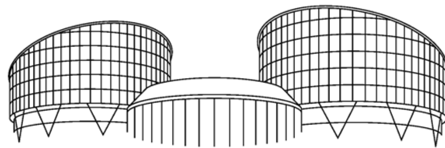

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF ULEMEK v. CROATIA

(Application no. 21613/16)

JUDGMENT

Art 35 § 1 • Relationship between preventive and compensatory remedies in poor conditions of detention cases • Exhaustion of domestic remedies • Six-month period • Effectiveness of preventive and compensatory remedies
Art 3 • Degrading treatment

STRASBOURG

31 October 2019

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Ulemek v. Croatia,

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

Krzysztof Wojtyczek, *President,*
Ksenija Turković,
Aleš Pejchal,
Armen Harutyunyan,
Tim Eicke,
Jovan Ilievski,
Raffaele Sabato, *judges,*
and Abel Campos, *Section Registrar,*

Having deliberated in private on 8 October 2019,

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

PROCEDURE

1. The case originated in an application (no. 21613/16) 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") by a Croatian national, Mr Dušan Ulemek ("the applicant"), on 15 April 2016.

2. The applicant, who had been granted legal aid, was represented by Ms L. Horvat, a lawyer practising in Zagreb. The Croatian Government ("the Government") were represented by their Agent, Ms Š. Stažnik.

3. The applicant alleged, in particular, inadequate conditions of detention and lack of an effective remedy in that respect.

4. On 28 June 2016 notice of the application was given to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1982.

6. By a judgment of the Zagreb County Court (*Županijski sud u Zagrebu*) of 2 March 2010 the applicant was sentenced to one year and six months' imprisonment on charges of aiding and abetting robbery.

7. The applicant served his prison sentence in Zagreb Prison from 12 May until 8 June 2011, when he was transferred to Glina State Prison. He was released on parole on 28 September 2012.

A. The applicant's detention in Zagreb Prison

8. The applicant alleged that he had been placed together with seven, and at times eight, people in a cell with 21.10 square metres (sq. m) of floor space. A sanitary facility measuring 1.57 sq. m had also been placed in the cell. The sanitary facility had been only partially partitioned from the remainder of the cell. Food had been served in the cell although there was a constant smell coming from the sanitary facility. The inmates had been allowed to have one hour's walk outside the cell and the remainder of time they had spent locked in the cell. Moreover, the inmates had not been provided with adequate hygiene and sanitary facilities, such as showering, and no recreational or vocational activities had been organised in Zagreb Prison. The cell was not air conditioned and had only very limited access of daylight.

9. According to the information provided by the Government, which is largely based on a report by the Ministry of Justice Prison Service of 20 September 2016, the applicant had been placed in a cell measuring 21.10 sq. m of floor space and containing a sanitary facility measuring 1.57 sq. m together with five-six and sometimes seven prisoners. The sanitary facility was partitioned from the remainder of the cell by a wall 1,80 metres high. Food had been served in the cells. The inmates had been allowed to take two hours of outdoor exercise. They had been provided with all the relevant hygiene and sanitary facilities and the hygiene in the cell had been adequate.

10. During his stay in Zagreb Prison the applicant did not make a complaint to the prison administration or to the relevant sentence-execution judge concerning the conditions of his detention.

B. The applicant's detention in Glina State Prison

1. Conditions of the applicant's detention in Glina State Prison

11. According to the applicant, he had been placed in several cells differing in size and the number of prisoners placed there. The cells had been overcrowded and the out-of-cell activities had not been properly organised. Moreover, the prisoners had lacked basic hygiene and sanitary facilities. He had not been offered any vocational activities. He had been harassed and attacked by other inmates, so he had been separated from them and kept in isolation. He had not been allowed to visit his sick family members and had not been allowed conjugal visits until he married his partner. Although he had been in need of urgent dental treatment, it had been unjustifiably delayed for five months.

12. According to the Government, relying on the report by the Ministry of Justice Prison Service (see paragraph 9 above) and an additional report on the conditions in Glina State Prison of 30 January 2017, the details of the applicant's accommodation were the following:

- between 8 June and 1 August 2011 the applicant had been placed in a cell measuring 32 sq. m of living space (without the sanitary facility) together with five other persons. The cell was located in the old part of the Glina State Prison building (called “Internat”). The cell had a sanitary facility of 2,20 sq. m, which was separated from the rest of the cell by a door. The cell also had access to fresh air and daylight. Inmates had been obliged to stay in the cell only in the period between 11 p.m. and 7 a.m. Otherwise they had been free to leave the cell and to take part in relevant recreational activities. Food had been served in the cells;

- between 1 August and 20 September 2011 the applicant had been placed in the newly built part of Glina State Prison in a cell measuring 22.30 sq. m of living space together with five other persons. The cell had a sanitary facility of 2,20 sq. m separated from the rest of the cell by a partition. The cells in the newly built part had been locked between 11 p.m. and 7 a.m. and between 6 p.m. and 7 p.m. Otherwise, inmates had been free to leave the cell and to take part in relevant recreational activities. The cell provided access to fresh air and daylight and was equipped with under-floor heating. Food had been served in the cells;

- between 20 September and 19 December 2011, at his own request related to his fear of alleged attacks by other prisoners (see paragraph 16 below), the applicant had been placed alone in a cell for special treatment measuring 11.70 sq. m. The cell had a sanitary facility separated from the rest of the cell by a partition. It also provided access to fresh air and daylight. The applicant had a daily opportunity of one hour outdoor exercise in the morning. In that period he had also been taken to see the dentist;

- between 19 December 2011 and 18 July 2012 the applicant had been placed in the newly built part of Glina State Prison in a cell measuring 22.30 sq. m of living space together with five other persons. It had a separated sanitary facility of 2,20 sq. m. Other conditions in all cells in the new part of the building were the same as described above;

- between 18 July and 19 September 2012 the applicant had been placed in another cell in the newly built part of Glina State Prison. The cell had 22.30 sq. m of floor surface and he had been placed there together with five other persons. Other conditions were the same as in the previous cell;

- the period between 19 and 28 September 2012 the applicant had spent in a cell for prisoners preparing for release which was located in the *Internat*. The cell measured 17.37 sq. m and he had been placed there with seven other persons. It had a sanitary facility separated from the rest of the cell by a door but showers were not in the same cell. This cell was never locked. During his stay there, the applicant was involved in various activities where he was prepared for the life outside prison.

13. The Government also submitted that throughout his stay in Glina State Prison, the applicant had been provided with sufficient sanitary and hygiene amenities and had had adequate recreational and educational

(library) activities at his disposal. In particular, prisoners had been allowed to have two hours of outdoor exercise and had been engaged in various sport activities. Moreover, the applicant had been provided with adequate medical treatment. As of 4 October 2011 he had seen a dentist nine times during his imprisonment and had been provided psychiatric treatment, particularly since he had had a history of psychiatric treatment even before his imprisonment.

14. The Government also explained that the applicant had been given the possibility of receiving parcels and visits while in prison. The only restriction in this respect had been placed upon the visits of his current wife, who, at the time of the applicant's imprisonment, had not been able to prove that they had been partners and the police had provided information to the prison authorities that she had been registered as perpetrator of an offence. However, at the applicant's request, the prison authorities had allowed the applicant to marry the person in question and afterwards he had been allowed to have conjugal visits by her on several occasions. The Government also explained that the applicant's initial requests for temporary release to make visits outside the prison had been restricted due to the fact that three separate sets of criminal proceedings against him were still pending. However, by the end of his term of imprisonment, he had been allowed short visits outside the prison to see his family.

15. In support of the above arguments, the Government provided the applicant's prisoner's file.

16. It follows from the applicant's file that on 9 and 27 June and 7 and 16 August 2011 he asked for an interview with the prison guards concerning his fear of other prisoners. Each time he was interviewed but refused to provide further details concerning his fear and simply refused to move to the new part of the building. As this led to disciplinary sanctioning, the applicant eventually moved to the new part of the building. On 18 September 2011 he again reported threats. In an interview with the prison guards of 19 September 2011 he disclosed the names of prisoners who had allegedly threatened him. With his consent, he was moved to the cell for special treatment and police was informed of his allegations. In October 2011 the police interviewed the applicant concerning his allegations.

17. The applicant's prisoner's file also contains his medical records showing that on 17 June 2011 he requested, amongst other things, to see a dentist. From then on he was under a constant medical supervision. He was provided dental treatment first on 4 October 2011 and then on eight further occasions.

18. The file also shows that during the applicant's confinement he was regularly provided with various toiletry items and was allowed to receive parcels from outside prison. Detailed records are also available as regards

the food served to prisoners, which was diverse, consisted of four meals and calculated as regards its nutritive values.

19. It follows further from the applicant's file that he was twice denied temporary prison leave in order to visit, as he alleged, his sick grandmother and father. On both occasions when denying his request, the prison administration took into account the nature of the criminal offence that he had committed, the penalty imposed, the circumstances related to the progress of execution of the sentence and his family circumstances.

20. In the period between June 2011 and June 2012, including the period which he spent in the cell for special treatment, the applicant's family members regularly visited him in prison (in total sixteen visits). Initially, the request of his current wife, I.P., to visit him was denied on the grounds that she was registered in the police records as perpetrator of a criminal offence. On 12 December 2011 the applicant had been allowed to marry I.P. in prison and thereafter he received ten visits from her. He was also granted eight conjugal visits by I.P. (once per month starting from 18 December 2011), and once he was granted leave to spend two hours with her in the town.

2. The applicant's use of remedies concerning conditions in Glina State Prison

21. In April 2012 the applicant complained to the prison governor, alleging, in particular, that he had been kept in isolation without any disciplinary proceedings against him (see paragraphs 12 and 16 above), that he had not been given adequate dental treatment which had been delayed for four months, that he had been placed in an overcrowded cell (allegedly with five other prisoners in a cell measuring 18,94 sq. m), and that the personal toiletries provided had been insufficient.

22. On 30 April 2012 the prison governor replied to the applicant dismissing all his allegations. She explained that the applicant had been separated from other prisoners on his own request, due to his fear of being attacked by other inmates, in respect of which further measures had been taken within the prison and the police had also been informed. She further stressed that the applicant had been placed in the new part of the building, which had been neither overcrowded nor otherwise inadequate for the accommodation of prisoners. In particular, the governor stressed that the applicant was placed in a cell measuring 20,16 sq. m containing a separate sanitary facility of 1,81 sq. m., that he was allowed at least six hours per day to walk out of the cell and to use various prison facilities and that in general Glina State Prison was the best prison facility in Croatia. The governor also explained that efforts had been made in order to provide adequate dental treatment to prisoners and that sufficient toiletry had been provided.

23. On 4 May 2012 the applicant complained to a sentence-execution judge of the Sisak County Court (*Županijski sud u Sisku*; hereinafter: the

County Court) of the inadequate conditions of his detention. He reiterated the complaints that he had made to the prison governor (see paragraph 21 above). He also complained that unjustified restrictions had been placed on visits by I.P. before their marriage and that he had been unfairly treated by the prison authorities. In this connection, he stressed that his only requests granted concerned the right to enrol to the IT course and to have conjugal visits.

24. In connection with the applicant's complaint, on 8 May 2012 the sentence-execution judge requested that the prison administration report on the conditions of the applicant's detention. The judge also visited the applicant in the prison and interviewed him. In the course of the interview, the applicant elaborated on the circumstances related to his fear of violence from some of the other prisoners in Glina Prison. He also pleaded for a release on parole.

25. On 21 June 2012, on the basis of the information provided by the prison administration and his personal contact with the applicant, the sentence-execution judge dismissed the applicant's complaints. She held that there had been no unjustified restrictions of his rights and that the conditions of his imprisonment had been adequate.

26. The applicant challenged the decision of the sentence-execution judge before a three-judge panel of the County Court, arguing that her findings had not been correct.

27. On 10 July 2012 the three-judge panel of the County Court dismissed the applicant's appeal and upheld the decision of the sentence-execution judge, arguing that it had been based on an appropriate assessment of the circumstances of the applicant's confinement. That decision was served on the applicant on 13 July 2012.

