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Torture in respect to imprisonment: A Croatian perspective

ABSTRACT: *The discussion of strengthening prisoners' rights is rooted in human rights principles and the recognition of inherent dignity. Historically, torture was widely accepted, but enlightenment ideals led to its condemnation. International efforts and universal legal documents shaped global attitudes towards the prohibition of torture. This comprehensive analysis explores the safeguarding of individuals deprived of liberty, primarily from an international perspective, with a focus on the European Convention on Human Rights and its pivotal Article 3, which explicitly prohibits torture and inhumane or degrading treatment. The examination encompasses material and procedural obligations imposed on states, providing a nuanced understanding of the fundamental rights tied to human dignity and physical integrity. Significantly, the study delves into the jurisprudence of the European Court of Human Rights, emphasising cases involving Croatia and revealing persistent shortcomings in prison conditions.*
KEYWORDS: *torture, imprisonment, jurisprudence of ECtHR, prison conditions, prisoners' rights*

1. Introduction

Should we strengthen prisoners' rights? This question has become a major topic of discussion in the context of human rights and fair punishment. An important maxim is that all prisoners should be treated with respect due to their inherent dignity and values as human beings.[1] Definitions of imprisonment often include only the deprivation of liberty; however, considering the progressive growth of human rights in general, it should also include respect for the protection of other human rights that are guaranteed to prisoners in the same way as other people. In history, prisoners were treated like 'lower humans', and it was commonly thought that they deserved to

1 Basic Principles for the Treatment of Prisoners, 1990.

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be punished and degraded. It took centuries for human rights development to change common opinion. In the first half of the 20th century, the first legal act was drafted, providing a more humane approach to the treatment of those deprived of liberty and emphasising the inherent dignity and equal and inalienable rights of all members of society. Their right to human treatment, which includes the absolute prohibition of torture, should not be diminished but, on the contrary, be equal to those who are free. Although the torture of prisoners has historically been used as a widespread method of punishment, the current situation has changed, and torture has been viewed in a much stricter way with profound consequences. Inhumane treatment and torture, owing to their historical representation, are well known to the general public. It is a commonly accepted term to describe the deliberate infliction of severe pain or suffering on a person for reasons such as punishment, extracting a confession, interrogation for information, or intimidating third parties.[2] Looking at the historical context, one can say that the meaning of torture depends on the society and legal system within which it is defined. Considering the social, political, and economic changes throughout history, it was inevitable for torture to have different connotations at different points in the past.

2. Historical overview

History tells us of torture as far back as we can trace:[3] In the context of law, torture was systematically used in criminal procedures from the beginning of society and was itself universally viewed as a valid legal tool,[4] a moral and justified practice. Its methods date back to ancient Mesopotamia and Egypt. The first record of the use of torture as a means of extracting confessions dates back to the 21st century before Christ with the Sumerian Code of Ur-Nammu. This was the first written code prescribing torture and the situations in which it could be used. The Babylonian Code of Hammurabi, which uses *lex talionis* as its main policy, is commonly known as a very rigorous set of rules. To describe the severity of torture in that period, it is worth mentioning the trial by ordeal,[5] which was considered the 'judgement of God'. Both the above-mentioned historical Codes were led by the theocratic idea of law, which claims authority as interpreting law as the will of the gods and, as such, must be obeyed. Furthermore, the judiciary of Ancient Greece likewise knew and used torture.

2 Rodley, 2002, pp. 467–493.
3 Morgan, 1933, pp. 1–15.
4 Einolf, 2007, p. 102.
5 Trial by ordeal was an ancient judicial practice in which the guilt or innocence of the accused was determined by subjecting them to a painful, or at least an unpleasant, usually dangerous experience.

