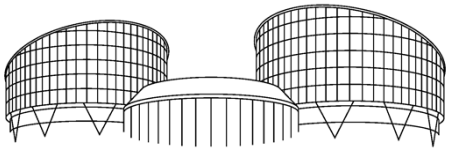

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF HANŽEVAČKI v. CROATIA

(Application no. 49439/21)

JUDGMENT

Art 6 § 1 (civil) • Lack of effective access to Constitutional Court due to unforeseeable retroactive application of admissibility criteria for lodging a constitutional complaint of inadequate conditions of detention • Applicant no longer in a position to fulfil procedural condition of using preventive remedy before availing himself of compensatory remedy • Very essence of right of access to a court impaired Art 3 (substantive) • Degrading treatment • Conditions of detention

STRASBOURG

5 September 2023

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 Hanževački v. Croatia,

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

Arnfinn Bårdsen*, President*,
Jovan Ilievski,
Egidijus Kūris,
Pauliine Koskelo,
Frédéric Krenc,
Diana Sârcu,
Davor Derenčinović*, judges*,
and Hasan Bakırcı, *Section Registrar,*

Having regard to:

the application (no. 49439/21) 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 Kristijan Hanževački ("the applicant"), on 1 October 2021;

the decision to give notice to the Croatian Government ("the Government") of the application;

the parties' observations;

Having deliberated in private on 4 July 2023,

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

INTRODUCTION

1. The present case concerns the applicant's conditions of detention in Varaždin, Zagreb, Lepoglava and Bjelovar prisons and his alleged lack of effective access to the Constitutional Court on account of the retroactive application of admissibility criteria for lodging a constitutional complaint in his case.

THE FACTS

2. The applicant was born in 1983 and lives in Kućan Marof. He was represented by Ms L. Horvat, a lawyer practising in Zagreb.

3. The Government were represented by their Agent, Ms Š. Stažnik.

4. The facts of the case may be summarised as follows.

5. In 2008 the applicant was convicted of arson and sentenced to a term of imprisonment of two years. In 2010 he was convicted of another criminal offence and sentenced to four years and four months' imprisonment. On 5 November 2012 he was convicted of yet another criminal offence and sentenced to a total of four years and eight months' imprisonment.

I. THE APPLICANT'S PRISON CONDITIONS

6. Between 12 April and 24 December 2008 the applicant was held in pre-trial detention in Varaždin Prison (*Istražni zatvor u Varaždinu*). Between 12 April and 17 December 2008 he was placed in a cell measuring 26.76 sq. m, excluding sanitary facilities, with five to ten other prisoners. Between 18 and 24 December 2008 he was placed in a cell measuring 17.01 sq. m, excluding sanitary facilities, with five other detainees. On 24 December 2008 the applicant was released from pre-trial detention.

7. On 30 October 2009 the applicant was again arrested and sent to the Zagreb Diagnostics Centre (*Centar za dijagnostiku u Zagrebu* – hereinafter "Zagreb Prison"), where he stayed until 13 January 2010, with a view to a proposal being drawn up for his referral to a correctional facility. He stayed in a cell measuring 21.10 sq. m with six to seven other prisoners. A partially partitioned sanitary facility measuring 1.57 sq. m formed part of the cell. Food was served in the cell while there was a constant smell coming from the sanitary facility. The inmates were allowed one hour's walk outside the cell every day and they were locked in the cell for the remainder of the day. Moreover, the inmates were only allowed to shower twice a week and no recreational or vocational activities were organised.

8. Between 13 January 2010 and 6 September 2011 the applicant was serving his prison sentence in Lepoglava State Prison (*Kaznionica u Lepoglavi*). Between 13 January and 2 February 2010 he was held in a cell measuring 7.7 sq. m, excluding sanitary facilities, with three other prisoners; between 2 and 9 February 2010 and between 26 April and 6 September 2011 he stayed in a cell measuring 9.8 sq. m with three other prisoners; between 9 February and 4 April 2010 he stayed in a cell measuring 8.07 sq. m with three other prisoners; and between 4 April 2010 and 24 April 2011 he stayed in a cell measuring 33.12 sq. m with seven to eleven other prisoners. During part of his stay there the applicant worked, and he also completed a vocational programme.