C. Civil proceedings instituted by the applicant

28. On 8 January 2013, after his release from prison (see paragraph 7 above), the applicant informed the Zagreb Municipal State Attorney's Office (*Općinsko državno odvjetništvo u Zagrebu*; hereinafter: the State Attorney's Office) that he intended to lodge a claim for damages against the State concerning the allegedly inadequate conditions of his detention in Zagreb Prison and Glina State Prison. Before lodging a claim for damages, he invited the State Attorney's Office to settle the case, as required under the relevant domestic law.

29. On 2 April 2013 the State Attorney's Office informed the applicant that it considered his claim unfounded and refused the settlement proposal.

30. On 26 June 2013 the applicant lodged a civil action against the State with the Zagreb Municipal Civil Court (*Općinski građanski sud u Zagrebu*; hereinafter: the Municipal Court) seeking damages for inadequate conditions of detention in Zagreb Prison and Glina State Prison. He alleged,

in particular, that the conditions of his detention in the two prison facilities had been inadequate. As regards Glina State Prison, the applicant also contended that he had been unjustifiably separated from other prisoners for a period of ninety days. He further submitted that he had been unjustifiably denied possibility to meet I.P. before their marriage and had been denied possibility of temporary prison leave in order to visit his sick father. Moreover, he had not been provided adequate dental treatment which was unjustifiably delayed.

31. In its reply to the applicant's civil action, the State Attorney's Office argued that the applicant had been placed in adequate conditions of detention in the two prison facilities and that there had been no unjustified restriction of his rights. As regards, in particular, the conditions of detention in Glina State Prison, the State Attorney's Office submitted that the applicant had initially been placed in a cell measuring 22,45 sq. m, which had a fully separated sanitary facility. He had then been moved to a cell in the new part of the building which was equipped to accommodate six prisoners and measured (just as all other cells in that part of the prison) 20,16 sq. m with a sanitary facility of 1,81 sq. m. The most part of the applicant's stay in Glina State Prison he had spent in a cell for two persons measuring 9,45 sq. m with a separated sanitary facility of 1,90 sq. m.

32. In the course of the proceedings, the Municipal Court examined, amongst other, the case file of the sentence-execution judge related to the applicant's complaints in Glina State Prison (see paragraphs 23-27 above) and heard several witnesses on the circumstances of the conditions of the applicant's detention. It also took into account the relevant report of the Constitutional Court (*Ustavni sud Republike Hrvatske*) on the situation in prisons. The Municipal Court refused to obtain further documents related to the conditions of the applicant's detention on the grounds that all the relevant facts had been sufficiently established.

33. On 14 October 2014 the Municipal Court dismissed the applicant's civil action as unfounded on the grounds that he had failed to demonstrate that he had suffered any damage in connection with his imprisonment. It also ordered the applicant to pay costs and expenses for the State's legal representation in the amount of 6,250 Croatian kunas (approximately 820 Euros).

34. The applicant challenged the first-instance judgment by lodging an appeal before the Zagreb County Court, which was dismissed on 5 June 2015 as unfounded. The Zagreb County Court considered that the applicant had failed to prove that the conditions of his detention had been in breach of the law, Constitution, the Convention and other international standards.

35. In September 2015 the applicant lodged a constitutional complaint with the Constitutional Court, alleging that he had been placed in inadequate conditions of detention in Zagreb Prison and Glina State Prison and that the relevant civil courts had erroneously dismissed his claim for

damages in that respect. He also contended that he had been obliged to bear the high costs and expenses of the proceedings. The applicant invoked Articles 23 § 1 of the Constitution (prohibition of ill-treatment) in conjunction with Article 3 of the Convention, Article 29 § 1 of the Constitution (right to a fair trial) in conjunction with Article 6 § 1 of the Convention, and Article 35 of the Constitution (right to respect for private and family life) in conjunction with Article 8 of the Convention.

36. On 19 November 2015 the Constitutional Court examined on the merits and dismissed the applicant's constitutional complaint (case no. U-III-3553/2015). In its decision, the Constitutional Court summarised the applicant's arguments and indicated that the relevant law for its assessment of his complaints were the provisions of the Civil Obligations Act. The relevant part of the decision reads as follows:

> "In the case at issue, the Constitutional Court has examined the constitutional complaint from the perspective of the invoked Article 29 § 1 of the Constitution ...
>
> ...
>
> The Constitutional Court finds that the impugned judgments contain clear and valid reasoning [for the dismissal of the civil action] and that there was no arbitrariness in the interpretation of the relevant law.
>
> The Constitutional Court stresses that the relevant court examines all the circumstances of a specific case and depending on the evaluation of the nature of those circumstances, it awards just compensation or excludes the possibility of awarding that compensation, bearing in mind the circumstances expressly stated in Article 1100 § 3 of the Civil Obligations Act. Therefore, the award of compensation depends on the particular circumstances of a case. The Constitutional Court points out that in proceedings before the Constitutional Court initiated with a constitutional complaint, it does not establish the facts and, as a rule, it does not evaluate the facts of the case established or evidence adduced by the relevant courts.
>
> ...
>
> The appellant also invoked Article 23 § 1 of the Constitution in conjunction with Article 3 of the Convention and Article 35 of the Constitution in conjunction with Article 8 of the Convention ...
>
> In view of the requirements under the cited provisions of the Constitution and the Convention, and bearing in mind the subject matter of the dispute in the proceedings preceding those before the Constitutional Court (compensation for damage), the Constitutional Court finds that the cited provisions of the Constitution and the Convention have not been breached by the impugned court decisions."

37. The decision of the Constitutional Court was served on the applicant's representative on 4 December 2015.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Relevant domestic law

1. Constitution

38. The relevant provisions of the Constitution of the Republic of Croatia (*Ustav Republike Hrvatske*, Official Gazette nos. 56/1990, with further amendments) read as follows:

Article 23

"No one shall be subjected to any form of ill-treatment ..."

Article 25

"All detainees and convicted persons shall be treated in a humane manner and with respect for their dignity."

Article 29

"In the determination of his rights and obligations or of any criminal charge against him, everyone is entitled to a fair hearing within a reasonable time by an independent and impartial court established by law."

Article 35

"Everyone has a right to respect for and legal protection of his private and family life, dignity, reputation and honour."

39. The relevant part of section 62 of the Constitutional Act on the Constitutional Court (*Ustavni zakon o Ustavnom sudu Republike Hrvatske*, Official Gazette nos. 99/1999, with further amendments) reads:

"(1) Anyone may lodge a constitutional complaint with the Constitutional Court if he or she deems that a decision *(pojedinačni akt*) of a State body, a body of local and regional self-government, or a legal person with public authority, which has decided about his or her rights and obligations, or about a suspicion or accusation of a criminal act, has violated his or her human rights or fundamental freedoms, or his or her right to local and regional self-government guaranteed by the Constitution (hereinafter 'constitutional right') ...

2. If another legal remedy exists in respect of the violation of the constitutional right [complained of], a constitutional complaint may be lodged only after that remedy has been used."

2. Enforcement of Prison Sentences Act

40. The relevant provisions of the Enforcement of Prison Sentences Act (*Zakon o izvršavanju kazne zatvora*, Official Gazette no. 128/1999, with further amendments) read as follows:

Complaints
Section 15

"(1) An inmate shall have the right to complain about an act or decision of an employee of a State prison or [county] prison.

(2) Complaints shall be lodged orally or in writing with the prison governor, or the head office of the Prison Administration [of the Ministry of Justice].

(3) Inmates must be enabled to express their oral complaint in the absence of employees of a State prison or [county] prison, and in the absence of the person against whose actions and decisions the complaint is directed.

(4) The governor shall reply to the complaint within fifteen days, and the Ministry of Justice, within thirty days. Written complaints shall be answered in writing.

(5) If an inmate lodges a complaint with the sentence-execution judge, it shall be considered a request for judicial protection under section 17 hereof."

Judicial protection against acts and decisions of the administration of a State prison or [county] prison
Section 17

"(1) An inmate may lodge a request for judicial protection against any acts or decisions unlawfully denying him or her any of the rights guaranteed by the present Act or unlawfully restricting such rights.

(2) The sentence-execution judge shall dismiss the request for judicial protection if he or she finds that it is unfounded. If the request is well-founded, the sentence-execution judge shall order that the unlawful deprivations or restrictions of rights be remedied. If that is not possible, the sentence-execution judge shall find a violation and prohibit its repetition.

(3) The inmate and the prison facility may lodge an appeal against the sentence-execution judge's decision ... "

Visits to prisoners
Section 117

"(1) Prisoner has the right to receive visits by the members of his or her family ...

...

(4) Upon the authorisation of the prison governor, prisoner may be visited by other persons ..."

Restriction on visits
Section 118

"(1) The prison governor can restrict visits [to a prisoner] for the reasons of safety.

..."

Exceptional leave [from prison]
Section 128

"(1) The prison governor may allow a prisoner an exceptionally leave of absence for the following purposes:

...

2) visit of a seriously ill family member;

...

(3) With his or her request for leave, the prisoner must provide documentation related to the reason for which the leave is sought."

41. Further relevant provisions of the Enforcement of Prison Sentences Act are set out in the case of *Muršić v. Croatia* ([GC], no. 7334/13, § 43, 20 October 2016).

3. Civil Obligations Act

42. The relevant provision of the Civil Obligations Act (*Zakon o obveznim odnosima*, Official Gazette no. 35/2005, with further amendments) reads as follows:

Section 19

"(1) All natural persons or legal entities are entitled to the protection of their rights of personality [prava osobnosti] under the conditions provided by law.

(2) Rights of personality within the meaning of this Act are the right to life, to physical and mental health, reputation, honour, dignity, name, privacy of personal and family life, liberty, etc."

Section 200

"(1) For any physical pain or mental suffering ... the court shall, if appropriate under the circumstances of a given case, and particular if the intensity of the pain or fear and their duration so require, award non-pecuniary damages ..."

Section 230

"(1) A claim for damages shall become statute-barred three years after the injured party learned about the damage and the identity of the person who caused it.

(2) In any event that claim shall become statute-barred five years after the damage occurred."

Section 1100

"(1) Where a court finds it justifiable, on account of the seriousness of an infringement of the right to respect for one's personal integrity and the circumstances of a particular case, it shall award non-pecuniary damages, irrespective of compensation for pecuniary damage or where no such damage exists."

4. Civil Procedure Act

43. The relevant provisions of the Civil Procedure Act (*Zakon o parničnom postupku*, Official Gazette no. 53/1991, with further amendments) read as follows:

Section 12

"If it is necessary for a court, in order to make its decision, to first settle an issue of the existence of a right or legal relationship, and no decision on this issue has yet been adopted by a court or other competent body (preliminary issue), the court may settle the issue itself, unless otherwise provided for under special rules.

The court's decision on a preliminary issue shall have legal effect only in the proceedings in which the issue in question was settled.

In civil proceedings, where an issue arises in relation to a criminal offence and the perpetrator's criminal liability, the court shall be bound by the final judgment of the criminal court by which the accused was found guilty."

Section 186(a)

"(1) A person intending to bring a civil claim against the Republic of Croatia shall first submit a request for settlement to the competent State Attorney's Office ..."

B. Relevant practice of the domestic courts

44. In case no. U-III-1437/2007 the Constitutional Court examined a constitutional complaint against the civil courts' judgments dismissing a prisoner's claim for damages in a situation where the relevant sentence-execution judge had previously found that the individual in question had been placed in inadequate conditions of detention in Lepoglava State Prison and had ordered his transfer to another cell meeting the relevant accommodation requirements. The Constitutional Court quashed the civil courts' judgments and ordered a retrial. The relevant part of the Constitutional Court's decision reads as follows:

"The Constitutional Court finds that the established fact of a lack of personal space in detention, coupled with [the appellant'] impossibility to have access to the toilet during the day, is of itself sufficient to cause suffering beyond that normally associated with any deprivation of liberty. Thus, in the relevant period the appellant was subjected to the conditions of detention amounting to a degrading treatment, contrary to the standards of treatment of inmates with dignity as required under Article 25 § 1 of the Constitution.

