CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

SECOND SECTION

PARTIAL DECISION

AS TO THE ADMISIBILITY OF

Application no. 34425/04
by Ljubiša STOJANOVIĆ
against Serbia and Montenegro

The European Court of Human Rights (Second Section), sitting on 6 September 2005 as a Chamber composed of:

Mr J.-P. COSTA, *President*,
Mr A.B. BAKA,
Mr I. CABRAL BARRETO,
Mr R. TÜRMEN,
Mr V. BUTKEVYCH,
Ms D. JOČIENĖ,
Mr D. POPOVIĆ, *judges*,
and Mrs S. DOLLÉ, *Section Registrar*,

Having regard to the above application lodged on 10 August 2004,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Ljubiša Stojanović, is a national of Serbia and Montenegro, who was born in 1956, and is presently serving a sentence in the Niš Penitentiary (*"kazneno-poravni zavod u Nišu"*).

A. The circumstances of the case

The facts of the case, as submitted by the applicant, may be summarised as follows.

Criminal proceedings

On 16 July 2002 the applicant was convicted of fraud by the Municipal Court in Paraćin and sentenced to six months in prison (Kbr.303/02).

On 11 August 2003, the applicant was again convicted of fraud, this time by the Municipal Court in Jagodina (Kbr.329/03). On 25 November 2003 the District Court in Jagodina (Kž. 888/03) seems to have increased the applicant's sentence on appeal.

The applicant appears to submit that on 31 December 2003 the above convictions, and possibly others, were joined into one by the Municipal Court in Jagodina (Kbr.265/04) and that he was sentenced to a total of five years and three months in prison.

Finally, on 7 July 2004, the Municipal Court in Jagodina (Kv.171/04) decided to join proceedings in two separately pending cases against the applicant into a single procedure concerning charges of forgery and abuse of office (Ki.739/03 and Ki.688/03 respectively). Apparently, these proceedings are still pending.

The applicant is currently serving his sentence in the Niš Penitentiary and appears not to be due for release at least until 17 December 2007.

Interference with correspondence and lack of dental assistance

By letter of 10 August 2004 the applicant briefly outlined his complaints to this Court about the fairness of the aforementioned criminal proceedings. The letter bore the stamp of the Niš Penitentiary (*"pisarnica kazneno-popravnog zavoda u Nišu"*) dated 10 August 2004 as well as a registration number (24/9684).

In its letter of 21 December 2004, *inter alia*, the Registry of this Court informed the applicant in Serbian of the said stamp since he may not have been aware of it.

In his subsequent letter of 11 January 2005, the applicant stated that all his mail addressed to the Court, as well as to other bodies, has to go through the prison administration where it is opened. He alleged that this was standard practice based on the provisions of the Niš Penitentiary Prison Rules (*"Statut kućnog reda"*). The applicant's letter of 11 January 2005 also bore the stamp of the Niš Penitentiary of the same date with registration number 24-267.

In addition, the applicant claimed that, while in prison, his teeth started falling out and that, at present, he does not have any teeth left. As a consequence, he alleged that he "cannot eat normally" and "has other health problems". The applicant explained that he turned for assistance to the prison dentist, and in so doing apparently referred to his blood donations on fifty-eight separate occasions. He was told, however, that he would have to pay for a part of the price of the dentures in any case.

By letter of 21 July 2004 the Health Inspection (*"Zdravstvena inspekcija Ministarstva zdravlja Republike Srbije - odsek Niš"*) noted that the applicant had complained to the prison authorities about his dental situation repeatedly but explained that, under Article 4 of the Decision on the Participation of Insured Persons in the Costs of Health Care (*"Odluka o učešću osiguranih lica u troškovima zdravstvene zaštite"*), blood donors were not exempted from the legal obligation to cover parts of the cost of obtaining dentures (*"pokretne stomatološke nadoknade od akrilata"*.)

The Health Inspection's letter of 21 July 2004 also bore the stamp of the Niš Penitentiary and was dated (22 July 2004) and numbered (713/9033).

B. Relevant domestic law

1. *Charter on Human and Minority Rights and Civic Freedoms of the State Union of Serbia and Montenegro (Povelja o ljudskim i manjinskim pravima i građanskim slobodama državne zajednice Srbija i Crna Gora; published in the Official Gazette of Serbia and Montenegro – OG SCG – no. 6/03)*

Article 9 § 2

"Everyone who believes that any one of his human or minority rights guaranteed by this Charter has been violated or denied by an individual act or action of a State Union institution, or a member state body or organization exercising public powers, shall have the right to submit a complaint to the Court of Serbia and Montenegro, if no other legal redress is provided in a member state, in accordance with the Constitutional Charter."

Article 12 §§ 1 and 2

"Everyone is entitled to the inviolability of his physical and mental integrity.