However, the leading philosophers of the time, Plato[6] and Aristotle,[7] introduced the concept of natural law. In this regard, the theory of natural law attributes to humans a sense of reasoning and a distinction between right and wrong, eventually leading to the introduction of natural justice. Although torture was part of laws, customs, and testimonies, it was mainly reserved for slaves, who were not perceived as human. Because torture was mainly used to obtain a confession, the truth acquired in that way was respected as the only possibility.[8] Although the use of torture was not considered a form of punishment but rather a way of obtaining the truth, as time passed, its use in society soon exceeded its legal limits. Torture was applied in situations where there was no substantial evidence and rapidly expanded its limits to grave crimes and small offences against property. Frequent usage of torture became widely accepted and experienced its greatest resurgence in the period of the Inquisition against heresy, cases of witchcraft, and political crimes, becoming the primary means for obtaining confession. Available data show that many trials performed in the 16th and 17th centuries reveal several tragic verdicts that ended with capital punishment and were reached by extorting the confession using the method of torture.[9]

The Age of Enlightenment introduced a new perspective and brought about many changes. As society began transforming, the renowned authors Voltaire, Rousseau, and Montesquieu developed new ideas regarding modifications to the trial procedure. With that in mind, distinguished Italian criminologist, jurist, and philosopher Cesare Beccaria wrote a book *On Crimes and Punishments*[10] in which he backed the principle of respect for the human rights of the accused, advocated public trials, and opposed torture and the death penalty. He imagines the criminal justice system as preventing crime instead of imposing punishment. Beccaria's book contributed to the abolition of torture by introducing the idea of improving living conditions with the aim of reducing crime. From a historical perspective, we have two points that could be taken as the beginning of modern criminal law: Beccaria's *On Crimes and Punishments* and the enactment of the famous Declaration of the Rights of Man and of the Citizen from 1789 as a response to the French Revolution.

At the beginning of the 19th century, European legislation no longer used torture as a legal means in trial procedures. However, this did not last long. At the beginning of the 20th century, with socialist agendas and ideologies, human and civil rights were put in second place. Consequently, torture again started to be used as an instrument for asserting ideology and revolutionary ideas and was used against 'enemies' of

6 See Kelsen, 1960.
7 See Burns, 1998.
8 More information about natural law can be found in Goldschmidt, 1974, pp. 396–397; Devereux, 2011, pp. 96–120.
9 See more in Wisnewski, 2010; Barnes, 2017.
10 Beccaria, 1872, pp. 11–78.

such an approach.[11] Although torture was implemented and foreseen in law, it was regularly used by secret civil and military forces on political dissidents, spies, and prisoners of war. The individual was subordinate to the political order and 'the higher cause' of the regime. To preserve political order at all costs, all means were permitted, and new methods of torture were introduced.[12] In the period during and after World War II, almost all countries in Europe, America, and Asia had specific kinds of camps where they would imprison and torture 'those who had a different opinion'. At that point in history, international humanitarian organisations began to react to this systematic use of repression. With the enormous devastation and suffering inflicted on civilians by war, new legal documents regarding the protection of human dignity were drafted to remind society of the ethical principles stated in the Declaration of the Rights of Man and of the Citizen.

3. Relevant legal documents

Rapid changes in social and political circumstances resulted in the adoption of the Universal Declaration of Human Rights[13] under the United Nations in 1949. Torture was seriously condemned in Article 5, which stipulates: 'No one shall be subjected to torture or cruel, inhuman, or degrading treatment or punishment'. Following the post-war period and recovery from the devastation of war, several acts for the protection of human and civil rights were adopted at the initiative of the Council of Europe. The most prominent document that has continued in force until today is the European Convention on Human Rights,[14] which was adopted in Rome in 1950. Similar to the previous Convention, this Convention contains provisions on the prohibition of torture with the same expressions.[15] The United Nations General Assembly then adopted The International Covenant on Civil and Political Rights in 1966.[16] This document recognised the prohibition of torture in Article 7[17] as a fundamental value and right inherent to every person. Apart from the United Nations, whose aim is