There has therefore been a breach of the appellant's right to treat him, as an inmate, in a manner that is humane and in respect of his dignity.

...

The Constitutional Court finds particularly unacceptable the position of the courts that compensation for non-pecuniary damage cannot be awarded pursuant to Article 200 of the Civil Obligations Act because this is a legally unrecognised form of compensation for damage.

In contemporary democratic countries, personality rights of each person are particularly protected, ...

The concept of personality rights is set out in Article 19 § 2 of the Civil Obligations Act, where the following rights are listed as personality rights within the meaning of

the Act: right to life, to physical and mental health, reputation, honour, dignity, name, privacy of personal and family life, freedom and other.

Therefore, non-pecuniary damage includes not only the appearance of physical or psychological pain or fear ... or reduced activities of life ... but also every injury caused to personality and dignity, pursuant to the cited Article 19 of the Civil Obligations Act currently in force.

The determined facts ... point precisely to injury to the dignity of the appellant and represent the substance of the request for compensation for non-pecuniary damage.

The appellant is entitled to all of that, regardless of the fact that in his complaint he specified damage as a request for compensation for damage on account of decreased living and working capabilities ... pain suffered ... and fear experienced ...

The civil court (as a rule) decides only on the facts presented by the parties, namely it examines evidence proposed by the parties ... In this specific case, however, it is incorrect to conclude that the appellant as the plaintiff in the civil proceedings presented only statements of facts regarding the decrease in his living and working capabilities, the pain suffered and the fear experienced. He also clearly talked about other feelings of discomfort due to inadequate space in the prison, which also represents the basis for the civil court to examine the case and decide on it. The lower courts did not take that part of the problem into consideration until now.

...

It should therefore be concluded that human, constitutional and personal rights have been violated in this case because the appellant was placed in prison conditions that did not comply with the standards prescribed by the Enforcement of Prison Sentences Act. The same conditions were also contrary to the legal standard prescribed under Article 25 § 1 of the Constitution. The courts are therefore obliged to determine the damages for that violation of human dignity."

45. On 17 March 2009, in case no. U-III-4182/2008, the Constitutional Court accepted a constitutional complaint lodged by a remand prisoner about the conditions of his detention in Zagreb Prison. In the operative part of the decision it found a violation of the applicant's right to humane treatment and respect for his dignity. It also ordered the Government to adjust the facilities at Zagreb Prison to the needs of detainees within a reasonable time, not exceeding five years. The relevant part of the decision reads:

"As to [the right not to be ill-treated]

17.1. ... the Constitutional Court notes that section 74, paragraph 3, of the Enforcement of Prison Sentences Act, *inter alia*, defines the standard occupancy space per prisoner in the following terms:

'Premises in which the prisoners dwell shall be clean, dry and sufficiently spacious. There shall be a minimum space of 4 square metres and 10 cubic metres per prisoner in each dormitory.'

... overcrowded conditions in Zagreb Prison cannot serve as acceptable justification for the poor condition of the cell the applicant occupies. In the light of the principle of presumption of innocence, the Constitutional Court stresses that the applicant's right to personal freedom, since he is in pre-trial detention and not convicted, must not be restricted to a more severe degree than that of a convicted person.

17.2. In assessing the quality of medical care, the Constitutional Court accepts the allegations of the Zagreb Prison administration that it is at a satisfactory level. However, the prison administration must, taking into account the need to minimise any damaging consequences of overcrowded conditions, establish standards in respect of additional medical care for detainees by employing the services of out-of-prison medical assistance not dependent on the discretionary assessment of the prison administration.

17.3. Lastly, the Constitutional Court finds the family visits regime inadequate, in view of the overcrowded conditions, as regards both the duration of visits and the procedure applied in respect of family members, which ... significantly diminishes the purpose of such contact ...

...

22. For the reasons set out in points ... 17 [of this decision] the Constitutional Court finds that the general conditions of the applicant's detention amount to degrading treatment and thus infringe his constitutional rights guaranteed under Article 23 and Article 25(1) of the Constitution as well as his rights under Article 3 of the Convention.

The Constitutional Court has not addressed the possibility of granting the applicant just satisfaction for the above infringements of his constitutional and Convention rights because in the Croatian legal system there exists another, effective legal remedy in that respect (see the Constitutional Court's decision no. U-III-1437/07 of 23 April 2008 [see paragraph 44 above].

..."

46. In the same case, the Constitutional Court stressed the following:

"[A] constitutional complaint alleging a violation of the rights guaranteed under Article 25 § 1 of the Constitution becomes a subsidiary legal remedy, which can be used only after the exhaustion of the [preventive remedy before the relevant courts]"

47. Thus, in subsequent cases the Constitutional Court declared inadmissible for non-exhaustion of relevant remedies before the lower bodies the complaints concerning prison conditions made by prisoners who had not beforehand complained to the sentence-execution judge about the allegedly inadequate conditions of their detention (U-III-Bi-4989/2012, 1 June 2016; U-IIIBi-2475/2016, 5 October 2016).

48. On 3 November 2010, in case no. U-III-64744/2009, the Constitutional Court accepted a complaint lodged by a prisoner concerning his stay in Zagreb Prison Hospital, even though after lodging the constitutional complaint, he had been transferred to another prison facility. The Constitutional Court found a breach of the appellant's constitutional right to humane treatment and respect for his dignity guaranteed under Article 25 of the Constitution.

49. With regard to the question of exhaustion of remedies, the Constitutional Court found that the appellant had properly used preventive remedies by complaining to the relevant sentence-execution judge, which had allowed him to lodge a constitutional complaint. With regard to the possibility of obtaining damages, the Constitutional Court stressed:

> “The Constitutional Court notes that the appellant has a legal possibility of exercising the right to appropriate compensation for the inhuman accommodation and living conditions in the prison hospital, which can be obtained in ordinary [civil] court proceedings.”

50. According to the practice of the Constitutional Court, an appellant who complains of inadequate conditions of detention in a prison facility, following successful use of the preventive remedy before the sentence-execution judge, but is then removed to another prison facility, is again required to use the remedy before the sentence-execution judge concerning the allegedly inadequate conditions of detention in the prison facility to which he or she has been transferred. In a number of such cases, although essentially examining the question of exhaustion of remedies, the Constitutional Court finds no breach of prisoners’ rights (U-III-5495/2011, 7 October 2015; U-III-835/2012, 2 December 2015).

51. The Constitutional Court recently held that the appellants are not required to use the preventive remedy before the sentence-execution judge in order formally to be allowed to lodge a civil action for damages before the civil courts. This was clarified in the Constitutional Court’s recent leading decision, U-III-5725/2016 of 19 December 2017, where the Constitutional Court stressed the following:

> “The second-instance court also found that the appellant, while still serving his prison sentence, could have complained of [inadequate] conditions of detention within the meaning of section 15 of the Execution or Prison Sentences Act and thus to ensure improvement of the conditions [of his detention] while still in prison. That court thereby did not condition the possibility of obtaining damages by a prior use of the remedy in question, as the appellant erroneously thinks, but has only pointed to the fact that there is an effective remedy for prisoners which can be used if they consider that the conditions of their detention are unlawful.”

52. In the cited case, the Constitutional Court referred to the relevant principles from the *Muršić* judgment (cited above) as the standards to be applied when assessing the conditions of detention. It also construed a procedural duty under Article 25 § 1 of the Constitution according to which, when examining civil actions for damages related to inadequate conditions of detention, the civil courts must duly establish all the circumstances of an appellant’s conditions of detention. If the courts find that such conditions were inadequate, that creates a basis for awarding damages, as already explained in the case U-III-1437/2007 (see paragraph 44 above; see also U-III-272/2017 of 20 December 2018, paragraph 14, with further references).

53. In several subsequent decisions where appellants lodged their constitutional complaints after their civil actions for damages relating to inadequate conditions of detention had been dismissed, the Constitutional Court followed its approach in the case U-III-5725/2016 and examined those complaints from the perspective of the civil courts’ procedural duty to elucidate the circumstances of a former prisoner’s conditions of detention

under Article 25 § 1 of the Constitution, sometimes taken alone and sometimes in conjunction with Article 29 § 1 of the Constitution. In making that assessment, the Constitutional Court stresses that it is primarily for the relevant lower courts to determine disputes before them and that it can only intervene in the event of arbitrariness in their decisions (U-III-2388/2015, 26 February 2018, dismissed on the merits; U-III-181/2017, 19 April 2018 and U-III-1630/2017, 30 May 2018, both adopted and the lower courts' judgments quashed; see also, for earlier case-law, U-III-703/2016, 27 April 2016; U-III-4340/2015, 13 July 2016; U-III-1573/2016, 14 July 2016).

54. However, in some cases where appellants lodged their constitutional complaints after their civil actions for damages relating to inadequate conditions of detention had been dismissed, the Constitutional Court itself examined the (in)adequacy of the conditions of detention under Article 25 §1 of the Constitution (U-III-145/2017, 10 July 2018; U-III-4077/2017, 13 September 2018).

C. Other relevant domestic material

55. In the periodic annual reports in 2011 and 2012 the Ombudsman reported on the general problem of prison overcrowding in Croatia. The same concerns were raised in the Ombudsman's report for 2012 acting in the capacity of the National Preventive Mechanism under the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT).

56. In the 2011 report Glina State Prison was mentioned as an example of a successful extension of prison estate, which created a positive impact on the reduction of prison overcrowding in general. However, in the 2011 and 2012 reports concerns were expressed over the fact that dental treatment in Glina State Prison was provided from two external clinics and thus average waiting time for such treatment amounted to some four months. The 2011 report also noted that most complaints concerning the conditions of detention were made with regard to Zagreb Prison, and in 2012 the report referred to the issues of inadequate conditions of detention identified by the Court in the case of *Longin v. Croatia* (no. 49268/10, 6 November 2012) and the Constitutional Court in the case U-III-4182/2008 (see paragraph 45 above).

57. In a general report on the conditions of detention in Croatia, no. U-X-5464/2012 of 12 June 2014, the Constitutional Court identified the problem of prison overcrowding and instructed the competent authorities to take more proactive measures in securing adequate conditions of detention for all types of detainees, as provided under the relevant domestic law and international standards.

III. RELEVANT INTERNATIONAL MATERIAL

58. The relevant reports of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ("CPT") concerning Croatia can be found in the *Muršić* judgment (cited above, § 54).

59. In the report concerning its visit in 2012 [CPT/Inf (2014) 9] the CPT noted the following concerning Zagreb Prison and Glina State Prison:

> 30. Glina State Prison, located about 70 kilometres south-west of Zagreb, is a former juvenile correctional institution which became an establishment for adult male sentenced prisoners after 1995. At the time of the visit, it was accommodating 564 male convicted prisoners, with an official capacity of 716 places. The establishment includes two main accommodation blocks (one of which only entered into service in 2011), and a separate closed building for inmates with drug addictions.
>
> ...
>
> Zagreb County Prison, located in the south of the city, has an official capacity of 400. At the time of the visit, it was accommodating 910 prisoners, of whom 339 were on remand, 537 sentenced and 34 had committed misdemeanours; the inmate population included 20 adult women and three male juveniles. The prison is composed of nine cellular modules and also hosts the National Diagnostic Centre, which receives sentenced inmates from the entire country at the outset of their terms and decides on their subsequent allocation.
>
> ...
>
> 34. Material conditions of detention were, on the whole, good in the newly inaugurated accommodation block of *Glina State Prison*; cells were suitably equipped, appropriately ventilated and had sufficient artificial lighting and access to natural light. The conditions in the original accommodation block (the so-called *"internat"*) were less favourable, with cells in a poor state of repair and lacking adequate access to natural light. Several inmates who had been held in the *"internat"* previously, referred to the frequent presence of rats in the cells. That said, at the time of the 2012 visit, only the ground floor of the original block was in service. Conditions in the building housing module 4, accommodating inmates on substitution therapy, were generally austere and had poor access to natural light; further, some showers were not functioning properly.
>
> *Zagreb County Prison*, operating at more than double its official capacity, was marked by the deleterious effects of overcrowding. That said, cells were in a decent state of repair, well ventilated and had adequate artificial lighting. However, those cells of modules 1, 4 and 7 overlooking the courtyards had metal shutters placed in front of the windows which restricted to a great extent access to natural light. Further, the sanitary annexes in most cells were only semi partitioned and inmates complained about the lack of privacy and conditions of hygiene. Indeed, the delegation found that the situation remained identical to that described in the Constitutional Court decision U-III-4182/2008 ..."