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

Article 24 §§ 1 and 3

"Everyone has the right to respect for his private and family life, his home and his correspondence.

...

Confidentiality of letters and other means of communication shall be inviolable. Exceptions shall be permitted for a limited period of time and only on the basis of a court decision, if necessary for the purposes of conducting criminal proceedings or the defence of the country, in a manner prescribed by law."

Article 45

"Everyone is entitled to the protection of his health.

The member states [of the State Union of Serbia and Montenegro] shall provide health care for children, pregnant women and the elderly, unless they are entitled to health care on other grounds."

2. Constitutional Charter of the State Union of Serbia and Montenegro (Ustavna povelja državne zajednice Srbija i Crna Gora; published in OG SCG no. 1/03)

The relevant part of Article 46 of the Constitutional Charter provides as follows:

"The Court of Serbia and Montenegro: ...

- decides with respect to complaints filed by citizens in cases where an institution of Serbia and Montenegro has infringed their rights and freedoms guaranteed by the Constitutional Charter, if no other legal redress has been provided; ..."

3. Constitution of the Republic of Serbia (Ustav Republike Srbije; published in the Official Gazette of the Republic of Serbia – OG RS – no. 1/90)

Article 18

"Human dignity and the right to private life are inviolable."

Article 19

"Confidentiality of letters and other means of communication are inviolable.

Laws may provide that, on the basis of a decision adopted by a court, ... [this principle] ... may be departed from, if it is indispensable for the conduct of criminal proceedings or the defence of the Republic of Serbia."

Article 26 §§ 1 and 2

"Respect for one's person and his dignity shall be guaranteed in criminal and any other proceedings, in the event of deprivation or restriction of his liberty, as well as during imprisonment.

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

Article 30

"Everyone is entitled to the protection of his health.

Children, pregnant women and the elderly shall have the right to health care financed from public funds, if this right is not secured on some other ground, while other persons shall enjoy such care under conditions provided by law."

Article 40

"Under the obligatory insurance scheme, in accordance with the law, employed persons ...[enjoy] ... the right to health care and other rights in the event of sickness, ... pregnancy, childbirth, impairment or loss of the ability to work, unemployment and old age ... , as well as rights to other forms of social security ...

Social security rights for those citizens who are not covered by the obligatory social insurance scheme shall be regulated by law."

4. Enforcement of Criminal Sanctions Act (Zakon o izvršenju krivičnih sankcija; published in OG RS nos. 16/97 and 34/01)

Article 6 § 1

"Individual decisions concerning the rights and obligations of persons subjected to criminal sanctions may not be challenged through the judicial review procedure."

Article 21

"The health care unit [of the penitentiary] provides preventive assistance, treats convicted persons and persons detained on remand, and supervises the hygiene and quality of the food and water."

Article 23

"Details of the life and work of convicted persons shall be further regulated in the Prison Rules.

Prison Rules shall be adopted by the Minister of Justice"

Article 56

"Everyone must respect the dignity of a convicted person.

No one may endanger the physical and mental health of a convicted person."

Article 61

"Convicted persons have the right to nutrition capable of sustaining their good health and strength ..."

Article 65 §§ 1 and 3

"Convicted persons have the right to send written communications to the competent bodies.

...

Convicted persons shall receive and send written communications through the prison authorities."

Article 66

"Convicted persons have an unrestricted right to correspond."

Article 90 §§ 1 and 2

"Convicted persons enjoy free health care.

Convicted persons who cannot receive adequate medical treatment in the penitentiary shall be transferred to the prison hospital, a psychiatric ward or another medical institution."

Article 103

"Convicted persons have the right to complain to the governor [of the penitentiary] concerning a violation of their rights or other irregularities which they have suffered.

The governor is obliged to carefully examine such complaints and adopt a decision.

Convicted persons who do not receive a response to their complaints or are not satisfied with the decision adopted have the right to submit a written application to the head of the Directorate [for the Enforcement of Institutional Sanctions within the Ministry of Justice].

Convicted persons have the right to complain to the official authorised to supervise the operation of the penitentiary, in the absence of penitentiary staff as well as officials appointed to serve in the institution.

The substance of the complaint as well as the application shall be confidential."

According to Articles 346-352, the Directorate for the Enforcement of Institutional Sanctions ("the Directorate"), as a constituent part of the Ministry of Justice, has the competence to monitor both the implementation of the relevant legislation concerning the enforcement of criminal sanctions as well as the existing practices in this respect. The Directorate proceeds *ex officio* and may adopt binding recommendations addressed to respective prison governors which the governors themselves may subsequently appeal to the Minister of Justice. In addition, Article 353 provides, *inter alia*, that the quality of health care in prisons is to be monitored by the Ministry of Health.

