October 2006 to 6 January 2007.

(iii) Pula Prison from 6 January to 5 November 2007

139. From 6 January 2007 to 8 February 2007 he shared a cell measuring 10.02 square metres with one other inmate; and from 8 February 2007 to 5 November 2007 he shared one measuring 8.73 square metres with another inmate, save for the period from 4 to 19 October 2007 when he was in Zagreb Prison Hospital. Thus he was confined to personal space between 5.01 and 4.36 square metres, which is in conformity with the standards set by the CPT.

140. The Court finds no other aggravating circumstances of the applicant's detention in Pula Prison and concludes that the information submitted by the applicant does not suffice for it to find a violation of Article 3 of the Convention on account of the general conditions of the applicant's detention in Pula Prison in the period from 6 January to 5 November 2007.

(iv) Conclusion

141. In conclusion the Court finds that there has been no violation of Article 3 of the Convention as regards the general conditions of the applicant's detention from 6 July 2005 to 5 November 2007.

b. Alleged assaults on the applicant in prison

142. The Court reiterates that where an individual is taken into police custody in good health but is found to be injured at the time of his release, it is incumbent on the State to provide a plausible explanation of how those injuries were caused, failing which a clear issue arises under Article 3 (see *Selmouni v. France* [GC], no. 25803/94, § 87, ECHR 1999-V, and *Satık and Others v. Turkey*, no. 31866/96, § 54, 10 October 2000).

143. In the Court's opinion, the same principle extends to detainees in a prison having regard to the fact that they are deprived of their liberty and remain subject to the control and responsibility of the prison administration. In respect of a person deprived of his liberty, recourse to physical force which has not been made strictly necessary by his own conduct diminishes

human dignity and is in principle an infringement of the right set forth in Article 3 (see *Tekin v. Turkey*, 9 June 1998, *Reports* 1998-IV, §§ 52 and 53).

144. Where an individual raises an arguable claim that he or she has been seriously ill-treated by the state authorities in breach of Article 3, that provision, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within their jurisdiction the rights and freedoms defined in ... [the] Convention", requires by implication that there should be an effective official investigation. This investigation should be capable of leading to the identification and punishment of those responsible. Otherwise, the general legal prohibition of torture and inhuman and degrading treatment and punishment would, despite its fundamental importance, be ineffective in practice and it would be possible in some cases for agents of the State to abuse the rights of those within their control with virtual impunity (see *Assenov and Others*, cited above, § 102; *Labita v. Italy* [GC], no. 26772/95, § 131, ECHR 2000-IV; and *Muradova v. Azerbaijan*, no. 22684/05, § 100, 2 April 2009). The minimum standards as to effectiveness defined by the Court's case-law also include the requirements that the investigation must be independent, impartial and subject to public scrutiny, and that the competent authorities must act with exemplary diligence and promptness (see, for example, *Menesheva v. Russia*, no. 59261/00, § 67, ECHR 2006-III).

145. The investigation into serious allegations of ill-treatment must be thorough. That means that the authorities must always make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation or as the basis of their decisions (see *Assenov and Others*, cited above, § 103 et seq.). They must take all reasonable steps available to them to secure the evidence concerning the incident, including, *inter alia,* eyewitness testimony and forensic evidence (see *Tanrıkulu v. Turkey* [GC], no. 23763/94, ECHR 1999-IV, § 104 et seq., and *Gül v. Turkey*, no. 22676/93, § 89, 14 December 2000). Any deficiency in the investigation which undermines its ability to establish the cause of injuries or the identity of the persons responsible will risk falling foul of this standard.

(i) Incident of 18 September 2006

146. The Court reiterates that allegations of ill-treatment must be supported by appropriate evidence. In assessing evidence, the Court has generally applied the standard of proof beyond reasonable doubt. However, such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII, and *Dedovskiy and Others v. Russia*, no. 7178/03, § 74, 15 May 2008).

147. It is not disputed between the parties that on 18 September 2006 force was used against the applicant by prison guards. However, the course of the incident is differently described by the applicant and by the

Government. While the applicant asserted that the prison guards had beaten him, the Government, relying on several written reports by the Lepoglava State Prison personnel submitted to the prison governor, alleged that force was used against the applicant strictly for the purposes of responding to his violent behaviour and handcuffing him and strapping him to the bed.

148. The Court notes that the prison doctor arrived immediately afterwards to examine the applicant. In the applicant's medical record the doctor described the applicant as being anxious, verbally aggressive, dissatisfied with being handcuffed and banging against the bed with the handcuffs. The doctor recorded no wounds or any other traces of physical injuries.

149. In view of the above, the Court considers that these indications are insufficient to substantiate the ill-treatment described by the applicant. Thus the Court finds that there is insufficient evidence to support the applicant's allegation that on 18 September 2007 he was beaten by prison guards. Therefore, there has been no substantive violation of Article 3 of the Convention as regards the said incident.

150. The Court reiterates that Article 3 of the Convention also requires the authorities to investigate allegations of ill-treatment when they are “arguable” and “raise a reasonable suspicion” (see *Gök and Güler v. Turkey*, no. 74307/01, § 38, 28 July 2009). In the present case the Court has not found it proved, on account of lack of evidence, that the applicant was ill-treated. Nevertheless, as it has held in previous case, that does not preclude his complaint in relation to Article 3 form being “arguable” for the purposes of the positive obligation to investigate (see *Böke and Kandemir v. Turkey*, nos. 71912/01, 26968/02 and 36397/03, § 54, 10 March 2009).

151. The Court notes that it is undisputed that on 18 September 2006 an incident took place in Lepoglava State Prison where physical force was used against the applicant by the prison guards. Furthermore, in his complaint of 25 September 2006 addressed to the Varaždin County Court judge responsible for the execution of sentences, the applicant alleged, *inter alia*, that on 18 September 2006 he had been beaten up in Lepoglava State Prison by prison guards. In view of particularly vulnerable position of detained persons and the requirement that any use of physical force by the state officials must be confined to the level of strictly necessary, the Court considers that the above facts called for an investigation into the applicant's allegations of ill-treatment in order to establish all relevant circumstances of the use of physical force against the applicant. However, the applicant's allegations were ignored.