9. Between 6 September 2011 and 29 May 2013 the applicant was serving his prison sentence in Bjelovar Prison (*Zatvor u Bjelovaru*). During the first eighty-five days he stayed in a cell measuring 17.8 sq. m; for seventeen of those days he shared the cell with five other prisoners, thus having 2.96 sq. m of personal space between 21 and 23 September, 27 and 29 September, on 9 November and from 20 to 29 November 2011. He stayed in the same cell for twenty-two days with four other prisoners, for thirty-eight days with three other prisoners and for eight days with two other prisoners. For the remaining 546 days of his stay in Bjelovar Prison, the applicant stayed in a cell measuring 9.22 sq. m with one other prisoner for 530 days and alone for sixteen days.

II. THE APPLICANT'S COMPLAINTS CONCERNING PRISON CONDITIONS AND CIVIL PROCEEDINGS

10. On 19 January 2012, while serving his sentence in Bjelovar Prison, the applicant submitted a request for judicial protection to the sentence-execution judge of the Bjelovar County Court (*Županijski sud u Bjelovaru*), complaining of inadequate conditions in Varaždin, Zagreb, Lepoglava and Bjelovar prisons. On the same date he also lodged an application for a friendly settlement with the Varaždin Municipal State Attorney's Office, which was dismissed.

11. Following a visit to Bjelovar Prison and after requesting a statement from the prison authorities, on 22 March 2012 the sentence-execution judge dismissed the applicant's complaint as ill-founded, holding that his conditions of detention were satisfactory.

12. On 12 April 2012 the appeal panel of the Bjelovar County Court dismissed a complaint by the applicant against that decision.

13. On 5 December 2012 the applicant brought a civil action against the State in the Zagreb Municipal Civil Court (*Općinski građanski sud u Zagrebu*), seeking damages in the amount of 70,550 Croatian kunas (HRK – approximately 9,400 euros (EUR)).

14. On 10 October 2018 the first-instance court dismissed the applicant's claim, finding that he had failed to prove the existence of a breach of his personality rights of such gravity, intensity and duration as to justify an award in respect of non-pecuniary damage. The applicant was ordered to reimburse the State's costs of legal representation in the amount of HRK 12,500 (approximately EUR 1,660).

15. On 21 July 2020 the Osijek County Court (*Županijski sud u Osijeku*) dismissed an appeal by the applicant as ill-founded.

16. On 23 October 2020 the applicant lodged a constitutional complaint against the second-instance judgment. Relying on Articles 23 § 1, 29 § 1 and 35 of the Constitution, as well as on Articles 3, 6 and 13 of the Convention, the applicant complained about the violation of his civil rights and maintained that his conditions of detention in the various prisons had been inhuman and degrading, contrary both to the Convention and the domestic law. He also complained that the domestic courts had wrongly and arbitrarily dismissed his civil claim for compensation of damage in that respect without sufficient reasoning and ordered him to pay costs of proceedings.

17. On 18 March 2021 the Constitutional Court dismissed the applicant's constitutional complaint as ill-founded as regards the costs of proceedings, finding that he had failed to show that those costs had imposed a significant financial burden on him. At the same time, his complaint concerning the conditions of detention was declared inadmissible because the applicant had never used the existing preventive remedies (see paragraph 27 below) during

his stay in the detention conditions complained of. The above-mentioned decision was served on the applicant on 2 April 2021.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

18. The relevant domestic law and practice are set out in *Ulemek v. Croatia* (no. 21613/16, §§ 38-57, 31 October 2019).

19. On 4 February 2020, in its decision no. U-III-2757/2018 (published in Official Gazette No. 26/2020 of 10 March 2020), the Constitutional Court examined the case of an appellant who had been detained in Zagreb Prison and who had lodged a constitutional complaint in 2018 against a civil court judgment dismissing his civil action for compensation for inadequate conditions of detention in that prison. The Constitutional Court considered that the case fell to be examined under Article 23 § 1 and Article 25 § 1 of the Constitution (see *Ulemek*, cited above, § 38, for the text of those provisions) and Article 3 of the Convention and declared it inadmissible. The relevant parts of the decision read as follows:

> "3. The constitutional complaint [against the civil courts' judgment] is inadmissible because one of the conditions for lodging a constitutional complaint has not been met, namely, the relevant legal remedies had not been exhausted.
>
> In particular, before lodging a civil action for damages during his stay in the prison, the appellant had not used the remedy for the protection of his rights as provided by the Enforcement of Prison Sentences Act ... and therefore the relevant remedy concerning his constitutional complaint under Articles 23 and 25 of the Constitution and Article 3 of the Convention was not pursued.
>
> This decision of the Constitutional Court represents a departure from its earlier case-law, for which the relevant reasons are provided below.
>
> ...
>
> **General principles**
>
> 7. The Constitutional Court begins by noting that a civil action for damages is only one aspect of the overall system of effective remedies for prisoners concerning the conditions of their detention. The first aspect of the overall system [of remedies] concerns the preventive remedy under the Enforcement of Prison Sentences Act which is aimed at improving the conditions of detention of prisoners: in other words, [it is aimed at] bringing the ongoing violation relating to inadequate conditions of detention to an end. [On the other hand], a civil action for damages concerning inadequate conditions of detention is the other part of the overall [system of remedies] (the compensatory remedy).
>
> 8. As regards the effectiveness of remedies [in the context of conditions of detention], the Constitutional Court accepts the general principles developed in the case-law of the European Court of Human Rights under Article 13 of the Convention [see also the relevant principles set out in *Ulemek*, [cited above,] §§ 71 and 83-86] ...
>
> 11. The Constitutional Court notes that, in accordance with the Enforcement of Prison Sentences Act, prisoners have at their disposal an effective remedy capable of bringing to an end a breach of their rights guaranteed under Article 23 § 1 and

Article 25 § 1 of the Constitution and Article 3 of the Convention ... In particular, prisoners have an opportunity to lodge a complaint [with the prison administration] under section 15 of the Enforcement of Prison Sentences Act and a complaint with the sentence-execution judge under section 17 of the Enforcement of Prison Sentences Act.

In this connection, the Constitutional Court stresses the importance of the powers granted to the sentence-execution judge under [the above-mentioned Act], which represent the expression of the State's duty to ensure adequate conditions of detention. Having regard to this duty, it is sufficient that the prisoner raises an arguable claim that the conditions of his or her detention or treatment in prison are contrary to the requirements of Article 23 § 1 and Article 25 § 1 of the Constitution or Article 3 of the Convention, and it is then for the State authorities to examine that claim and to establish the facts. These are in fact the powers vested in the sentence-execution judge.

On the other hand, a civil court which is called upon to examine an action for compensation for damage does not have investigative powers and its [examination of the case] is limited to the parties' proposals and the rules on the burden of proof, according to which it is exclusively for the claimant to prove his or her claim. Having regard to the special nature of the duty which the State has towards prisoners, civil proceedings are not an adequate legal remedy for the protection of prisoners from inhuman conditions [of detention] or conduct [by the prison administration]. Moreover, civil proceedings are not an appropriate way to put an end to [ongoing] breaches. In addition, the sentence-execution judge has the duty to act in a manner in which, according to the relevant principles, *effective* protection of the prisoners' rights and interests is guaranteed (section 44(2) of the Enforcement of Prison Sentences Act), which is achieved through, *inter alia*, short time-limits for the taking of actions [by the sentence-execution judge] ...

12. As regards civil proceedings for damages concerning conditions of detention, the Constitutional Court stresses that appellants who have not used the preventive remedy under the Enforcement of Prison Sentences Act cannot raise before the Constitutional Court, in their constitutional complaints lodged against judgments of the civil courts concerning actions for compensation for damage for inadequate conditions of detention, complaints under Article 23 § 1 and Article 25 § 1 of the Constitution.

While in civil proceedings for damages relating to breaches of personality rights concerning inadequate conditions of detention the court establishes the existence of the legal conditions for compensation for damage, the subject matter of the Constitutional Court's assessment relating to the conditions of detention ... is different and goes beyond the scope of the judicial assessment conducted in civil proceedings for damages.

13. When the Constitutional Court examines appellants' complaints under Article 23 § 1 and Article 25 § 1 of the Constitution and Article 3 of the Convention, the focus of its assessment is not on the civil proceedings for damages but on the conditions in which the appellant served or is serving his or her sentence of imprisonment and the manner in which the State responded to his or her complaints [in that respect].

If the appellant failed to give an opportunity to the State to respond to such a complaint, notably by protecting him or her from inhuman conditions of imprisonment in breach of Article 23 § 1 and Article 25 § 1 of the Constitution and Article 3 of the Convention, he or she cannot raise that issue in a constitutional complaint lodged against a judgment of the civil courts concerning his or her action for compensation for damage [relating to allegedly inadequate conditions of detention].

