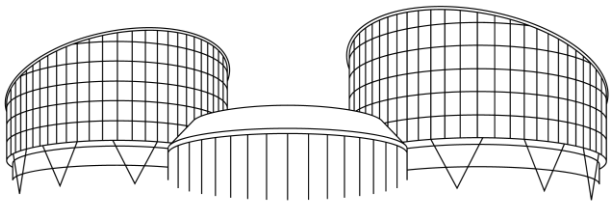

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

**CASE OF LONGIN v. CROATIA**

*(Application no. 49268/10)*

JUDGMENT

STRASBOURG

6 November 2012

**FINAL**

06/02/2013

*This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.*

**In the case of Longin v. Croatia,**

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

Anatoly Kovler, *President,*
Nina Vajić,
Peer Lorenzen,
Elisabeth Steiner,
Khanlar Hajiyev,
Mirjana Lazarova Trajkovska,
Julia Laffranque, *judges,*
and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 16 October 2012,

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

# PROCEDURE

1. The case originated in an application (no. 49268/10) 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 Dženi Longin ("the applicant"), on 9 August 2010.

2. The applicant was represented by Mr A. Korljan, a lawyer practising in Zadar. The Croatian Government ("the Government") were represented by their Agent, Ms Š. Stažnik.

3. On 26 January 2011 the complaints concerning the conditions of the applicant's detention in Zagreb Prison and the alleged insufficient contacts with his family during the detention were communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

# THE FACTS

## I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1974 and lives in Zadar.

5. On 17 December 2008 the Zadar County Court (*Županijski sud u Zadru*) found the applicant guilty on charges of drug abuse and sentenced him to four years and three months' imprisonment.

6. On 1 October 2009 the applicant was placed in Zagreb Prison (*Zatvor u Zagrebu*).

7. According to the applicant, during his stay in Zagreb Prison he was held in a cell measuring sixteen to twenty square metres, with six to seven other inmates. The sanitary facilities were in the same room and only a wall approximately 1,80 metres high separated the living area and sanitary facilities, including a toilet. The sanitary facilities were about one metre away from the dining table and there was a constant smell in the cell. He was able to take a shower only once a week which was insufficient since he had been diagnosed as suffering from asthma and allergies. The cell had never been disinfected so cockroaches were frequently found in the inmates' food or drinks. The window was covered with aluminium netting which prevented the daylight coming into the cell. He was constantly confined to the cell and was allowed out into the fresh air only for two hours a day.

8. His contact with the outside world was very limited. He was able to talk with his wife only for eight minutes a week and was not able to see his three-year old daughter at all.

9. According to the Government, during his stay in Zagreb Prison the applicant was detained in two cells. Each cell measured 21,20 square metres and the applicant was placed with five to six other inmates, depending on the period. The applicant had access to hot and cold water and the sanitary facilities were physically separated from the living area by a wall 1,80 meters high. Each cell had four windows measuring in total 3,20 square metres. Two windows could be opened fully and two only partially.

10. It was possible to shower once a day and if necessary even more frequently. The cells were treated for insects at least four times a year and also for rodents twice a year. The meals were served in the cells since Zagreb Prison did not have a dining room. However, the food was regularly inspected. In the applicant's cell there was a television set and he was able to engage in sporting activities, to practice a religion and to buy various items in the prison shop. The applicant was allowed to spend two hours outdoors every day. His medical condition was also monitored and he was provided with adequate medical assistance.

11. As to his contacts with the outside world, the applicant was able to make phone calls once a week for eight minutes. He was also able to receive visits twice a month and on holidays for at least one hour. On different occasions the prison authorities granted him an additional thirty minutes for visits which he could have used within three months. He was also given the right to have unsupervised visits from his wife once a month for two hours over a period of three months. The applicant had access to newspapers and books.