5. Prison Rules in Secure and Highly Secure Institutions (Pravilnik o kućnom redu u zavodima zatvorenog i strogo zatvorenog tipa; published in OG RS no. 5/01)

Article 23 §§ 1 and 2

"Convicted persons have an unrestricted right to correspond, in accordance with the law.

Their mail is received and dispatched through the prison authorities."

6. Criminal Procedure Code 2001 (Zakonik o krivičnom postupku; published in the Official Gazette of the Federal Republic of Yugoslavia – OG FRY – no. 70/01; amendments published in OG FRY no. 68/02 and OG RS no. 58/04)

Articles 148-153 set out the principles for the treatment of persons detained on remand (*"pritvorenici"*) and do not apply to those serving their prison sentences.

Rights of persons detained on remand may be restricted only for the purposes of preventing an escape or in response to several listed activities aimed at the obstruction of justice. (Article 148 § 2)

A person detained on remand has the right to correspond with other persons on the outside "with the knowledge and under the supervision" of the competent investigating or presiding judge. Any correspondence deemed detrimental to the conduct of a pending criminal case may be barred. This, however, does not apply to a detained person's correspondence with "international courts", all domestic authorities or his own legal counsel. Exceptionally, a detained person's correspondence with his counsel may be screened by the investigating judge before a formal indictment has been issued if there are reasons to believe that an escape is being planned or that other specifically listed activities aimed at the obstruction of justice are being undertaken. (Article 150 §§ 3 and 4)

The situation of persons detained on remand is regularly monitored by the president of the competent court or a judge appointed by the president who cannot be an investigating judge. The president of the court or this other judge is obliged to visit prisons within his jurisdiction at least once a week and if needed talk directly to the detained persons in the absence of prison staff. He is also authorised to take steps to redress any irregularities which he may have identified as well as to consider any complaints raised by persons detained on remand, including complaints about their nutrition. (Article 152)

7. Health Care Act (Zakon o zadravstvenoj zaštiti; published in OG RS nos. 17/92, 26/92, 50/92, 52/93, 53/93, 67/93, 48/94, 25/96 and 18/02)

Pursuant to Article 50 and Articles 60, 60a and 61, the Health Inspection "supervises the implementation of laws and other regulations as well as the execution of prescribed measures in the field of health care". In so doing, *inter alia*, it can order that any "irregularities and shortcomings be addressed" and/or that certain remedial steps be undertaken "within a specific period of time". The costs of the proceeding before the Health Inspection, unless instituted *ex officio*, are to be covered by the complainant.

8. Health Care Insurance Act (Zakon o zdravstvenom osiguranju; published in OG RS nos. 18/92, 26/93, 53/93, 67/93, 48/94, 25/96, 46/98, 54/99, 29/01, 18/02 and 45/05.)

Article 28 § 1

"With respect to certain kinds of health care, it may be provided that insured persons have to contribute towards the costs ... [incurred,] ... while taking into account that this contribution must not deter them from making use of their health coverage."

9. Decision on the Participation of Insured Persons in the Costs of Health Care (Odluka o učešću osiguranih lica u troškovima zdravstvene zaštite; published in the OG RS no. 31/01.)

Article 1

"This decision sets out the modalities and the amounts of contribution by insured persons to the costs of health care ... , any exemptions from paying such contributions, as well as the location and manner of payment."

Article 3

"A contribution is to be made for ... the production or procurement of prosthetics ... [as follows:] ...

16. [for] dental prosthetics ...

16.1 removable orthodontics ... 25% ... [of the price set by the health insurance board]

16.2. removable dental prosthetics ... 60% ... [of the price set by the health insurance board]"

Article 4 § 2

"Blood donors are exempt from paying contribution within a period of 12 months following each blood donation, except the contribution referred to in [Article 3] paragraphs 15, 16, 17, 19 and 20 ..."

10. Criminal Code of the Republic of Serbia (Krivični zakon Republike Srbije; published in OG RS nos. 26/77, 28/77, 43/77, 20/79, 24/84, 39/86, 51/87, 6/89, 42/89, 21/90, 16/90, 49/92, 23/93, 67/93, 47/94, 17/95, 44/98, 10/02, 11/02, 80/02, 39/03 and 67/03.)

Article 72

"1. Whoever, without authorisation, opens a letter or a telegram or any other closed communication or piece of mail of another person, or in some other way violates their privacy, or without authorisation, keeps, conceals, destroys or delivers to another a person's letter, telegram, closed communication or piece of mail shall be punished by imprisonment not exceeding one year.

...

3. If the offence referred to in paragraph 1 ... of this Article is committed by an official in the performance of his public duties, such a person shall be punished by imprisonment from six months to five years [and will be prosecuted *ex officio*]."

