

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

SECOND SECTION

CASE OF BOŠNJAK v. CROATIA

(Application no. 64579/16)

JUDGMENT

STRASBOURG

11 May 2023

This judgment is final but it may be subject to editorial revision.



In the case of Bošnjak v. Croatia,

The European Court of Human Rights (Second Section), sitting as a Committee composed of:

Frédéric Krenc*, President*,
Diana Sârcu,
Davor Derenčinović*, judges*,

and Viktoriya Maradudina, *Acting Deputy Section Registrar,*

Having deliberated in private on 6 April 2023,

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

PROCEDURE

1. The case originated in an application against Croatia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 31 October 2016.

2. The applicant was represented by Ms L. Horvat, a lawyer practising in Zagreb.

3. The Croatian Government ("the Government") were given notice of the application.

THE FACTS

4. The applicant's details and information relevant to the application are set out in the appended table.

5. The applicant complained of the inadequate conditions of his detention and the ineffectiveness of domestic remedies available in that regard.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

6. The applicant complained principally of the inadequate conditions of his detention. He relied on Article 3 of the Convention.

A. As regards the periods of the applicant's detention indicated in the appended table

7. The Court notes that on 26 November 2014 the applicant instituted civil proceedings seeking compensation for inadequate conditions of his detention, but civil courts dismissed his action. However, by a decision of 2 February 2023 the Croatian Constitutional Court (a) allowed the applicant's constitutional complaint, (b) found a violation of Article 3 of the Convention and of the corresponding provisions of the Croatian Constitution because in the periods in question the applicant had been kept in detention in poor

conditions, and (c) quashed the civil courts' judgments and remitted the case for a fresh decision. The details of the applicant's detention in those periods are indicated in the appended table.

8. In the leading cases of *Muršić v. Croatia* [GC], §§ 69-73 and 91-173, no. 7334/13, ECHR 2016, and *Ulemek v. Croatia,* no. 21613/16, §§ 71-120 and 126-46, 31 October 2019, the Court already found a violation in respect of issues similar to those in the present case.

9. Having examined all the material submitted to it, the Court has not found any fact or argument capable of persuading it to reach a different conclusion on the admissibility and merits of these complaints.

10. In particular, the Government's objection that these complaints are premature because the above-mentioned civil proceedings for compensation (see paragraph 7 above) are still pending must be dismissed. To be considered effective such compensatory remedies must conform to the reasonable-time requirement (see *Neshkov and Others v. Bulgaria*, nos. 36925/10 and 5 others, § 184, 27 January 2015). Moreover, the speed of remedial action may be relevant in assessing whether a remedy, that is effective in principle, was also practically effective in the particular case for the purposes of Article 35 § 1 (see, *mutatis mutandis*, *Story and Others v. Malta*, nos. 6854/13 and 2 others, § 82, 29 October 2015) as excessive length of domestic proceedings may constitute a special circumstance absolving the applicants from exhausting domestic remedies (see, for example, *Šorgić v. Serbia*, no. 34973/06, § 55, 3 November 2011). In the present case the Constitutional Court on 21 October 2020 found a violation of the applicant's right to a hearing within a reasonable time on account of the excessive length of the civil proceedings in question, which had been pending since 26 November 2014, and awarded him compensation. The applicant therefore cannot be required to wait any longer for the final outcome of those civil proceedings.

11. Having regard to its case-law on the subject, the Court considers that in the instant case the applicant's conditions of detention, as described in the appended table, were inadequate.

12. This part of the complaint is therefore admissible and discloses a breach of Article 3 of the Convention.

B. As regards the remaining complaints

13. In so far as the applicant's complaint under Article 3 of the Convention concerns the lack of requisite medical assistance in both Zagreb and Zadar Prisons, as well as overcrowding in the Zadar Prison in the period between 8 October and 29 November 2013, the Court considers that, in the light of all the material in its possession, this part of his application does not disclose any appearance of a violation of the rights and freedoms enshrined in the Convention or the Protocols thereto.

14. It follows that this part of the application is therefore inadmissible under Article 35 § 3 (a) of the Convention as manifestly ill-founded and must be rejected pursuant to Article 35 § 4 thereof.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

15. The applicant also complained that the domestic remedies for inadequate conditions of his detention in the Zagreb Prison (see the appended table) had been ineffective in his case. He relied on Article 13 of the Convention.

16. The Court considers that the excessive length of the civil proceedings in the present case rendered the civil action for compensation, an otherwise effective remedy, ineffective (see paragraph 10 above), it being understood that this was the only remedy available to the applicant as regards the conditions of his detention in the Zagreb Prison (see the appended table) in view of the brevity of his stay in that facility (see *Ulemek*, cited above, § 88).

17. This complaint is therefore admissible and discloses a breach of Article 13 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

18. 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."

19. Regard being had to the documents in its possession and to its case-law (see, in particular, *Muršić,* cited above, § 181, and *Ulemek,* cited above, § 162), the Court considers it reasonable to award the sums indicated in the appended table.

20. The sum awarded for costs and expenses includes the costs and expenses incurred before the Court, and the costs of the constitutional complaint (see paragraph 7 above). As regards the costs of the ongoing civil proceedings for compensation (see paragraphs 7 and 10 above), the Court notes that the applicant will have a possibility to recover those costs on the basis of section 158(2) of the Civil Procedure Act after the State pays him the sums awarded by the present judgment. That provision stipulates that plaintiffs have the right to have their costs reimbursed if they withdraw their civil action or renounce their claim immediately after the defendant satisfied their claim or if they do so for other reasons attributable to the defendant.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint concerning the inadequate conditions of detention in the periods indicated in the appended table, and the complaint concerning ineffectiveness of domestic remedies available in that regard admissible, and the remainder of the application inadmissible;

2. *Holds* that these complaints disclose a breach of Article 3 of the Convention concerning the inadequate conditions of detention;

3. *Holds* that these complaints disclose a breach of Article 13 of the Convention in conjunction with Article 3 thereof;

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, the amounts indicated in the appended table;
   (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.

Done in English, and notified in writing on 11 May 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Viktoriya Maradudina	Frédéric Krenc
Acting Deputy Registrar	President

APPENDIX

Application raising complaints under Article 3 of the Convention (inadequate conditions of detention)

Application no. Date of introduction	Applicant's name Year of birth	Representative's name and location	Facility Start and end date Duration	Sq. m per inmate	Specific grievances	Amount awarded for non-pecuniary damage (in euros)[1]	Amount awarded for costs and expenses (in euros)[2]
64579/16 31/10/2016	**Majk BOŠNJAK** 1973	Horvat Lidija Zagreb	Zagreb Prison 07/09/2013 to 07/10/2013 1 month and 1 day	2.79 m²	lack of fresh air, overcrowding, no or restricted access to shower, inadequate temperature, lack of or inadequate hygienic facilities, lack of or insufficient physical exercise in fresh air, lack of privacy for toilet, constant electric light, lack of or insufficient electric light, lack of or restricted access to leisure or educational activities, lack of or insufficient natural light, lack of or poor quality of bedding and bed linen, lack of toiletries	2,500	1,063
			Zadar Prison 30/11/2013 to 07/03/2014 3 months and 8 days	3.82 m²	lack of fresh air, lack of or insufficient physical exercise in fresh air, lack of or inadequate hygienic facilities, lack of privacy for toilet, no or restricted access to shower, overcrowding, lack of or insufficient natural light, lack of or restricted access to leisure or educational activities, lack of toiletries		

[1] Plus any tax that may be chargeable to the applicant.
[2] Plus any tax that may be chargeable to the applicant.