

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

SECOND SECTION

CASE OF ĆEHIĆ v. CROATIA

(Application no. 14043/19)

JUDGMENT

STRASBOURG

22 October 2024

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Ćehić v. Croatia,

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

Lorraine Schembri Orland*, President*,
Frédéric Krenc,
Davor Derenčinović*, judges*,
and Dorothee von Arnim, *Deputy Section Registrar,*

Having regard to:

the application (no. 14043/19) 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") on 7 March 2019 by a Croatian national, Mr Mario Ćehić ("the applicant"), who was born in 1994, lives in Zagreb and was represented by Mr L. Kipa, a lawyer practising in Zagreb;

the decision to give notice of the complaint concerning alleged ill-treatment by the police and ineffective investigation into the incident to the Croatian Government ("the Government"), represented by their Agent, Ms Š. Stažnik, and to declare inadmissible the remainder of the application;

the parties' observations;

Having deliberated in private on 1 October 2024,

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

SUBJECT MATTER OF THE CASE

1. The case concerns the applicant's alleged ill-treatment by the police during his arrest and the allegedly ineffective response of the domestic authorities in that respect.

I. ALLEGED ILL-TREATMENT

2. On 20 September 2017, at around 4:30 pm, the applicant was arrested while transporting a group of foreigners who had illegally entered the country. His brother had been arrested some 15 minutes earlier while transporting another group.

3. According to the applicant, after the police officers had pulled him out of the car, two men dressed in civilian clothes arrived and punched him several times. From the comments made by others, the applicant understood that the two men were organized crime police officers.

4. Following their arrest, the applicant and his brother were brought to the Vrbanja Police Station. Police officer T.M. interviewed the applicant. Police officer P.J. prepared a report on the applicant's arrest. He noted that the applicant had not been examined by a doctor, that he had stated that he was in good health, and that he had refused medical assistance and waived his

right to be represented by a lawyer. No existing injuries were noted in the report.

5. The following day, on 21 September 2017 at 10:30 am, the applicant was handed over to the detention supervisor in the Vukovar-Srijem Police Department. The detention supervisor noted that the applicant had visible injuries: hematomas on his eyes and on the left side of his forehead, and that he had stated that he had sustained those injuries during his arrest. In connection to the injuries, the detention supervisor noted that a report had been sent by two police officers, N.L. and T.T., who submitted that the applicant had slipped and hit his head against the door when stepping out of the car during his arrest, whereupon he had sustained a visible injury in the form of a scratch and reddened face.

6. On 21 September at 11:34 am the applicant was photographed from various angles. The photographs show that the applicant had visible injuries.

7. On the same day at 12:45 pm, the applicant was taken for questioning to the Deputy Vukovar Municipal State Attorney, M.G.B. He waived his right to be represented by a lawyer. The recording of his questioning shows that he had visible injuries. The Deputy Vukovar Municipal State Attorney made no note of the applicant's injuries nor asked him how he had sustained them.

8. After the questioning, two officers tasked with transferring the applicant to Zagreb Prison refused to do so on the ground that he had visible injuries and had first to be seen by a doctor. Two other police officers then took the applicant for a medical exam.

9. On 21 September 2017 at 6:28 pm, doctor I.A. noted in her report that the applicant had been brought by the police and that he had been arrested for participating in a fight two days ago. Upon examining the applicant, she established the following: "contusion injuries to the face, a periocular haematoma, a lacero-contusion wound on the left temple and a left lumbar contusion injury from two days ago, already in regression."

II. CRIMINAL PROCEEDINGS AGAINST THE APPLICANT

10. On 17 October 2017 the applicant and his brother were charged with enabling other persons, for their personal gain, to illegally move within Croatia, thus committing a criminal offence against public order.

11. The applicant hired a lawyer who, at the first hearing held on 18 January 2018, complained that the applicant had been ill-treated by the police during his arrest, as evidenced by the video recording of his questioning of 21 September 2017 which showed that he had had visible injuries. The trial court accepted the lawyer's proposal to obtain the applicant's medical record and photographs of 21 September 2017, and the detention supervisor's report on the applicant's health condition.

12. At a hearing held on 24 May 2018, the applicant gave an account of his ill-treatment. On the same day he was found guilty as charged and given

a one-year prison sentence. The trial court stressed that the applicant's complaint of ill-treatment would be addressed in an inquiry launched by the Vukovar Municipal State Attorney's Office (see paragraph 15 below). On 20 September 2018 the appellate court upheld the applicant's conviction.

13. In his subsequent constitutional complaint, the applicant complained *inter alia* that he had been ill-treated by the police during his arrest and that there had been no effective investigation in that connection.