152. As to the Government's argument that the prison personnel involved in the incident made written reports to the prison governor, the Court reiterates that it may generally be regarded as necessary for the persons responsible for and carrying out the investigation to be independent from those implicated in the events (see, *mutatis mutandis*, *Güleç v. Turkey*, 27 July 1998, *Reports* 1998-IV, §§ 81-82; *Öğur v. Turkey*, [GC] no. 21954/93, ECHR 1999-III, §§ 91-92; and *McShane v. the United*

Kingdom, no. 43290/98, § 95, 28 May 2002). This means not only a lack of hierarchical or institutional connection, but also a practical independence (see, *mutatis mutandis*, *Ergi v. Turkey*, 28 July 1998, *Reports* 1998-IV, §§ 83-84).

153. In the present case the written reports and oral statements of the guards involved were made within the prison and were subject to scrutiny by the prison governor, who was the hierarchical superior of the persons implicated in the incident. Furthermore, neither the prison governor nor any other official has issued any decision as to the applicant's allegations. This cannot be seen as a thorough and effective investigation into the applicant's allegations of ill-treatment by the prison personnel carried out by independent and impartial bodies. In the Court's view, the onus was primarily on the Varaždin County Court judge responsible for the execution of sentences, to whom the applicant submitted his complaint of ill-treatment, or other independent prosecuting or judicial authority, to examine the available evidence, such as taking statements from the applicant, the officers involved and the prison doctor, and carrying out an independent assessment of the facts. However, the judge ignored the applicant's allegations.

154. Having regard to the above findings, the Court finds that the inquiry carried out into the applicant's allegations of ill-treatment was not independent, thorough, adequate or efficient. There has accordingly been a violation of Article 3 of the Convention under its procedural limb.

(ii) Incident of 21 January 2007

155. Again, it is not disputed between the parties that on 21 January 2007 force was used against the applicant by prison guards. However, the course of the incident is differently described by the applicant and by the Government. While the applicant asserted that one of the prison guards had stamped on his foot and the other had hit him on the head, the Government, relying on several written reports by the Pula Prison personnel, alleged that the force was used against the applicant strictly for the purpose of responding to his violent behaviour and handcuffing him and strapping him to the bed.

156. The Court notes that there is no medical documentation or any other evidence supporting the applicant's allegations of ill-treatment. Therefore, the Court considers that there is insufficient evidence to support the applicant's allegation that on 21 January 2007 he was ill-treated by prison guards. Therefore, there has been no substantive violation of Article 3 of the Convention as regards the said incident.

157. As to the procedural aspect of Article 3 of the Convention, and especially in the context of detained persons, the Court refers to the principles stated above in paragraphs 150 and 151. In his statement given before the Pula County Court judge responsible for the execution of sentences on 26 February 2007, the applicant alleged, *inter alia*, that on 21 January 2007 one of the prison guards had stamped on his foot while the

other had thumped him on the head. The judge requested the report from the Pula Prison authorities, which report was filed on 9 March 2007, briefly describing the event in question. In a letter of 23 March 2007 the judge dismissed the applicant's allegations. The Court notes that the judge did not hear any of the guards involved in person. As to the report submitted by the Pula Prison authorities, the Court notes that it did not describe the details of the incident, but only briefly stated that a special measure of maintaining order and security had been applied to the applicant because he had previously threatened to inflict self-injuries.

158. As to the Government's argument that the prison personnel involved in the incident submitted written reports to the prison governor, the Court refers to the findings as regards the incident of 18 September 2006 (see paragraphs 152 and 153 above).

159. In sum, the Court considers that there was no thorough, effective and independent investigation into the applicant's allegations of ill-treatment by the prison personnel. There has accordingly been a violation of Article 3 of the Convention under its procedural limb.

(iii) Incident of 17 February 2007

160. As regards the incident of 17 February 2007, the applicant alleged that while being strapped to the bed in solitary confinement one guard had thumped him on the left side of his chest. The Government denied that any force had been used against the applicant that day.

161. The Court notes that four days after the alleged incident, on 21 February 2007, the applicant was examined by the Pula Prison doctor who drew up a report stating that the applicant complained of pain in the left hemithorax and that trauma was not excluded, though the doctor found no visible signs of trauma or haematoma. While breathing, the applicant spared the left side and expressed pain at palpation of the left upper ribs. He was sent for an x-ray examination, which was done on 22 February 2007 and did not reveal any signs of rib-related trauma or lung alteration.

162. In the Court's view, the above medical report does not suffice to conclude beyond reasonable doubt that the applicant had been hit on the left side of his chest. While it is true that he expressed pain on being touched in that area, neither the examination by the prison doctor, nor the x-ray examination revealed any sign of injury. Therefore, the Court considers that there is insufficient evidence to support the applicant's allegation that on 17 February 2007 he was ill-treated by prison guards. Therefore, there has been no substantive violation of Article 3 of the Convention as regards the said incident.

163. As to the procedural aspect of Article 3 of the Convention, the Court first notes that in his statement given before the Pula County Court judge responsible for the execution of sentences on 26 February 2007, the applicant alleged, *inter alia*, that on 17 January 2007 one of the prison guards had thumped him on the left side of his chest while the applicant had been strapped to a bed in solitary confinement. It follows that the applicant

duly informed the relevant national authorities of the substance of his complaints under Article 3 of the Convention. A question now arises as to whether in the specific circumstances of the incident at issue an obligation arose for the relevant State authorities to investigate the applicant's allegations of ill-treatment. In this connection the Court observes that the judge requested the report from the Pula Prison authorities, which report was filed on 9 March 2007 stating that no force had been used against the applicant.

164. The Court finds that because of the lack of clear medical findings that the applicant had any injuries coupled with the lack of any conducive evidence that physical force was used against the applicant, his assertion of ill-treatment against him by the prison guards allegedly occurred on 17 February 2007 lacked credibility and therefore did not entail a procedural obligation under Article 3 of the Convention to investigate the applicant's allegations.

There has accordingly been no violation of Article 3 of the Convention under its procedural limb.

B. COMPLAINTS TO BE EXAMINED UNDER ARTICLE 8 OF THE CONVENTION

165. Private life" is a broad term not susceptible to exhaustive definition. The Court has already held that mental health must also be regarded as a crucial part of private life associated with the aspect of moral integrity. The preservation of mental stability is in that context an indispensable precondition to effective enjoyment of the right to respect for private life (see *Bensaid v. the United Kingdom*, no. 44599/98, § 47, ECHR 2001-I).