12. On 4 February 2010 the applicant complained to a sentence-execution judge of the Zagreb County Court (*Županijski sud u Zagrebu*) and the Zagreb County State Attorney's Office (*Županijsko državno*

*odvjetništvo u Zagrebu*) about the conditions of his detention and his treatment in Zagreb Prison. The relevant part of his complaint reads:

> "I have been imprisoned in Zagreb Prison since 1 October 2009 in Department no. 7 where I am serving a four years and three months' prison sentence. I have already served more than three years and I still have less than a year to serve ...
>
> I suffer from asthma. My human rights, provided *inter alia* under the Sentence Execution Act, are violated in Zagreb Prison. I have been placed in a room with six other inmates. The room has less than requested four square meters per person and I am confined in the room for twenty-two hours. It does not have sufficient access of daylight nor appropriate artificial light and access of fresh air, what makes my health condition to deteriorate day by day.
>
> The toilet is not separated from the same room where we are accommodated and where we eat and drink. It is only divided with two walls of a height up to the half of the room. The doors are lifted from the ground for forty centimetres and the sanitary facilities are rusted. The smell from the toilet, especially during the night while we sleep, is unbearable. Therefore the room is full of cockroaches which scroll during the night on me, on the table where we eat, on our food, ect.
>
> The prison administration and the Head of treatment in the Department no. 7 and the Head Office of the Prison Administration have been informed about the bad conditions but nobody reacts, nobody cares that this problem be resolved.
>
> Because of my health problems I have asked for more appropriate accommodation, namely to be placed in isolation but so far this has not been granted. I am lodging this complaint because of the violation of my human rights under Article 3 of the Convention for the Protection of Human Rights and I hope that the Zagreb State Attorney's Office will be able to sanction this or at least that my complaint will be answered so that I can take further legal actions."

13. On 11 March 2010 the applicant's complaint was forwarded to the Head Office of the Prison Administration of the Ministry of Justice (*Ministartsvo pravosuđa Uprava za zatvorski sustav Središnji ured*).

14. On 26 April 2010 the Head Office of the Prison Administration of the Ministry of Justice replied to the applicant by a letter that his complaints were unfounded and that he had received adequate medical treatment. The relevant part of the letter reads:

> "Concerning your complaint about your medical treatment of your asthma diagnosis, we reply as follows:
>
> Since 1 October 2009 you have been serving your prison sentence in Zagreb Prison where you are placed in a closed department. You are not performing any work. In execution of the program of execution of the prison sentence you have been awarded grade "satisfactory".
>
> The medical report reveals that you are a drug addict for years and that you have hepatitis C and bronchial asthma which is the result of your allergy on dust.
>
> Under the recommendation of the lung diseases specialist you have been granted use of drugs "Alvesco" and Ventolin spray.
>
> During your stay in Zagreb Prison you have been seen by a psychiatrist and you have been treated for the respiratory infect (received antibiotic and ...).

On more occasions you have been granted use of the antihistaminic in tablets as well as vitamin B and a neutral crème.

The above shows that you have an appropriate and expert medical treatment and that your diagnosis and the drug addiction have been appropriately treated under the supervision of the specialised physicians and regular controls of the [prison] doctors. Therefore, your complaint is ill-founded."

15. On 30 April 2010 the applicant lodged an objection with the Head Office of the Prison Administration of the Ministry of Justice against their findings, reiterating his previous claims.

16. On 11 May 2010 the Head Office of the Prison Administration of the Ministry of Justice replied to the applicant that he had failed to put forward any new argument and that all his complaints had already been examined. The relevant part of the letter reads:

" On 30 April 2010 you have lodged an objection with this Head Office against the reply concerning your complaint of 11 March 2010.

Everything to what you have complained in your letter of 11 March 2010 has been fully examined as required under Section 15 § 3 of the Sentence Execution Act and you have received a detailed reply on 26 April 2010.

Therefore, since in your objection you are reiterating your previous arguments ... we can only refer to our reply of 26 April 2010."

17. On 7 June 2010 the applicant lodged a further complaint with the Zagreb County Court pointing out that he had never received any decision of the sentence-execution judge of as regards his complaint of 4 February 2010.

