CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

CASE OF ŠTITIĆ v. CROATIA

(Application no. 29660/03)

JUDGMENT

STRASBOURG

8 November 2007

FINAL

31/03/2008

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

In the case of Štitić v. Croatia,

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

Mr C.L. ROZAKIS, *President*,
Mr L. LOUCAIDES,
Mrs N. VAJIĆ,
Mrs E. STEINER,
Mr K. HAJIYEV,
Mr D. SPIELMANN,
Mr G. MALINVERNI, *judges*,
and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 11 October 2007,

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

PROCEDURE

1. The case originated in an application (no. 29660/03) 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 Vladimir Štitić ("the applicant"), on 1 September 2003.

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

3. The applicant alleged, in particular, that two sets of disciplinary proceedings against him, one conducted in Lepoglava State Prison, and the other in Gospić Prison, had been unfair, that the general conditions in Gospić Prison and the lack of adequate medical care for an injury he had sustained there had amounted to degrading treatment, that his right to respect for his correspondence had been violated and that he lacked an effective remedy in respect of his Article 3 complaints.

4. On 9 November 2006 the Court declared the application partly inadmissible and decided to communicate the complaints concerning the fairness of the disciplinary proceedings conducted against the applicant in Lepoglava State Prison and in Gospić Prison, the complaint concerning the general conditions in Gospić Prison and the alleged lack of adequate medical care for his injury, and the complaints concerning the applicant's right to respect for his correspondence and the lack of an effective remedy in respect of his Article 3 complaints to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1967 and is presently serving a prison term in Šibenik Prison.

6. Following a series of criminal convictions for drug abuse, the applicant was sent to serve the sentence in Lepoglava State Prison (*Kazneni zavod Lepoglava*) on 11 November 2002. On 29 July 2004 he was transferred to Gospić Prison.

A. Disciplinary proceedings against the applicant

1. In Lepoglava State Prison

7. While the applicant was serving a prison term in Lepoglava State Prison, the prison authorities instituted disciplinary proceedings against him on an unspecified date. The hearings were held on 10 and 13 October 2003. Both the applicant and his counsel were present at the hearings. The applicant and four witnesses gave evidence in person. In the Head of the Disciplinary Proceedings' decision of 14 October 2003 it was established that on 19 July 2003 the applicant had held closed the door of cell no. 9 and had thus prevented a member of the prison staff from entering the cell and performing his duties. The applicant's conduct was found to be in breach of section 145 § 3(10) of the Enforcement of Prison Sentences Act (*Zakon o izvršavanju kazne zatvora*) and he was sentenced to seven days' solitary confinement suspended for three months. The decision was served on the applicant on 17 October 2003 at 2.45 p.m. It was also served on his counsel on an unspecified date. The applicant's counsel lodged an appeal against the decision on Monday, 20 October 2003.

8. In a decision of 27 October 2003 the Varaždin County Court judge responsible for the execution of sentences declared the appeal inadmissible as being out of time. The judge held that the time-limit for an appeal was forty-eight hours and that the time-limit had expired on 19 October 2003 at 2.45 p.m. despite the fact that this day had been a Sunday. The time-limit could not be extended to the first working day, since it had been fixed in hours.

2. In Gospić Prison

9. During his stay in Gospić Prison the prison authorities opened disciplinary proceedings against the applicant. The prison authorities found that on 16 August 2004 the applicant had attempted to smuggle illegal drugs

into the prison via a letter sent to him by his girlfriend, which constituted a disciplinary offence under section 145 (3)(11) of the Enforcement of Prison Sentences Act. In his decision of 2 November 2004 the Head of Disciplinary Proceedings imposed on the applicant a disciplinary measure consisting of a restriction on his movement inside the prison and frequent contacts with the outside world for a period of three months, including a ban on receiving postal parcels, starting from 2 November 2004.

10. In an appeal of 16 November 2004 the applicant, *inter alia*, alleged that he had not attended the final hearing before the prison disciplinary authorities because his lawyer had not been present. The applicant also alleged that the notes of that hearing had not been served on him. He further stated that his counsel would elaborate on these issues in a separate appeal. On 16 November 2004 counsel lodged a separate appeal whereby he contested the findings of the applicant's guilt and the severity of the disciplinary measure imposed. On 18 November 2004 the Gospić County Court judge responsible for the execution of sentences dismissed the appeal. The decision analysed in some detail the evidence presented in the disciplinary proceedings but made no mention of the procedural defects complained of by the applicant.

B. The applicant's stay in Gospić Prison

1. General conditions of the applicant's stay in Gospić Prison

(a) The applicant's submissions

11. The applicant submitted that he had firstly been put in cell no. 5 in Unit 1. However, later on he had been moved to Unit 2. He alleged that the room had been very damp, and the mattresses old and torn so that bare wire stuck out. The bed sheets and pillowcases had been dirty and the blankets old and foul smelling. No daylight entered the cell and the electric light had to be switched on all day. He had been locked in his cell for twenty-one hours per day, with no contact with other prisoners or the outside world. He had been allowed two one-hour walks and one hour of exercise in a gym per day, both without the presence of any other prisoner. The rest of the time he had had to spend locked alone in his cell. He had not had regular access to a bathroom or running water and his access to sanitary facilities had been left to the discretion of the prison guards. The heating had been inadequate and the food of low quality. No toiletries had been provided to the applicant and no permanent doctor had been on duty in the prison. Only one doctor (a paediatrician) had come once in a while for an hour at a time.