166. The Court further reiterates that, while the essential object of Article 8 is to protect the individual against arbitrary interference by the public authorities, it does not merely compel the State to abstain from such interference: in addition to this negative undertaking, there may be positive obligations inherent in an effective respect for private (see *Van Kück v. Germany*, no. 35968/97, § 70, ECHR 2003-VII). However, the boundaries between the State's positive and negative obligations under Article 8 do not lend themselves to precise definition. The applicable principles are nonetheless similar. In determining whether or not such an obligation exists, regard must be had to the fair balance which has to be struck between the general interest and the interests of the individual; and in both contexts the State enjoys a certain margin of appreciation (see, for instance, *Keegan v. Ireland*, 26 May 1994, Series A no. 290, § 49; *Sheffield and Horsham v. the United Kingdom*, 30 July 1998, § 52, *Reports of Judgments and Decisions* 1998-V and *Mikulić v. Croatia*, no. 53176/99, § 57, ECHR 2002-I).

167. The Court firstly notes that it has been established by appropriate experts that the applicant suffers from a personality disorder, PTSD and various other mental ailments. On 13 June 2005 the applicant was placed in

the Department for Diagnostics and Programming of Zagreb Prison with a view to assessing his condition in order to decide on which prison he should be placed in and his individual programme. A report drawn up for that purpose indicated that he was impulsive and emotionally unstable, easily lost control of his behaviour, with evident low tolerance towards frustrations, a high tendency to react aggressively, a significantly reduced capacity to maintain self-control and a high likelihood that he would reoffend. Psychiatric supervision, as needed, was recommended (see § 44 above).

168. This indication was reinforced several times. Thus, the discharge letter of Zagreb Prison Hospital drawn up on 25 May 2005 recommended psychiatric supervision of the applicant as needed and more intensive engagement on the part of the treatment services (see paragraph 41 above). The report of 24 February 2006 drawn up by the Lepoglava State Prison authorities indicated that the applicant's diagnosis included depression, paranoia, elements of PTSD and low tolerance on frustrations (see paragraph 53 above). A further discharge letter of the Zagreb Prison Hospital drawn up on 18 October 2007 indicated PTSD as the applicant's diagnosis and recommended his regular psychiatric supervision (see paragraph 88 above).

169. The facts of the case also show that the applicant was prone to conflicts with other inmates and the prison personnel, that he was of aggressive behaviour and that he often went on hunger strike. On several occasions he also inflicted self-injuries. In the Court's view, the above circumstances show that the applicant was indeed in need of a psychiatric supervision.

170. The case therefore raises the question whether the State authorities have taken necessary measures to secure adequate psychiatric supervision of the applicant. In this connection the fact that the applicant is a detainee is of paramount importance since as such he is under the control of the State authorities and is not able of securing the psychiatric supervision on his own but is in that respect dependable on the actions of the relevant prison authorities. Undeniably, detained persons who suffer from a mental disorder are more susceptible to the feeling of inferiority and powerlessness. Because of that an increased vigilance is called for in reviewing whether the Convention has been complied with. While it is for the authorities to decide, on the basis of the recognised rules of medical science, on the therapeutic methods to be used to preserve the physical and mental health of patients who are incapable of deciding for themselves, and for whom they are therefore responsible, such patients nevertheless remain under the protection of Article 8 (see, *mutatis mutandis*, *Sławomir Musiał v. Poland*, no. 28300/06, § 96, 20 January 2009).

171. As to the case at issue, the Court agrees with the Government that there was no indication in the applicant's medical record at any stage that called into question his placement in a regular penal institution. It is not for the Court to challenge this record. The Court further notes that none of the

psychiatrists who examined the applicant recommended any specific treatment, save for pharmacotherapy, for the applicant's mental condition.

172. It is undisputed that the applicant was prescribed and given pharmacotherapy for his mental condition during his stay in prisons. Furthermore, there is no indication in the documents submitted by the applicant that the conditions of his detention led to a deterioration of his mental health.

173. As regards some other, optional, treatment, the Government submitted that inmates suffering from PTSD were involved in group therapy specifically tailored to their needs. As regards the three penal institutions at issue, such groups were founded in Lepoglava State Prison and Pula Prison.

174. As regards the applicant's stay in Lepoglava State prison, the Government maintained that during his stay there the applicant had initially, from the day of his arrival, been involved in a therapeutic programme for inmates suffering from PTSD. The applicant alleged that he had not been informed of the group sessions and had not attended them. The Court notes that the Government failed to provide any further information on the exact duration and frequency of any therapeutic treatment of the applicant. For that reason the Court is not able to assess whether the applicant did or did not attend any such sessions.

175. While in Pula Prison, from 6 January to 5 November 2007, the applicant initially had been included in group therapy for inmates suffering from PTSD, but was soon excluded. According to the Government, this was because of the applicant's frequent conflicts with other inmates and his disruptive behaviour at the sessions.

176. The Court does accept that, as stated in the medical documents in the file, the applicant is a person prone to conflict and aggressive behaviour (as indeed indicated in his medical record and the opinions of the psychiatrists) and that accordingly his involvement in therapeutic groups might be difficult if at all possible. The Court also observes that the psychiatrists have never specifically recommended that the applicant undergo group therapy.

177. As regards the applicant's psychiatric treatment during his stay in Lepoglava State Prison, the Court notes that during the period of one year and three months that the applicant spent there, he was seen by a psychiatrist on six occasions and once refused to see the prison psychiatrist. He was also hospitalised twice in Zagreb Prison Hospital in connection with his mental condition, first for a period of twenty days from 30 May to 21 June 2006 and then for a period of nine days from 20 to 29 September 2006. During his entire stay in Lepoglava State Prison the applicant received prescription drugs for his mental condition.

178. It transpires from the file that during his stay in Gospić Prison from 14 October 2006 to 6 January 2007 the applicant did not receive any treatment for his psychiatric condition.

179. During the applicant's stay in Pula Prison from 6 January to 5 November 2007 he received prescription drugs. He was twice seen by a

psychiatrist and sent to Zagreb Prison Hospital for fourteen days from 4 to 18 October 2007.

