

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

SECOND SECTION

CASE OF MAFALANI v. CROATIA

(Application no. 3646/17)

JUDGMENT

STRASBOURG

21 May 2024

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



In the case of Mafalani v. Croatia,

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

Pauliine Koskelo*, President*,
Lorraine Schembri Orland,
Davor Derenčinović*, judges*,

and Dorothee von Arnim, *Deputy Section Registrar,*

Having regard to:

the application (no. 3646/17) 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 3 January 2017 by a Croatian national, Mr Amir Mafalani, born in 1982 and detained in Lepoglava ("the applicant"), who was represented by Ms L. Horvat, a lawyer practising in Zagreb;

the decision to give notice of the complaints concerning the applicant's conditions of detention and his right to respect for correspondence 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 16 April 2024,

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

SUBJECT MATTER OF THE CASE

1. The application concerns the applicant's conditions of detention under the special prison regime in Zagreb Prison and the authorities' alleged monitoring of his correspondence with his lawyer.

2. The applicant was placed in pre-trial detention in Zagreb Prison on 31 October 2008 on suspicion of involvement in a criminal organisation which had prepared the assassination of two journalists in the centre of Zagreb and attracted great media attention. The applicant was ultimately found guilty of aiding and abetting aggravated murder and sentenced to sixteen years' imprisonment (for further details see *Mafalani v. Croatia*, no. 32325/13, §§ 6-53, 9 July 2015).

3. By a decision dated 1 November 2008, which according to the applicant was never served on him, the head of the security department of Zagreb Prison decided that, in view of the specific nature and the manner in which the criminal offence he was suspected of had been committed, special supervision and security measures were to be applied to the applicant's detention and that of his co-accused. The applicant was, among other things, to stay in a cell alone, not to communicate with other prisoners or prison staff, and to take outside walks alone for the duration allowed by the prison circumstances. His visits and correspondence were to be monitored.

Subsequently, he was also prohibited from receiving daily newspapers, watching TV, or listening to the radio until September 2009.

4. Consequently, according to official prison records, between 31 October 2008 and 29 September 2009 the applicant was detained alone in a cell measuring 8.49 sq.m., excluding sanitary facilities which were semi-partitioned from the rest of the cell by an approximately 50 cm high wall.

5. Between 29 September 2009 and 7 December 2012, the applicant stayed in cells of the same size with another detainee.

6. Special measures were also foreseen for the applicant's transfers to the courthouse and attendance at court hearings, in that he was handcuffed and his legs were tied together. This was justified by the fact that one of the applicant's co-suspects had allegedly made accusations against the applicant and another suspect in the proceedings, which constituted a heightened security risk during the court hearings at which they were all tried together.

7. The applicant was allowed to receive monitored family visits throughout his detention and, according to the Government, he received 168 such visits from his parents during a period of over two years. He was also allowed unmonitored visits from his lawyers, which he also made ample use of.

8. On 13 April 2012 the applicant received a letter from his lawyer which had been opened and its envelope contained the stamp of the Zagreb County Court and a paraph of an unknown person. At the applicant's inquiry, he was informed by the president of the trial panel of the Zagreb County Court that no decision had ever been adopted allowing the monitoring of his correspondence with his lawyers, since such surveillance was in any event prohibited under domestic law. At about the same time, he was informed by the competent Ministry that the decision on the application of the special detention measures against him was confidential.

9. In 2013 the applicant lodged a civil claim against the State seeking damages for the inadequate conditions of detention in Zagreb Prison. By a judgment of 19 June 2015, having carefully examined each of the applicant's complaints, the Zagreb Civil Municipal Court dismissed his claim as unfounded. The court held that the applicant's rights had been limited temporarily, lawfully and justifiably, as a result of security concerns with a view to unhindered completion of the investigation, and that he had not suffered treatment contrary to Article 3 of the Convention. In the court's view, any suffering to which the applicant may have been exposed to as a result of the restriction of his rights had not been of such intensity so as to justify awarding him compensation, but instead concerned the degree of suffering and debasement inevitable in all situations of deprivation of liberty and had been related to the specific nature and gravity of the criminal offence he had been accused of.