14. On 12 December 2018 the Constitutional Court examined the complaint under Article 3 of the Convention. It found no violation of the substantive aspect on the ground that the doctor who had examined the applicant on 21 September 2017 had established that the applicant had sustained his injuries in a fight two days earlier, and hence independently of his arrest. It found no violation of the procedural aspect on the ground that the competent prosecutor had commenced an inquiry.

III. INVESTIGATION INTO THE APPLICANT'S ALLEGED ILL-TREATMENT

15. On 19 January 2018 the Deputy Vukovar Municipal State Attorney M.G.B. made a note stating that the applicant had for the first time at the hearing held the previous day complained about ill-treatment during his arrest. An inquiry commenced and documents were requested concerning the applicant's detention and medical examination and a list of police officers who had taken action in respect of the applicant.

16. Questioned on 15 March 2018, the applicant submitted that after the police officers had pulled him out of the car on 20 September 2017, two men wearing civilian clothes, who in his understanding were organized crime police officers, arrived and punched him several times, mostly around the eyes.

17. Questioned on 24 May 2018, the applicant's brother stated that, before the arrest, the applicant had had no injuries, and that in the police station the applicant had told him that he had been punched by the organized crime police officers.

18. Between 2 May and 23 October 2018, the Vukovar Municipal State Attorney's Office questioned the police officers involved. All of them denied having used any force against the applicant. Almost all of them also denied noticing any injuries on the applicant, with the exception of Officer Ž.Ž., who stated that the applicant had told him that he had hit his head when entering the car before his arrest; and Officers N.L. and T.T., who stated that the applicant had told them that he had sustained his injuries by hitting his head when stepping out of the car upon his arrest. Officers P.J. and T.M. stated that they had arrived at the scene of the applicant's arrest but had not punched him.

19. On 16 November 2018 a forensic medical expert examination was ordered. After having examined the medical report and the black and white photographs of the applicant of 21 September 2017, on 23 November 2018 expert A.B. reported that the haematoma around the applicant's left eye could have been caused by a closed fist punch of moderate intensity, or by a hit by another person's elbow. The injury in the temple area could have been caused by hitting the damaged region of the head against a hard, blunt, fixed, mechanical object.

20. After receiving colour photographs of the applicant of 21 September 2017, on 12 December 2018 expert A.B. reported that the applicant's injuries had been caused by fist punches, and that they had been sustained in the 24 hours preceding the moment the applicant was photographed (on 21 September at 11:34 am). On 14 December 2018 expert A.B. reiterated his conclusions.

21. In May 2019 the investigation was focused against Officers T.M. and P.J. In an identification parade, the applicant recognised T.M. and P.J. as the persons who had punched him.

22. Questioned whether the applicant could have sustained his injuries by hitting his head against the car door, on 31 July 2019 expert A.B. confirmed that the applicant's injuries had most probably been inflicted by at least three fist punches in the 24 hours preceding the moment he had been photographed, and that it had been unlikely that they had been caused by the applicant hitting against a hard blunt mechanical object.

23. Questioned as suspects on 28 October 2019, Officers T.M. and P.J. chose to remain silent.

24. On 17 February 2020 Officers T.M. and P.J. were indicted for inflicting bodily injury on the applicant. In the trial they pleaded not guilty and chose to remain silent. The trial court heard the applicant, eight police officers, expert A.B. and doctor I.A.

25. By a judgment of 9 December 2022, which was upheld by the appellate court on 11 May 2023, T.M. and P.J. were acquitted on the grounds that (i) none of the police officers confirmed the applicant's allegations, (ii) it was not credible nor logical that the applicant had not immediately lodged a criminal complaint against the police officers and had instead waited until 24 May 2018 to complain about his ill-treatment and (iii) medical expert A.B. ultimately allowed for the possibility that the applicant had sustained his injuries more than 24 hours before the moment he was photographed on 21 September 2017.

IV. COMPLAINT BEFORE THE COURT

26. The applicant complained under Article 3 of the Convention that the police had ill-treated him during his arrest, and that there had been no effective investigation into the matter.

THE COURT'S ASSESSMENT

ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

A. Admissibility

27. As to the Government's argument that the applicant's alleged ill-treatment did not attain the threshold of severity such as to attract the application of Article 3, the Court reiterates that, according to the approach established in *Bouyid v. Belgium* ([GC], no. 23380/09, §§ 100-01, ECHR 2015), where an applicant is confronted with law-enforcement officers, the Court's examination shifts to the necessity, rather than the severity, of the treatment to which the applicant was subjected in order to determine whether the issue complained of falls within the scope of Article 3 of the Convention. If the treatment is not considered as having been made strictly necessary by the applicant's conduct, it amounts to degrading treatment and thus a violation of Article 3 (ibid., §§ 111-12).