11 "Enemies of the revolution" in the Soviet Union and China and "enemies of the political order" in fascist Germany and other nation of the Axis power.
12 E.g. sites for mass torture and execution instroduced in Nazi concentration camps and Stalin's gulags.
13 United Nations, 1948.
14 Council of Europe, 1950.
15 Council of Europe, 1950, Art. 3: No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.
16 United Nations, 1966.
17 '*No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.*'

the maintenance of international peace and security and the promotion of the well-being of the people of the world, international non-governmental organisations for human rights protection have contributed to condemning torture as an unjustified and unacceptable way of conduct in the current level of civilisation. In 1975, Amnesty International introduced a new Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment.[18] As stipulated in the preamble, its main purpose is 'recognizing that rights derive from the inherent dignity of the human person…' It is the first document that not only prohibits torture on an abstract level but also provides a definition, stated in Article 1 as follows: 'For the purposes of this Convention, the term 'torture' means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions'. Furthermore, this Convention became an integral part of the national legislation of all States Parties, which are obliged[19] to take measures to prevent any act of torture in the territory under their jurisdiction and are required to extradite or prosecute every person suspected of torture in the territory under their jurisdiction, regardless of where the alleged torture took place.[20]

In response to global expectations, the national legislation of numerous states has adjusted to adhere to international human rights law, thereby reinforcing the prohibition of torture. In the Croatian legal system, the prohibition of torture is a constitutional category. The Constitution of the Republic of Croatia,[21] in its Article 17, among other constitutionally guaranteed freedoms and rights, mentions '*prohibition of torture, cruel or unusual treatment or punishment*'. The importance of human dignity in the Croatian legal order is shown through the fact that the prohibition of torture is, *inter alia*,[22] absolute and cannot be limited, even in circumstances of

18 United Nations, 1984.

19 Office of the United Nations High Commissioner for Human Rights, 2001.

20 The UN established the Comittee against Torture in 2002, a body of independent human rights experts that monitor implementation of the Convention against Torture by its States Parties. The monitoring is aimed at encouraging chanes, public condemnation following only if the changes have not been implemented.

21 Constitution of the Republic of Croatia, Official Gazette no. 56/90, 135/97, 08/98, 113/00, 124/00, 28/01, 41/01, 55/01, 76/10, 85/10, 05/14.

22 The same applies to right to life, cruel or humiliating treatment or punishment, the principle of legality of punishable acts and punishments and freedom of thought, conscience and religion.

immediate danger to the State.[23] The positive obligation of a State to forbid torture by law and conduct a proper investigation if torture occurs is recognised in the Croatian Criminal Code[24] under the specified crime of *Torture and other cruel, inhuman or degrading treatment or punishment.* Article 104 defines it as an act of a public official or another person who, at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity, inflicts on another severe pain or suffering, whether physical or mental, for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, shall be punished by imprisonment of from one to ten years.[25]

4. Protection of the persons deprived of their liberty

As stated *supra*, the European Convention on Human Rights is a crucial international legal document. It contains just one provision about torture in Article 3: '*Prohibition of torture: No one shall be subjected to torture or to inhuman or degrading treatment or punishment*', under which three types of forbidden behaviour are listed: torture, inhumane treatment or punishment, and degrading treatment or punishment. The protection secured by Article 3 also extends to persons deprived of their liberty in a broad sense—those on remand, in custody, or detained in psychiatric institutions.[26] All State Parties have obligations arising from Convention provisions. These should be differentiated as material and procedural obligations of the state related to rights in Article 3. Material obligations include negative obligations understood as the prohibition of subjecting persons under state jurisdiction to torture or inhuman or degrading treatment or punishment, but also of not subjecting prisoners to conditions that would cause the violation of Article 3. Furthermore, positive obligations imply taking measures to prevent persons under state jurisdiction from being subjected to treatment contrary to guaranteed rights. Besides material obligations, the theory recognises procedural obligations, which entail a thorough official investigation of an alleged violation of rights under Article 3. Additionally, the Court may examine the complaint of failure to investigate even when it has already found that there is no substantive violation of Article 3 and may even accept the complaint in such

23 Brnetić, 2014, pp. 178–186.
24 Criminal Code of Republic of Croatia, Official Gazette no. 125/11, 144712, 56/15, 61/15, 101/17, 118/18, 126/19, 84/21.
25 Article 104 of the Criminal Code of Republic of Croatia, Official Gazette no. 125/11, 144712, 56/15, 61/15, 101/17, 118/18, 126/19, 84/21.
26 Akandji-Kombe, 2007, p. 21.