10. His subsequent appeal and constitutional complaint were dismissed by the competent courts, the last domestic decision having been served on the applicant on 12 September 2016.

11. Before the Court the applicant complained, under Article 3 of the Convention, about the inadequate conditions of his detention in Zagreb Prison (poor ventilation, lighting, heating, hygiene, food and medical care) and about the overly rigid special prison regime imposed on him (social isolation, total restriction of use of television and press, handcuffing his arms and legs during court hearings) and about having no procedural safeguards in that respect. He further complained, under Article 8 of the Convention, about the unlawful monitoring of his correspondence with his lawyer.

THE COURT'S ASSESSMENT

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

12. The general principles concerning inadequate conditions of detention have been summarised in *Muršić v. Croatia* [GC], no. 7334/13, §§ 96-101, 20 October 2016, and those concerning the compliance of special prison regimes with Article 3 of the Convention in *Piechowicz v. Poland*, no. 20071/07, §§ 158-165, 17 April 2012. In particular, a prohibition of contact with other prisoners for security, disciplinary or protective reasons does not in itself amount to inhuman treatment or punishment (see *Ramirez Sanchez v. France* [GC], no. 59450/00, § 123, ECHR 2006-IX, and the cases cited therein). While extended removal from association with others is undesirable, whether such a measure falls within the ambit of Article 3 of the Convention depends on the particular conditions, the stringency of the measure, its duration, the objective pursued and its effects on the person concerned (see *Rohde v. Denmark*, no. 69332/01, § 93, 21 July 2005, and *Rzakhanov v. Azerbaijan*, no. 4242/07, § 64, 4 July 2013).

13. The Court notes that the respondent Government and the applicant differed in their account of certain details concerning the applicant's detention in Zagreb Prison. In particular, they seemed to disagree about the duration of the applicant's stay in a prison cell alone. While the applicant maintained that he had been alone in a cell from 31 October 2008 until 9 July 2011, that is to say for a period of more than two years and eight months, the official prison records as well as the findings of the domestic courts show that he was in fact alone in the cell only until 29 September 2009, that is to say for some eleven months (see paragraphs 4 and 9 above).

14. The Court further notes that section 28 read in conjunction with section 30(1) of the House Rules in Prisons during Pre-trial Detention allowed the prison governor to decide whether a detainee would be placed in a shared or a single cell. In the applicant's case, his placement in a single cell had been justified by the specific nature of the criminal acts the applicant and

his co-suspects had been accused of, which not only attracted large media attention and caused panic among the general population, but also, as the Government explained, had the characteristics of a terrorist act unprecedented in the country's history.

15. The Court further notes that, while the applicant was not allowed to communicate with other inmates for his own security, but also so as not to try to influence the investigation, or pass messages, and was not allowed to watch television, listen to the radio or read newspapers before September 2009, he was allowed daily one-hour outside walks and visits from his family and his lawyers, which he made ample use of (see paragraph 7 above). It can thus not be said that he had been in a complete sensory and social isolation, but rather a partial and relative one (compare *Rzakhanov*, cited above, § 72, where the applicant's human contacts were limited to conversations with fellow prisoners during a one-hour walk and occasional dealings with prison staff).

16. In view of the above, the Court does not find that the eleven months which the applicant had spent alone in a detention cell without the right to communicate with other inmates, or have access to television or print media, have been of such duration or severity to have amounted to a "complete sensory" or "total social" isolation contrary to Article 3 of the Convention (see *Ramirez Sanchez*, cited above, § 135).