Application of those principles to the present case

14. ... The examination of the [civil court's] case file shows that the appellant did not use the remedies under the Enforcement of Prison Sentences Act; he did not lodge a complaint [with the prison administration] under section 15 of the Enforcement of Prison Sentences Act or a complaint [with the sentence-execution judge] under section 17 of the Enforcement of Prison Sentences Act.

Given that he spent sixty-five days in the prison, the Constitutional Court considers that the appellant had sufficient time to use the remedies under the Enforcement of Prison Sentences Act.

In view of the above, the Constitutional Court finds that the appellant failed to use the relevant legal remedy, namely the effective remedy for the protection of his constitutional rights under Article 23 § 1 and Article 25 § 1 of the Constitution, and thus he cannot successfully raise these complaints in the constitutional complaint.

15. It has therefore been decided [to declare the constitutional complaint inadmissible]."

20. On 29 March 2022, in decision no. U-III-3047/2019, the Constitutional Court held as follows:

"Admissibility of the constitutional complaint

19. It follows that, before lodging the constitutional complaint, the complainant used only the compensatory remedy in respect of inadequate conditions of detention (compare paragraphs 55 and 63 of the [Court's] decision in *Janković and Others* [*v. Croatia* (dec.), nos. 23244/16 and 4 others, 21 September 2021]) but before using that remedy, he had not used preventive remedies on the basis of the Execution of Prison Sentence Act. Bearing in mind that he could only have used those remedies from 2012 to 2013, but that at that time he could not have foreseen that the use of preventive remedies would become a criterion for the admissibility of a constitutional complaint, the Constitutional Court, applying the standpoint expressed in paragraph 63 of the [Court's] decision in *Janković and Others* [cited above], concludes that in this particular case, the failure to use preventive remedies on the basis of the Enforcement of Prison Sentences Act cannot be imputable to the complainant."

THE LAW

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

21. The applicant complained that the Constitutional Court had declared his constitutional complaint inadmissible by the retroactive application of its admissibility criteria. He relied on Article 6 § 1 and Article 13 of the Convention, asserting that a constitutional complaint had been ineffective in his case. Given that Article 6 § 1 is to be considered a *lex specialis* in relation to Article 13 (see, for example, *Kardoš v. Croatia*, no. 25782/11, § 63, 26 April 2016), the Court will examine this complaint solely under Article 6 § 1 of the Convention, which in so far as relevant, reads as follows:

"In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

A. Admissibility

22. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' observations

23. The applicant argued that the Constitutional Court's decision no. U-III-2757/2018 should not have been applied in his case because, during his detention in the conditions complained of, that court's practice had not required the use of the preventive remedy as a condition for the use of the compensatory one. The application of such a precondition had thus not been foreseeable for the applicant and he should not have been forced to bear the burden of subsequent changes in the Constitutional Court's practice. He submitted that the Court itself had already criticised the retroactive effect of the Constitutional Court's case-law in *Janković and Others v. Croatia* ((dec.), nos. 23244/16 and 4 others, 21 September 2021).

24. The Government pointed out that the applicant had lodged his constitutional complaint more than six months after the Constitutional Court had changed its practice with respect to admissibility criteria in cases concerning prison conditions. He must therefore have been aware of the Constitutional Court's new practice, which accordingly had not been unforeseeable for him. The applicant's right of access to the Constitutional Court had thus not been disproportionately restricted.

2. The Court's assessment

(a) General principles

25. The general principles concerning access to a court, and in particular access to superior courts, have been summarised in *Zubac v. Croatia* ([GC], no. 40160/12, §§ 76-89, 5 April 2018).

26. The Court reiterates, in particular, that the right of access to a court is not absolute but may be subject to limitations; these are permitted by implication, since the right of access by its very nature calls for regulation by the State, which enjoys a certain margin of appreciation in this regard. Nevertheless, the limitations applied must not restrict or reduce the access left to the individual in such a way or to such an extent that the very essence of the right is impaired. Furthermore, a limitation will not be compatible with Article 6 § 1 if it does not pursue a legitimate aim and if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be achieved (see, among many other authorities, *Petko Petkov v. Bulgaria*, no. 2834/06, § 27, 19 February 2013).