180. The Court observes that the applicant received pharmacotherapy as prescribed and was regularly seen by a psychiatrist. He was hospitalised on three occasions, owing to the worsening of his mental condition. In the Court's view, the applicant received the treatment prescribed by the psychiatrist and was under regular and adequate psychiatric supervision. His psychiatric condition was thus adequately addressed by the relevant prison authorities.

There has accordingly been no violation of Article 8 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 5 §§ 1 AND 5 OF THE CONVENTION

181. The applicant complained that his detention between 2 and 30 March 2005 was unlawful and that he had not obtained redress in that respect. He relied on Article 5 §§ 1 and 5 of the Convention, which, in so far as relevant, read:

> "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:
>
> ...
>
> (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
>
> ...
>
> 5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation."

182. The Government argued that the applicant did not have victim status because, in a decision of 30 March 2005, the Pula County Court found that the applicant's detention from 2 to 30 March 2005 had been unlawful and because the applicant had the possibility of bringing a civil action against the State in order to obtain compensation for his unlawful detention. In the alternative, they argued that this part of the application had been lodged outside the six-month time-period because the applicant's detention had ended on 30 March 2005, whereas the application had been lodged with the Court on 19 May 2006. Furthermore, the applicant had failed to exhaust domestic remedies because his civil action against the State had been pending.

183. As to the applicant's victim status, the Court reiterates that an applicant may lose his victim status if two conditions are met: first, the authorities should acknowledge the alleged violations either expressly or in substance and, second, afford redress (see, for example, *Eckle v. Germany*,

15 July 1982, Series A no. 51, §§ 69; *Dalban v. Romania* [GC], no. 28114/95, § 44, ECHR 1999-VI; *Guisset v. France*, no. 33933/96, §§ 66-67, ECHR 2000-IX; and *Stephens v. Malta (no. 1)*, no. 11956/07, § 58, 21 April 2009). A decision or measure favourable to the applicant is in principle not sufficient to deprive him of his status as a "victim" in the absence of such acknowledgement and redress (see *Constantinescu v. Romania*, no. 28871/95, § 40, ECHR 2000-VIII).

184. As to the question of exhaustion of domestic remedies, the Court has already held that where the applicant's complaint of a violation of Article 5 § 1 of the Convention is mainly based on the alleged unlawfulness of his or her detention under domestic law, and where this detention has come to an end, an action capable of leading to a declaration that it was unlawful and to a consequent award of compensation is an effective remedy which needs to be exhausted if its practicability has been convincingly established. To hold otherwise would mean to duplicate the domestic process with proceedings before the Court, which would be hardly compatible with its subsidiary character (see *Gavril Yosifov v. Bulgaria*, no. 74012/01, § 42, 6 November 2008).

185. Turning to the present case, the Court notes that the Čakovec County Court, in a decision of 30 March 2005, expressly acknowledged that, pursuant to the relevant provisions of the Criminal Procedure Act, the statutory time-limit of the applicant's detention had expired on 2 March 2005 and that there had therefore been no ground for keeping him in detention after that date and that consequently the applicant's detention from 2 to 30 March 2005 had been contrary to the relevant law (see paragraph 20 above). Furthermore, under Article 498 of the Code of Criminal Procedure, the applicant has the right to compensation for the period he was kept in detention after the statutory time-limit had expired. The applicant is entitled to bring a civil action against the State in that respect. Under section 186(a) of the Civil Procedure Act, he is firstly required to submit a request for a settlement with the competent State Attorney's Office. In the Court's view, a civil action against the State provided for under domestic law is a remedy to be exhausted since is specifically designed to allow persons who have been unlawfully detained to obtain redress from the State. The Court notes that the applicant did lodge a civil action for damages and that these proceedings are at present pending before the appellate court.

186. It follows that this part of the application is premature and therefore must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies. In view of this conclusion, the Court considers that at this stage it absorbs any further issue as to the applicant's victim status.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION TAKEN TOGETHER WITH ARTICLE 6 § 3

187. The applicant complained of a violation of his right to a fair trial in the criminal proceedings against him on account of his inability to engage the services of a defence counsel at the hearing held on 1 April 2005 and afterwards and the alleged inability to consult the case file. He also alleged that the identification of objects to be used as evidence was not carried out in compliance with the relevant procedural rules because two witnesses were not continually and simultaneously present. He relied on Article 6 §§ 1 and 3 of the Convention, the relevant parts of which read as follows:

> "In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...
>
> ...
>
> 3. Everyone charged with a criminal offence has the following minimum rights:
>
> ...
>
> (b) to have adequate time and facilities for the preparation of his defence;
>
> (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
>
> ..."

188. The Government contested that argument.

A. Admissibility

The parties' arguments

189. The Government argued that the applicant had not properly exhausted domestic remedies in that, instead of lodging a request for extraordinary review with the Supreme Court, he should have lodged a constitutional complaint against the judgment of the Čakovec County Court of 17 May 2005. Therefore, his application had also been lodged outside the six-month time-limit since the final decision in the criminal proceedings against the applicant was the above-mentioned judgment of the Čakovec County Court.

190. The applicant argued that he had properly exhausted all available remedies and that the request for extraordinary review of a final judgment was the remedy which would address the violation of which he had complained in respect of the criminal proceedings.

The Court's assessment

191. The Court observes that the requirements contained in Article 35 § 1 concerning the exhaustion of domestic remedies and the six-month period are closely interrelated, since not only are they combined in the same Article, but they are also expressed in a single sentence whose grammatical construction implies such correlation (see *Hatjianastasiou v. Greece*, no. 12945/87, Commission decision of 4 April 1990, and *Berdzenishvili v. Russia* (dec.), no. 31697/03, ECHR 2004-II (extracts).

192. The Court observes further that the purpose of the six-month rule is to promote security of the law and to ensure that cases raising issues under the Convention are dealt with within a reasonable time. Furthermore, it ought also to protect the authorities and other persons concerned from being under any uncertainty for a prolonged period of time. Finally, it should ensure the possibility of ascertaining the facts of the case before that possibility fades away, making a fair examination of the question at issue next to impossible (see *Kelly v. the United Kingdom*, no. 10626/83, Commission decision of 7 May 1985, Decisions and Reports (DR) 42, p. 205, and *Baybora and Others v. Cyprus* (dec.), no. 77116/01, 22 October 2002).