circumstances.[27] Such investigations aim to identify and punish those responsible in cases where there is reasonable suspicion that state officials have acted contrary to ensured rights towards persons deprived of their liberty. Article 3 protects the right to human dignity, as well as physical and mental integrity. A deeper analysis reveals that it promotes one of the fundamental values of democratic societies. It includes protection of the mental and physical integrity of the individual but also prevents states from subjecting individuals to mistreatment. It is an unconditional norm of international law—the so-called *ius cogens* –and an absolute and nonderogable human right. There are no restrictions on or derogations of the prohibition of torture, even in the most difficult circumstances (such as fighting terrorism and organised crime). When discussing fundamental human rights, it is clear that the same rights apply to those who are deprived of freedom. An important postulation for regulating the rights of prisoners at the international legal level was made more than 40 years ago in the case *Golder v. UK*.[28] The Court held that all convention rights belonged to prisoners, and they could be limited on the same grounds as for free people.

Torture occurs when someone deliberately causes serious and cruel suffering, physically or mentally, to another person for various reasons, such as punishment, intimidation, or to obtain information from them. Inhumane treatment or punishment is the treatment that causes intense physical or mental suffering[29] and degrading treatment or punishment that is extremely humiliating and undignified.[30] Regarding the definition of torture on the European level, it must be noted that the European Convention on Human Rights does not define torture as a specific term. Instead, the Court developed four elements of its definition through case law. First, the pain and suffering must be of a particular intensity and cruelty to constitute torture, causing severe mental or physical pain or suffering. In practice, a special stigma is placed on intentional inhumane treatment that causes very severe and cruel suffering (*Selmouni v. France*[31]). The second important element is intention, which implies the deliberate infliction of pain (*Aksoy v. Turkey*[32]). If the treatment reaches a minimum level of cruelty, it will be classified as inhuman or degrading, although not 'intentional' enough to be considered torture. Receiving information

27 Akandji-Kombe, 2007, p. 34.
28 Golder v. the United Kingdom, 1975.
29 E.g. serious physical assault, psychological interrogation, cruel or barbaric detention conditions or restraints, serious physical or psychological abuse in a health or care setting, and threatening to torture someone, if the threat is real and immediate.
30 Whether treatment reaches a level that can be defined as degrading depends on a number of factors. These include the duration of the treatment, its physical or mental effects and the sex, age, vulnerability and health of the victim. This concept is based on the principle of dignity – the innate value of all human beings.
31 Selmouni v. France, 1999.
32 Aksoy v. Turkey, 1996.

from that person or from a third party, extortion of statements, punishment for an act committed or suspected by this or a third person, intimidation, or coercion of this or a third person, or another reason based on any form of discrimination will be categorised as serious enough to be considered the third element (*Denizci v. Cyprus*[33]). Finally, to constitute an act of torture, it must be performed by a person acting in an official capacity.

It must be pointed out not only that Croatia strongly condemns any form of torture but also that as a State Party to all conventions mentioned above, it has a great responsibility to subordinate itself to the prescribed regulation, or else it could be brought in front of the European Court of Human Rights for not adopting the decisions delivered by the Court. Regarding Article 3, in the context of the human rights of people deprived of liberty, Croatia had been decided against in several cases at the ECtHR. The aforementioned case law is analysed below.

5. ECtHR jurisprudence

The first case in which the Republic of Croatia was convicted for the first time in the context of Article 3 related to the appropriate accommodation of prisoners was *Cenbauer v. Croatia*[34] in 2006. The case in question involved a situation in which a prisoner spent approximately 2 years and 3 months in a cell with less than 4 m^2 of space. There was no running water, and access to the common toilet was not possible during the night or when the prisoner was locked in the cell (they urinated in bottles). He was in the cell from 19:00 to 07:00 and for several hours during the day. Cells were dirty, with damp walls, and the overall hygienic conditions were poor. Only one year later, Croatia faced another judgement, *Štitić v. Croatia*,[35] in which the Court stated that the prisoner was locked in a humid cell without daylight for about 20 hours a day for 15 months. The very same year, in 2007, Croatia lost another case, *Testa v. Croatia*.[36] The prisoner suffered from chronic hepatitis C and was confined in an overcrowded cell with 2.4 m^2 of personal space and an old and partially broken bed. However, the environment was unsanitary and unsafe. The Court concluded that the lack of necessary medical care and assistance, combined with the prison conditions that the applicant had to endure for more than two years, reduced human dignity and aroused feelings of anxiety and subordination that could humiliate and disparage her. In addition, the Court stressed that if state authorities decide to place a seriously ill person in prison