(b) Development of the Constitutional Court's case-law in cases concerning conditions of detention in Croatia

27. As regards the domestic remedies and the competence of the Constitutional Court to examine cases concerning conditions of detention, in its leading judgment in *Ulemek v. Croatia* (no. 21613/16, 31 October 2019) the Court explained that the Croatian legal system provided for both preventive and compensatory remedies in respect of inadequate prison conditions. The preventive remedies involved making a complaint to the prison administration and/or the sentence-execution judge directly, while the compensatory remedy related to the possibility of obtaining compensation from the State in proceedings before the relevant civil courts. In the event of an unfavourable outcome after using the preventive and/or compensatory remedy, applicants were able to lodge a constitutional complaint with the Constitutional Court (ibid., §§ 93-110).

28. The Court further noted that, according to the case-law of the Constitutional Court at the material time, for the purposes of exhaustion of remedies before lodging a constitutional complaint following the use of the compensatory remedy, complainants had not been required to first use the preventive remedies if they later availed themselves of a civil action for damages – namely the compensatory remedy - in the relevant civil court concerning allegations of inadequate conditions of detention (see, for further details of this case-law, *Ulemek*, cited above, §§ 39 and 51-54). In *Ulemek* the Court consequently found that the applicant had not had to exhaust the existing preventive remedies (ibid., § 118).

29. Following the Court's adoption of the judgment in *Ulemek*, there have been changes in the Constitutional Court's case-law. In its decision no. U-III-2757/2018, adopted on 4 February 2020, the Constitutional Court established the principle according to which a complainant cannot successfully raise his or her complaints of inadequate conditions of detention in a constitutional complaint after the use of a civil action for damages if he or she has not first properly used the preventive remedy during his or her stay in the prison conditions complained of (see paragraph 21 above and sub-paragraph 3 *in fine* of the Constitutional Court's decision cited in paragraph 19 above).

30. Having examined the above-mentioned decision in the subsequent case of *Janković and Others*, the Court confirmed that this development in the Constitutional Court's case-law was substantively in line with the Court's findings in *Ulemek* concerning the complementary nature of the preventive and compensatory remedies in the context of conditions of detention (see *Janković and Others*, cited above, § 58).

31. However, the Court expressed concerns about the retroactive nature of the Constitutional Court's new case-law. Specifically, in the absence of a transition period or any indication as regards the manner in which the Constitutional Court's decision no. U-III-2757/2018 was to apply over time, the Court found that the retroactive application of the Constitutional Court's

leading case-law raised an issue of foreseeability, and thus effectiveness, of the constitutional complaint as a remedy in the context of conditions of detention for all complainants who used the compensatory remedy but had not used the preventive remedy before 10 September 2020 (that is, six months after that decision's publication), and were no longer in a position to do so with respect to the particular conditions of their detention (see *Janković and Others*, cited above, §§ 62-63). The Court, however, allowed for the further development of the Constitutional Court's case-law without considering the constitutional complaint to be an ineffective remedy at the material time (ibid., §§ 64-66).

32. Following the Court's decision in *Janković and Others*, the Constitutional Court yet again adjusted its approach on the matter in its decision no. U-III-3047/2019 of 29 March 2022 (see paragraph 20 above). In a case comparable to the applicant's, where the complainant had not used the preventive remedies but only the compensatory one, in view of the fact that he could have had recourse to the former only during his imprisonment, at which time it had not been foreseeable for him that using that remedy would become the condition for the admissibility of his constitutional complaint in subsequent civil proceedings, the Constitutional Court held that his failure to use the preventive remedies could not be held against the complainant in that case (ibid.).

33. In sum, prior to March 2020 and the Constitutional Court's decision no. U-III-2757/2018, domestic law had not required the use of the preventive remedies for the admissibility of a constitutional complaint during subsequent civil proceedings for damages (the compensatory remedy). After that date, the use of the preventive remedies became obligatory for all complainants wishing to lodge a constitutional complaint in civil proceedings for damages (compensatory remedy), irrespective of whether or not they still had the possibility of using the preventive remedies. As of March 2022, and the Constitutional Court's decision no. U-III-3047/2019, the condition of using the preventive remedy is no longer applied in cases where the complainant could no longer have used that remedy.