193. In the present case the Court notes that the applicant's conviction was upheld by the Čakovec County Court on 17 May 2005. The applicant subsequently lodged a request for extraordinary review of a final judgment with the Supreme Court. This request was dismissed on 22 November 2005. The applicant then lodged a constitutional complaint and on 23 February 2006 the Constitutional Court declared it inadmissible.

194. The application to the Court was introduced on 16 May 2006, that is, less than six months from the date of the decisions of the Supreme Court and the Constitutional Court, but more than six months after the date of the Čakovec County Court's judgment. It follows that the Court may only deal with the application if a request for extraordinary review of a final judgment and a constitutional complaint against the decision of the Supreme Court dismissing the applicant's request are considered remedies within the meaning of Article 35 § 1 of the Convention, in which case the six-month period provided for in that Article should be calculated from the date of the decision of the Constitutional Court.

195. The Court notes that it has jurisdiction in every case to assess in the light of the particular facts whether any given remedy appears to offer the possibility of effective and sufficient redress within the meaning of the generally recognised rules of international law concerning the exhaustion of domestic remedies and, if not, to exclude it from consideration in applying the six-month time-limit.

196. The Court reiterates that, according to its established case-law, the purpose of the domestic-remedies rule contained in Article 35 § 1 of the Convention is to afford the Contracting States the opportunity of preventing or putting right the violations alleged before they are submitted to the Court. The Court notes that the application of this rule must make due allowance for the context. Accordingly, it has recognised that Article 35 § 1 must be applied with some degree of flexibility and without excessive formalism (see *Akdivar and Others v. Turkey*, 16 September 1996, *Reports* 1996-IV, § 69).

197. The Court reiterates that an applicant is required to make normal use of domestic remedies which are effective, sufficient and accessible. It also observes that, in the event of there being a number of remedies which an individual can pursue, that person is entitled to choose a remedy which addresses his or her essential grievance (see *Croke v. Ireland* (dec.), no. 33267/96, 15 June 1999). In other words, when a remedy has been pursued, the use of another remedy which has essentially the same objective is not required (see *Moreira Barbosa v. Portugal* (dec.), no. 65681/01, ECHR 2004-V, and *Jeličić v. Bosnia and Herzegovina* (dec.), no. 41183/02, 15 November 2005).

198. The Court firstly notes that the applicant made use of an extraordinary remedy - a request for extraordinary review of a final judgment. Under domestic law, several remedies against final judgments exist both in respect of civil and criminal proceedings. So far, the Court has dealt with a number of Croatian cases where an appeal on points of law to the Supreme Court against a final judgment adopted in the course of civil proceedings has been regarded as a remedy to be exhausted (see, for example, *Blečić v. Croatia*, no. 59532/00, §§ 22-24, 29 July 2004; *Debelić v. Croatia*, no. 2448/03, §§ 10 and 11, 26 May 2005; and *Pitra v. Croatia*, no. 41075/02, § 9, 16 June 2005). The same has been applied in cases against Bosnia where an identical remedy exists (see *Jeličić v. Bosnia and Herzegovina*, no. 41183/02, § 17, ECHR 2006-...). As to the criminal-law remedy at issue, the Court has in a previous case (see *Kovač v. Croatia* (no. 503/05, 12 July 2007)) taken into consideration proceedings before the Supreme Court concerning a request for extraordinary review of a final judgment by a defendant in a criminal case.

199. A request for extraordinary review of a final judgment is available only to the defendant (the prosecution is barred from its use) and may be filed within one month following the service of the judgment on the defendant in respect of strictly limited errors of law that operate to the defendant's detriment. The applicant in the present case lodged such a request on account of, *inter alia*, an alleged infringement of his defence rights at the main hearing, which is, under Article 427, one of the statutory grounds for lodging such a request. The Court therefore considers that in the present case precisely this remedy afforded the applicant an opportunity to address the alleged violation at issue. The Court notes that in this case this remedy afforded the applicant an opportunity to complain of the alleged

violation. Therefore, and notwithstanding the Constitutional Court's finding that the Supreme Court's decision following such a request did not concern the merits of the case, the Court considers that the applicant made proper use of the available domestic remedies and complied with the six-month rule.

200. As to the applicant's subsequent constitutional complaint, the Court notes that, under section 62 of the Constitutional Court Act, anyone who deems that an individual act of a State body determining his or rights and obligations, or a suspicion or accusation of a criminal act, has violated his or her human rights or fundamental freedoms may lodge a constitutional complaint against such act. The applicant in the present case, both in his request for extraordinary review of a final judgment and in his constitutional complaint, alleged an infringement of his defence rights at the main hearing in the criminal proceedings against him. Without questioning the decision of the Constitutional Court as to the relevant criteria for assessing the admissibility of constitutional complaints, the Court considers that from the wording of section 62 of the Constitutional Court Act, the applicant had reason to believe that his constitutional complaint against the Supreme Court's decision dismissing his request for extraordinary review of a final judgment, whereby he complained of the violation of his right to a fair trial, was a remedy to be exhausted.

201. In view of the Court's conclusions that in the present case the request for extraordinary review of a final judgment was a remedy to be exhausted and notwithstanding the Constitutional Court's finding that the decision adopted upon such a request by the Supreme Court did not concern the merits of the case, the Court finds that the applicant made proper use of available domestic remedies and complied with the six-month rule. The Government's objections in that regard must therefore be rejected.

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

B. Merits

The parties' arguments

203. The applicant complained under Article 6 §§ 1 and 3(b) and (c) of the Convention that he had not had a fair trial in the criminal proceedings against him. He maintained that although during his pre-trial detention he had been officially assigned several defence lawyers, he had had no real opportunity to communicate with them and prepare his defence. Furthermore, he had not been able to have sufficient access to his case file or to obtain a copy of all relevant documents in it. Although his requests to that effect had been formally allowed, he had actually exercised that right only once, before his conviction. He also argued that on 30 March 2005 his

officially appointed defence counsel had been automatically discharged since he had been released from pre-trial detention that day. The next hearing had been held on 1 April 2005 and his request that the hearing be adjourned so that he would have time to find a new defence counsel had been denied. Although he had then stated that he would not present his defence since he had had no defence counsel, the court conducting the proceedings had wrongly noted that the applicant had waived his right to be legally represented and had decided to remain silent. It had proceeded with the hearing and concluded the trial, finding the applicant guilty.