33 Denizci and Others v. Cyprus, 2001.
34 Cenbauer v. Croatia, 2006.
35 Štitić v. Croatia, 2008.
36 Testa v. Croatia, 2007.

and keep him there, they must show special care in guaranteeing conditions that correspond to the special needs of that person resulting from his incapacity.

Furthermore, in 2008 there occurred another case, *Pilčić v. Croatia*.[37] The prisoner suffered from kidney stones, from which he endured considerable intermittent pain for a prolonged period. The penitentiary authorities failed to oversee the illness or implement the suggested procedures. The Court considered the period during which the prisoner was exposed to ill-treatment[38] when assessing whether any treatment of the prisoner led to a violation of Article 3 of the ECHR. After these judgements, Croatia had a respite until 2012, when the case *Longin v. Croatia*[39] was judged. The prisoner had asthma and allergies and was confined in a 16 m^2 room with seven other prisoners. The sanitary unit, together with the toilet, was located in the same room as their dining table. He could shower only once a week, was constantly locked in a room, and was only allowed to go outside for 2 hours a day. Two years later, in *Lonić v. Croatia,*[40] from 2014, the prisoner had an area of less than 3 m^2. Each cell had eight beds and cabinets. He spent 22 h per day in the cell and urinated in bottles for 11 months. The lack of personal space was not compensated for by freedom of movement during the day.

The case that had the greatest impact, not only on Croatia but on all of the signatory States, was *Muršić v. Croatia,*[41] delivered in 2016**.** The case concerned a prisoner who was held in an overcrowded cell. The rooms were dirty and poorly maintained. The sanitary unit was in the same room as the dining table, and the patient had no access to hot water for showering. He had less than 3 m^2 of personal space at his disposal for 15 days. In this noted case, the Court found a violation of Article 3 and concluded that if the personal space falls below 3 m^2, the deficiency is so serious that there is a strong presumption of a violation of Article 3. The burden of proof lies with the state. This indicates that there are factors that can compensate for this deficiency. The Court also highlighted three criteria for defending this assumption: First, the reduction of personal space must be short, occasional, and minimal. Second, it must be accompanied by sufficient freedom of movement and activity outside the cell. Finally, the prisoner must be placed in an institution that is considered an appropriate institution for prison, and there are no other aggravating circumstances. This case holds significant prominence and importance as a precedent, influencing not only the Croatian judicial system but also carrying implications for all States Parties to the ECtHR. After such a significant case and judgement, Croatia was again convicted in 2019 in the case *Ulemek v. Croatia.*[42] The

37 Pilčić v. Croatia, 2008.
38 In that regard, the state has the obligation to prevent ill-treatment; see Hassanová, 2023, p. 53.
39 Longin v. Croatia, 2013.
40 Lonić v. Croatia, 2015.
41 Muršić v. Croatia, 2016.
42 Ulemek v. Croatia, 2020.

prisoner was placed in an overcrowded cell with 7 other people. The cell had a 1.57 m^2 big toilet. He was allowed to spend just one hour outside the cell, and the rest of the time was locked in the cell. He was not entitled to adequate hygiene conditions, such as the possibility of a daily shower, and the cells had limited access to daylight. The last case concerning the relevant topic was from 2022, *Huber v. Croatia*.[43] In this case, the prisoner claimed that the cells were overcrowded. There was a lack of adequate hygienic facilities, privacy for the toilet, and fresh air and no restricted access to showers. To date, this is the last case in which Croatia has been found guilty concerning the inadequate conditions of detention.