18. On 17 August 2010 the applicant lodged a constitutional complaint with the Constitutional Court (*Ustavni sud Republike Hrvatske*). He argued that he had been placed in a cell measuring twenty square metres with six other persons and that he had been confined there for twenty-two hours a day. He also complained that the sanitary facilities had not been separated from the living area and that the room had been full of cockroaches.

19. On 4 October 2010 he was transferred to Split Prison (*Zatvor u Splitu*).

20. On 10 January 2011 the applicant was released on parole.

21. The proceedings before the Constitutional Court are still pending.

## II. RELEVANT DOMESTIC LAW AND PRACTICE

22. The relevant articles of the Croatian Constitution (*Ustav Republike Hrvatske*, Official Gazette nos. 56/1990, 135/1997, 8/1998, 113/2000, 124/2000, 28/2001, 41/2001, 55/2001, 76/2010, 85/2010) provide:

**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 human manner and with respect for their dignity.

..."

23. 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, 29/2002, 49/2002) reads:

"1. Everyone 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) ..."

24. The relevant provisions of the Civil Obligations Act (*Zakon o obveznim odnosima*, Official Gazette nos. 35/2005 and 42/2008) read as follows:

**Section 19**

"(1) Every legal entity and every natural person has the right to respect for their personal integrity under the conditions prescribed by this Act.

(2) The right to respect for one's personal integrity within the meaning of this Act includes the right to life, physical and mental health, good reputation and honour, the right to be respected, the right to respect for one's name and privacy of personal and family life, freedom *et alia*.

..."

**Section 1046**

"Damage is ... infringement of the right to respect for one's personal dignity (non-pecuniary damage)."

25. The relevant part of section 186(a) of the Civil Procedure Act (*Zakon o parničnom postupku*, Official Gazette nos. 53/1991, 91/1992, 58/1993, 112/1999, 88/2001, 117/2003, 88/2005, 02/2007, 84/2008, 123/2008, 57/2011, 148/2011) reads as follows:

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

...

Where the request has been refused or no decision has been taken within three months of its submission, the person concerned may file an action with the competent court.

..."

26. The relevant provision of the State Administration System Act (*Zakon o sustavu državne uprave*, Official Gazette of the Republic of Croatia no. 150/2011), reads as follows:

**Section 14**

"Damage caused to a citizen, legal entity or any other party by an illegal or irregular act of the state administration body, local administration body or any legal entity with public powers when exercising authorities of the state administration, shall be redressed by the Republic of Croatia."

27. Section 67 of the Administrative Disputes Act (*Zakon o upravnim sporovima*, Official Gazette nos. 53/1991, 9/1992, 9/1992 and 77/1992), as in force at the material time, provided for special proceedings for the protection of constitutional rights and freedoms from unlawful acts of public officials, specifically that an action could be brought if the following conditions were met: (a) an unlawful action had already taken place, (b) such action was the work of a government official/body/agency or another legal entity, (c) the action resulted in a violation of one or more of the plaintiff's constitutional rights, and (d) the Croatian legal system did not provide for any other avenue of redress.

28. The relevant provisions of the Enforcement of Prison Sentences Act (*Zakon o izvršavanju kazne zatvora*, Official Gazette nos. 128/1999 and 190/2003), read as follows:

**COMPLAINTS**

**Section 15**

"(1) Inmates shall have the right to complain about an act or decision of a prison employee.

(2) Complaints shall be lodged orally or in writing with a prison governor, a judge responsible for the execution of sentences or the Head Office of the Prison Administration. Written complaints addressed to a judge responsible for the execution of sentences or the Head Office of the Prison Administration shall be submitted in an envelope which the prison authorities may not open ..."

**JUDICIAL PROTECTION AGAINST ACTS AND DECISIONS OF THE PRISON ADMINISTRATION**

**Section 17**

"(1) An inmate may lodge a request for judicial protection against any acts or decisions unlawfully denying him, or limiting him in, any of the rights guaranteed by this Act.

