

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

FIRST SECTION

CASE OF HRNČIĆ v. CROATIA

(Application no. 53563/16)

JUDGMENT

STRASBOURG

29 September 2022

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



In the case of Hrnčić v. Croatia,

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

Krzysztof Wojtyczek*, President,*
Erik Wennerström*,*
Lorraine Schembri Orland*, judges,*
and Viktoriya Maradudina, *Acting Deputy Section Registrar*,

Having deliberated in private on 8 September 2022,

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 1 September 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.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

6. The applicant complained about the inadequate conditions of his detention. He relied on Article 3 of the Convention, which reads as follows:

Article 3

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

A. As regards the applicant's detention in the Varaždin Prison in the period between 27 January and 17 March 2008

7. The Court notes that the applicant, *inter alia*, complained of inadequate conditions of detention in the Varaždin Prison in the period between 27 January and 17 March 2008, whereas he took the relevant preliminary step to bring his action for compensation for inadequate conditions of detention

on 8 January 2013. Since the applicant brought his civil action outside of the three-year statutory limitation period, the Government's objection that he did not properly exhaust domestic remedies in respect of that period, must be accepted.

8. It follows that this part of the application is inadmissible and must be rejected pursuant to Article 35 §§ 1 and 4 of the Convention.

B. As regards the remainder of the application

9. As regards the remaining periods complained of (see table appended below), the Court notes that the applicant was kept in detention in poor conditions. The details of his detention are indicated in the appended table. The Court refers to the principles established in its case-law regarding inadequate conditions of detention (see, for instance, *Muršić v. Croatia* [GC], no. 7334/13, §§ 96-101, ECHR 2016). It reiterates in particular that a serious lack of space in a prison cell weighs heavily as a factor to be taken into account for the purpose of establishing whether the detention conditions described are "degrading" from the point of view of Article 3 and may disclose a violation, both alone or taken together with other shortcomings (see *Muršić*, cited above, §§ 122-41, and *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, §§ 149-59, 10 January 2012).

10. In the leading cases of *Muršić*, cited above, §§ 69-73 and 91-173, 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.

11. 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.

12. In particular, the Government submitted that the applicant had only been spending between seven and nine hours in his cell during the night whereas the rest of the time he had either worked or been able to move freely within his ward. In addition, he had been allowed to spend two hours per day outdoors. The Government also pointed out that the Court had previously found no violation of Article 3 of the Convention in similar circumstances (see *Dolenec v. Croatia*, no. 25282/06, §§ 133-36, 26 November 2009).

13. The Court reiterates its finding in *Muršić*, a Grand Chamber judgment subsequent to *Dolenec* (cited above), that a strong presumption of a violation of Article 3 arises where the personal space available to a detainee falls below 3 sq. m of floor surface. That presumption can only be rebutted if certain factors are cumulatively met, *inter alia*, if the reductions in the required minimum personal space of 3 sq. m are short, occasional and minor (see *Muršić*, cited above, §§ 137-38). However, the periods in which the applicant in the present case disposed of less than 3 sq. m were neither short nor occasional (see the appended table).

14. Having regard to its case-law on the subject, the Court thus considers that in the instant case the applicant's conditions of detention were inadequate.

15. This part of the application is therefore admissible and discloses a breach of Article 3 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

16. 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."

17. 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.

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaints concerning the inadequate conditions of detention in the periods indicated in the appended table 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*
   (a) that the respondent State is to pay the applicant, within three months, the amounts indicated in the appended table, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above 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 29 September 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Viktoriya Maradudina Acting Deputy Registrar	Krzysztof Wojtyczek 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]
53563/16 01/09/2016	**Dalibor HRNČIĆ** 1977	Horvat Lidija Zagreb	Varaždin Prison 20/04/2010 to 22/03/2011 11 months and 3 days	2.43 m²	overcrowding, lack of fresh air, inadequate temperature, no or restricted access to shower, lack of or insufficient physical exercise in fresh air, lack or inadequate furniture, insufficient number of sleeping places, no or restricted access to warm water, lack of or inadequate hygienic facilities, no or restricted access to shower, lack of or insufficient physical exercise in fresh air, lack or inadequate furniture	7,600	2,490
			Zagreb Prison 23/03/2011 to 13/04/2011 22 days	2.79 m²	overcrowding, lack of privacy for toilet, lack of fresh air, lack of or insufficient physical exercise in fresh air, lack of or inadequate hygienic facilities, no or restricted access to shower, lack of or poor quality of bedding and bed linen		
			Varaždin Prison 14/04/2011 to 23/01/2012 9 months and 10 days	between 2.21 and 2.62 m²	overcrowding, insufficient number of sleeping places, lack of fresh air, inadequate temperature, no or restricted access to warm water, lack of or inadequate hygienic facilities, no or restricted access to shower, lack of or insufficient physical exercise in fresh air, lack or inadequate furniture		

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