204. The Government argued that the applicant had been officially assigned a defence counsel throughout his pre-trial detention, as required under the relevant provisions of the Code of Criminal Procedure and had had ample time and opportunity to prepare his defence. At the hearing held on 30 March 2005 the applicant had expressly waived his right to be legally represented, as had been recorded in the record of the hearing.

The Court's assessment

205. Bearing in mind that the requirements of paragraph 3 (b) and (c) of Article 6 of the Convention amount to specific elements of the right to a fair trial guaranteed under paragraph 1, the Court will examine all the complaints under both provisions taken together (see, in particular, *Hadjianastassiou v. Greece*, 16 December 1992, § 31, and *G.B. v. France*, no. 44069/98, § 57, ECHR 2001-X).

206. The Court reiterates that Article 6 of the Convention, read as a whole, guarantees the right of an accused to participate effectively in a criminal trial. The concept of "effective participation" in a criminal trial includes the right to compile notes in order to facilitate the conduct of the defence, irrespective of whether or not the accused is represented by counsel. Indeed, the defence of the accused's interests may best be served by the contribution which the accused makes to his lawyer's conduct of the case before the accused is called to give evidence (see *Matyjek v. Poland*, no. 38184/03, § 59, ECHR 2007-..., and *Pullicino v. Malta* (dec.), no. 45441/99, 15 June 2000).

207. The Court reiterates further that, according to the principle of equality of arms, as one of the features of the wider concept of a fair trial, each party must be afforded a reasonable opportunity to present his or her case under conditions that do not place the individual at a substantial disadvantage vis-à-vis the opponent (see, for example, *Bulut v. Austria*, 22 February 1996, § 47, *Reports of Judgments and Decisions* 1996-II, and *Foucher v. France*, 18 March 1997, § 34, *Reportss* 1997-II). The Court further observes that, in order to ensure that the accused receives a fair trial, any difficulties caused to the defence by a limitation on its rights must be sufficiently counterbalanced by the procedures followed by the judicial authorities (see *Doorson v. the Netherlands*, 26 March 1996, § 72, *Reports* 1996-II, and *Van Mechelen and Others v. the Netherlands*, 23 April 1997, § 54, *Reports* 1997-III).

208. The Court points out that Article 6 § 3 (b) guarantees the accused "adequate time and facilities for the preparation of his defence" and therefore implies that the substantive defence activity on his behalf may comprise everything which is "necessary" to prepare the main trial. The accused must have the opportunity to organise his defence in an appropriate way and without restriction as to the possibility to put all relevant defence arguments before the trial court and thus to influence the outcome of the proceedings (see *Connolly v. the United Kingdom* (dec.), no. 27245/95, 26 June 1996, and *Mayzit v. Russia*, no. 63378/00, § 78, 20 January 2005). Furthermore, the facilities which everyone charged with a criminal offence should enjoy include the opportunity to acquaint himself for the purposes of preparing his defence with the results of investigations carried out throughout the proceedings (see *C.G.P. v. the Netherlands*, (dec.), no. 29835/96, 15 January 1997; *Foucher, cited above*, §§ 26-38; and *Galstyan v. Armenia*, no. 26986/03, § 84, 15 November 2007). The issue of adequacy of time and facilities afforded to an accused must be assessed in the light of the circumstances of each particular case.

209. In the instant case, several considerations are of crucial importance. The Court notes firstly that the charges against the applicant consisted of more than twenty counts of theft and aggravated theft and that the applicant was liable to an unconditional prison sentence. The case file, a copy of which was submitted by the Government, was quite voluminous.

210. The Court observes that the judgment adopted by the Prelog Municipal Court on 26 August 2004 in the criminal proceedings against the applicant was quashed by the appellate court on 14 January 2005 on the grounds that, *inter alia*, the applicant's defence rights had been violated. The case was then remitted to the court of first instance. The Court will therefore examine whether the proceedings after 14 January 2005 complied with the requirements of Article 6 of the Convention.

211. The Court notes that the applicant was represented by various officially appointed defence lawyers throughout the proceedings, save from 30 March to 1 April 2005. The ground for appointing defence counsel was the fact that the applicant was detained during the trial, since under Article 65 of the Code of Criminal Procedure all detainees must be legally represented, irrespective of the gravity of the charges against them.

212. In the fresh proceedings before the Prelog Municipal Court a new defence counsel was appointed to the applicant on 4 February 2005, following the request of the previous counsel to be relieved of his duties owing to disagreements with the applicant. Although the applicant was allowed unrestricted telephone communication with his new counsel, it appears that there was no such contact at least until 14 February 2005, when the applicant complained to the presiding judge that he had not been able to contact counsel because there had been no answer to his calls to the number given to the applicant as that of counsel. The applicant further requested permission for a visit to the prison from his counsel, but there was no answer to this request. However, it is true that the hearing scheduled for 17

February 2005 was adjourned at counsel's oral request in order to enable him to prepare the applicant's defence. There is no evidence that counsel actually visited the applicant at all. In the Court's view, bearing in mind that the applicant was in pre-trial detention, it would have been expected of the relevant authorities to keep a record of the appointed counsel's visits to the applicant in prison in order to make sure that the defence rights of the accused were respected.

213. The Court notes further that on 7 March 2005 the applicant lodged a request to consult the case file, but received no answer. The hearing of 10 March 2005 was adjourned because the applicant had insulted the presiding judge when it started. The applicant was released on 30 March 2005 since the maximum time for his detention had expired. At that time his defence counsel was relieved of his duties since, under domestic law, the ground for obligatory legal representation of the applicant in the criminal proceedings had ceased to exist. Thus, at the hearing held on 1 April 2005 before the Prelog Municipal Court the applicant was legally unrepresented. The applicant's and the Government's account of what happened at the hearing differ in some significant respects. While the Government asserted that the applicant, after having been properly informed of his rights, waived his right to be legally represented and decided to remain silent, the applicant contended that his objection to the effect that he had not been able to prepare his defence since his request to consult the case file had not been properly complied with had remained completely ignored.