(2) Requests for judicial protection shall be decided by the judge responsible for the execution of sentences."

**SENTENCE-EXECUTION JUDGE**

**Section 41**

"(1) The [function of the] sentence-execution judge shall be established within the territorially competent County Court.

..."

**Section 42**

"(1) The sentence-execution judge protects the rights of prisoners, oversights the lawfulness of execution of the sentences of imprisonment and secures equality of the prisoners before the law.

..."

**ACCOMMODATION OF PRISONERS**

**Section 74**

"(3) 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.

..."

29. The Constitutional Court's decision no. U-III-1902/2008 of 20 May 2009, relying on the Court's case-law, accepted a constitutional complaint lodged by an applicant who complained about the lack of contact with her child while she served her prison term. The relevant part of the decision reads:

"The detention of the applicant made the meetings between the mother and her child impossible and thus it represented an interference with her right to respect for family life within the meaning of Article 35 of the Constitution and Article 8 of the Convention. ...

Even in such circumstances, however, the competent bodies are obliged to secure meetings of a detained mother ... and her child in accordance with the law, having in mind the legitimate aim (protection of family life of the mother and the child), with possibility to restrict such meetings to a degree which is necessary in a democratic society."

# THE LAW

## I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

30. The applicant complained about the general conditions of his detention in Zagreb Prison from 1 October 2009 to 4 October 2010. 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. Admissibility

### *1. Exhaustion of domestic remedies*

#### (a) The parties' arguments

31. The Government argued that the applicant's complaint under Article 3 of the Convention was premature. They pointed out that he had raised the same complaints in his constitutional complaint of 17 August 2010 and that the proceedings before the Constitutional Court were still pending. The Government also argued that the applicant had failed to bring a civil action for damages against the Republic of Croatia although it had been open to him to do so under the Civil Obligation Act and the State Administration System Act. Moreover, he had failed to seek protection of his rights by lodging an action under the Administrative Disputes Act although he could have done so under domestic law.

32. The applicant argued that he had availed himself of all the domestic remedies but that these remedies had not been effective. He pointed out that he had complained before the Zagreb County Court about the conditions of his detention but had never received an answer. As to the proceedings before the Constitutional Court, he argued that these proceedings represented a separate set of proceedings in which he had not raised all the complaints which he had made before the Court. In his view the fact that they were pending did not prevent him from lodging his complaints with the Court. As to the possibility of lodging a civil or administrative action, the applicant argued that he had not been obliged to exhaust these remedies before bringing his complaints with the Court.

#### (b) The Court's assessment

33. The Court reiterates that, in accordance with Article 35 § 1 of the Convention, it may only deal with an issue after all domestic remedies have been exhausted. The purpose of Article 35 is to afford the Contracting States the opportunity of preventing or putting right the violations alleged against them before those allegations are submitted to the Court (see, for example, *Hentrich v. France*, 22 September 1994, § 33, Series A no. 296-A, and *Remli v. France*, 23 April 1996, § 33, *Reports* 1996-II).

34. Nevertheless, the obligation to exhaust domestic remedies requires only that an applicant make normal use of remedies which are effective, sufficient and accessible in respect of his Convention grievances (see *Balogh v. Hungary*, no. 47940/99, § 30, 20 July 2004, and *John Sammut and Visa Investments Limited v. Malta* (dec.), no. 27023/03, 28 June 2005). The existence of the remedies must be sufficiently certain, in practice as

well as in theory, failing which they will lack the requisite accessibility and effectiveness. Therefore, Article 35 § 1 does not require that recourse should be had to remedies which are inadequate or ineffective (see *Aksoy v. Turkey*, 18 December 1996, §§ 51-52, *Reports of Judgments and Decisions* 1996-VI, and *Barta v. Hungary*, no. 26137/04, § 45, 10 April 2007). Remedies available to a litigant at domestic level are considered effective if they prevent the alleged violation or its continuation, or provide adequate redress for any violation that has already occurred (see *Mifsud v. France* (dec.) [GC], no. 57220/00, § 17, ECHR 2002-VIII).