(c) Application of the above findings to the present case

34. Turning to the present case, the Court notes that the applicant lodged his constitutional complaint in October 2020 and it was declared inadmissible in March 2021 through the application of the Constitutional Court's then leading decision no. U-III-2757/2018. This constituted a restriction on his right of access to the Constitutional Court.

35. It thus falls to the Court to ascertain whether the restriction applied by the Constitutional Court was clear, accessible and foreseeable within the meaning of the Court's case-law, whether it pursued a legitimate aim and whether it was proportionate to that aim (see *Petko Petkov*, cited above, § 30). While case-law development is not, in itself, contrary to the proper

administration of justice (see *Lupeni Greek Catholic Parish and Others v. Romania* [GC], no. 76943/11, § 116, 29 November 2016; *Nejdet Şahin and Perihan Şahin v. Turkey* [GC], no. 13279/05, § 58, 20 October 2011; and *Legrand v. France*, no. 23228/08, § 37, 26 May 2011), in cases where changes in domestic case-law had affected pending civil proceedings, the Court has found no issue under Article 6 only where the way in which the law had developed had been well known to the parties, or had at least been reasonably foreseeable, and where no uncertainty had existed as to their legal situation (see *Gil Sanjuan v. Spain*, no. 48297/15, § 38, 26 May 2020).

36. Turning to the present case, the Court has already found that the Constitutional Court's decision no. U-III-2757/2018 applied the new admissibility requirement retroactively and without any transitional measures, which raised an issue of foreseeability under the Convention (see *Janković and Others*, cited above, §§ 62-63; see also paragraph 31 above).

37. The Government's principal argument consisted in asserting that, since more than six months had passed between the publication of the Constitutional Court's decision no. U-III-2757/2018 in March 2020 and the applicant's lodging of his constitutional complaint in October 2020, the applicant could no longer argue that the new admissibility criterion had been unforeseeable to him. Instead, he should have been aware that the above-mentioned case-law would be applied in his case.

38. In that connection, the Court notes, as did the Constitutional Court in its subsequent case-law (see paragraph 20 above), that the relevant moment for the assessment of the foreseeability of a restriction on access to a court was the time when it had been possible for the applicant to observe any such limitation. In the applicant's case, that was the period between 2008 and 2011, while he was still incarcerated and could have exhausted the preventive remedies, had he known that it would become a condition for the admissibility of his constitutional complaint in the subsequent civil proceedings. As things stood at the relevant time, however, the applicant believed that he had a choice between the preventive and the compensatory remedies, and he chose the latter, trusting that he would be able to have his claim examined by the civil courts and ultimately by the Constitutional Court. However, on account of the unexpected change in the Constitutional Court's practice with retroactive effect, the applicant was no longer in a position to fulfil the newly imposed condition of using the preventive remedy.

39. Moreover, in a situation where the practice of the Constitutional Court had been evolving (see paragraphs 21 and 22 above), and in line with the principle of subsidiarity, it cannot be held against the applicant for having requested that the highest national court in Croatia rule on his case (see, *mutatis mutandis*, *Vrtar v. Croatia*, no. 39380/13, § 76, 7 January 2016).

40. The foregoing considerations are sufficient to enable the Court to conclude that the unforeseeable retroactive imposition of a procedural

condition, which the applicant could no longer fulfil, restricted his access to a court to such an extent that the very essence of that right was impaired.

41. There has accordingly been a violation of Article 6 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

42. The applicant complained that his prison conditions had been inhuman and degrading, contrary to 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. The parties' observations

43. The Government maintained that the six-month time-limit for the applicant to lodge a complaint concerning the conditions in the various prisons he had stayed in had started to run from the dates on which he had ceased to be detained in each of those institutions. Alternatively, they submitted that the applicant had failed to exhaust preventive domestic remedies in respect of inadequate prison conditions in Croatia, that is to say, a complaint with the sentence-execution judge and, ultimately, a constitutional complaint. Lastly, the Government argued that the applicant had failed to properly avail himself of the compensatory remedy in respect of inadequate prison conditions in that his civil claim for damages in respect of his stay at Varaždin Prison had become time-barred.

44. The applicant disagreed. He submitted that he had lodged his application with the Court within six months from the exhaustion of the domestic remedies in the case and that, in line with the domestic law at the material time, he had not been required to exhaust preventive remedies concerning prison conditions prior to turning to compensatory ones. Lastly, the applicant argued that his complaint had not been time-barred, as evidenced by the fact that the civil courts had dismissed his claim without finding it time-barred.