214. The Court notes that on 2 April 2005, even before having received a written copy of the judgment pronounced on 1 April 2005, the applicant lodged an appeal alleging, *inter alia*, that his defence rights had been violated in that he had not been able to prepare his defence since he had had no real opportunity to consult the case file. In his appeal the applicant also complained that his objections to that effect at the hearing had been completely ignored. In view of such a prompt complaint by the applicant and the fact that the transcript of the hearing held on 1 April 2005 was not signed by the applicant, the Court cannot give decisive importance to the record in the transcript that the applicant had waived his right to be legally represented and decided to remain silent. While it is established that the applicant did not make any defence submissions at that hearing, it cannot be unreservedly accepted that he did so because he did not wish to defend himself. In this connection the applicant's assertion that he could not defend himself since he had never been given proper access to the case file bears some significance.

215. As to the circumstances surrounding the applicant's request to consult the case file, the Court notes that during his entire trial, save for two days between 30 March and 1 April 2005, the applicant was in detention and thus not in a position to freely consult his case file. He was brought to the Municipal Court conducting the criminal trial against him on 1 October 2004, when he examined the case file and copied certain documents. However, the judgment adopted on 26 August 2004 was quashed on 14

January 2005 on the grounds, *inter alia*, that the applicant had neither had sufficient contact with his defence counsel nor sufficient time to prepare his defence. Furthermore, on 7 March 2005, in the resumed proceedings before the Municipal Court, the applicant made a further request to consult the case file. He explained that on 1 October 2004 he had had insufficient time to consult the case file – which had been voluminous – and that not all requested documents had been copied. However, his request remained unanswered. The applicant reiterated his complaints about not being given a real opportunity to consult the case file in his appeal against the first-instance judgment of 1 April 2005. Thus, the fact that the applicant did consult the case file on 1 October 2004 cannot be regarded as satisfying the requirement that the applicant be afforded adequate means and facilities for the preparation of his defence. In this connection the Court observes that the Convention "is intended to guarantee not rights that are theoretical or illusory but rights that are practical and effective; this is particularly so of the rights of the defence in view of the prominent place held in a democratic society by the right to a fair trial, from which they derive" (see *Artico v. Italy*, 13 May 1980, § 33, Series A no. 37).

216. The applicant's further request to consult the case file, made during the appellate proceedings; was allowed by the president of the Prelog Municipal Court, but when asked to fix the date for that purpose the president answered that the case file had been sent to the appellate court. It appears that no contact was made between the trial and the appellate courts in order to facilitate compliance with the applicant's request. After the appellate court upheld the first-instance judgment on 17 May 2005, the applicant made several further requests to consult the case file. In view of the possibility of using further remedies in the criminal proceedings against him, the Court considers that the applicant had a legitimate interest in studying the case file. However, his requests were denied on the grounds that the case file had been forwarded to the Supreme Court. In the Court's view, however, the fact that the case file was with the Supreme Court, does not in itself justify denying the applicant's request.

217. Even after the Supreme Court upheld the lower courts' judgment, the applicant still had the possibility of lodging a constitutional complaint, and thus his interest in consulting the case file remained. However, his further request to that effect of 23 January 2006 was again denied, this time on the grounds that the case file had been sent to the Varaždin Municipal Court. The Court cannot see how the fact that the case was at the latter court could in itself justify refusing the applicant's request.

218. The Court has already found that unrestricted access to the case file and unrestricted use of any notes, including, if necessary, the possibility of obtaining copies of relevant documents, were important guarantees of a fair trial in criminal proceedings (see *Matyjek*, cited above, §§ 59 and 63; *Luboch v. Poland*, no. 37469/05, §§ 64 and 68, 15 January 2008; and *Moiseyev v. Russia*, no. 62936/00, § 217, 9 October 2008). As the applicant in the present case did not have such access, he was unable to prepare an

adequate defence and was not afforded equality of arms (see *Foucher*, cited above, § 36). Regard being had to all the circumstances of the case, the Court finds that the applicant's defence rights in the criminal proceedings against him taken as a whole were infringed to such a degree that it constitutes a violation of Article 6 § 1 of the Convention taken together with Article 6 § 3.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

219. 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

220. The applicant claimed 51,793 euros (EUR) in respect of non-pecuniary damage and EUR 7,655.17 in respect of pecuniary damage. As to the latter, he explained that the amount of EUR 758.62 referred to lost income during his unlawful incarceration from 2 to 30 March 2005 and the remaining amount referred to the value of the items taken from him during the criminal proceedings on the grounds that they had been stolen from third parties.

221. The Government deemed the applicant's request in respect of pecuniary damage unfounded and his request in respect of non-pecuniary damage excessive.

222. The Court notes that it has found that the applicant's rights guaranteed by Articles 3 and 6 of the Convention have been violated. In particular, it has found that there was no required investigation into his allegations of ill-treatment in respect of two separate incidents and that in the criminal proceedings against him his defence rights were violated. These facts have indisputably caused him some physical and mental suffering. Consequently, ruling on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant EUR 1,000 under this head, plus any tax that may be chargeable to him. On the other hand, the Court does not discern any causal link between the violations found and the pecuniary damage alleged: it therefore rejects this claim

B. Costs and expenses

223. The applicant also claimed HRK 24,400 for his legal representation before the Court.

224. The Government deemed the claim excessive.

225. The Court considers that the amount claimed is not excessive in the light of the nature of the dispute, particularly given the complexity of the

case. It therefore considers that the applicant's costs and expenses should be met in full and thus awards him EUR 3,400 less the EUR 850 already received in legal aid from the Council of Europe, plus any tax that may be chargeable to him.

C. Default interest

226. 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

1. *Declares* unanimously admissible the complaints concerning:
   - the general conditions of the applicant's detention from 6 July 2005 to 5 November 2007;
   - the alleged assaults on the applicant by the prison personnel and the lack of an effective and thorough investigation into those allegations;
   - the lack of adequate psychiatric care during the applicant's detention; and
   - the applicant's right to a fair hearing in the criminal proceedings against him; and declares
   - the remainder of the application inadmissible;

2. *Holds* unanimously that there has been no violation of Article 3 of the Convention on account of the general conditions of the applicant's detention from 6 July 2005 to 5 November 2007;

3. *Holds* unanimously that there has been no violation of the substantive aspect of Article 3 of the Convention on account of the alleged assaults on the applicant by prison personnel;

4. *Holds* unanimously that there has been a violation of the procedural aspect of Article 3 of the Convention on account of the lack of an effective and thorough investigation by independent bodies in respect of the applicant's allegations that he had been assaulted by prison guards on 18 September 2006 and 21 January 2007 and no such violation in respect of the incident of 17 February 2007.