28. The Court thus considers that the Government's objection raises an issue which is closely related to the merits of the complaint concerning the alleged ill-treatment (compare *A.P. v. Slovakia*, no. 10465/17, § 43, 28 January 2020). Accordingly, it finds that this objection is to be joined to the merits of the complaint under the substantive aspect of Article 3 of the Convention.

29. As to the Government's argument that the applicant did not exhaust an effective domestic remedy given that in his constitutional complaint lodged in 2018 he had invoked his alleged ill-treatment primarily in the context of his complaint regarding the unfairness of the criminal proceedings against him, whereas during the investigation and the subsequent criminal proceedings against T.M. and P.J. he had failed to lodge another constitutional complaint, an effective domestic remedy as of 2019, the Court considers that the issue of exhaustion of domestic remedies is closely linked to the substance of the applicant's complaint concerning the alleged lack of an effective investigation and must therefore be joined to the merits of the complaint under the procedural aspect of Article 3 of the Convention.

30. The Court further notes that the complaint concerning the applicant's alleged ill-treatment and ineffective investigation is neither manifestly ill-founded within the meaning of Article 35 §§ 3 (a) of the Convention nor inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

31. The general principles concerning the prohibition of ill-treatment and the obligation to carry out an effective investigation of such allegations have been summarised in *Bouyid*, cited above, §§ 81-90, 100-01 and 114-23.

32. The Court reiterates that even in the absence of an express complaint, an investigation should be undertaken if there are other sufficiently clear indications that ill-treatment might have occurred (see *Members of the Gldani Congregation of Jehovah's Witnesses and Others v. Georgia*, no. 71156/01, § 97, 3 May 2007). It cannot be left to the initiative of the victim either to lodge a formal complaint or to take responsibility for the conduct of any investigative procedures since the authorities must act on their own motion (see *Bouyid*, cited above, § 119, and *Tadić v. Croatia,* no. 10633/15, § 41, 23 November 2017).

33. As regards compliance with the procedural obligation to carry out an effective investigation into a sufficiently clear indication that ill-treatment might have occurred, in the present case the Court notes that, even though the applicant had visible injuries and told the detention supervisor that he had sustained them during his arrest (see paragraphs 5-9 above), none of the officers in the police station or the detention unit, nor the prosecutor who questioned the applicant and had the opportunity to notice herself that he had fresh injuries, properly recorded his injuries or took sufficient steps to verify how he had sustained them. The applicant was only taken to a medical exam after the officers who were supposed to transfer him to Zagreb Prison refused to do so because he had visible injuries (see paragraph 8 above). An inquiry into his possible ill-treatment commenced only after the applicant had hired a lawyer, who then made an express complaint on that account (see paragraphs 11 and 15 above).

34. The Court further notes that the applicant brought his ill-treatment complaint before the Constitutional Court, which examined it in the light of the Court's criteria under Article 3 of the Convention (see paragraphs 13 and 14 above). However, that examination was conducted only on the basis of the documents available in the criminal proceedings against the applicant, without the Constitutional Court requesting the case-file concerning the inquiry into his alleged ill-treatment. The Constitutional Court therefore did not have before it the documents on the basis of which it could have properly examined the matter (see paragraph 33 above). It further remained unaware of the actions undertaken in the investigation, such as the applicant's and his brother's account of the ill-treatment, and the results of the forensic examination of the applicant's injuries (see paragraphs 15-20 above).

35. As to the Constitutional Court's conclusion that the doctor who had examined the applicant on 21 September 2017 established that he had sustained his injuries independently of his arrest (see paragraph 14 above), the Court observes that the doctor noted in her report that the applicant had sustained his injuries in a fight two days earlier most probably because the police officers who had brough the applicant had told her so (see paragraph 9 above). In any event, the doctor's task on that occasion was to examine and treat the applicant's injuries, and not to establish where and how he had sustained them.

36. The Court therefore finds that there has been a violation of the procedural aspect of Article 3 of the Convention already in the period subject to the Constitutional Court's scrutiny as a result of the authorities' failure to act on their own motion and the lack of a thorough investigation. It therefore rejects the Government's non-exhaustion objection that the applicant should have lodged another constitutional complaint, which it previously joined to the merits (see paragraph 29 above and, *mutatis mutandis*, *Kozlica v. Croatia*, no. 29182/03, § 28, 2 November 2006).