60. In the report concerning its latest visit to Croatia in 2017 [CPT/Inf (2018) 44] the CPT noted the following concerning Zagreb Prison:

> "The conditions of detention at Zagreb County Prisons had improved since the CPT's 2012 visit in those cells which had been recently renovated (i.e. most cells of modules 1 and 4 and, to a lesser extent, module 7) and in which the walls had been

painted, furniture replaced and sanitary annexes fully partitioned. That said, conditions remained deficient in the unrenovated cells where the semi-partitioned sanitary annexe still provided no privacy to inmates as well as in module 10 accommodating female prisoners where sanitary annexes were only semi-partitioned, toilets dilapidated and the common showers facilities in a poor state of repair; conditions were particularly critical in the two dormitories accommodating misdemeanour offenders in ward 7, with damaged furniture and sanitary installations, damaged window glass and malfunctioning artificial lighting. The cells of modules 1, 4 and 7 overlooking the courtyards still had metal shutters in front of the windows which hampered access to natural light and ventilation during the summer.

The CPT recommends that the Croatian authorities pursue their efforts to ameliorate the conditions of detention at the prison establishments visited, in particular:

...

- at Zagreb County Prison, by urgently accelerating the complete refurbishment of the un-renovated cells with a particular focus on the two dormitories for misdemeanour offenders of module 7 as well as sanitary and common shower facilities of module 10 and removing the shutters in front of windows in modules 1, 4 and 7."

61. In its 21st General Report (CPT/Inf (2011) 28) the CPT dealt specifically with the issue of solitary confinement. In so far as relevant for the present case, the report reads as follows:

"Types of solitary confinement and their legitimacy

56. There are four main situations in which solitary confinement is used. Each has its own rationale and each should be viewed differently:

...

(d) Solitary confinement for protection purposes

Every prison system has prisoners who may require protection from other prisoners. This may be because of the nature of their offence, their co-operation with the criminal justice authorities, inter-gang rivalry, debts outside or inside the prison or the general vulnerability of the person. While many prisoners can be managed in the general prison population in these circumstances, the risk to some is such that the prison can only discharge its duty of care to the individuals by keeping them apart from all other prisoners. This may be done at the prisoner's own request or at the instigation of management when it is deemed necessary. Whatever the process, the fact is that it can be very difficult for a prisoner to come off protection for the rest of the sentence – and maybe even for subsequent sentences.

States have an obligation to provide a safe environment for those confined to prison and should attempt to fulfil this obligation by allowing as much social interaction as possible among prisoners, consistent with the maintenance of good order. Resort should be had to solitary confinement for protection purposes only when there is absolutely no other way of ensuring the safety of the prisoner concerned."

THE LAW

I. EXHAUSTION OF DOMESTIC REMEDIES AND ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

A. The parties' arguments

1. The Government

62. The Government argued that the applicant had failed properly to exhaust the available and effective domestic remedies in relation to his allegations of inadequate conditions of detention. In particular, during his stay in Zagreb Prison he had not complained before the relevant sentence-execution judge of inadequate conditions of detention and had thus failed to institute the relevant judicial procedure concerning the matter. Had he attempted to use that remedy, and in the event of an unfavourable outcome, he would have been in a position to bring his complaints before the Constitutional Court. In any event, if the applicant had considered that no effective preventive remedy had existed concerning the conditions of his detention in Zagreb Prison, he should have lodged an application with the Court within a period of six months following his transfer to Glina Prison.

63. With regard to the applicant's stay in Glina State Prison, the Government pointed out that he had failed to challenge before the Constitutional Court the decision of the sentence-execution judge dismissing his complaint alleging inadequate conditions of detention. In the Government's view, a complaint before the Constitutional Court against the decision of the sentence-execution judge was an effective domestic remedy, within the meaning of Article 13 of the Convention, for the applicant's complaints under Articles 3 and 8 of the Convention. However, it followed from the practice of the Constitutional Court that a constitutional complaint concerning inadequate conditions of detention had to be lodged after using the remedy before the sentence-execution judge. Otherwise, if a constitutional complaint was lodged following an unsuccessful outcome of subsequent civil proceedings, the Constitutional Court would examine it only as a complaint against the outcome of a civil dispute.

64. Nevertheless, the Government explained that the use of the preventive remedy before the sentence-execution judge was not a prerequisite for the use of the compensatory remedy before the civil courts. In other words, there was nothing preventing the civil courts from awarding damages for inadequate conditions and detention if an applicant did not use the preventive remedy. However, in practice, the use of the preventive remedy, which resulted in a decision of the sentence-execution judge or the Constitutional Court, facilitated the decision-making process before the civil courts.

65. In any event, in the Government's view, this did not mean that the applicant had not been required to use the domestic remedies concerning allegedly inadequate conditions of detention as required under the Court's case-law, namely by first properly using the preventive remedy and only then lodging a civil action before the relevant court. However, by failing to do that, he had not properly exhausted the domestic remedies concerning his complaints before the Court.

2. The applicant

66. The applicant submitted that by complaining to the sentence-execution judge and instituting civil proceedings for damages, he had complied with the requirement of exhaustion of domestic remedies concerning the conditions of his detention. He pointed out that according to the Court's case-law, in the event of the existence of more remedies pursing the same aim, he was required to use only one remedy.

67. With regard to his failure to use the preventive remedy during his stay in Zagreb Prison, the applicant explained that he thought that he would stay in that prison only for a short period of time. He also contended that owing to the severe overcrowding in that prison, his complaint would have been ineffective as it had been impossible to move him to adequate conditions of detention. In any event, once he had left Zagreb Prison, he had complained of the conditions of detention in that prison in his civil action before the relevant court.

68. With regard to his stay in Glina Prison, he considered that he had properly used the preventive and then compensatory remedies. It was true that he had not lodged a constitutional complaint against the decision of the sentence-execution judge but, in his view, the recent practice of the Constitutional Court showed that it was not an effective remedy for complaints concerning inadequate conditions of detention. In any event, even if the Constitutional Court had found a violation of his right to adequate conditions of detention, that would have had no effect given the severe overcrowding in Croatian prisons, which made the use of any preventive remedy futile.

69. The applicant further contended that the civil action had proved to be an ineffective compensatory remedy for allegations of inadequate conditions of detention. In particular, a civil action could be lodged only after a burdensome friendly settlement procedure with the State Attorney's Office. Moreover, in practice it had provided no relief to prisoners, and the civil courts had made claimants to bear excessive costs and expenses of the proceedings for the State's representation by the State Attorney's Office, ranging from some 600 to more than 3,000 Euros. A further complaint in this respect before the Constitutional Court was also ineffective because, in particular, of the recent practice of the Constitutional Court declaring all such complaints inadmissible.

70. The applicant also argued that whereas earlier case-law of the Constitutional Court required the full exhaustion of the preventive remedy before the sentence-execution judge, as a precondition of admissibility of a constitutional complaint before it, the recent case-law of that court allowed appellants to use the compensatory remedy in the civil courts and then, if needed, to lodge a constitutional complaint before the Constitutional Court. This line of case-law could be observed in the Constitutional Court's decision of 19 December 2017 (see paragraph 51 above), which clearly indicated that the use of the preventive remedy was not a precondition for lodging a civil action for damages. In any event, in the applicant's view, the Constitutional Court incorrectly applied the Court's case-law and thus it was an ineffective remedy for the complaints of inadequate conditions of detention.

B. The Court's assessment

1. *Overview of the Court's case-law*

(a) In relation to the effective remedies under Article 13 of the Convention in general and specifically with respect to conditions of detention

71. The relevant principles on the application of Article 13 of the Convention in general and specifically with respect to conditions of detention are exhaustively set out in the judgment of *Neshkov and Others v. Bulgaria* (nos. 36925/10 and 5 others, 27 January 2015), the relevant part of which reads as follows:

> "180. Article 13 of the Convention guarantees the availability at national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they may happen to be secured in the legal order of the High Contracting Party concerned. The effect of this Article is thus to require the provision of a domestic remedy to deal with the substance of an arguable complaint under the Convention and grant appropriate relief. This remedy must be effective in practice as well as in law, it being understood that such effectiveness does not depend on the certainty of a favourable outcome for the person concerned (see, among many other authorities, *M.S.S. v. Belgium and Greece* [GC], no. 30696/09, §§ 288-89, ECHR 2011).
>
> 181. The scope of the obligation under Article 13 depends on the nature of the aggrieved person's complaint under the Convention. With respect to complaints under Article 3 of inhuman or degrading conditions of detention, two types of relief are possible: improvement in these conditions and compensation for any damage sustained as a result of them. Therefore, for a person held in such conditions, a remedy capable of rapidly bringing the ongoing violation to an end is of the greatest value and, indeed, indispensable in view of the special importance attached to the right under Article 3. However, once the impugned situation has come to an end because this person has been released or placed in conditions that meet the requirements of Article 3, he or she should have an enforceable right to compensation for any breach that has already taken place. In other words, in this domain preventive and compensatory remedies have to be complementary to be considered effective (see *Ananyev and Others*, cited above, §§ 96-98 and 214).

182. The authority referred to in Article 13 of the Convention does not need to be a judicial one (see *Klass and Others v. Germany*, 6 September 1978, § 67, Series A no. 28, and, more recently, *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 149, 17 July 2014). The Court has already found that remedies in respect of conditions of detention before an administrative authority can satisfy the requirements of this Article (see *Norbert Sikorski v. Poland*, no. 17599/05, § 111, 22 October 2009; *Orchowski v. Poland*, no. 17885/04, § 107, 22 October 2009; and *Torreggiani and Others* [*v. Italy*, nos. 43517/09 and 6 others, § 51, 8 January 2013]). However, the powers and procedural guarantees that an authority possesses are relevant in determining whether the remedy before it is effective (see *Klass and Others*, § 67, and *Centre for Legal Resources on behalf of Valentin Câmpeanu*, § 149, both cited above).

183. For instance, for a preventive remedy with respect to conditions of detention before an administrative authority to be effective, this authority must (a) be independent of the authorities in charge of the penitentiary system, (b) secure the inmates' effective participation in the examination of their grievances, (c) ensure the speedy and diligent handling of the inmates' complaints, (d) have at its disposal a wide range of legal tools for eradicating the problems that underlie these complaints, and (e) be capable of rendering binding and enforceable decisions (see *Ananyev and Others*, cited above, §§ 214-16 and 219). Any such remedy must also be capable of providing relief in reasonably short time-limits (see *Torreggiani and Others*, cited above, § 97).

184. As regards compensatory remedies in respect of conditions of detention, whether judicial or administrative, the burden of proof imposed on the claimant should not be excessive. While inmates may be required to make a prima facie case and produce such evidence as is readily accessible, such as a detailed description of the impugned conditions, witness' statements, or complaints to and replies from the prison authorities or supervisory bodies, it then falls to the authorities to refute the allegations. In addition, the procedural rules governing the examination of claims for compensation must conform to the principle of fairness enshrined in Article 6 § 1 of the Convention, including the reasonable-time requirement, and the rules governing costs must not place an excessive burden on the inmate where his or her claim is justified. Lastly, claimants should not be required to establish that specific officials have engaged in unlawful conduct. Poor conditions of detention are not necessarily due to failings of individual officials, but often the product of more wide-ranging factors (ibid., §§ 228-29).