35. As regards the remedies available in connection with the conditions of detention in Croatia and other rights of detained persons, under the Enforcement of Prison Sentences Act, the Court notes that section 15 (2) of that Act provides that complaints shall be lodged orally or in writing with a prison governor, a sentence-execution judge or the Head Office of the Prison Administration of the Ministry of Justice. However, only a complaint to a competent sentence-execution judge entails judicial protection and is susceptible to a further appeal before a three-judge panel of a competent County Court and a constitutional complaint (see *Šimunovski v. Croatia* (dec.), no. 42550/08, 21 June 2011, *Srbić v. Croatia* (dec.), no. 4464/09, 21 June 2011, *Peša v. Croatia*, no. 40523/08, §§ 78-80, 8 April 2010, and *Šebalj v. Croatia*, no. 4429/09, §§ 173-177, 28 June 2011).

36. In order to comply with the principles of subsidiarity the 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 *Šimunovski*, *Srbić*, *Šebalj*, § 177, cited above and *Bučkal v. Croatia* (dec.), no. 29597/10, § 20, 3 April 2012).

37. The Court notes that in the present case the applicant lodged a complaint with the sentence-execution judge of the Zagreb County Court on 4 February 2010 where he complained about the general conditions of his detention. This complaint was forwarded, without any further examination by the sentence-execution judge, to the Head Office of the Prison Administration of the Ministry of Justice which confined its examination only to the adequacy of the applicant's medical treatment. This resulted in the applicant's complaints about the general conditions of his detention remaining unanswered.

38. The Court also notes that the applicant lodged a further complaint with the sentence-execution judge of the Zagreb County Court on 7 June 2010 but this complaint also remained unanswered. Finally, the applicant lodged on 17 August 2010 a constitutional complaint before the Constitutional Court, reiterating his complaints about the conditions of his detention. This complaint is still pending before that court.

39. Without calling into question the adequacy of remedies provided for under the national law in respect of the prison conditions as such, the Court

notes that in the present case the applicant for the first time complained about his prison conditions in Zagreb Prison on 4 February 2010 and has not so far received an answer by the competent national authorities to his grievances.

40. While it is true that the applicant was transferred to Split Prison on 4 October 2010 and that he has not put forward any complaints about the conditions in that prison, the fact remains that after his complaint of 4 February 2010 the applicant continued to dwell in allegedly inadequate prison conditions for a further eight months during which no decision upon his complaint was adopted. The fact that the applicant was subsequently released on parole does not have any bearing on this aspect of the case.

41. The Court considers that a remedy concerning inadequate prison conditions may be seen as effective only if it provides for prompt relief (see *Štitić v. Croatia* (dec.), no. 29660/03, 9 November 2006; and *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, §§ 96-98, 10 January 2012). By not answering the applicant's complaint for eighth months which the applicant spent in the same conditions, the national authorities did not comply with the requirement of promptness. Therefore, the applicant's complaint to a sentence-execution judge and to the Constitutional Court has not been effective in the circumstances of the present case.

42. As regards further remedies relied on by the Government, the Court notes as follows.

43. As regards a civil action for damages, the Court has already held that a possibility of obtaining monetary redress for the period spent in inadequate prison conditions combined with an urgent decision with an immediate effect on the actual conditions of an individual applicant represent effective remedies in respect of inadequate prison conditions (see *Štitić*, cited above).

44. In case the Constitutional Court finds a violation of his right to adequate prison conditions, the applicant in the present case would be able to seek compensation. Consequently, the institution of civil proceedings for damages in itself cannot be regarded as effective remedies in respect of the applicant's grievances, but only in combination with a decision by the judicial authorities that his prison conditions have been inadequate (see *Miljak v. Croatia* (dec.), no. 66942/09, §§ 33-34, 7 February 2012).