6. Challenges in Croatia

Considering the number of cases in which Croatia lost in front of the European Court of Human Rights, it can be easily concluded that there are systematic deficiencies in the Croatian prison system, mostly related to a serious lack of appropriate private space for each prisoner and a lack of proper hygienic conditions. In addition to cases in which the Court stated the mentioned minimum multiple times, the European Prison Rules set up by the Council of Europe also share the same standard in Rule 18.[44] These Rules set minimal standards for the treatment of prisoners and are widely accepted even though they are not legally binding. According to certain indicators, the Croatian prison system has experienced some progress compared to the period before Croatia entered the EU. For example, poor prison conditions are no longer the subject of lawsuits at the European Court of Human Rights. Despite the improvement in living conditions in prisons, hygienic conditions, untidy buildings, insufficient health care for prisoners, and the inability to reduce the risk of criminal infections, there are still areas that cry out for positive changes.[45]

Looking at the statistics, the Croatian Ombudsman, in her report, pointed out the existing problems and shortcomings of the prison system. Owing to the spread of COVID-19 and the devastating earthquakes that struck Croatia in 2020, the Ombudsman analysed the conditions in prisons and warned about some deficiencies.[46] On the subject of COVID-19 and already present low hygienic standards, the prison administration had the difficult task of balancing prisoners' rights on the one hand and protecting the whole prison population on the other. At the time, certain epidemiological measures were implemented, and as the first wave of the pandemic weakened,

43 Huber v. Croatia, 2022.
44 European Prison Rules, 2006.
45 Getoš Kalac, Bezić, Šprem, 2021, pp. 106–107.
46 Croatian Ombudsman Report, 2020.

prisoners started to complain.[47] The accommodation conditions were still inadequate, and one prisoner complained that he was accommodated at the Diagnostic Centre in Zagreb in a room of 21 m^2, of which 1.57 m^2 of space was for sanitary facilities, with six other prisoners. Additionally, prisoners with chronic diseases also complained. As the Ombudsman explains, one prisoner, who suffered from an extensive form of ulcerative colitis, stated that he was placed in a room with ten others, with whom he also shared a sanitary facility. This led to the appearance of symptoms of the disease and caused a danger to his health. Although after some time, he was moved to a room with a smaller number of prisoners, it is unacceptable that he was accommodated in that way at all, as it could be a humiliating treatment and a possible violation of Article 3 of the ECHR.

In addition to the pandemic, the prison system has experienced earthquakes. While in the earthquake that hit in March in Zagreb, only the building of the Prison Hospital Zagreb was damaged and suffered minor material damage, a devastating earthquake in Sisak-Moslavina County significantly damaged the Prison in Sisak and the Glina Penitentiary. Owing to the resulting damage, the Prison in Sisak remains closed, and all prisoners have been transferred. In Glina, buildings were severely damaged, and 82 prisoners were transferred to other penal institutions. In addition, the prison in Karlovac was damaged. Under these extraordinary circumstances and the need to act immediately, prisoners' rights were placed second. In a report from 2021[48] regarding accommodation conditions in prisons, the Ombudsman stated that the overcrowding[49] of penal institutions and accommodation conditions which do not correspond to health, hygiene, spatial requirements, and climatic conditions are some of the most common reasons for complaints over the years. Furthermore, the Ombudsman underlined that the new Law concerning this matter does not prescribe a minimum personal space standard of 4 m^2, which additionally affects the accommodation conditions of persons deprived of liberty.

Likewise, the decision of the Constitutional Court in 2009[50] established that prisoners' constitutional right to human treatment and respect for dignity was

47 Some of the complaints were as follows: '*…there are sixty to seventy people in the building, and only three showers work, and it is very crowded, so it is difficult to maintain hygiene, the supplies we receive, that is, soap, shampoo, calodont, toilet paper are distributed every three months, which is impossible to, with a couple of packets of shampoo, one soap and four packets of toilet paper, you can maintain hygiene for three months…*'