185. The effective remedy required by Article 13 is one where the domestic authority or court dealing with the case has to consider the substance of the Convention complaint. For instance, in cases where this complaint is under Article 8 of the Convention, this means that the domestic authority has to examine, *inter alia*, whether the interference with the applicant's rights was necessary in a democratic society for the attainment of a legitimate aim (see *Smith and Grady v. the United Kingdom*, nos. 33985/96 and 33986/96, § 138, ECHR 1999-VI; *Peck v. the United Kingdom*, no. 44647/98, § 106, ECHR 2003-I; and *Hatton and Others v. the United Kingdom* [GC], no. 36022/97, § 141, ECHR 2003-VIII). The same goes for complaints under Article 9 of the Convention (see *Hasan and Chaush v. Bulgaria* [GC], no. 30985/96, § 100, ECHR 2000-XI), and Article 10 of the Convention (see *Glas Nadezhda EOOD and Anatoliy Elenkov v. Bulgaria*, no. 14134/02, §§ 68-70, 11 October 2007).

186. In cases, such as the present one, where the grievance that requires examination at domestic level is under Article 3 of the Convention, the domestic

authority or court dealing with the case must review the acts or omissions alleged to amount to a breach of this Article in line with the principles and standards laid down by this Court in its case-law; for instance, in relation to force used in the course of arrest operations, whether that force has exceeded what could be considered strictly necessary in the circumstances (see *Ivan Vasilev v. Bulgaria*, no. 48130/99, §§ 75-78, 12 April 2007). The same goes for analogous complaints under Article 2 of the Convention (see *Vasil Sashov Petrov v. Bulgaria*, no. 63106/00, § 60, 10 June 2010).

187. Thus, for a domestic remedy in respect of conditions of detention to be effective, the authority or court in charge of the case must deal with it in accordance with the relevant principles laid down in the Court's case-law under Article 3 of the Convention. ... Since what matters is the reality of the situation rather than appearances, a mere reference to this Article in the domestic decisions is not sufficient; the case must have in fact been examined consistently with the standards flowing from the Court's case-law.

188. If the domestic authority or court dealing with the case finds, whether in substance or expressly, that there has been a breach of Article 3 of the Convention in relation to the conditions in which the person concerned has been or is being held, it must grant appropriate relief.

189. In the context of preventive remedies, this relief may, depending on the nature of the underlying problem, consist either in measures that only affect the inmate concerned or – for instance where overcrowding is concerned – wider measures that are capable of resolving situations of massive and concurrent violations of prisoners' rights resulting from the inadequate conditions in a given correctional facility (see *Ananyev and Others*, cited above, § 219).

190. In the context of compensatory remedies, monetary compensation should be accessible to any current or former inmate who has been held in inhuman or degrading conditions and has made an application to this effect. A finding that the conditions fell short of the requirements of Article 3 of the Convention gives rise to a strong presumption that they have caused non-pecuniary damage to the aggrieved person. The domestic rules and practice governing the operation of the remedy must reflect the existence of this presumption rather than make the award of compensation conditional on the claimant's ability to prove, through extrinsic evidence, the existence of non-pecuniary damage in the form of emotional distress (ibid., § 229; see also *Iovchev* [*v. Bulgaria*, no. 41211/98, § 146, 2 February 2006]).

191. Lastly, prisoners must be able to avail themselves of remedies without having to fear that they will incur punishment or negative consequences for doing so (see Rule 70.4 of the 2006 European Prison Rules ... as well as, *mutatis mutandis*, *Marin Kostov v. Bulgaria*, no. 13801/07, §§ 47-48, 24 July 2012)."

72. On the basis of the above principles the Court has recently examined the structural reforms in the systems of remedies in different countries introduced in response to its pilot and leading judgments concerning inadequate conditions of detention (see, in particular, *Torreggiani and Others v. Italy*, nos. 43517/09 and 6 others, 8 January 2013, concerning Italy; *Varga and Others v. Hungary*, nos. 14097/12 and 5 others, 10 March 2015, concerning Hungary; and *Shishanov v. the Republic of Moldova*, no. 11353/06, 15 September 2015). The Court thereby reaffirmed its case-law according to which the preventive and compensatory remedies in this context have to be complementary.

73. In particular, as regards the preventive remedy, in the case of *Stella and Others v. Italy* ((dec.), 49169/09 et al., §§ 46-55, 16 September 2014), in response to the *Torreggiani and Others* pilot judgment, the Court accepted that a complaint to the judge responsible for the execution of sentences – competent to issue binding decisions concerning conditions of imprisonment – satisfied the requirements of its case-law. Similarly, in *Domján v. Hungary* ((dec.), no. 5433/17, §§ 21-23, 14 November 2017), in response to the *Varga and Others* pilot judgment (cited above), a complaint to the governor of a penal institution – who had the right to order relocation within the institution or transfer to another institution – which was subject to a further judicial review was found to be compatible with the requirements of the Court's case-law (see also *Draniceru v. the Republic of Moldova* (dec.), no. 31975/15, §§ 32-34, 12 February 2019, concerning a complaint to the investigating judge, who can order improvement of the inadequate conditions of detention).

74. As regards the compensatory remedy, the Court accepted financial compensation and, in some cases, the possibility of a reduction in sentence as adequate forms of redress (see *Stella and Others*, cited above, §§ 56-63; *Domján*, cited above, §§ 24-29; and *Draniceru*, cited above, §§ 35-40). In this context, it should be noted that the relevant compensatory remedy examined in *Stella and Others* applied to those currently detained, as well as those released, but only if they use that remedy six months following the termination of their detention. Moreover, in *Domján*, two pre-conditions were set in the relevant law for the use of the compensatory remedy: first, the previous use of the preventive remedy if the number of days spent in inadequate conditions of detention exceeds thirty (where inadequate conditions of detention exist over a longer period of time, a further complaint does not need to be lodged within three months); and second, compliance with the six-month time-limit running from the day on which the inadequate conditions of detention have ceased to exist or, for those who had already been released at the date of entry into force of the new law, from a particular date set by the law.

(b) In relation to the exhaustion of domestic remedies and compliance with the six-month rule in general

75. The rule of exhaustion of domestic remedies in Article 35 § 1 of the Convention requires those seeking to bring their case against the State before the Court to first use the remedies provided by the national legal system. Consequently, the High Contracting Parties are dispensed from answering for their acts or omissions in proceedings before the Court before they have had an opportunity to put matters right through their own legal system. The rule is based on the assumption, reflected in Article 13 of the Convention, with which it has close affinity, that the domestic legal system provides an effective remedy which can deal with the substance of an

arguable complaint under the Convention and grant appropriate relief. In this way, it is an important aspect of the principle that the machinery of protection established by the Convention is subsidiary to the national systems safeguarding human rights (see *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, § 93, 10 January 2012, and *Neshkov and Others*, cited above, § 177, with further references).

76. The Court refers to the general principles on the exhaustion of domestic remedies set out in the cases of *Vučković and Others v. Serbia* ((preliminary objection) [GC], nos. 17153/11 and 29 others, §§ 69-77, 25 March 2014) and *Gherghina v. Romania* ([GC] (dec.), no. 42219/07, §§ 83-88, 9 July 2015).

77. The Court would also stress that principally it is the domestic procedural arrangement which determines the exhaustion of domestic remedies. Thus, applicants must comply with the applicable rules and procedures of domestic law, failing which their application is likely to fall foul of the condition laid down in Article 35 of the Convention. However, non-exhaustion of domestic remedies cannot be held against an applicant if, in spite of his or her failure to observe the forms prescribed by law, the competent authority has nevertheless examined the substance of the complaint (see *Gäfgen v. Germany* [GC], no. 22978/05, § 143, ECHR 2010). As a rule, it would be unduly formalistic to require the applicants to exercise a remedy which the relevant domestic authorities would not oblige them to exhaust (see *Vučković and Others*, cited above, § 76).

78. The Court further reiterates that the requirement contained in Article 35 § 1 concerning the exhaustion of domestic remedies is closely interrelated with the requirement of compliance with the six-month period, since not only are they combined in the same Article, but they are also expressed in a single sentence whose grammatical construction implies such correlation (see *Gregačević v. Croatia*, no. 58331/09, § 35, 10 July 2012, with further references). Compliance with the six-month time-limit must be examined by the Court on its own motion (see, amongst many others, *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 138, 20 March 2018; see also *Norkin v. Russia* (dec.), no. 21056/11, § 11, 5 February 2013).

79. As a rule, the six-month period runs from the date of the final decision in the process of exhaustion of domestic remedies. Where no effective remedy is available to the applicant, the period runs from the date of the acts or measures complained of, or from the date of the knowledge of that act or its effect on or prejudice to the applicant (see *Ananyev and Others v. Russia*, cited above, § 72, and cases cited therein)

80. In other words, when it is clear from the outset that the use of a remedy cannot be considered effective for an applicant's complaints, the use of that remedy cannot interrupt the running of the six-month time-limit.

Where, therefore, an applicant avails himself of an apparently existing remedy and only subsequently becomes aware of circumstances which render the remedy ineffective, the Court considers that it may be appropriate for the purposes of Article 35 § 1 to take as the start of the six-month period the date when the applicant first became or ought to have become aware of those circumstances (see, amongst many others, *Norkin*, cited above, §§ 15-16).

(c) Exhaustion of remedies and compliance with the six-month rule in conditions of detention cases

81. The issue of whether domestic remedies have been exhausted is normally determined by reference to the date when the application was lodged with the Court (see *Baumann v. France*, no. 33592/96, § 47, ECHR 2001-V (extracts)). Thus, applicants who are still in detention under the circumstances of which they complain, are obliged to exhaust the available and effective preventive remedy before bringing their complaints before the Court (see, for instance, *Stella and Others*, cited above, § 67).

82. However, in cases where unsatisfactory conditions of detention have already ended, the use of a compensatory remedy, such as civil action for damages, is normally an effective remedy for the purposes of Article 35 of the Convention (see, amongst many others, *Łomiński v. Poland* no. 33502/09 (dec.), §§ 70-73 12 October 2010, and *Wersel v. Poland*, no. 30358/04, §§ 33-36, 13 September 2011; see also *Nikitin and Others v. Estonia*, nos. 23226/16 and 6 others, § 129, 29 January 2019). Accordingly, the Court has held that where an applicant had already been released when he or she lodged his application with it, a remedy of a purely compensatory nature could in principle have been effective and could have provided him or her with fair redress for the alleged breach of Article 3 (see, for instance, *Bizjak v. Slovenia* (dec.), no. 25516/12, § 28, 8 July 2014; *Chatzivasiliadis v. Greece* (dec.), no. 51618/12, § 30, 26 November 2013; *Singh and Others v. Greece*, no. 60041/13, §§ 33-34, 19 January 2017, and *Igbo and Others v. Greece*, no. 60042/13, § 28, 9 February 2017, with further references).

83. The Court notes, however, that in the cases cited in the preceding paragraph it did not find that there was a preventive remedy providing for an effective avenue which the applicants could and should have used during their confinement (see, for instance, *Singh and Others*, cited above, §§ 35-37). By contrast, for countries where the Court found that there was an effective preventive remedy the Court considered the effectiveness of the compensatory remedy in combination with the use of an effective preventive remedy (see paragraph 95 below, concerning Croatia; and, in particular, paragraph 74 above, concerning other countries). It therefore follows that there is an important difference between the cases cited above

(see paragraph 82) and those cases, such as the one at hand, where the domestic system provides for an effective preventive remedy.

84. In this context, it should be stressed that the Court did not consider the use of the civil action for damages to be an alternative to the proper use of the preventive remedy (see *Stella and Others*, cited above, § 67), as suggested by the applicant, irrespective of the fact that those remedies may be, as a whole, exercised through two separate sets of judicial proceedings (see *Peša v. Croatia*, no. 40523/08, § 81, 8 April 2010).

85. Moreover, in its case-law the Court did not consider it unreasonable to require a prisoner to use the available and effective preventive remedy as a pre-condition for his or her use of the compensatory remedy, aimed at obtaining damages for the past inadequate conditions of detention (see paragraph 74 above). Indeed, an effective preventive remedy is capable of having an immediate impact on an applicant's inadequate conditions of detention while the compensatory remedy could only provide redress for the consequences of his or her allegedly inadequate conditions of detention.