(b) The Government's submissions

12. According to the Government, the main building of the Gospić Prison was built in 1878 and renovated in 1995. It comprised two units. The first ("Unit 1") consisted of five-bed cells and the other ("Unit 2") of two-bed cells, each equipped with a toilet. Inmates shared a communal bathroom. Unit 1 had a communal living-room. Disinfection and rat extermination were performed regularly. Inmates' clothes and bed sheets could be washed in the prison laundry every day. The bed sheets were changed once a week.

13. On 29 July 2004 the applicant had arrived at Gospić Prison. He had been put in Unit 1, under the "semi-open" prison regime until 24 September 2004 when he had been moved to Unit 2, under a higher security regime, to a cell measuring 3.75 x 3.5 metres and sanitary facilities measuring 2 x 1.6 metres, which he had shared with another inmate. In November 2005 he had been moved back to Unit 1 to a cell measuring 7.15 x 3.7 metres with sanitary facilities measuring 1.6 x 1.5 metres, which he had shared with three to four inmates at times. He had stayed there until 17 March 2006 when he had been moved back to Unit 2 due to an incident involving a fight with another inmate. He had stayed there until May 2006 when he had been transferred to Pula Prison. During his stay in Unit 2 the applicant had been locked in his cell save for one hour in the mornings when he had been allowed to go out in the courtyard and for two hours between 8 and 10 p.m. when he had been allowed to watch television, read or play games in a common room. During his stay in Unit 1 the applicant worked for four hours per day.

2. Medical assistance provided to the applicant

(a) The applicant's submissions

14. According to the applicant, on 17 March 2005 he had been injured by another prisoner who had struck him twice on the head. He had been taken to a doctor to whom he had complained of general sickness, dizziness and heavy thirst. However, the doctor had only prescribed painkillers and had not made any further examinations. The applicant had asked that an X-ray examination be carried out at his own expense, but this had been refused. He further alleged that he had a bruise under his left eye.

(b) The Government's submissions

15. According to the Government the applicant had been seen by the prison doctor the very same day and the following day. The doctor had prescribed painkillers. Following the applicant's further complaints of backache, he had been taken to the Gospić General Hospital and seen by a specialist. An X-ray examination had been carried out but no fractures had

been identified. The applicant had been prescribed further painkillers to be taken orally and a soothing gel. The Government submitted a copy of the medical report from the Gospić General Hospital to confirm their submissions.

3. Remedies used by the applicant

16. On 14 September 2004 the applicant petitioned the Gospić County Court judge responsible for the execution of sentences, complaining about the prison conditions and also alleging that a postal parcel sent to him by his parents on 30 August 2004, containing three cartons of cigarettes, two magazines on motor cars and one notebook, had never been delivered but had instead been returned to his parents, who had informed the applicant about it.

17. On 21 September 2004 the judge requested the Gospić Prison authorities to comment on the complaint concerning the alleged non-delivery of the parcel. In his letter to the prison authorities of 24 September 2004, the judge noted that a prison governor was allowed to temporarily prohibit a prisoner from receiving parcels for health and security reasons and that the prisoner in question should be informed about such a decision and the reasons for it. The applicant received a copy of the letter.

18. The applicant again petitioned the Gospić County Court judge responsible for the execution of sentences on 21 October 2004, repeating his complaints about the prison conditions and further asserting that six to eight letters he had sent to various persons had never been delivered. The judge replied to the applicant's allegations by letter of 8 November 2004 stating that the Gospić Prison authorities had informed him that all his letters had been properly forwarded and instructed the applicant to send future letters via registered mail only. As to the applicant's complaints concerning the prison conditions, the judge expressly stated that he had no jurisdiction to supervise the running of prisons.

19. Following the incident of 17 March 2006, the applicant was moved back to Unit 2, and the Prison Governor ordered that disciplinary proceedings be instituted against him. On an unspecified date the applicant appealed against that decision, alleging that he had been attacked by another inmate who had struck him twice on the head. The applicant further complained that the medical assistance provided to him had been insufficient since the doctor had only prescribed him painkillers and had not made any further examinations. His request that an X-ray examination be carried out at his own expense had been refused. On 23 March 2006 the Gospić County Court judge responsible for the execution of sentences dismissed the applicant's appeal on the ground that the decision to place the applicant under the “closed prison regime” had been based in law and was a consequence of his conduct, which had endangered the order and security in

the prison. No comment was made about the applicant's allegations concerning the lack of adequate medical assistance.

20. The applicant appealed against the judge's decision on 27 March 2006 to a three-judge panel of the Gospić County Court. In his appeal he complained about the conditions in Unit 2 (see paragraph 11 above). The panel dismissed the applicant's appeal on 28 March 2006 on the ground that the only way to prevent further unacceptable behaviour on his part had been his isolation. They made no remarks concerning the applicant's complaint about the conditions in Unit 2.