48 Croatian Ombudsman Report, 2021.

49 Prisoners complaint: '*…I am currently in a cell measuring approx. 6x3 m, that's about 18 m^2, i.e. there are 6 of us person. Until recently, there were 5 of us and that was too much, and now a sixth bed has been added and it's one person staying in such a space is unbearable. … besides the six of us, there are 3 more bunk beds, a large dining table, a small table, a table for the TV receiver, and 5 chairs that take up 10m^2… Please you as a human being to imagine what its like in the morning when we all get up and each of us has to leave to the toilet and perform human needs. It takes an hour for the last one to come. So you please help me explain how to avoid bigotry in that little room…*'

50 Decision of the Constitutional Court of Croatia, U-III-4182/2008.

violated because the Government had been ordered to adapt the capacity of the Zagreb Prison within five years but still failed to do so. Furthermore, inadequate accommodation conditions in the Centre for Diagnostics in Zagreb were detected according to another decision of the Constitutional Court in 2020.[51] It stated that the applicant spent twenty-two hours a day in the cell in which he occasionally had less than 4m^2 of personal space, that the toilet was also located in that room, that there was no special ventilation for the toilet, and that food was served and consumed in the same room. According to the ECtHR, these conditions have been established as inhuman and degrading treatments.

When discussing the Croatian national legal system, continuous violations come to light of the right to adequate conditions in prison that the Committee for the Protection of Torture and Inhumane or Degrading Treatment or Punishment (CPT)[52] often warns about. The fact that the CPT, in several of its reports, highlighted that, for the first time since the CPT started visiting Croatia in 1998, there were evident difficulties in cooperation is alarming. Regarding the situation of appropriate accommodation for prisoners, they stated that it is crucial to use a common measuring rod when determining the minimum amount of living space that should be offered to each prisoner and to determine with precision the actual level of overcrowding in each prison cell, in each prison and in the prison system as a whole.[53] Referring to ECtHR jurisprudence, the report again emphasises the importance of drawing a line between 'desirable' standards on the one hand and 'undesirable' standards on the other. Additionally, for over 30 years (since the 1990s), the Committee has recommended minimum standards for personal living space in prisons, establishing 6m^2 in a single cell and 4m^2 in shared cells.[54] Respecting the CPT's recommendation, Croatia adopted new measures to improve living conditions[55] in prisons and prevent future violations of Article 3. In the last report from 2018, CPT was satisfied with the progress;

51 Decision of the Constitutional Court of Croatia, U-III-1192/2018.

52 CPT is the body set up to monitor the implementation of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

53 31st General Report of the European Committee for the Prevention of Torture, 2021, p. 27.

54 Council of Europe, 2015.

55 Report to the Croatian Government on the visit to Croatia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, 2017, p. 25. In that regard, for example, Osijek County Prison offered satisfactory material conditions of detention in terms of state of repair, hygiene, access to natural light and ventilation in most of its cells and sanitary annexes, had installed new PVC windows, and the courtyards in use were equipped. At Split County Prison, the situation was a bit different: 33 of the 49 cells in the five modules had been renovated since March 2016 and offered good material conditions of detention, but the remaining 16 unrenovated cells were less favorable; walls were crumbling, the sanitary facilities displayed signs of wear and tear, and the in-cell hygienic conditions left much to be desired. In Zagreb County Prisons the cells were recently renovated, the walls had been painted, furniture replaced and sanitary annexes fully partitioned.

however, serious levels of overcrowding were still observed. In that regard, the Committee recommended that the Croatian authorities ensure that the minimum requirement of 4 m^2 per prisoner in multiple-occupancy cells be respected and that this standard, which is also enshrined in national legislation, is attained.

The law in force regulating this matter at the time was the Law on the Execution of Prison Sentences of 1999.[56] It stated: There must be at least 4 m^2 and 10 m^3 of space in the dormitory for each prisoner.[57] At the time, prisoners were filing many complaints regarding the private space they had at their disposal. Because the Croatian legal system failed to protect their rights, some of the claims ended up before the ECtHR. Bearing in mind the number of violations Croatia was sentenced for, there were two options: to secure the conditions prescribed by the law or to change the legislature. The latter appears to be easier to achieve. With the goal of not receiving any more convictions at the European level, the Croatian Parliament passed a new Law on the Execution of Prison Sentences.[58] According to the legislator, the solution was simply to erase the given norm. Therefore, in the new Law, there was no explicitly stipulated norm regarding the number of square meters of floor space that each prisoner should have while in the cell, although the ECtHR determined that the personal space of an inmate should not fall below 3m^2.[59] This approach of the legislator could, in the future, result in serious remarks from the European Court, reminding us of the binding character of the Court's decisions. It is understandable that the State, on the subject of this question, does not want to guarantee something that cannot be provided and expose itself to possible lawsuits. On the other hand, the fact that the State took the line of least resistance in this situation raises an inevitable question: is it the best solution to simply erase standards we cannot comply with at the moment or should the State try to find a way to meet those same minimum standards, as in this case, the 4m^2 of floor space in shared cells stated by ECtHR?