86. As the Court already explained, from the perspective of the State's duty under Article 13, the prospect of future redress cannot legitimise particularly severe suffering in breach of Article 3 and unacceptably weaken the legal obligation on the State to bring its standards of detention into line with the Convention requirements (see *Varga and Others*, cited above, § 49). Thus, given the close affinity of Articles 13 and 35 § 1 of the Convention, it would be unreasonable to accept that once a preventive remedy has been established from the perspective of Article 13 – as a remedy found by the Court to be the most appropriate avenue to address the complaints of inadequate conditions of detention – an applicant could be dispensed from the obligation to use that remedy before bringing his or her complaint to the Court (see paragraph 74 above).

87. Thus, normally, before bringing their complaints to the Court concerning the conditions of their detention, applicants are first required to use properly the available and effective preventive remedy and then, if appropriate, the relevant compensatory remedy.

88. However, the Court accepts that there may be instances in which the use of an otherwise effective preventive remedy would be futile in view of the brevity of an applicant's stay in inadequate conditions of detention and thus the only viable option would be a compensatory remedy allowing for a possibility to obtain redress for the past placement in such conditions. This period may depend on many factors related to the manner of operation of the domestic system of remedies (see paragraphs 73-74 above) and the nature of the alleged inadequacy of an applicant's conditions of detention (see, for instance, *Muršić*, cited above, §§ 149-150, and *Gaspari v. Armenia*, no. 44769/08, §§ 56-58, 20 September 2018, both concerning a period of close to thirty days; see also paragraph 74 above).

89. In any event, for the purpose of legal certainty and the necessity to facilitate the establishment of facts in a case by avoiding a situation where the passage of time might rendered problematic any fair examination of the issues raised, the use of the compensatory remedy cannot be unlimited in time. Drawing comparison to the period in which the supervision by the Court would no longer be possible (see *Sabri Güneş v. Turkey* [GC], no. 27396/06, §§ 39-42, 29 June 2012, with further references), and noting the relevant domestic arrangements found by the Court to be appropriate (see paragraphs 73-74 above), the Court considers that the compensatory remedy in this context should normally be used within six months after the allegedly inadequate conditions of detention have ceased to exist.

90. This is, of course, without prejudice to the possibility that the relevant domestic law provides for different arrangements in the use of remedies or for a longer statutory time-limit for the use of a compensatory remedy, in which case the use of that remedy is determined by the relevant domestic arrangements and time-limits (see, for instance, *Nikitin and Others*, cited above, §§ 135-144; see also paragraph 77 above).

91. The Court would also reiterate that it is possible that an otherwise effective remedy – preventive and/or compensatory – may operate inappropriately in the circumstances of a particular case (see, for instance, *Lonić v. Croatia*, no. 8067/12, § 63, 4 December 2014). In such instances, applicants must comply with the above-mentioned requirements of the Court's case-law concerning compliance with the six-month rule under Article 35 § 1 of the Convention (see paragraphs 79-80 above).

92. Moreover, in this connection the Court stresses that, in the conditions of detention context, special rules on calculation of the six-month time-limit apply in cases where an applicant has been confined in different detention regimes and/or facilities. In this respect the Court has held that a period of an applicant's detention should be regarded as a "continuing situation" as long as the detention has been effected in the same type of detention facility in substantially similar conditions. Short periods of absence during which the applicant was taken out of the facility for interviews or other procedural acts would have no incidence on the continuous nature of the detention. However, the applicant's release or transfer to a different type of detention regime, both within and outside the facility, would put an end to the "continuing situation". The complaint about the conditions of detention must be filed within six months of the end of the situation complained about or, if there was an effective domestic remedy to be exhausted, of the final decision in the process of exhaustion (see *Ananyev and Others*, cited above, § 78).

2. *Application of the above case-law in the present case*

(a) Preliminary remarks

93. The Court notes that the Croatian legal system provides for both preventive and compensatory remedies. The preventive remedy is exercised by using a complaint to the prison administration and/or the sentenceexecution judge directly, while the compensatory remedy relates to a possibility to obtain compensation of damages before the relevant civil courts. In any event, in case of an unfavourable outcome in the use of the preventive and/or compensatory remedy, an applicant can bring his or her complaints before the Constitutional Court.

94. In particular, as regards the preventive remedy concerning prison conditions in Croatia, in the case of *Muršić v. Croatia* ([GC], no. 7334/13, § 71, 20 October 2016), the Court noted as follows:

> "[T]he Court held that a complaint lodged with the competent judicial authority or the prison administration is an effective remedy, since it can lead to an applicant's removal from inadequate prison conditions. Moreover, in the event of an unfavourable outcome, the applicant can pursue his complaints before the Constitutional Court (see *Štitić v. Croatia* (dec.), no. 29660/03, 9 November 2006; and *Dolenec v. Croatia*, no. 25282/06, § 113, 26 November 2009), which also has the competence to order his release or removal from inadequate prison conditions (see, *inter alia*, *Peša v. Croatia*, no. 40523/08, § 80, 8 April 2010). Accordingly, in order to satisfy the requirement of exhaustion of domestic remedies and in conformity with the principle of subsidiarity applicants are required, before bringing their complaints to the Court, to afford the Croatian Constitutional Court the opportunity of remedying their situation and addressing the issues they wish to bring before the Court (see *Bučkal v. Croatia* (dec.), no. 29597/10, § 20, 3 April 2012; and *Longin v. Croatia*, no. 49268/10, § 36, 6 November 2012)."

95. With regard to the compensatory remedy aimed at the award of damages for the time the applicant was detained in inadequate conditions of detention, the Court held that this remedy was not in itself effective in respect of the complaints of adverse prison conditions by prisoners. The Court stressed that only in combination with an effective use of the above-mentioned preventive remedy, leading to the acknowledgement of a breach of the applicant's rights and his or her removal from the inadequate conditions of detention, can the civil proceedings satisfy the requirements of effectiveness (see, for instance, *Štitić v. Croatia* (dec.), no. 29660/03, 9 November 2006; *Novak v. Croatia*, no. 8883/04, § 34, 14 June 2007; *Peša*, cited above, § 81; *Miljak v. Croatia* (dec.), no. 66942/09, § 33, 7 February 2012, and *Longin v. Croatia*, no. 49268/10, § 44, 6 November 2012).

96. In the light of the principles noted above, the Court has always insisted on the necessity for applicants to use diligently the available preventive remedy before the prison administration and/or the sentence-execution judge directly and, in the event of an unfavourable

outcome, to lodge a constitutional complaint before the Constitutional Court. Where applicants have failed to comply with that requirement, the Court has declared their applications inadmissible for non-exhaustion of domestic remedies (see, for instance, *Šimunovski v. Croatia* (dec.), no. 42550/08, 21 June 2011; *Šebalj v. Croatia*, no. 4429/09, § 177, 28 June 2011; *Miljak*, cited above, §§ 36-39; *Bučkal v. Croatia* (dec.), no. 29597/10, § 21, 3 April 2012, and *Golubar v. Croatia*, no. 21951/15, §§ 30-32, 2 May 2017).

97. In this connection, it should also be noted that according to the relevant practices of the domestic authorities, including the Constitutional Court, once the preventive remedy is set in motion by first lodging a complaint before the prison administration and/or the sentence-execution judge directly, neither removal from inadequate conditions of detention nor release prevents the examination and finding of a breach of Article 3 (see paragraph 48 above; see also *Miljak*, cited above, §§ 10, 14 and 31-34).

98. As regards the practice of the Constitutional Court related to the use of the compensatory remedy, the Court notes that the Constitutional Court has recently held that the appellants are not required to use the preventive remedy before the sentence-execution judge in order formally to be allowed to lodge a civil action for damages before the civil courts, which then also allows them, if needed, to bring their complaints before the Constitutional Court (see paragraph 51 above). However, it seems that the Constitutional Court approaches cases where appellants lodged their constitutional complaints after their civil actions for damages related to inadequate conditions of detention had been dismissed, in two ways. On the one hand, in several of such cases the Constitutional Court limited its examination to the procedural assessment of the civil courts' duty to elucidate the circumstances of a former prisoner's conditions of detention. On the other hand, in several other cases the Constitutional Court examined itself the (in)adequacy of detention conditions and not only the procedural aspect of the complaints (see paragraphs 53-54 above)

99. The Court also reiterates that the above principles concerning the effective remedies were found to be applicable to the complaints under Article 8 of the Convention concerning the conditions and regime of an applicant's detention (see *C. and D. v. Croatia* (dec.), no. 43317/07, 14 October 2010; *Srbić v. Croatia* (dec.), no. 4464/09, 21 June 2011; *Šimunovski*, cited above, and *Longin*, cited above, §§ 68-70).

100. In the light of the above case-law, in the present case the Court must determine whether the applicant made proper use of the domestic remedies and consequently complied with the six-month time-limit as required under the Court's case-law (compare *Norkin*, cited above, § 16).

101. However, before proceeding with this analysis, the Court must first examine the applicant's arguments of ineffectiveness of the relevant

preventive and compensatory remedies in Croatia concerning allegations of inadequate conditions of detention.

(b) Effectiveness of remedies in Croatia concerning allegations of inadequate conditions of detention

102. The Court finds at the outset that there is nothing in the applicant's arguments calling into question the general effectiveness of the preventive remedy in Croatia concerning allegations of inadequate conditions of detention (see paragraph 94 above).

103. In this connection, it should be stressed that the Court has never considered that conditions of detention in Croatia disclosed a structural problem from the standpoint of Article 3 of the Convention (see *Muršić,* cited above, § 142, with further references), making futile the use of the available preventive remedy (see *Ananyev and Others*, cited above, § 111, and *Neshkov and Others*, cited above, § 210, with further references). Indeed, evidence shows that the remedy of a complaint before the sentenceexecution judge, followed by a constitutional complaint before the Constitutional Court, was able to provide adequate relief for complaints alleging inadequate conditions of detention (see, for instance, *Štitić v. Croatia* (dec.), no. 9660/03, 9 November 2006; *Novak*, cited above, § 34; and *Bučkal*, cited above, §§ 26-27; and, by contrast, *Ananyev and Others*, cited above, § 110). This applied also to the conditions of detention in Zagreb Prison (see *Peša*, cited above, § 80). Accordingly, with regard to Zagreb Prison, the Court stressed that, irrespective of the issue of overcrowding existing in that prison at the relevant time, individual measures were available under the national law and therefore the available remedies had to be exhausted (see *Šebalj*, cited above, § 176).

104. With regard to the applicant's arguments about the ineffectiveness of a constitutional complaint in the context of the use of preventive remedy, the Court notes that, for the reasons set out above and in view of the Constitutional Court's practice (see paragraphs 44-54 above), there is no reason to doubt the availability and effectiveness of that remedy. Indeed, the Court would reiterate, as it did in many other contexts, that before bringing complaints against Croatia to it, in order to comply with the principle of subsidiarity applicants are in principle required to afford the Croatian Constitutional Court, as the highest Court in Croatia, the opportunity to remedy their situation (see *Pavlović and Others v. Croatia*, no. 13274/11, § 32, 2 April 2015).

105. As to the effectiveness of the compensatory remedy, the Court notes that the domestic legal order allows for a possibility of obtaining damages for physical pain and mental suffering as well as the infringements of personality rights (see paragraph 43 above). According to the Constitutional Court's case-law, the inadequate conditions of detention amount, in particular, to injury to the dignity which in itself entitles the

claimant to obtain compensation for non-pecuniary damage (see paragraph 44 above), which is in line with the Court's case-law (see *Neshkov and Others*, cited above, § 190). Indeed, the practice of the Constitutional Court shows that it quashed a lower courts' decision finding to the contrary (see paragraph 44 above).