45. However, given that his complaint about the prison conditions has remained unanswered since 4 February 2010, it cannot be said that the remedies provided for under national law, including a constitutional complaint, have had any effect on the applicant's prison conditions. Thus, the requirement that at least one of the remedies available has an immediate effect on the actual conditions of an applicant has not been met in the present case.

46. As to the Government's argument that the applicant could have sought protection of his rights under the Administrative Disputes Act, the

Court observes that, under the relevant domestic law, such an action could have been lodged only if there had been no other revenue of redress (see paragraph 27). However, as regards the complaints about the conditions of detention, the Court observes that the domestic legal system provides specific remedies before the prison authorities and the sentence-execution judge which could be further pursued before the Constitutional Court, as done by the applicant in the present case. Therefore, the action under the Administrative Disputes Act is not a remedy the applicant has to exhaust.

47. Against the above background, the Government's objection in respect of the exhaustion of domestic remedies must be rejected.

*2. Conclusion*

48. The Court notes that this part of the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

## B. Merits

*1. The parties' arguments*

49. The applicant submitted that the conditions of his detention had failed to meet the requirements under the relevant domestic law on the execution of prison sentences. The overcrowded cells, non-existence of separate sanitary facilities, the lack of light and fresh air as well as the confinement in the cell for twenty-two hours had made him feel humiliated and debased.

50. The Government contested that view. They argued that the applicant's dignity had been fully respected by the domestic authorities and that he had not been subjected to any suffering that would go beyond the suffering inherent in any deprivation of liberty. The space in the applicant's cell had only been slightly under the required minimum of four square metres per person, the sanitary facilities had been separated by a wall of 1,80 metres and the cells had sufficient access to daylight and fresh air. The hygiene conditions were good and the applicant had been served with regular meals which had been specially inspected for their quality. The applicant had a possibility to engage in sporting activities and he could spend two hours outdoors every day which was in conformity with the recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. In addition he had access to books and TV and regular medical treatment.

*2. The Court's assessment*

**(a) General principles**

51. The Court has held on many occasions that Article 3 of the Convention enshrines one of the most fundamental values of democratic society. It prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the circumstances and the victim's behaviour (see *Labita v. Italy* [GC], no. 26772/95, § 119, ECHR 2000-IV).

52. According to the Court's case-law, ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum level is, in the nature of things, relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim (see *Kudła v. Poland* [GC], no. 30210/96, § 91, ECHR 2000-XI, and *Peers v. Greece*, no. 28524/95, § 67, ECHR 2001-III). Although the purpose of such treatment is a factor to be taken into account, in particular whether it was intended to humiliate or debase the victim, the absence of any such purpose does not inevitably lead to a finding that there has been no violation of Article 3 (see *Peers*, cited above, § 74).

53. The Court has consistently stressed that the suffering and humiliation involved must in any event go beyond that inevitable element of suffering or humiliation connected with a given form of legitimate treatment or punishment. Measures depriving a person of his liberty may often involve such an element. Under this provision the State must ensure that a person is detained in conditions which are compatible with respect for his human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured (see *Kudła v. Poland* [GC], cited above, §§ 92-94).

**(b) Application of these principles to the present case**

54. The Court firstly observes that one of the characteristics of the applicant's detention that requires examination is his allegation that the cells were overpopulated. In this connection the Court observes that the General Reports published by the Committee for the Prevention of Torture do not appear to contain an explicit indication as to what amount of living space per inmate should be considered the minimum standard for a multi-occupancy prison cell. It transpires, however, from the individual country reports on the CPT's visits and the recommendations following on those reports that the desirable standard for the domestic authorities, and the objective they should attain, should be the provision of four square metres of living space per person in pre-trial detention facilities (see, among others, CPT/Inf (2006) 24 [Albania], § 93; CPT/Inf (2004) 36 [Azerbaijan], § 87; CPT/Inf (2008) 11 [Bulgaria], §§ 55, 77; CPT/Inf (2008) 29 [Croatia],

§§ 56, 71; CPT/Inf (2007) 42 [Georgia], §§ 42, 51, 61, 74; CPT/Inf (2009) 22 [Lithuania], § 35; CPT/Inf (2006) 11 [Poland], §§ 87, 101, 111; CPT/Inf (2009) 1 [Serbia], § 49, and CPT/Inf (2008) 22 [FYRO Macedonia], § 38).