II. RELEVANT DOMESTIC LAW

21. Article 23 of the Croatian Constitution (*Ustav Republike Hrvatske*) provides:

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

22. The Enforcement of Prison Sentences Act (*Zakon o izvršavanju kazne zatvora*, Official Gazette no. 128/1999 of 30 November 1999, and no. 190/2003 of 3 December 2003 (consolidated text) – "the Act") came into force on 1 July 2001, whereas the provisions concerning the judge responsible for the execution of sentences came into force six months later, on 1 January 2002. The relevant provisions of the Act 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."

PROCEDURE FOR PERSONAL OBJECTS

Section 60

"...

(3) Objects suspected of being connected to a criminal offence shall be forfeited and a record thereof drawn up. These objects shall be handed over to the competent authority. Objects suspected of being designed to facilitate escape from a prison or endangering order and security and objects that may endanger health shall be forfeited, destroyed or handed over to the competent authority. A record of these acts shall be drawn up."

ACCOMODATION, FURNISHINGS AND NUTRITION

Section 74

"(1) The accommodation of inmates shall meet the required standards in terms of health, hygiene and space, including climatic conditions.

(2) Inmates shall as a general rule be accommodated in separate rooms ...

(3) Inmates' rooms shall be clean, dry and of adequate size. Each inmate shall have at least 4 square metres and 10 cubic metres of space in the room.

(4) Every room ... must have daylight and artificial light ...

(5) Penitentiaries and prisons must be equipped with sanitary facilities allowing inmates to meet their physiological needs in clean and adequate conditions, whenever they wish to do so.

(6) Inmates shall have drinking water at their disposal at all times."

HEALTH CARE

Section 103

"(1) Inmates shall be provided with medical treatment and regular care for their physical and mental health ..."

OBLIGATORY MEDCIAL EXAMINATION

Section 104

"...

(2) A doctor shall examine a sick or injured inmate ... and undertake all measures necessary to prevent or cure the illness and to prevent deterioration of the inmate's health."

SPECIALIST EXAMINATION

Section 107

"(1) An inmate has the right to seek a specialist examination if such an examination has not been ordered by a prison doctor.

..."

POSTAL PARCELS

Section 126

"(1) An inmate has the right to receive a postal parcel containing authorised items at least once a month and during public holidays.

(2) The sender shall enclose a list of contents with the parcel.

(3) The parcel shall be opened and examined by a prison official in the presence of the inmate concerned.

(4) Unauthorised, stale and dangerous items shall be treated in the manner prescribed by section 60 (3) of this Act.

(5) The Prison Governor may temporarily ban reception of parcels for reasons of health or safety, of which the inmate concerned shall be informed. The inmate has the right of appeal to a judge responsible for the execution of sentences. The appeal does not have suspensive effect."

DISCIPLINARY OFFENCES, MEASURES AND PROCEEDINGS

Section 145

"...

(2) Minor disciplinary offences are:

...

10) preventing an official or any other person involved in the implementation of the programme of execution [of prison sentences] from performing their duties;

...

(3) Grave disciplinary offences are:

...

11) possession or intake of any narcotic or psychoactive substance;

...”

DISCIPLINARY MEASURES

Section 146

“(1) Disciplinary offences are punishable with disciplinary measures.

(3) Disciplinary measures are:

1) an admonition;

2) restriction or prohibition on using money inside the prison for up to three months;

3) restriction or temporary deprivation of some or all privileges enumerated in sections 129 and 130 of this Act;

5) solitary confinement for up to twenty-one days during free time or during night and day;

...”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

23. The applicant complained about the general conditions in the Gospić Prison and alleged that the prison authorities had failed to secure him adequate medical care after he had sustained injuries to his head caused by another inmate on 17 March 2006. 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.”

24. The Government contested that argument.

A. Admissibility

25. The Government requested the Court to declare these complaints inadmissible for failure to exhaust domestic remedies. They submitted that the 1999 Enforcement of Prison Sentences Act envisages a number of remedies for the protection of the rights of persons deprived of liberty, judicial protection against proceedings and decisions of the prison

administration included. The applicant should have firstly addressed his complaints to the prison administration. Those complaints should have been clearly specified. The applicant had, however, addressed them directly to a judge responsible for the execution of sentences. The judge instructed the applicant to firstly make his complaints to the prison administration. Furthermore, assuming that the applicant's letter to the judge responsible for the execution of sentences and the judge's letter in reply might be regarded as first-instance proceedings, the applicant could have lodged an appeal with a three-judge panel of the competent County Court. Finally, the applicant could have filed a constitutional complaint in respect of the prison conditions and all the other decisions taken in any of the disciplinary proceedings against him.

26. The applicant submitted that he had exhausted all remedies available within the domestic legal system in respect of the alleged violations.