106. It also follows from the Constitutional Court's case-law that the civil courts are required to conduct a thorough examination of the complaints of inadequate conditions of detention taking into account the wider meaning and substance of such complaints (ibid.). Moreover, it should be noted that in its recent case-law the Constitutional Court construed a concept of procedural duty requiring the civil courts to elucidate all the circumstances of an applicant's conditions of detention in order to assess whether such conditions complied with the standards set out in the Court's case-law (see paragraph 52 above). Thus, irrespective of the Constitutional Court's approach to such cases in terms of its focus on the substantive or procedural aspects of complaints (see paragraphs 53-54 and 98 above), the fact remains that the Constitutional Court exercises a further review of the case in relation to the findings of the civil courts, taking as a basis for its assessment the Court's case-law in *Muršić* (see paragraph 52 above).

107. As to the applicant's allegations that the awards of costs and expenses of the proceedings against the unsuccessful claimants render the compensatory remedy ineffective, the Court finds it important to reiterate that the "loser pays" rule pursues a legitimate aim of ensuring the proper administration of justice and protecting the rights of others by discouraging ill-founded litigation and excessive costs (see, for instance, *Klauz v. Croatia*, no. 28963/10, § 84, 18 July 2013). The same is true, in principle, for cases concerning claims for compensation for poor conditions of detention (see *Atanasov and Apostolov*, cited above, § 60).

108. Thus, the Court does not consider that obliging unsuccessful claimants to bear the costs and expenses of the proceedings in itself renders the compensatory remedy ineffective. That said, the Court would reiterate that the award of costs must not place an excessive burden on the claimant (see *Neshkov and Others*, cited above, § 184), which is a matter that has to be determined in the circumstances of a particular case.

109. The Court further notes that the applicant challenges the effectiveness of the preventive remedy on the grounds that a preliminary friendly settlement procedure with the State Attorney's Office is a pre-condition for lodging a civil action against the State for damages. However, the Court notes that it has already accepted that a duty of claimants to institute such a preliminary procedure does not in itself amount to an unreasonable and unjustified restriction on access to court (see *Momčilović v. Croatia*, no. 11239/11, §§ 45-46 and 52-54, 26 March 2015). Thus, it cannot be said that it renders the use of the compensatory remedy

before the civil courts ineffective (compare *Nikitin and Others*, cited above, §§ 122-123).

110. Lastly, as to the applicant's argument that the compensatory remedy provided no prospect of relief, the Court reiterates that while Article 13 requires a remedy to be effective in practice as well as in law, such effectiveness does not depend on the certainty of a favourable outcome for the person concerned (see *Neshkov and Others*, cited above, § 180). In this connection, the Court notes that according to the Constitutional Court's case-law, the civil courts are obliged to follow the relevant standards from the Court's case-law and that the Constitutional Court quashed the lower courts' judgments when that had not been the case (see paragraph 44 above). Thus, in view of its findings above and in particular the Constitutional Court's case-law, the Court finds the applicant's argument unfounded.

111. Having regard to the above considerations, the Court confirms its case-law as to the existence of effective preventive and compensatory remedies in Croatia concerning allegations of inadequate conditions of detention (see paragraphs 93-99 above).

(c) Whether the applicant properly exhausted the domestic remedies and complied with the six-month time-limit

112. At the outset, it should be noted that the applicant served his prison sentence in two detention facilities: first he spent some twenty-seven days in Zagreb Prison between 12 May and 8 June 2011, when he was transferred to Glina State Prison, where he stayed until his release on 28 September 2012 (see paragraph 7 above). The conditions of detention in these two prison facilities differed in terms of prison regime and conditions of detention.

113. Moreover, in Glina State Prison the conditions of the applicant's detention substantially differed during his confinement. In particular, the following periods and regimes of his detention in that prison may be differentiated: his stay in the old part of the building (between 8 June and 1 August 2011) and the new part of the building, where he was placed in two separate non-consecutive periods (between 1 August and 20 September 2011, and 19 December 2011 and 19 September 2012); his stay in the cell for special treatment (between 20 September and 19 December 2011); and his stay during the final part of the service of his sentence in that prison (between 19 and 28 September 2012).

114. According to the Court's case-law, this would have in general required the applicant to bring to the Court any possible complaints he might have had concerning the conditions of his confinement within six months following the final decision in the process of exhaustion of the domestic remedies and, if such remedies did not properly operate in the particular circumstances of the case, six months following his removal from the particular adverse conditions of detention or detention regime.

115. Thus, the applicant was normally required to use the preventive remedy, namely to complain to the prison administration and/or the sentence-execution judge directly and, in case of an unfavourable outcome, bring his complaints first before the Constitutional Court and then, if necessary, before the Court within a period of six months following his receipt of the Constitutional Court's decision. On the other hand, if the use of the preventive remedy was successful, the applicant should have used the compensatory remedy by lodging a civil action for damages and then, in case he was dissatisfied with the outcome, by bringing his complaint in that respect before the Constitutional Court and afterwards, if needed, before the Court within a period of six months following his receipt of the Constitutional Court's decision (see paragraphs 93-97 above).

116. With regard to the conditions of his detention in Zagreb Prison, the applicant did not avail himself of the preventive remedy before the prison administration and/or the sentence-execution judge (see paragraph 10 above). With regard to the conditions of his confinement in Glina State Prison in the relevant period, the applicant did use that remedy but, after his complaints had been dismissed, he failed to lodge a constitutional complaint before the Constitutional Court (see paragraphs 23-27 above), which is a further required step in the process of exhaustion of the preventive remedy concerning the conditions of detention in Croatia (see paragraphs 94 and 104 above).

117. However, after his release on parole from Glina State Prison, the applicant initiated the civil proceedings seeking damages for the allegedly inadequate conditions of detention in Zagreb Prison and Glina State Prison (see paragraphs 7 and 28 above). Following the unfavourable outcome of those proceedings he lodged a constitutional complaint and the Constitutional Court examined on the merits and dismissed his complaints of inadequate conditions of detention for the overall period of his confinement in Zagreb Prison and Glina State Prison (see paragraphs 36-37 above). After the dismissal of his constitutional complaint, the applicant lodged an application with the Court within six months following the receipt of the Constitutional Court's decision (see paragraph 37 above).

118. In these circumstances, an issue may be raised as regards the applicant's proper exhaustion of the relevant domestic remedies (preventive and compensatory) for some of the periods of his imprisonment, as required under the Court's case-law, and consequently with his compliance with the six-month time-limit for bringing his complaints to the Court. However, it should be noted that the Constitutional Court, as the highest court in the country, examined on the merits the applicant's complaints of inadequate conditions of detention for the overall period of his confinement in Zagreb Prison and Glina State Prison, and the applicant duly lodged his application with the Court after obtaining that decision of the Constitutional Court (see paragraphs 36-37 above). The Court thus considers that, as the

Constitutional Court's case-law currently stands, the applicant's complaints cannot be dismissed for failure to exhaust domestic remedies and/or non-compliance with the six-month time limit (see, *mutatis mutandis*, *Verein gegen Tierfabriken Schweiz (VgT) v. Switzerland (no. 2)* [GC], no. 32772/02, §§ 43-45, ECHR 2009, and cases cited therein; see also paragraph 77 above).

(d) Conclusion

119. In view of the above considerations, reiterating that there is nothing in the applicant's arguments calling into question the general effectiveness of remedies in Croatia concerning allegations of inadequate conditions of detention, the Court finds that the applicant's complaint under Article 13 is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention (see paragraphs 102-111 above).

120. The Court also finds that the Government's preliminary objection concerning non-exhaustion of domestic remedies must be rejected (see paragraph 118 above).

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

121. The applicant complained of inadequate conditions of his detention in Zagreb Prison and Glina State Prison. He relied on Article 3 of the Convention, which reads as follows:

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

A. The parties' arguments

1. The applicant

122. With regard to his stay in Zagreb Prison the applicant contended that he had been placed in an overcrowded cell where he had constantly had only some 2,97 sq. m of floor surface, which, in his view, could not amount to a short restriction on the requisite personal space of 3 sq. m as set out in the Court's case-law. In addition, the sanitary facility in the cell was not fully separated from the living area where he had been accommodated so smell had been pervasive and, due to the absence of a dining area, he had been served food in such conditions. Moreover, there had not been sufficient space to move around the cell and he had been confined to the cell for twenty-two hours a day. During rainy days even that possibility had been restricted. Other recreational or vocational activates had also not been provided.

123. As regards Glina State Prison, the applicant contended that the information provided to the Court as regards the personal space available to

him in Glina State Prison did not correspond to the information put forward by the State Attorney's Office while arguing the case at the domestic level. According to the applicant, in the cell where he had first been placed he had had 4,11 sq. m. Later on he had spent some time separated from other prisoners and then he had spent some nine months having at his disposal 3,1 sq. m. Finally, in the last period of his stay in Glina State Prison he had had only 2,1 sq. m of personal space. Furthermore, he had not received proper dental treatment, which had been delayed and had been inadequate. He had also not received sufficient toiletries and the sanitary facilities had been inadequate. Moreover, the area for the outdoor exercise had been small and inadequate. The applicant also contended that he had not been protected from the harassment by other prisoners and had been placed in isolation for a period of three months, during which time he had been confined to his cell for twenty-three hours a day. Moreover, while being in isolation, he had not had the right to have visits or to make telephone calls or to watch television.

2. The Government

124. In connection with the applicant's detention in Zagreb Prison, the Government argued that it had lasted for a very short period of time and that it had been of a temporary nature simply in order to determine further prison facility to which the applicant would be transferred. This temporary nature of the confinement in Zagreb Prison had been known to the applicant and thus he could not argue that it had been capable of causing him any suffering.

125. As regards Glina State Prison, the Government submitted that it was the best maintained prison facility in Croatia. In 2011 a newly built wing of the prison had been opened and the applicant had served his prison sentence there, having at his disposal completely new premises, sanitary facilities, furniture and other equipment. Throughout his stay in Glina State Prison the applicant had had more than 3 sq. m of personal space. The only period in which he had had less than 3 sq. m was in the last eight days of his confinement in that prison. However, he had spent that period in a special cell for prisoners preparing for release. That call was never closed so prisoners remained free to walk out of the cell at any time during the night and day. Moreover, it had been properly equipped and furbished. The Government also stressed that throughout the applicant's stay in Glina State Prison he had had sufficient freedom of movement and had been provided with adequate out-of-cell activities. As regards the period of the applicant's separation from other prisoners, the Government stressed that it had been the result of his own request due to his fear from the alleged violence by two other prisoners. Lastly, the Government pointed out that the applicant had been given adequate medical treatment. In particular, he had first seen the dentist four months after his arrival to Glina State Prison and had in total seen the dentist on nine occasions in a period of little more than a year.

B. The Court's assessment

1. Admissibility

126. The Court notes that the applicant's complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that they are not inadmissible on any other grounds (see paragraph 120 above). They must therefore be declared admissible.

2. Merits

(a) The applicant's detention in Zagreb Prison

127. The general principles on conditions of detention are set out in *Muršić* (cited above, §§ 136-140).

128. With regard to the conditions of detention in Zagreb Prison, the Court has found a violation of Article 3 in the *Longin* case (cited above) on the following grounds:

> "60. In connection with the above considerations, the Court firstly observes that the applicant was confined in an overcrowded cell for twenty-two hours a day. There were at least five beds to each cell, together with a dining table and chairs which did not leave much space for moving around. Furthermore, the sanitary facilities in the detention cells were not fully separated from the living area where the detainees were accommodated. It is not disputed between the parties that Zagreb Prison did not have dining facilities and that the food for all prisoners was served in cells. The Government also did not dispute that the dining table had been only one metre away from the open sanitary facilities which at the outset raises serious concerns about the hygiene and health conditions in the cell, regard being had in addition to the fact that the applicant was confined in such conditions for twenty-two hours a day.
>
> 61. In these circumstances, the cumulative effect of the applicant's confinement must have left the applicant with feelings of anguish and inferiority capable of humiliating and debasing him (see *Aleksandr Makarov v. Russia*, no. 15217/07, §§ 94-98, 12 March 2009). Therefore, particularly in view of the fact that these restrictions had not been compensated for by the freedom of movement during the daytime, the Court considers that the conditions of the applicant's detention amounted to a degrading treatment incompatible with the requirements of Article 3 of the Convention."