55. This approach has been confirmed by the Court's case-law. The Court notes that in the *Peers* case a cell of 7 square metres for two inmates was noted as a relevant aspect in finding a violation of Article 3, although in that case the space factor was coupled with an established lack of ventilation and lighting (see *Peers*, §§ 70–72, cited above). In the *Kalashnikov* case the applicant had been confined to a space measuring less than 2 square metres. In that case the Court held that such a degree of overcrowding raised in itself an issue under Article 3 of the Convention (see *Kalashnikov v. Russia*, no. 47095/99, §§ 96–97, ECHR 2002-VI). The Court reached a similar conclusion in the *Labzov* case, where the applicant was afforded less than 1 square. metre of personal space during his 35-day period of detention (see *Labzov v. Russia*, no. 62208/00, §§ 41-49, 16 June 2005), and in the *Mayzit* case where the applicant was afforded less than 2 square metres during nine months of his detention (see *Mayzit v. Russia*, no. 63378/00, § 40, 20 January 2005) as well as in *Ananyev* case where the applicants were afforded less than three square metres of personal space (see *Ananyev and Others*, § 148, cited above).

56. In some other cases, however, no violation of Article 3 was found, as the restricted space in the sleeping facilities was compensated for by the freedom of movement enjoyed by the detainees during the daytime (see *Valašinas v. Lithuania*, no. 44558/98, §§ 103-107, ECHR 2001-VIII, and *Nurmagomedov v. Russia* (dec.), no. 30138/02, 16 September 2004).

57. Turning to the circumstances of the present case the Court firstly notes that the applicant, who was serving a four years and three months' prison sentence, had been in the period at issue placed in Zagreb Prison which is in the Croatian penitentiary system an establishment for persons serving shorter sentences and for remand prisoners (see the CPT Report on its visit to Croatia, CPT/inf (2001) 4, § 46, 10 April 2001). The Court is aware of the necessity that such institutions, primarily designated for short periods of detentions, can have special freedom of movement regimes particularly concerning the remand prisoners, but that should not have any adverse effect on the prisoners who are serving longer sentences particularly where there is a restricted space in the sleeping facilities (see, *mutatis mutandis*, *Lalić and Others v. Slovenia* (dec.), no. 5711/10, 27 September 2011).

58. The Government did not contest that in Zagreb Prison the applicant had been accommodated in detention cells measuring less than the desirable guideline of four square metres per prisoner, although their account of the actual overcrowdings differs from that of the applicant. The Government submitted that during the applicant's stay in Zagreb Prison he had been placed in two cells, each measuring 21,20 square metres, with five to six

other prisoners while the applicant claimed that he had been accommodated in the detention cell measuring sixteen to twenty square metres with six to seven other prisoners (see paragraphs 7 and 9). Whether the Court accepts the Government's or the applicant's account of the cell size and the number of inmates placed in the same cell as the applicant, the personal space allowed to each inmate falls below the standard required.

59. The Court, however, considers that the overcrowding of the detention cells in which the applicant had been detained cannot be taken in isolation and must be examined in the light of all the other physical conditions of his detention (see *Sulejmanovic v. Italy*, no. 22635/03, § 42, 16 July 2009). Such elements include, in particular, the possibility of using the toilet in private, ventilation, access to natural light and air, adequacy of heating arrangements, and compliance with basic sanitary requirements (see, for example, *Moiseyev v. Russia*, no. 62936/00, § 123, 9 October 2008). Furthermore, a limited space in relative terms can be compensated for by the large size in absolute terms of the dormitories, as well as the freedom of movement allowed (see *Valašinas*, cited above, § 107).

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.