17. The applicant further complained that, after he had been put in a cell with another inmate, apart from a one-hour walk outside, the remaining twenty-three hours per day he had stayed locked in a cell which was of an adequate size, but where he and his cellmate consumed all their meals in close vicinity of only semi-partitioned sanitary facilities (see paragraph 4 above). Although the Court finds this particular aspect of the applicant's detention deplorable, the applicant's situation nonetheless differed from previous cases against Croatia concerning inhuman and degrading conditions of detention in Zagreb Prison (see, among many others, *Longin v. Croatia*, no. 49268/10, §§ 59-62, 6 November 2012; *Ulemek v. Croatia*, no. 21613/16, §§ 128-131, 31 October 2019), in that in those cases the applicants had stayed in cells with several other inmates, where they lacked requisite individual space, which necessarily exacerbated their situation of a shared semi-partitioned toilet in the room. The Court considers that in the present case, that fact alone cannot lead to the same conclusion (see *Szafrański v. Poland*, no. 17249/12, §§ 25-29, 15 December 2015).

18. As to the applicant's complaint that he had not received adequate medical care during his stay in Zagreb Prison for the injuries to his nose, shoulder and fist, which he had sustained during his arrest (see *Mafalani*, cited above, § 35), the Court notes that according to the information submitted to it, the applicant had been examined by doctors on numerous occasions during his detention. In particular, shortly after his admission, the applicant was diagnosed with contusions of his head, nose and shoulder and a nose fracture without dislocation, as well as a distortion of a metal implant in his

hand related to an old injury without a fresh fracture and a smaller hematoma on the left shoulder. It also transpires from the applicant's prison medical history that he had been provided treatment for all of those conditions as necessary: he was examined by an otorhinolaryngologist and given painkillers for his nose fracture, whereas there is no evidence that there had been an indication for an urgent surgical intervention in respect of his wrist, as maintained by the applicant, or his shoulder. What is more, as noted by the Zagreb Municipal Civil Court, the applicant failed to substantiate his complaint before the domestic courts by requesting an expert medical report showing that his injuries remained untreated. The expert report on which the applicant relied on before the Court concerned the manner in which his injuries had been sustained and it in no way assessed the adequacy of the subsequent medical care provided to him, let alone showed that the care received during his stay in Zagreb Prison had been inadequate.

19. The applicant further complained about the special security measures applied to him during his transport to the courthouse and during court hearings, in that both his hands and legs had been tied together. The Government explained that these measures were due to the specific nature of the offence with which the group of suspects including the applicant was being tried, as well as the fact that one of the co-suspects had accused the applicant and another person of the crime in question, which constituted a heightened security risk during the court hearings at which they were all tried together (see paragraph 6 above). Recalling that handcuffing does not normally give rise to an issue under Article 3 of the Convention where it has been imposed in connection with lawful arrest or detention and does not entail the use of force, or public exposure, exceeding what is reasonably considered necessary in the circumstances (see *Svinarenko and Slyadnev v. Russia* [GC], nos. 32541/08 and 43441/08, § 117, ECHR 2014 (extracts)), the Court sees no reason to doubt the reasons and necessity of imposing such measures in the particular circumstances of the applicant's case. It is further satisfied that those measures were not disproportionate to the security aim for which they had been applied (contrast *Gorodnitchev v. Russia*, no. 52058/99, § 105, 24 May 2007).

20. Finally, the applicant complained about the lack of legal safeguards concerning the special measures imposed on him in that he was never informed about the application of such measures or about the reasons thereof, nor could he appeal any such decision. Moreover, he maintained that all his complaints to the prison administration and the Zagreb County Court had remained unanswered. The Government explained that the non-communication of the said decision was due to security concerns resulting from the charges brought in respect of the applicant, but that the applicant had been warned each time before his outside walks that he was not allowed to talk to other prisoners as well as about the necessary order during court hearings when he was escorted there. Moreover, the measures imposed

on the applicant had been regularly reviewed by the prison administration. In this connection, the Court refers to its case-law regarding the procedural safeguards required in order to protect against the arbitrary application of excessively restrictive conditions of detention (see *Onoufriou v. Cyprus*, no. 24407/04, § 70, 7 January 2010 with further references). It notes that the applicant was placed in a cell with another inmate and gained access to various media after the end of the investigation against him in September 2009. It can thus not be said that the authorities failed to carry out a reassessment that takes into account any changes in the prisoner's circumstances, situation or behaviour (compare *A.T. v. Estonia (no. 2)*, no. 70465/14, §§ 73 and 85, 13 November 2018, and contrast *Csüllög v. Hungary*, no. 30042/08, § 37, 7 June 2011).