129. The Court notes that the applicant was placed in Zagreb Prison in 2011, which is approximately the same period examined in the *Longin* case. Moreover, the same conditions of detention in the *Longin* case pertained in the applicant's case. In addition, it would appear from the parties' submissions that at times the applicant had barely 3 sq. m of personal space and at times even below (see paragraphs 8-9 above). Moreover, it should be noted that concerns over the conditions of detention in Zagreb Prison were expressed by the Constitutional Court (see paragraph 45 above), the Ombudsman (see paragraph 56 above), and the CPT (see paragraph 59 above).

130. In these circumstances, irrespective of the relative brevity of the applicant's stay in Zagreb Prison, the Court finds that the conditions of the applicant's detention amounted to a degrading treatment incompatible with the requirements of Article 3 of the Convention.

131. There has accordingly been a violation of Article 3 of the Convention.

(b) The applicant's detention in Glina State Prison

(i) Material conditions of detention

132. As already noted, in Glina State Prison the conditions of the applicant's detention substantially differed during his stay in different cells and prison regimes. Although the information on the personal space available to the applicant is inconclusive as it is inconsistently presented in various sources available to the Court (see paragraphs 12, 22 and 31 above), even if the applicant's arguments are taken as a starting point for the Court's assessment it follows that during the most part of his stay in Glina State Prison he had between 3,1 and 4,11 sq. m, and then below 3 sq. m in the last ten days of his confinement (see paragraph 123 above).

133. Thus, for the most part of the applicant's stay in Glina State Prison the space factor, although a weighty factor in the Court's assessment, has to be coupled with other aspects of inappropriate physical conditions of detention in order to amount to a breach of Article 3 (see *Muršić*, cited above, § 139).

134. In this connection, the Court notes that the applicant did not contest that, save for the period of his separation from other prisoners (which will be addressed separately further below), during his stay in Glina State Prison he was allowed to move outside the cell essentially throughout the day, save for a short period of time (one hour) in which the cells in the new part of the building were locked (see paragraph 12 above). Moreover, the information available to the Court shows that the applicant was regularly given toiletries; that he was allowed to receive parcels from outside the prison; that the food was under a constant monitoring, regular and diverse; and that the applicant was involved in out-of-cell activities (see paragraphs 18 and 23 above).

135. It should also be noted that during its visit in 2012 the CPT noted that there was no issue of overcrowding in Glina Prison and that the conditions of detention, particularly in the newly built part of the prison, were, on the whole, satisfactory (see paragraph 59 above). Moreover, the relevant annual reports of the Ombudsman did not refer to any issue as regards the conditions of detention in Glina State Prison but, to the contrary, mentioned it as a good example of investments in the prison system (see paragraph 56 above).

136. As regards the conditions of the applicant's detention in the period of last ten days of his stay in Glina State Prison, the Court notes that while the impugned reduction in the personal space is capable of giving rise to a strong presumption of a violation of Article 3 in accordance with the *Muršić* case-law (cited above), it considers that there were sufficient factors to rebut such a presumption. In this connection, the Court notes that the period in question immediately preceded the applicant's release; that the applicant had sufficient freedom of movement as the cell was never locked; that he was engaged in various activities related to the preparation for his release; and that the overall conditions in the special cell for release were satisfactory (see paragraph 12 above).

137. In these circumstances, the Court does not find that the conditions of the applicant's detention in Glina State Prison run counter to Article 3 of the Convention.

(ii) The applicant's placement in the cell for special treatment

138. As regards the period in which the applicant was placed in the cell for special treatment, the Court would stress at the outset that it cannot be said that in the period in question the applicant's detention regime amounted to solitary confinement where he was under a total sensory and social isolation (see, for instance, *Ramirez Sanchez v. France* [GC], no. 59450/00, §§ 115-124, ECHR 2006-IX). As explained by the Government, in this period the applicant was separated from other prisoners on the basis of his request for protection from the alleged threats of other prisoners. According to the Court's case-law this measure, in so far as it entailed the applicant's separation from the general prison population, required the existence of effective safeguards (see *X v. Turkey*, no. 24626/09, §§ 37-54, 9 October 2012; and *Peňaranda Soto v. Malta*, no. 16680/14, § 76, 19 December 2017).

139. In this connection, the Court notes that, contrary to the applicant's submissions, during his separation from other prisoners he was granted visits by his family members and was even allowed to marry in prison. Moreover, during the period in question, he was also granted a conjugal visit by his wife (see paragraph 20 above). This therefore contradicts and calls into question the credibility of his submissions as regards the alleged restrictions placed upon him during his stay in the cell for special treatment (see paragraph 123 above).

140. It should also be noted that the evidence shows that the prison authorities actively worked on resolving the issue causing the applicant's fears (see paragraph 16 above). Moreover, the applicant's separation from other prisoners was subject to an effective administrative and judicial supervision (see paragraphs 21-27 above; and, by contrast, *X v. Turkey*, cited above, § 43). There is also no indication, nor does the applicant so argue, that the physical conditions of detention in the special cell were

inadequate nor is there any evidence that the applicant suffered any adverse effects related to his confinement in the cell for special treatment.

141. In sum, whilst extended removal from association with others for protection purposes should be used as a measure of last resort and should not normally subject an individual to further restrictions beyond those necessary for meeting that purpose (see paragraph 61 above), having regard to the above considerations and its case-law, the Court does not find that the circumstances of the applicant's placement and conditions of his detention in the cell for special treatment amounted to a breach of Article 3 of the Convention.

(iii) Medical treatment

142. Lastly, as regards the applicant's complaints related to his dental treatment, the Court refers to its case-law concerning medical treatment of prisoners (see *Blokhin v. Russia* [GC], no. 47152/06, §§ 135-140, 23 March 2016).

143. In the present case, the Court notes that there is no evidence that the applicant's treatment was urgent and throughout the period in which he awaited treatment he was under a constant medical supervision. Moreover, he has seen a dentist in total nine times and there is nothing to suggest that the treatment provided was inadequate (see paragraphs 17 above).

144. In these circumstances, although it can be accepted that the applicant suffered certain distress while he waited for the dental treatment, the Court does not consider that any such suffering objectively amounted to a breach of Article 3 of the Convention (see *Peňaranda Soto*, cited above, § 79).

(iv) Conclusion

145. Taking account of the above considerations, the Court does not consider that the overall conditions of detention and the medical treatment received by the applicant in Glina State Prison caused him distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention or that, given the practical demands of imprisonment, his health and well-being were not adequately protected.

146. It follows that there has been no violation of Article 3 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

147. The applicant alleged, invoking Article 8 of the Convention, that an unjustified and unreasonable restriction had been placed on contacts with his family in Glina State Prison. Article 8 reads as follows:

Article 8

> “1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

148. The applicant alleged, in particular, that the prison authorities had unjustifiably restricted his right to receive visits from his partner, I.P., for a period of first six months after his arrival to Glina State Prison. They had asked him to prove the existence of an extramarital relationship with his partner by obtaining the relevant certificate from the local social welfare centre. Eventually, he had been obliged to marry his partner in order to receive visits from her. Moreover, the applicant stressed that he had been deprived of any contact with the outside world during the period of his separation from other prisoners. Also, the prison authorities had unjustifiably restricted his right of leave from the prison in order to visit his father, who had been seriously sick at the time.

149. The Government argued that throughout his stay in Glina State Prison the applicant had been given adequate opportunity to contact his family members. As regards the visits of his partner I.P., the Government stressed that under the relevant domestic law the applicant could have received visits by family members and other persons. As he could not prove that he had had any family ties to I.P., she had been treated as other persons and had not been granted visiting rights as she had been registered in police records as a perpetrator of a criminal offence. However, after the applicant had married I.P., he had been given right to see her as his family member. He had used the privilege of conjugal visits on eight occasions and once he had been allowed to spend a few hours with her in the town. As to the applicant’s complaint concerning the visit to his father, the Government stressed that such a possibility had been justifiably restricted due to security reasons.

150. As regards the applicant’s complaint related to the visiting rights by his then partner, I.P., the Court refers to its case-law with respect to visiting rights of prisoners (see *Khoroshenko v. Russia* [GC], no. 41418/04, §§ 123-126, ECHR 2015, and *Polyakova and Others v. Russia*, nos. 35090/09 and 3 others, §§ 84-89, 7 March 2017).

151. The Court notes at the outset that, even assuming that there was an interference with the applicant’s Article 8 rights, such an interference was lawful (see paragraph 40 above) and clearly justified. The Court notes that the evidence available to it shows that at the relevant time the applicant could not prove that I.P. was his partner. Thus, the prison administration considered her as belonging to the category of other persons wishing to visit

the applicant. In the Court's view, the fact that she was registered in the police records as a perpetrator of a criminal offence reasonably justified the prison administration's decision to restrict her access to the applicant. However, the applicant was allowed to marry her in prison and thereafter to receive many visits, including conjugal visits, from her (see paragraph 20 above).

152. As to the applicant's complaint that he was not allowed to visit his sick father, the Court reiterates that Article 8 of the Convention does not guarantee a detained person an unconditional right to leave prison to visit a sick relative. It is up to the domestic authorities to assess each request on its merits. The Court's scrutiny is limited to consideration of the impugned measures in the context of the applicant's Convention rights, taking into account the margin of appreciation left to the Contracting States (see *Lind v. Russia*, no. 25664/05, § 94, 6 December 2007).

153. In the case at issue, the Court is satisfied that the refusal of the applicant's request to visit his sick father was based in the law allowing the prison governor to examine and base his or her decision on the particular circumstances of each such request (see paragraph 40 above). The Court is also satisfied that the domestic authorities carried out an adequate assessment of the case and justifiably denied the request for leave taking into account the nature of the criminal offence that the applicant had committed, the penalty imposed, the circumstances related to the progress of execution of the sentence and his family circumstances (see paragraph 19 above).

154. Lastly, as regards the applicant's complaint that he was deprived of any contact with the outside world during the period of his separation from other prisoners, the Court refers to its findings above according to which such a complaint is unfounded (see paragraph 139 above).

155. In view of the above considerations, the Court finds that the applicant's complaints are manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

156. Relying on Article 6 § 1 of the Convention, the applicant complained of a lack of fairness in the civil proceedings against the State for damages on account of inadequate conditions of his detention.

157. The Government contested this.

158. The Court is of the view that this complaint is related to the complaint under Article 13 examined above. Having regard to its findings under that provision (see paragraph 119 above), and in the light of all the material in its possession, the Court considers that this part of the application does not disclose an appearance of a violation of the

Convention. It follows that it is inadmissible under Article 35 § 3 as manifestly ill-founded, and must be rejected pursuant to Article 35 § 4 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

159. 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."

A. Damage

160. The applicant claimed 20,000 euros (EUR) in respect of non-pecuniary damage.

161. The Government considered the applicant's claim unfounded.

162. The Court considers that the applicant must have sustained non-pecuniary damage which is not sufficiently compensated by the finding of a violation. Ruling on an equitable basis, it awards the applicant EUR 1,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on this amount.

B. Costs and expenses

163. The applicant also claimed EUR 8,975 for the costs and expenses incurred before the domestic courts and for those incurred before the Court.

164. The Government considered the applicant's claim unfounded.

165. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. Regard being had to the documents in its possession and the above criteria, as well as the sum which the applicant's lawyer received on account of the legal aid granted (EUR 850), the Court considers it reasonable to award the sum of EUR 2,890 plus any tax that may be chargeable to the applicant, in respect of her costs and expenses before the Court.

C. Default interest

166. The Court 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 under Article 3 of the Convention admissible, and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 3 of the Convention concerning the conditions of the applicant's detention in Zagreb Prison;

3. *Holds* that there has been no violation of Article 3 of the Convention concerning the conditions of the applicant's detention in Glina State Prison;

4. *Holds*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts to be converted into Croatian kunas at the rate applicable at the date of settlement:

(i) EUR 1,000 (one thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 2,890 (two thousand eight hundred and ninety 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;

5. *Dismisses* the remainder of the applicant claim for just satisfaction.

Done in English, and notified in writing on 31 October 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Abel Campos
Registrar

Krzysztof Wojtyczek
President