27. As to the remedies available to the applicant under the Enforcement of Prison Sentences Act, the Court notes that section 5 (2) of that Act clearly provides that 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 of the Ministry of Justice. It follows that the applicant could have addressed his complaints to any of these authorities. In fact, he chose to address his complaints to a judge responsible for the execution of sentences. In the Court's view this choice was in conformity with the domestic legislation. However, the judge did not institute any proceedings upon the applicant's complaint nor did he issue a decision upon it. Instead, he replied to the applicant by letters, the first of 24 September 2004 and the second of 8 November 2004. As to the Government's contention that the applicant could have lodged an appeal against the decision of the judge responsible for the execution of sentences, the Court notes that the latter did not issue any decision and that it is not possible to lodge an appeal against a letter.

28. As to the possibility of lodging a constitutional complaint about the conditions in prison, the Court observes that the rule of exhaustion of domestic remedies contained in Article 35 § 1 of the Convention requires that normal recourse should be had by an applicant to remedies which are available and sufficient to afford redress in respect of the breaches alleged. The existence of the remedies in question must be sufficiently certain not only in theory but in practice, failing which they will lack the requisite accessibility and effectiveness. It is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one available in theory and practice at the relevant time, that is to say, that it was accessible, was capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success (see, among other authorities, *Akdivar and Others v. Turkey*, judgment of 16 September 1996, *Reports of Judgments and Decisions* 1996-IV, pp. 1210-11, §§ 65 and 68).

29. Turning to the present case, the Court observes that the established practice of the Constitutional Court is to declare inadmissible constitutional complaints which do not concern the merits of a given case. Having regard to such a practice and the failure of the Government to produce before the Court any case-law supporting their argument concerning the sufficiency and effectiveness of that remedy, and leaving aside the question of the adequacy of a constitutional complaint as a remedy capable of providing redress in respect of the applicant's complaint, the Court concludes that a constitutional complaint about the prison conditions is not a remedy whose existence has been established with sufficient certainty.

30. The Court finds that the applicant, by complaining to the competent judge responsible for the execution of sentences, made adequate use of the remedies provided for in the domestic law that were at his disposal in respect of his complaints concerning the inadequate prison conditions and the lack of adequate medical assistance. Accordingly, these complaints cannot be dismissed for failure to exhaust domestic remedies.

31. The Court notes that theses complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

A. The parties' submissions

32. The Government submitted that each cell in Gospić Prison had a toilet and each section had a communal bathroom. Therefore, the applicant's allegation that he had been accommodated in a cell without a toilet was unfounded. The bed sheets had been changed once a week. In the Government's opinion that was sufficient and the applicant's allegations about the dirty sheets were therefore also unfounded. As to the food provided, the applicant's complaint was of a general nature and unsubstantiated. The Government asserted that the food was prepared according to a normal diet. A representative of prisoners was included in drawing up the menu. There had been no complaints from other inmates about the food quality and therefore the applicant's complaint in that connection was also unfounded. As regards toiletries, the Government acknowledged that these had not been provided to the applicant. However, during his stay in Unit 1 of Gospić Prison he had worked and received some income, and therefore had been able to purchase the necessary toiletries. As to the applicant's general complaints about the lack of adequate medical care in prison, the Government submitted that a doctor had been on call every day. As to the applicant's specific allegations that he had not received adequate medical assistance for his injury, the Government emphasised that

the medical records submitted showed that the applicant had been seen by a doctor on the same day and adequate treatment had been prescribed. The doctor had seen the applicant again the very next day and three days after the incident the applicant had been sent to a hospital to be examined by a specialist. On that occasion an X-ray examination had also been carried out and it had showed no fractures.

33. The applicant maintained his allegations. He claimed that his description of the conditions of detention and lack of medical assistance was accurate (see paragraphs 11, and 14 above).

B. The Court's assessment

(a) Scope of the issues for consideration

34. The Court notes that the applicant's complaints under Article 3 of the Convention mainly concern two issues:

- *first*, whether the conditions of the applicant's detention were compatible with that provision; and

- *second*, whether the applicant was given adequate medical care for the injury sustained on 17 March 2006.

(b) General principles enshrined in the case-law

35. As the Court has held on many occasions, 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).

36. The Court further reiterates that, according to its case-law, ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3 of the Convention. The assessment of this minimum level of severity is 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. Furthermore, in considering whether a treatment is "degrading" within the meaning of Article 3, the Court will have regard to whether its object is to humiliate and debase the person concerned and whether, as far as the consequences are concerned, it adversely affected his or her personality in a manner incompatible with Article 3 (see *Peers v. Greece*, no. 28524/95, §§ 67-68, 74, ECHR 2001-III, and *Valašinas v. Lithuania*, no. 44558/98, § 101, ECHR 2001-VIII).

37. 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 by, among other things, providing him with the requisite medical assistance (see *Kudła v. Poland* [GC], no. 30210/96, §§ 92-94, ECHR 2000-XI, and *McGlinchey and Others v. the United Kingdom*, no. 50390/99, § 46, ECHR 2003-V).

(c) Application in the present case

(i) General conditions in Gospić Prison

38. The Court notes that in the present case the parties have disputed the actual conditions of the applicant's detention in Gospić Prison. However, in the present case the Court does not consider it necessary to establish the truthfulness of each and every allegation of the parties, because it may find a violation of Article 3 on the basis of the facts that have been presented or undisputed by the respondent Government, for the following reasons.