11. Law on Obligations (Zakon o obligacionim odnosima; published in the Official Gazette of the Socialist Federal Republic of Yugoslavia - OG SFRY - nos. 29/78, 39/85, 45/89, 57/89 and OG FRY no. 31/93)

Under Articles 199 and 200, *inter alia*, anyone who has suffered fear or physical pain or indeed mental anguish as a consequence of a breach of his "personal rights" (*"prava ličnosti"*) or has been subjected to adverse

circumstances seriously affecting his health (*"umanjenje životne aktivnosti"*) may, depending on their duration and intensity, sue for financial compensation before the civil courts and, in addition, request other forms of redress "which may be capable" of affording adequate non-pecuniary satisfaction. A precondition for such a claim is that the underlying actions which have caused the damage in question were themselves in violation of the relevant domestic legislation. In addition, Article 157 provides that "everyone can petition" the courts "to issue an order" requiring the "cessation" of all activities resulting in the violation of one's integrity, personal and family life, as well as other "personal rights".

12. Court of Serbia and Montenegro Act (Zakon o Sudu Srbije i Crne Gore, published in OG SCG no. 26/03)

Article 62 § 1

"A citizen's complaint may be filed by anyone who considers that an individual act or action of an institution of Serbia and Montenegro, or a member state body or organization exercising public powers, has violated his human or minority rights, if no other avenue of legal redress is provided or if redress has not been secured within a member state."

Article 64

"A citizen's complaint may be filed within three months of the date of receipt of the individual decision or the commission or cessation of an action in violation of a human or minority right guaranteed by the Constitutional Charter."

Article 65 §§ 1, 2 and 3

"If the Court finds that an individual decision or action is in violation of a human or minority right guaranteed by the Constitutional Charter, it may annul the individual decision in question, ban the continuation of such actions or grant the implementation of other specific measures and, in view of the circumstances of each case, order the removal of all consequences of such decisions and/or actions.

The decision of the Court accepting a citizen's complaint shall constitute a legal basis for requesting compensation or the removal of other adverse consequences before a competent body, in accordance with law.

If the Court finds that a violation of a human or minority right guaranteed by the Constitutional Charter has occurred as a result of an individual decision adopted or an individual act undertaken on the basis of a particular piece of legislation, it will institute proceedings for the assessment [of the compatibility] of this piece of legislation [with the Constitutional Charter]."

COMPLAINTS

The applicant complains about the following: 1) the fairness of the proceedings before, and his convictions by, the Municipal Court in Paraćin

of 16 July 2002, the Municipal Court in Jagodina of 11 August 2003, and the Municipal Court in Jagodina of 31 December 2003 respectively; 2) the decision of the Municipal Court in Jagodina of 7 July 2004 to join two separately pending cases against him into a single procedure and his innocence concerning the crimes of which he is accused; 3) the refusal of the respondent State to provide him with dentures free of charge, which, in turn, has caused him various health problems; and 4) the opening of his correspondence with this Court as well as with various domestic bodies by the prison authorities. In so doing, the applicant does not invoke a specific provision of the Convention.

THE LAW

1. The applicant complained about the fairness of the proceedings before, and his convictions by, the Municipal Court in Paraćin of 16 July 2002 (Kbr.303/02), the Municipal Court in Jagodina of 11 August 2003 (Kbr.329/03), and the Municipal Court in Jagodina of 31 December 2003 (Kbr.265/04) respectively.

The Court has examined this complaint under Article 6 of the Convention. Since Serbia and Montenegro ratified the Convention on 3 March 2004 it finds all complaints with respect to the said proceedings and decisions incompatible *ratione temporis* with the provisions of the Convention and, as such, inadmissible in accordance with Article 35 §§ 3 and 4.

2. He also complained about the decision of the Municipal Court in Jagodina of 7 July 2004 (Kv.171/04) and maintained his innocence with respect to the crimes of which he was accused.

Having examined this complaint under Article 6 of the Convention, the Court notes that the proceedings in question are still pending at the first instance and that the applicant's complaint is therefore inadmissible as premature, within the meaning of Article 35 §§ 1 and 4 of the Convention.

3. Finally, the applicant further complained about the refusal of the State to provide him with dentures free of charge, which, in turn, had caused him various health problems, and about the opening of his correspondence with this Court as well as with various domestic bodies by the prison authorities.

The Court has examined these complaints under Articles 3 and 8 of the Convention but finds that it cannot, on the basis of the case file, determine their admissibility and that it is therefore necessary, in accordance with Rule 54 § 2 (b) of the Rules of Court, to give notice of this part of the application to the respondent Government.

For these reasons, the Court unanimously

Decides to adjourn the examination of the applicant's complaint concerning the refusal of the respondent State to provide him with dentures free of charge and any consequent health problems, as well as his separate complaint about the interference with his correspondence by the prison authorities;

Declares the remainder of the application inadmissible.

S. DOLLÉ
Registrar

J.-P. COSTA
President