

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

FIRST SECTION

CASE OF KOPIĆ v. CROATIA

(Application no. 16789/19)

JUDGMENT

STRASBOURG

29 September 2022

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



In the case of Kopić 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 August 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 22 March 2019.

2. The applicant was represented by Ms N. Owens, 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 that the conditions of his detention had been poor. 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 periods of the applicant's detention indicated in the appended table

7. The Court notes that in the periods in question the applicant was kept in detention in poor conditions. The details of his detention in those periods 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).

8. 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.

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 argument that in respect of certain periods of his detention the applicant's civil action for compensation had become time barred because he had brought it outside of the statutory time-limit of three years must be dismissed. Detention should be regarded as a "continuing situation" as long as it was effected in the same type of detention facility in substantially similar conditions. Requiring detainees to bring their compensation claims against the State before the end of such situations imposes an unreasonable procedural burden on them (see *Nikitin and Others v. Estonia*, nos. 23226/16 and 6 others, §§ 136 and 141, 29 January 2019). Moreover, the Government's argument seems to be contrary to the position of the Croatian courts (see, for example, the judgment of the Split County Court, no. Gž-1371/2018 of 21 August 2019). In the present case the applicant took the relevant preliminary step for bringing his civil action (which interrupts the running of the statutory time-limit) on 1 February 2012, that is, even before his detention in Lepoglava State Prison ended on 12 December 2012 (see the Appendix).

11. The Government also submitted that the applicant had been spending only 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 was allowed to spend between two and a half to three 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).

12. The Court reiterates its finding in *Muršić*, a Grand Chamber judgment (cited above) subsequent to *Dolenec* (also 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 be rebutted only 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 Appendix).

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

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

B. As regards the remaining complaints

15. In so far as the application concerns inadequate hygienic facilities and poor quality of food, as well as overcrowding in the period between 9 March and 6 April 2012, the Court considers that, in the light of all the material in its possession, these complaints do not disclose any appearance of a violation of the rights and freedoms enshrined in the Convention or the Protocols thereto.

16. 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. APPLICATION OF ARTICLE 41 OF THE CONVENTION

17. 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."

18. 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.

19. 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 during the periods indicated in the appended table;

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]
16789/19 22/03/2019	**Slavko KOPIĆ** 1978	Owens Nataša Zagreb	Lepoglava State Prison 03/12/2007 to 14/12/2011 4 years and 12 days	between 2.36 and 2.40 m²	overcrowding	12,500	2,060
			Lepoglava State Prison 29/12/2011 to 05/01/2012 8 days	2.38 m²	overcrowding		
			Lepoglava State Prison 27/01/2012 to 09/03/2012 1 month and 12 days	2.38 m²	overcrowding		
			Lepoglava State Prison 06/04/2012 to 12/12/2012 8 months and 7 days	2.38 m²	overcrowding		

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