39. The Court notes that it transpires from the Government's observations that in a period of about fifteen months (from 29 September 2004 until November 2005 and again from March to May 2006) the applicant was held in Unit 2 of Gospić Prison where he had been locked in a cell with another inmate save for one hour in the morning, when he had been allowed to go outside, and two hours in the evening, when he had been allowed to watch television, read or play games. Furthermore, the Government did not dispute the applicant's allegations that the cell had been very damp, the mattresses old and torn so that bare wire stuck out, the heating inadequate and the cell devoid of natural light. It is also undisputed that the applicant received no toiletries.

40. The Court does not find it necessary to examine further the conditions of the applicant's detention as the above considerations are sufficient to find a violation of Article 3 of the Convention.

41. The Court accepts that in the present case there is no indication that there was a positive intention of humiliating or debasing the applicant. However, although the question whether the purpose of the treatment was to humiliate or debase the victim is a factor to be taken into account, the absence of any such purpose cannot exclude a finding of violation of Article 3 (see *Peers*, cited above, § 74, and *Romanov v. Russia*, no. 63993/00, § 80, 20 October 2005). The Court considers that the above described conditions of detention in which the applicant was held for about fifteen months, must have had a harmful effect on the applicant's human dignity. In the light of the above, the Court finds that the applicant's

conditions of detention, in particular the fact that he had been locked in a damp cell with no access to natural light for about twenty hours per day must have had a detrimental effect on the applicant's well-being and that these conditions, combined with the length of the period during which the applicant was detained in such conditions, amounted to degrading treatment.

42. Accordingly, there has been a violation of Article 3 of the Convention concerning the applicant's detention in Unit 2 of Gospić Prison.

(ii) Lack of adequate medical assistance for the applicant's injury

43. The Court notes at the outset that it is undisputed that the applicant was injured on 17 March 2005. The parties disagree, however, over whether the medical assistance provided to the applicant following the injury was adequate and sufficient. The Court observes that the medical records submitted show that on the very same day the applicant saw a prison doctor and complained of dizziness and a headache. The doctor prescribed painkillers. The same doctor saw the applicant again the next day. On 20 March 2005 the applicant was taken to the Gospić General Hospital since he complained of backache. An X-ray examination was carried out and it showed no fractures. The applicant was prescribed further painkillers and a soothing gel.

44. In the Court's view the medical assistance provided to the applicant was adequate and sufficient. In this respect the Court points out in particular that the applicant complained that he had requested an X-ray examination, which had been denied to him. However, the medical records clearly show that an X-ray examination was carried out. Since no fractures were identified the treatment was confined to painkillers, which appears adequate, particularly bearing in mind the fact that the applicant made no further complaints about his health.

45. The foregoing considerations are sufficient to enable the Court to conclude that there has been no violation of Article 3 of the Convention concerning the medical assistance provided to the applicant for the injury sustained on 17 March 2005.

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

46. The applicant made two separate complaints concerning two different sets of disciplinary proceedings against him. The applicant firstly complained about the fairness of the disciplinary proceedings conducted against him in Lepoglava State Prison. He alleged in particular that the time-limit for an appeal against the prison authorities' decision imposing disciplinary sanctions on him, being forty-eight hours only, had been too short, and further that the Varaždin County Court judge responsible for the execution of sentences had erred in his reasoning that a time-limit fixed in hours and expiring on a Sunday did not have to be extended until the first

working day. The applicant also complained that in the disciplinary proceedings conducted against him by the Gospić Prison authorities for the alleged possession of illegal drugs, he had not attended the final hearing because his defence lawyer had not been present. The notes on the hearing had not been served on him. The applicant complained that although he had raised the same issues in his appeal against the prison authorities' decision of 2 November 2004 imposing a disciplinary sanction on him, the Gospić County Court judge's decision of 18 November 2004 had not made any reference to these complaints.

The applicant relied on Article 6 § 1 of the Convention, the relevant parts of which read as follows:

Article 6 § 1

"In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal..."

47. The Government argued that under domestic law the proceedings in question undoubtedly fell within the scope of disciplinary matters. The disciplinary offences enumerated in section 145 of the Enforcement of Prison Sentences Act were a mixture of illegal acts that might amount to violations of the prison disciplinary rules and also those that might amount to criminal offences. As regards the sanctions prescribed, they were purely disciplinary in nature. In conclusion, they submitted that Article 6 was not applicable to the disciplinary proceedings conducted against the applicant.

48. In the alternative and as regards the proceedings conducted in connection with the offence committed during the applicant's stay in Lepoglava State Prison, they maintained that the applicant had not shown that either he or his counsel had attempted to lodge an appeal on a Sunday. The applicant had been in Lepoglava State Prison, where he could have handed his appeal to a member of the prison staff at any time. Under domestic law this would have sufficed to comply with the prescribed time-limit.

49. As regards the proceedings conducted against the applicant on charges of possession of drugs in Gospić Prison, the Government contended that the decisions taken in those proceedings had been adequately and sufficiently reasoned. They further stressed that in his appeal the applicant had only briefly mentioned that he had not been present at the final hearing and stated that his counsel would elaborate on this issue in a separate appeal. However, counsel had not done so.