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

## II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

63. The applicant complained that during the period of his detention in Zagreb Prison he did not have sufficient contact with his family. He relied on Article 8 of the Convention, which reads as follows:

> "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."

### A. The parties' arguments

64. The Government argued that the applicant had failed to exhaust domestic remedies. They firstly pointed out that he had failed to submit his complaints about the insufficient contacts with his child to the social services which could have taken necessary measures to remedy his situation. Secondly, they stressed that he had failed to make the same complaints he had raised before the Court under Article 8 of the Convention in his constitutional complaint lodged with the Constitutional Court.

65. The applicant argued that the Government had failed to prove that these remedies had been effective in respect of his complaints. He did not however contest that he had not raised before the Constitutional Court all the complaints which he made before the Court.

### B. The Court's assessment

66. The Court reiterates that that the machinery for the protection of fundamental rights established by the Convention is subsidiary to the national systems safeguarding human rights. The Convention does not lay down for the Contracting States any given manner for ensuring within their internal law the effective implementation of the Convention. The choice as to the most appropriate means of achieving this is in principle a matter for the domestic authorities, who are in continuous contact with the vital forces of their countries and are better placed to assess the possibilities and resources afforded by their respective domestic legal systems (see *Chapman v. the United Kingdom* [GC], no. 27238/95, § 91, ECHR 2001-I; and *Sisojeva and Others v. Latvia* [GC], no. 60654/00, § 90, ECHR 2007-II).

67. A complaint submitted to the Court must first have been made to the appropriate national courts, at least in substance, in accordance with the formal requirements of domestic law and within the prescribed time-limits. To hold otherwise would not be compatible with the subsidiary character of

the Convention system (see *Gavril Yosifov v. Bulgaria*, no. 74012/01, § 42, 6 November 2008).

68. The Court notes that in none of his complaints lodged before the national authorities did the applicant raise any complaints as regards his contacts with the outside world, and in particular his family. In these circumstances, the Court cannot speculate whether these authorities would have examined such a complaint or what the outcome of these proceedings would have been had he raised the same complaint he is now bringing before the Court under Article 8 of the Convention.

69. Therefore, since the applicant failed to bring the complaints he has raised before the Court before any of the national authorities, he failed to exhaust the domestic remedies as required under Article 35 § 1 of the Convention.

70. It follows that this complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

## III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

71. The applicant also complained under Article 14 of the Convention that he was discriminated against based on his social status.

72. In the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court considers that this part of the application does not disclose any appearance of a violation of the Convention. It follows that it is inadmissible under Article 35 § 3 (a) as manifestly ill-founded and must be rejected pursuant to Article 35 § 4 of the Convention.

## IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

73. 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

74. The applicant claimed 50,000 euros (EUR) in respect of non-pecuniary damage.

75. The Government considered the applicant's claim excessive, unfounded and unsubstantiated.

76. Having regard to all the circumstances of the present case, the Court accepts that the applicant has suffered non-pecuniary damage which cannot be compensated solely by the finding of a violation. Making its assessment

on an equitable basis, the Court awards the applicant EUR 5,000 in respect of non-pecuniary damage, plus any tax that may be chargeable to him.

### B. Costs and expenses

77. The applicant also claimed EUR 5,000 for the costs and expenses concerning his legal representation before the domestic courts and before the Court.

78. The Government considered that the applicant had failed to substantiate his claim for the costs and expenses in any respect.

79. 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. The Court notes that the applicant was not represented in the proceedings before the domestic authorities and that his claim for costs and expenses relates only to the legal representation before the Court. Therefore, making its assessment on an equitable basis and in the light of its practice in comparable cases, the Court considers it reasonable to award the applicant, who was legally represented before the Court, the sum of EUR 1,000, plus any tax that may be chargeable to the applicant on these amounts.

### C. Default interest

80. 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 complaint concerning the general conditions of the applicant's detention in Zagreb Prison admissible and the remainder of the application inadmissible;

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

3. *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 5,000 (five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
(ii) EUR 1,000 (one thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 6 November 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Anatoly Kovler
President