5. *Holds* by four votes to three that there has been no violation of Article 8 of the Convention on account of the lack of adequate and continuous treatment for the applicant's psychiatric condition;

6. *Holds* unanimously that there has been a violation of Article 6 §§ 1 and 3 of the Convention;

7. *Holds*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts which are to be converted into the national currency of the respondent State at the rate applicable at the date of settlement:

(i) EUR 1,000 (one thousand euros) in respect of non-pecuniary damage, plus any tax that may be chargeable to the applicant;

(ii) EUR 2,550 (two thousand five hundred fifty euros) in respect of costs and expenses, plus any tax that may be chargeable to the applicant;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 26 November 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen Registrar	Christos Rozakis President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the joint dissenting opinion of Judges Rozakis, Spielmann and Jebens is annexed to this judgment.

C.L.R.
S.N.

JOINT DISSENTING OPINION OF JUDGES ROZAKIS, SPIELMANN AND JEBENS

1. We are unable to agree that there has been no violation of Article 8 of the Convention on account of the lack of adequate and continuous treatment for the applicant's psychiatric condition.

2. Being the master of the characterisation to be given in law to the facts of the case, the Court decided to examine this issue under Article 8 of the Convention and did not exclude the possibility that treatment which does not reach the severity of Article 3 may nonetheless breach Article 8 in its private-life aspect where there are sufficiently adverse effects on physical and moral integrity.

3. In our view, the facts disclose that the applicant suffers from a number of serious mental ailments, and that he was in great need of psychiatric treatment (see paragraphs 167-169 of the judgment). We furthermore find that the State authorities have not provided the applicant with sufficient treatment, bearing in mind that he, as a detained person, was particularly vulnerable (see paragraph 170 of the judgment).

4. It is our submission that the State authorities have not taken necessary measures to secure adequate psychiatric supervision of the applicant, notwithstanding the fact that in two penal institutions, specific treatment, tailored to the needs of people suffering from PTSD, is provided (see paragraph 173 of the judgment).

5. Admittedly, the applicant has been prescribed and given pharmacotherapy for his mental condition during his imprisonment. But this, in the particular circumstances of the case, does not suffice. The applicant was impulsive and emotionally unstable, easily lost control of his behaviour, with evident low tolerance towards frustration, a high tendency to react aggressively, a significantly reduced capacity to maintain self-control and a high likelihood of reoffending. Psychiatric supervision was clearly needed. The facts of the case also show that the applicant was prone to conflicts with other inmates and the prison personnel, that he was aggressive and that he often went on hunger strikes. On several occasions he also inflicted injuries on himself and attempted to commit suicide. These circumstances, together with the clear recommendations that the applicant receive psychiatric treatment, show that the applicant was indeed in need of such treatment. In view of the applicant's diagnosis and mental problems, such a programme appears to have been all the more necessary.

6. The applicant has been detained since 1 April 2005. Although the relevant provisions of the Enforcement of Prison Sentences Act require that an individual programme be devised for each inmate, the Government have not shown that any such programme was devised in respect of the applicant. In view of the applicant's diagnosis and his mental problems, such a programme appears to have been all the more necessary.

7. The Government submitted that inmates suffering from PTSD were involved in group therapy specifically tailored to their needs. As regards the three penal institutions at issue, such groups were founded in Lepoglava State Prison and Pula Prison. However, the applicant did not benefit from any such therapy.

8. During his stay in Pula Prison from 6 January to 5 November 2007, the applicant was not included in any group therapy for inmates suffering from PTSD and was seen by a psychiatrist only once, on 24 August 2007.

9. As regards the applicant's stay in Lepoglava State Prison, the Government alleged that during his time there he had initially, on arrival, been involved in a therapeutic programme for inmates suffering from PTSD. The applicant, however, submitted that he had not been included in any therapy for persons suffering from PTSD. It is therefore regrettable that the Government failed to provide any further information on the exact duration or frequency of any of the alleged therapeutic treatment of the applicant. It could reasonably have been expected of the prison authorities to keep a record of the psychiatric and other therapeutic sessions attended by the applicant and to carry out regular assessment of his participation and condition. It is unclear what treatment, if any, was provided to the applicant in such groups, and on what basis, or what personnel was involved in the conduct of these groups.

10. It is undisputed that during his stay in Gospić Prison, from 14 October 2006 to 6 January 2007, the applicant did not receive any treatment for his psychiatric condition.

11. In the course of the applicant's continual placement in penal institutions since 1 April 2005, his examinations by a psychiatrist, though frequent, have always been connected with incidents or hunger strikes concerning him rather than being planned as part of a well-designed therapeutic process with specific aims. In this connection we would stress that providing adequate professional treatment for convicts suffering from psychiatric conditions, and in particular PTSD, is not only beneficial to the individual convict but also to the well-being of society as a whole. In short, the attitude of the authorities has been purely reactive and not, as it should have been, proactive.

12. We are also mindful of the fact that there was a recommendation by doctors who examined the applicant, including psychiatrists, that he be placed in a non-smoking cell, and that this was not complied with.

13. An aggravating circumstance is the frequency of the applicant's transfers to various detention facilities. He has been a prisoner "in orbit". Indeed, the applicant has so far spent about four years in various penal institutions in Croatia, during which period he has not been provided with adequate psychiatric supervision for his PTSD and has at times been placed in overcrowded cells with smokers. In view of the gravity of his psychiatric problems, the constant change in the applicant's placement, which has then

necessarily entailed a change in his therapists and therapeutic conditions, can hardly be conducive for improvement in his mental health.

14. In our view, the foregoing considerations are sufficient to conclude that the relevant prison authorities have not secured the applicant adequate supervision for his mental problems. They have therefore failed in their positive obligations under Article 8 of the Convention, namely to secure to the applicant the “respect” for his private life to which he is entitled under the Convention.