50. The applicant made no submissions on the applicability of Article 6 but reiterated his initial complaints as regards the fairness of both sets of disciplinary proceedings against him.

51. The Court firstly has to examine the issue of applicability of Article 6 to both sets of proceedings. The Court reiterates that under its

constant case-law Article 6 of the Convention does not apply in principle to disciplinary proceedings, unless, having regard to the autonomy of the concept "criminal charge", a disciplinary offence belongs to the criminal sphere (see *Engel and Others v. the Netherlands*, judgment of 8 June 1976, Series A no. 22, pp. 33-35, § 80-82; *Campbell and Fell v. the United Kingdom*, judgment of 28 June 1984, Series A no. 80, pp. 34-38, §§ 66- 73; and *Ezeh and Connors v. the United Kingdom* [GC], nos. 39665/98 and 40086/98, § 82, ECHR 2003-X).

52. In order to determine whether Article 6 § 1 is applicable under its "criminal" head, the Court has to have regard to the three alternative criteria laid down in its case-law, namely the legal classification of the offence under domestic law, the nature of the offence and the nature and degree of severity of the penalty (see *Campbell and Fell*, cited above, pp. 34 et seq., §§ 67 et seq.).

53. In the first-mentioned respect it is clear that, in Croatian law, the offences with which the applicant was charged both in Lepoglava State Prison and in Gospić Prison belong to disciplinary law.

54. In respect of the Lepoglava State Prison proceedings, the Court notes that Section 145 (2)(10) of the Enforcement of Prison Sentences Act states that conduct of that kind on the part of a prisoner is a minor disciplinary offence. The Court finds that this offence was disciplinary in nature, given that it involved a violation of rules governing the operation of the prison.

55. As to the penalty imposed the Court notes that the applicant was punished with seven days' solitary confinement, which punishment was to be implemented only if the applicant committed another disciplinary offence within three months.

56. The Court recalls that in the *Engel and Others* judgment (cited above, p. 35, § 82), it stated that deprivation of liberty liable to be imposed as a punishment was, in general, a penalty that belonged to the "criminal" sphere. However, in the present case the legal basis for the applicant's deprivation of liberty was his original conviction for criminal offences. Although the disciplinary sanction added a new element – imposition of seven days' solitary confinement – it did not in any way extend the applicant's prison term. Furthermore, the seriousness of the sanction was lessened by its conditional character. Therefore, the Court considers that the penalty imposed was not of such nature and severity that the matter would thereby have been brought within the “criminal” sphere.

57. In respect of the proceedings conducted against the applicant in Gospić Prison the Court notes that the applicant was charged with attempting to introduce illegal drugs into the prison via a letter sent to him by his girlfriend.

58. As to the nature of the offence, it is firstly to be noted that the offence with which the applicant was charged belongs to disciplinary law: section 145 (3)(11) of the Enforcement of Prison Sentences Act states that

conduct of that kind on the part of a prisoner is a grave disciplinary offence. However, according to the Court's case law, the indications so afforded by the national law have only relative value; the very nature of the offence is a factor of greater importance (see *Campbell and Fell*, cited above, p. 36, § 71).

59. The Court's case law affirms that it has to be borne in mind that misconduct by a prisoner may take different forms; certain acts are clearly no more than a question of internal discipline, whereas others cannot be seen in the same light. Firstly, some matters may be more serious than others. Secondly, the illegality of some acts may not turn on the fact that they were committed in prison: certain conduct which constitutes a disciplinary offence may also amount to an offence under the criminal law. In the circumstance of the present case, it corresponds to a crime of drug abuse under Article 173 of the Croatian Penal Code which comprises also mere possession of the illegal drugs.

60. However, the fact that the offence in question could have been the subject of both criminal and prison disciplinary proceedings does not suffice for the Court to conclude that Article 6 is applicable to these proceedings. In this respect the Court notes that the national authorities did not institute any criminal proceedings against the applicant, but opted for disciplinary proceedings. Therefore, it is necessary to turn to the third criterion: the nature and degree of severity of the penalty that the applicant risked incurring (see *Engel and Others*, cited above, pp. 34-35, § 82).

61. The Court notes that the sanction imposed restricted the applicant's free movement inside the prison and his contact with the outside world for a period of three months. In this respect the Court notes that at the core of maintaining an adequate prison regime lies the need to impose disciplinary sanctions for breaches of prison discipline. The Court stresses the importance of preserving an effective system of order and control in prison. The sanction imposed on the applicant for a very serious breach of prison discipline did not extend the applicant's prison term (see, *a contrario*, *Ezeh and Connors v. the United Kingdom* [GC], nos. 39665/98 and 40086/98, ECHR 2003-X), nor did it seriously aggravate the terms of the applicant's prison conditions. It restricted the applicant's freedoms in prison for a limited period of time. In the Court's view, this sanction stayed entirely within the "disciplinary" sphere.

62. Therefore, the Court concludes that the penalty imposed was not of such nature and severity that the matter would thereby have been brought within the "criminal" sphere. Accordingly, Article 6 of the Convention does not apply in the instant case.