37. The Court further reiterates that the procedural requirements of Article 3 go beyond the preliminary investigation stage when the investigation leads to legal action being taken before the national courts: the proceedings as a whole, including the trial stage, must meet the requirements of Article 3. This means that the domestic judicial authorities must on no account be prepared to let the physical or psychological suffering inflicted go unpunished. This is essential for maintaining the public's confidence in, and support for, the rule of law and for preventing any appearance of the authorities' tolerance of or collusion in unlawful acts (see *Okkalı v. Turkey*, no. 52067/99, § 65, ECHR 2006-XII (extracts)).

38. In the present case, the Court has serious doubts as regards the reasons for which the criminal courts acquitted the police officers charged with inflicting bodily injury on the applicant (see paragraph 25 above).

39. Firstly, the Court doubts that the police officers heard as witnesses could be considered as "neutral" witnesses in proceedings concerning their colleagues.

40. Secondly, the Court disagrees with the assessment of the applicant's failure to report his ill-treatment immediately after his arrest. It notes that in the police station he was interviewed by Officer T.M., the same person who had allegedly punched him (see paragraph 4 above). The report on the applicant's arrest, according to which he sustained no injuries and needed no medical assistance, was drawn up by Officer P.J., the other police officer who had allegedly punched him (see paragraph 4 above). Furthermore, given that he had no lawyer at the time, and that he was brought to the prosecutor and to the doctor by two police officers, the Court finds it understandable that he did not report the matter on those occasions. The Court reiterates that the psychological effects of ill-treatment inflicted by State agents may undermine a victim's capacity to take the necessary steps to bring proceedings against a perpetrator without delay. Such a barrier may become particularly difficult to overcome when the victim continuously remains under the control of those implicated in the ill-treatment following the incident (compare *Mafalani v. Croatia*, no. 32325/13, § 82, 9 July 2015, and *Ochigava v. Georgia*, no. 14142/15, § 51, 16 February 2023).

41. Lastly, the Court cannot overlook the fact that the forensic medical expert A.B. confirmed on several occasions that the applicant's injuries had been inflicted by fist punches within 24 hours up to the moment he was

photographed on 21 September 2017 (see paragraphs 20 and 22 above). Even if at the trial the expert ultimately allowed for the possibility that the applicant's injuries had been inflicted more than 24 hours before the moment he was photographed, the Court cannot but note that this alternative clearly did not correspond to the police officers' account of the events. In particular, the police officers stated that the applicant had hit his head while entering/stepping out of the car (see paragraph 18 above), whereas the expert found that the hematomas in particular on the applicants' eyes could not have been sustained by hitting his head against the car door but by receiving fist punches (see paragraphs 20 and 22 above).

42. Accordingly, it follows that the domestic authorities did not make a genuine attempt to thoroughly examine the matter, establish the facts and, if necessary, bring those responsible to account. There has accordingly been a violation of the procedural aspect of Article 3 of the Convention.

43. In the absence of a sufficient attempt to establish the facts of the case, the Court considers that the Government have failed to discharge their burden of proof or to produce evidence capable of casting doubt on the applicant's account of the events. The Court thus endorses the relevant facts as submitted by the applicant and finds that his ill-treatment took place and was attributable to the respondent State. Since recourse to physical force was not made strictly necessary by the applicant's own conduct (see *Bouyid*, cited above, §§ 100-01), the Court rejects the Government's objection that the applicant's ill-treatment did not attain the threshold of severity such as to attract the application of Article 3, which it previously joined to the merits (see paragraph 28 above). There has accordingly also been a violation of the substantive aspect of Article 3 of the Convention.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

44. The applicant claimed 25,000 euros (EUR) in respect of non-pecuniary damage and EUR 2,660 in respect of costs and expenses incurred before the Constitutional Court and before the Court.

45. The Government contested those claims.

46. The Court awards the applicant EUR 12,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

47. Having regard to the documents in its possession, the Court considers it reasonable to award EUR 2,660 covering costs and expenses under all heads, plus any tax that may be chargeable to the applicant.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Joins* to the merits the Government's objections and *rejects* them;

2. *Declares* the application admissible;

3. *Holds* that there has been a violation of the procedural aspect of Article 3 of the Convention;

4. *Holds* that there has been a violation of the substantive aspect of Article 3 of the Convention;

5. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, the following amounts:
      (i) EUR 12,000 (twelve thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 2,660 (two thousand six hundred and sixty euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (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;

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

Done in English, and notified in writing on 22 October 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Dorothee von Arnim Deputy Registrar	Lorraine Schembri Orland President