2. The Court's assessment

45. The general principles concerning the exhaustion of domestic remedies and compliance with the six-month rule in cases concerning conditions of detention have been summarised in *Ulemek* (cited above, §§ 81-92).

46. As regards the Government's objection that the applicant had not brought his complaint in respect of the conditions in each prison within six

months after his release from the respective facility, the Court notes that according to its case-law, an applicant is in general required to bring to the Court any possible complaints he or she might have had concerning the conditions of his or her detention within six months following the final decision in the process of exhaustion of domestic remedies and, only if such remedies did not properly operate in the particular circumstances of the case, six months following his or her removal from the particular adverse conditions of detention or detention regime (ibid., § 114).

47. Since the applicant in the present case first sought to make use of an effective domestic remedy, namely civil proceedings for damages against the State following the end of his imprisonment, and the civil courts decided on the merits of his claim, the Court is satisfied that by raising his complaint before it within six months from the last domestic decision in those civil proceedings, the applicant complied with the six-month time-limit. The Government's argument in this respect must therefore be dismissed.

48. Furthermore, in so far as the Government argued that the applicant should have exhausted the preventive remedies in respect of inadequate conditions of detention, which he had failed to do, before applying to the Court, the Court has already concluded in respect of the complaint under Article 6 of the Convention that this requirement was imposed on the applicant retroactively and that it was consequently impossible for him to fulfil (see paragraphs 34-41 above). For the same reasons, the Court dismisses the Government's preliminary objection in this respect.

49. Lastly, as regards the Government's argument that in respect of his detention in Varaždin Prison, the applicant's civil action for compensation had become time-barred because he had brought it outside the statutory time-limit of three years, the Court notes as follows. The applicant was detained in Varaždin Prison between 12 April and 24 December 2008, and on 19 January 2012 he took the relevant preliminary step of bringing an action for compensation for inadequate conditions of detention (see paragraphs 6 and 10 above). Since he brought his civil action outside of the three-year statutory limitation period, the Government's objection that he did not properly exhaust domestic remedies in respect of that period must be upheld. It follows that this part of the application is inadmissible and must be rejected pursuant to Article 35 §§ 1 and 4 of the Convention.

50. As regards the remaining periods, the Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' observations

51. The applicant complained that his conditions of detention in prisons in Zagreb, Lepoglava and Bjelovar had been inhuman and degrading. In

particular, he submitted that in all of those prisons he had had insufficient personal space, the conditions of hygiene had been appalling and the food had been of poor quality. Specifically, in Zagreb Prison he had stayed in an overcrowded cell for twenty-two hours per day, from which the sanitary facilities had been only partially separated by a partition, which had made the smells unbearable and privacy non-existent. The meals had also been served in the same room. In Lepoglava State Prison, the applicant had continuously had less than 4 sq. m of personal space and, in particular, for 328 days he had had less than 3 sq. m, which had not been compensated for by a greater freedom of movement. He could only stay outdoors for two hours, his health had deteriorated and he had not been afforded adequate healthcare or conditions of hygiene. As regards Bjelovar Prison, the applicant pointed out that the documents submitted by the Government had excluded the sanitary facilities which were in the room and that, accordingly, for at least seventeen days he had only had access to 2.90 sq. m of personal space, whereas for twenty-two days he had had access to 3.49 sq. m.

52. The Government contested those allegations. As regards Zagreb Prison, they maintained that the applicant had often stayed outside his cell for interviews with the professional staff and for medical examinations. Moreover, he had been allowed outdoor activity for at least two hours per day and he had been able to use the games, library and television in the leisure room. In Lepoglava State Prison the applicant had stayed in dry, warm and clean cells and had been afforded between 1.92 and 4.14 sq. m of personal space during different periods. His lack of space had, however, been compensated for by sufficient freedom of movement and activities outside the room. Lastly, as regards Bjelovar Prison, the applicant had had between 3.28 and 9.22 sq. m of personal space at all times, he had stayed in the renovated prison wing and had been able to use the day room with a television, books and games for ninety minutes per day and had had two hours of outdoor exercise daily.