63. It follows that this part of the application is incompatible *ratione materiae* with the provisions of the Convention and therefore must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

64. The applicant further made two complaints concerning his right to respect for his correspondence. He firstly complained of the fact that a postal parcel sent to him to Gospić Prison on 30 August 2004 by his parents had never been delivered. Secondly, he complained that some six to eight letters sent by him from the prison had never been forwarded to the addressees. He relied on Article 8 of the Convention, the relevant parts of which read as follows:

Article 8

"1. Everyone has the right to respect for 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."

65. The Government contested these arguments.

(a) Postal parcel sent to the applicant by his parents

1. Admissibility

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

2. Merits

67. The Government contended that the ban on receiving postal parcels for a period of three months had been imposed by the prison authorities as a disciplinary measure against the applicant for a grave breach of the prison rules (smuggling of illegal drugs) and that there is no indication that such an interference with the applicant's right to respect for his correspondence had been disproportionate to the legitimate aim pursued.

68. The Court observes that on 2 November 2004 the applicant was punished with a minor disciplinary reprimand – restriction of movement inside the prison and contact with the outside world for three months, which included the deprivation of the right to receive parcels for the following three months (see paragraph 9 above). The reason for that punishment, as confirmed by the Gospić County Court, was the fact that the applicant had attempted to smuggle illegal drugs into the prison in breach of section 145 (3)(11) of the Enforcement of Prison Sentences Act. The Court finds that

this punishment constituted an interference with the applicant's right to respect for his correspondence, within the meaning of Article 8 § 1 of the Convention.

69. The Court reiterates that any "interference by a public authority" with the right to respect for correspondence will contravene Article 8 of the Convention unless it is "in accordance with the law", pursues one or more of the legitimate aims referred to in paragraph 2 of that Article and is "necessary in a democratic society" in order to achieve them (see, among many other authorities, the following judgments: *Silver and Others v. the United Kingdom*, 25 March 1983, Series A no. 61, p. 32, § 84; *Campbell v. the United Kingdom*, 25 March 1992, Series A no. 233, p. 16, § 34; *Niedbała v. Poland*, no. 27915/95, § 78, 4 July 2000;and *Klyakhin v. Russia*, no. 46082/99, § 107, 30 November 2004).

70. The Court must first consider whether the interference was "in accordance with the law". This expression requires firstly that the impugned measure should have some basis in domestic law; it also refers to the quality of the law in question, requiring that it should be accessible to the person concerned, who must moreover be able to foresee its consequences for him, and be compatible with the rule of law (see *Kruslin v. France*, judgment of 24 April 1990, Series A no. 176-A, p. 20, § 27; *Huvig v. France*, Series A no. 176-B, p. 52, § 26; and *Dankevich v. Ukraine*, no. 40679/98, § 152, 29 April 2003).

71. The Court notes that the Enforcement of Prison Sentences Act clearly provides that possession of drugs represents a grave disciplinary offence and that disciplinary offences are punishable, *inter alia*, with forfeiture of the right to receive parcels for a period of up to three months. An inmate punished with any of the disciplinary sanctions is able to lodge a complaint with a judge responsible for the execution of sentences and to appeal the judge's decision. The Act was published in the Official Gazette. Therefore, the Court is satisfied that the domestic law at issue in the present case was drafted with sufficient clarity and precision so as to satisfy the requirement of being foreseeable, and was furthermore accessible and appealable to a court. The interference was thus compatible with the "lawfulness" requirement in the second paragraph of Article 8. It is further observed that the interference pursued the legitimate aim of the prevention of disorder and crime.

72. As to the necessity of the interference, the Court considers that the ordinary and reasonable requirements of imprisonment justify a system of imposing disciplinary measures on inmates who breach the prison rules. With that aim in mind, a measure imposing certain restrictions of the prisoner's right to respect for his or her correspondence may be called for and may not of itself be incompatible with the Convention (see *Silver and Others v. the United Kingdom*, Series A no. 61, judgment of 25 March

1983, p. 38, § 98, and, *a contrario*, *Jankauskas v. Lithuania*, no. 59304/00, judgment of 24 February 2005, §§ 21-22).

73. As to the present case the Court notes firstly that the measure in question was applied in connection with finding the applicant guilty of a very serious disciplinary offence, also amounting to criminal activity (possession of illegal drugs) and that it lasted for a limited period of time (three months). The Court notes, secondly, that the applicant's complaints received a judicial review by the Gospić County Court (see paragraph 10 above). Thirdly, the applicant has failed to present any argument calling into question the proportionality of the measure imposed. Fourthly, the penalty imposed on the applicant was of a minor nature. In the specific circumstances of the present case, the Court considers that the authorities did not overstep their margin of appreciation in the present case, and that the interference was proportionate and necessary in a democratic society.

74. There has thus been no breach of Article 8.

(b) Alleged failure of the prison authorities to forward the applicant's letters to the addressees

75. The Government submitted that all letters handed by the applicant to the prison authorities had been duly forwarded to a post office. They further emphasised that the applicant had failed to produce any details of the facts complained of.