7. Concluding Remarks

According to Zagorec,[60] the main purpose of implementing each of the ECtHR judgements is to correct the violation of that right in relation to the specific person who is the

56 Law on Execution of Prison Sentences, Official Gazette no. 128/99, 55/00, 59/00, 129/00, 59/01, 67/01, 11/02, 76/07, 27/08, 83/09, 18/11, 48/11, 56/12, 150/13, 98/19, 14/21.

57 Article 73 of Law on Execution of Prison Sentences Official Gazette no. 128/99, 55/00, 59/00, 129/00, 59/01, 67/01, 11/02, 76/07, 27/08, 83/09, 18/11, 48/11, 56/12, 150/13, 98/19, 14/21.

58 Law on Execution of Prison Sentences, Official Gazette no. 128/99, 55/00, 59/00, 129/00, 59/01, 67/01, 11/02, 76/07, 27/08, 83/09, 18/11, 48/11, 56/12, 150/13, 98/19, 14/21.

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60 Zagorec, 2018, p. 432.

applicant (individual enforcement measures) but also to prevent similar violations in the future (general enforcement measures). For each State party of the Convention, the legislator is obliged to harmonise the national regulations with the requirements of the Convention, as interpreted by the Court. This *modus operandi* ensures the protection of prisoners in appropriate accommodations through the national legal system. State authorities must adopt effective measures to ensure that a person deprived of liberty resides in conditions that ensure respect for human dignity.

For the Croatian legal system, the case *Muršić v. Croatia* is the most important. In this case, the fundamental principles regarding inadequate conditions of imprisonment were established. The Court introduced the concept of a strong presumption of violation of Article 3 when the personal space available to the prisoner falls below 3m^2 of the floor surface. Considering this concept, the aforementioned presumption can only be rebutted if certain conditions are cumulatively met. Even though the Court has emphasised on many occasions that under Article 3 it cannot determine a specific number of square meters that should be allocated to a prisoner in order to comply with the Convention, in *Muršić v. Croatia*, the Court took the position that 4 m^2 of personal accommodation for prisoners should be a desirable standard that contracting states should fulfil. Some of the determinants that can warn of the (im) purposefulness of the prison system are the following: the number of prisons and their spatial distribution, accommodation capacity in relation to the number of prisoners, rational management of material and human resources, treatment aspects, security in prison, and the humane conditions of serving a prison sentence.[61] Conditions in prisons are certainly relevant factors that affect the quality of a prison system as a whole but also prevent possible convictions of the State before the ECtHR. Prison sentences should be carried out in a way that guarantees the prisoners respect of their basic human rights and human dignity, as expressly proclaimed by the Convention, following the rule of law and legal certainty. From the jurisprudence of the European Court, it is important to note that it directly reflects on national legislation but also on the courts. On the one hand, the Constitutional Court of the Republic of Croatia tried to adopt the standards set by the Court, but the decisions also stated that state authorities are obliged to adopt and implement effective measures to ensure that a person deprived of his liberty resides in conditions that ensure respect for prisoners' human dignity. However, it is evident that there are still repeated violations of the fundamental right to a proper accommodation of a prisoner.[62] In the end, we are left to wonder whether the continuous violations of prisoners' rights should be observed through the perspective of a flawed legislature, the negligence of authorities, or something yet to be discovered.

61 Getoš Kalac, Bezić, Šprem, 2021, p. 88.
62 Zagorec, 20018, p. 431.

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