2. The Court's assessment

53. The Court refers to the principles established in its case-law regarding inadequate conditions of detention (see, for instance, *Muršić v. Croatia* [GC], no. 7334/13, §§ 96-101, 20 October 2016). It reiterates in particular that a serious lack of space in a prison cell weighs heavily as a factor to be taken into account for the purpose of establishing whether the detention conditions described were "degrading" from the point of view of Article 3 and may disclose a violation, both alone or taken together with other shortcomings (ibid., §§ 122-41; see also *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, §§ 149-59, 10 January 2012).

54. The Court notes that in Zagreb Prison the applicant had less than 3 sq. m of personal space throughout his stay, which lasted for seventy-five days (see paragraph 7 above; see also the Court's findings of a violation of

Article 3 in respect of stays in Zagreb Prison in *Ulemek*, cited above, §§ 128-31, and *Longin v. Croatia*, no. 49268/10, §§ 60-61, 6 November 2012). The same holds true as regards at least half of his stay in Lepoglava State Prison, where he was imprisoned for 601 days (see paragraph 8 above).

55. In the leading cases of *Muršić* (cited above, §§ 69-73 and 91-173) and *Ulemek* (cited above, §§ 71-120 and 126-46), the Court found a violation in respect of issues similar to those in the present case. Having examined all the material submitted to it, the Court has not found any fact or argument capable of persuading it to reach a different conclusion on the merits of the application in the present case.

56. There has accordingly been a violation of Article 3 of the Convention as regards the applicant's conditions of detention in Zagreb Prison and Lepoglava State Prison.

57. However, the Court finds no issue with the conditions of the applicant's detention in Bjelovar Prison, where he was subjected to minor reductions of personal space (2.96 sq. m) only on short, non-consecutive occasions and this was compensated for by sufficient out-of-cell activities (see paragraph 9 above, and compare *Muršić*, cited above, §§ 154-71, where the Court found that the occasional stay in the same conditions in Bjelovar Prison for non-consecutive periods of up to eight days could be regarded as short and minor reductions in personal space, during which sufficient freedom of movement and out-of-cell activities had been available). Moreover, out of the 631 days he spent in that prison, only on twenty-two days did the applicant have between 3 and 4 sq. m of personal space, whereas for the remaining period he had more than 4 sq. m. The Court has also previously found that the overall conditions of detention in Bjelovar Prison in approximately the same period were generally appropriate (see *Muršić*, cited above, §§ 164-68).

58. There has accordingly been no violation of Article 3 of the Convention as regards the applicant's conditions of detention in Bjelovar Prison.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

59. Lastly, the applicant complained that the domestic courts, when dismissing his claim for damages as ill-founded, had ordered him to reimburse to the State the costs of litigation. He relied on Article 6 § 1 and Article 1 of Protocol No. 1 to the Convention.

60. Having regard to the facts of the case and in the light of all the material in its possession as well as its above findings under Article 3 and Article 6 § 1 of the Convention, the Court considers that, since it has examined the main legal questions raised in the present application, there is no need to give a separate ruling on the remaining complaints (see *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 156, ECHR 2014, with further references).

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

61. 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

62. The applicant claimed 10,000 euros (EUR) in respect of non-pecuniary damage.

63. The Government contested that amount.

64. The Court awards the applicant EUR 9,900 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

65. The applicant also claimed EUR 15,251.68 for the costs and expenses incurred before the domestic courts and those incurred before the Court. Specifically, he claimed EUR 6,532.45 in respect of proceedings before the domestic courts, EUR 7,465.66 in respect of proceedings before the Court and EUR 1,253.57 in respect of translation costs.

66. The Government contested those claims.

67. 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 were actually and necessarily incurred and are reasonable as to quantum (see, among many others, *L.B. v. Hungary* [GC], no. 36345/16, § 149, 9 March 2023). In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 3,000 covering costs under all heads, plus any tax that may be chargeable to the applicant.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint concerning the conditions of detention in Varaždin Prison inadmissible and the remainder of the application admissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

3. *Holds* that there has been a violation of Article 3 of the Convention on account of inadequate conditions of detention in Zagreb Prison and Lepoglava State Prison;

4. *Holds* that there has been no violation of Article 3 of the Convention on account of inadequate conditions of detention in Bjelovar Prison;

5. *Holds* that there is no need to give a separate ruling on the remaining complaints raised by the applicant;

6. *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:
      (i) EUR 9,900 (nine thousand nine hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 3,000 (three thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
      (iii) 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;

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

Done in English, and notified in writing on 5 September 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı Registrar	Arnfinn Bårdsen President