76. The Court notes that the applicant failed to specify when and if the letters had been handed to the prison authorities and to whom they had been addressed. He also failed to provide any information on how he had learned that the letters had not reached the addressees. In these circumstances the Court considers that the alleged interference has not been established with sufficient certainty.

77. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

78. The applicant also complained that he had no effective remedy at his disposal in respect of his complaint concerning the prison conditions under Article 3 of the Convention, contrary to Article 13 of the Convention which reads as follows:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

A. Admissibility

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

B. Merits

80. The Government argued that under national law a number of remedies provided for in the Enforcement of Prison Sentences Act were available to persons deprived of liberty, such as filing a petition with a prison administration, a judge responsible for the execution of sentences or the Head Office of the Prison Administration. Furthermore, the applicant could have lodged a constitutional complaint.

81. The Court notes that under domestic legislation the applicant was able to lodge a complaint concerning the conditions in prison and the lack of adequate medical assistance and a complaint concerning the lack of respect for his right to correspondence either with the prison authorities, a judge responsible for the execution of sentences or the Head Office of the Prison Administration, and that the applicant actually made use of one of these possibilities, namely, he lodged a complaint with the competent judge responsible for the execution of sentences at the Gospić County Court.

82. The Court recalls that in its partial decision on admissibility in respect of the present case (see *Štitić v. Croatia* (dec.), no. 9660/03, 9 November 2006), it established that the applicant, whose situation in Lepoglava State Prison had been remedied by a decision of the Varaždin County Court (*Županijski sud u Varaždinu*) judge responsible for execution of sentences and who, following such a decision, had been transferred to an adequate cell, could have brought a civil action against the State claiming damages for the suffering hitherto sustained. Whilst the institution of civil proceedings for damages in itself could not be regarded as an effective remedy for addressing adverse prison conditions, such proceedings in combination with an urgent decision of a judge responsible for execution of sentences, with an immediate effect on the actual conditions of an individual applicant, did satisfy the requirements of effectiveness.

83. However, as regards the applicant's complaints lodged on 14 September and 21 October 2004 with the Gospić County Court judge responsible for the execution of sentences about the general conditions in Gospić Prison (see §§ 16 and 18 above), the Court notes that in his letter of 8 November 2004 the judge expressly stated that he had no jurisdiction to supervise the running of prisons (see § 18 above).

84. The Court reiterates that the effect of Article 13 is to require the provision of a domestic remedy allowing the competent national authority

both to deal with the substance of the relevant Convention complaint and to grant appropriate relief, although Contracting States are afforded some discretion as to the manner in which they comply with their obligations under this provision (see *Chahal v. the United Kingdom*, judgment of 15 November 1996, *Reports* 1996-V, pp. 1869-70, § 145). The remedy required by Article 13 must be "effective", both in practice and in law. However, such a remedy is required only for complaints that can be regarded as "arguable" under the Convention (see *Metropolitan Church of Bessarabia and Others v. Moldova*, no. 45701/99, § 137, ECHR 2001-XII).

85. In the instant case, in view of the conclusion under Article 3 (see § 31 above), the Court considers that the applicant's complaint did raise an issue of compliance with the Convention standards on the conditions in which the applicant was held in Unit 2 of Gospić Prison. The applicant could therefore have expected the Gospić County Court judge responsible for the execution of sentences to deal with the substance of his complaint and adopt a formal decision in this respect, which the judge did not. Instead, he declined his jurisdiction in the matter.

86. Whilst it is true that the fact that a remedy does not lead to an outcome favourable to the applicant does not render a remedy ineffective (see *Kudła v. Poland* [GC], no. 30210/96, § 157, ECHR 2000-XI), the Court concludes that the practice of the Gospić County Court judge responsible for the execution of sentences in the circumstances of the present case rendered an otherwise effective remedy ineffective. This conclusion does not, however, call into question the effectiveness of the remedy as such or the obligation of an incarcerated person to petition a competent judge responsible for the execution of sentences pursuant to sections 15 and 17 of the Enforcement of Prison Sentences Act in order to exhaust domestic remedies concerning complains about the conditions of imprisonment.

87. However, having regard to the circumstances of the present case, it follows that there has been a violation of Article 13 of the Convention in the present case.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

88. 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."

89. The applicant did not submit a claim for just satisfaction or for any costs and expenses incurred. Accordingly, the Court considers that there is no call to award him any sum on that account.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaints concerning the conditions of the applicant's detention in Gospić Prison and the alleged lack of adequate medical assistance for his injury as well as the complaints concerning the violation of the applicants right to respect for his correspondence in the part referring to the ban on receiving postal parcels for a period of three months and the lack of an effective remedy in respect of the complaint concerning the prison conditions 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 conditions of the applicant's detention in Unit 2 of Gospić Prison;

3. *Holds* that there has been no violation of Article 3 of the Convention on account of the alleged lack of adequate medical assistance for the applicant's injury;

4. *Holds* that there has been no violation of Article 8 of the Convention;

5. *Holds* that there has been a violation of Article 13 of the Convention;

Done in English, and notified in writing on 8 November 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President