Information Note on the Court's case-law No. 108

May 2008

Rodić and Others v. Bosnia and Herzegovina - 22893/05

Judgment 27.5.2008 [Section IV]

Article 3

Degrading treatment

Inhuman treatment

Failure to secure the well-being of prisoners subjected to ethnically-motivated violence: *violation*

Facts: The applicants, citizens of Bosnia and Herzegovina, were all convicted of war crimes against Bosniac civilians during the 1992-95 war in Bosnia and Herzegovina. Between August 2004 and May 2005 the applicants were each sent to Zenica Prison, the only maximum-security prison in that part of the country, where the prison population was approximately 90% Bosniac.

In May 2005 offensive graffiti referring to two of the applicants were discovered in the prison canteen. Those responsible were never identified. In early June 2005, following the screening of a video which showed a 1995 killing of Bosniacs from Srebrenica, a prisoner lured the second applicant into his cell and punched him in the eye with a clenched fist. Three days later, that applicant was taken to hospital. According to an official report, the attack was ethnically motivated, the attacker had a piece of glass in his hand and the consequences could have been more serious had it not been for the intervention of another prisoner. At the same time, another prisoner attacked the fourth applicant in the prison canteen. The prison guards intervened after he had received several blows to the head. He was taken to hospital.

On 8 June 2005 the applicants declared a hunger strike to attract public attention to their situation and were immediately placed in separate accommodation in the prison hospital unit. The same day the prisoners responsible for the attacks were sentenced to 20 days' solitary confinement and an investigation was opened by an *ad hoc* commission into the attacks. On 15 June 2005 the Ministry of Justice of Bosnia and Herzegovina ordered the applicants' transfer to another prison for security reasons. Subsequently, the ad hoc commission issued its final report criticising the prison authorities for failing to protect the applicants. In their defence, the authorities cited, *inter alia*, the lack of prison staff. On 1 July 2005 the applicants discontinued their hunger strike in response to a request from the European Court.

The applicants complained unsuccessfully to the Constitutional Court of Bosnia and Herzegovina about the failure to enforce the decision of 15 June 2005 ordering their transfer to another prison and about the conditions of their detention in Zenica Prison. They were subsequently transferred to Mostar Prison.

Law

Article 3 (detention with other inmates in Zenica Prison) – The applicants alleged that they had been persecuted by fellow prisoners from the time of their arrival in

Zenica Prison until they were provided with separate accommodation in the prison hospital unit. The Court did not find the Government's policy of integrating those convicted of war crimes into the mainstream prison system to be inherently inhuman or degrading. However, it did not rule out that the implementation of that policy might raise issues under Article 3.

It was common ground that the three main ethnic communities in Bosnia and Herzegovina (Bosniacs, Croats and Serbs) had been at war against each other from 1992 until 1995. Because of the atrocities committed during the war, inter-ethnic relations were still strained and occurrences of ethnically-motivated violence were still relatively frequent during the relevant period. Serious incidents of ethnically-motivated violence directed against prisoners of Serb and Croat origin in Zenica Prison had also been reported. Taking into consideration the number of Bosniacs in the prison and the nature of the applicants' offences (war crimes against Bosniacs), it was clear that their detention there entailed a serious risk to their physical well-being. Despite that, no specific security measures were introduced in Zenica Prison for several months. The applicants were placed in ordinary cell blocks, where they had to share a cell with up to 20 other prisoners and they were provided with separate accommodation in the prison hospital only after the attacks of June 2005, their declaration of a hunger strike and the consequent media attention. This had occurred almost ten months after the first of the applicants arrived at the prison. It was true that Zenica Prison was experiencing a serious shortage of staff during the period under examination. However, structural shortcomings did not alter the obligation of the State to adequately secure the well-being of prisoners. The Court concluded that the applicants' physical well-being was not adequately secured from the time of their arrival at Zenica Prison until they were provided with separate accommodation in the hospital – a period which lasted between one and ten months, depending on the applicant.

Conclusion: violation (unanimously).

Article 3 (conditions of detention in Zenica Prison hospital) – The applicants were allocated more than 4 square metres of personal space (the minimum requirement for a single inmate in multi-occupancy cells according to the standards set by the Council of Europe's Committee for the Prevention of Torture or Degrading or Inhuman Treatment or Punishment). While their rooms were equipped with neither a toilet nor running water, the Government claimed, and the applicants did not disagree, that they had unlimited access to the communal sanitation facilities, including at night. The applicants had not complained about the adequacy of their access to natural light, ventilation, heating and artificial lighting. Having been under special protection, the applicants could not benefit from the entire range of available work, educational and recreational activities. It had to be noted, however, that they were able to watch television and obtain reading materials without restrictions. Finally, in the Court's opinion, they spent adequate time outside the hospital unit every day. There was no other indication that the facilities in issue were such as to render their use inhuman or degrading.

Conclusion: no violation (unanimously).

The Court also found a violation of Article 13 read in conjunction with Article 3 of the Convention for lack of an effective remedy in respect of the applicants' Article 3 complaint.

Article 41 – EUR 4,000 to the first and fourth applicants and EUR 2,000 to the second and third applicants in respect of non-pecuniary damage.

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