21. Moreover, the Court notes that the applicant's conditions of detention, including the special security measures applied to him, have been thoroughly reviewed by three instances of domestic courts, which found no violation of his rights in well-reasoned judgments. The Court is therefore satisfied that the applicant had appropriate safeguards in place (compare, for factual similarities, *Hansen v. Norway* (dec.) [Committee], no. 48852/17, § 154, and contrast *Onoufriou*, cited above, § 73).

22. Having carefully examined all the material available to it, the Court finds no grounds for reaching a different conclusion to that of the domestic courts with respect to the applicant's confinement to relative isolation not having implied treatment or punishment exceeding the threshold of what is "inhuman or degrading" and hence contrary to Article 3.

23. In the light of the above and viewing the conditions of the applicant's detention as a whole, the Court finds that the facts of the case do not disclose any appearance of a violation of Article 3 of the Convention.

24. Accordingly, this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

25. The Court considers that the complaint concerning the monitoring of the applicant's written correspondence with his lawyer is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. It must therefore be declared admissible.

26. The general principles concerning monitoring of prisoners' correspondence have been summarised in *Piechowicz* (cited above, §§ 232-240).

27. The Court notes that in support of his complaint, the applicant submitted an envelope from a letter by his lawyer addressed to him, which contained a stamp of the Zagreb County Court and a paraph of an unknown person (see paragraph 8 above).

28. The Government accepted that, in view of the amount of correspondence the applicant and his co-accused had been receiving and the fact that the court had been monitoring their correspondence with the outside world, except with their lawyers, it was possible that one of the lawyer's letters might have inadvertently been opened and stamped by mistake. However, they maintained that this had been a one-off occurrence, which occurred more than three years after the order on special measures concerning the applicant had been issued (see paragraph 3 above) and that the applicant did not claim that ever before or after such a situation reproduced.

29. The Court notes that, under Article 69 of the Criminal Procedure Code, correspondence between an accused and his lawyer is not to be monitored, unless otherwise decided by a judge and only in relation to certain criminal offences. It further observes that by a letter of 13 June 2012, the Zagreb County Court informed the applicant's lawyer that no court decision had been adopted to monitor the applicant's correspondence with his lawyers and that, in any event, such a decision would not be allowed under domestic law (see paragraph 8 above).

30. Since by opening the above letter, the authorities acted against the said explicit legal prohibition, their interference with the applicant's right to respect for his correspondence was not "in accordance with the law" and was therefore in breach of Article 8 of the Convention (compare *Piechowicz*, cited above, § 236). Consequently, it is not necessary to examine whether the other requirements of that provision were complied with.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

31. The applicant claimed 80,000 euros (EUR) in respect of non-pecuniary damage. He further claimed EUR 5,200 in respect of costs and expenses incurred before the domestic courts and EUR 4,170 for those incurred before the Court, plus EUR 995 on account of translation costs.

32. The Government contested those amounts.

33. In view of the violation found, the Court awards the applicant EUR 2,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

34. Having regard to the documents in its possession, the Court considers it reasonable to award EUR 2,850 covering costs under all heads, plus any tax that may be chargeable to the applicant.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint under Article 8 admissible and remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 8 of the Convention;

3. *Holds,*

(a) that the respondent State is to pay the applicant, within three months, the following amounts:

(i) EUR 2,000 (two thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 2,850 (two thousand eight hundred and fifty 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;

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

Done in English, and notified in writing on 21 May 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Dorothee von Arnim Deputy Registrar	Pauliine Koskelo President