



## BigoviÄž v Montenegro

[2019] ECHR 48343/16

**Country:**

**Region:** Europe

**Year:** 2019

**Court:** European Court of Human Rights

**Health Topics:** Diet and nutrition, Health care and health services, Prisons

**Human Rights:** Freedom from torture and cruel, inhuman or degrading treatment, Right to liberty and security of person, Right to privacy

### Facts

### Decision and Reasoning

#### HEADNOTE

Ljubo BigoviÄž was held in remand prison in Montenegro<sup>3</sup> from 2006 until 2016 while on trial for aggravated murder and other offenses. He applied for release in 2014 due to a lack of medical care for his gastro-intestinal, eye, psychiatric, and leg issues and poor detention conditions. The European Court of Human Rights determined that the medical care BigoviÄž received was adequate and did not amount to a breach of Article 3 of Convention for the Protection of Human Rights and Fundamental Freedoms, but that the detention conditions he endured from February 2006 until August 2009 were in violation of Article 3.

#### FACTUAL AND PROCEDURAL BACKGROUND

The applicant, Ljubo BigoviÄž, was arrested in connection with the murder of a high-ranking police officer in February 2006, and was charged with taking part in a criminal enterprise, attempted extortion, and aiding and abetting aggravated murder. The High Court issued a detention order for BigoviÄž given the severity of the charges and the fear he may abscond. As the trial made its way through the High Court, Court of Appeal, and Supreme Court, the detention order was extended, and the applicant remained in remand prison from February 2006 until February 2016. In 2013, BigoviÄž was diagnosed with ulcerative colitis (an inflammatory bowel disease), for which he was prescribed a special diet and underwent ongoing treatment with Vedolizumab (âœVDZâœ). He underwent eye surgery in 2014 after being diagnosed with complicated cataracts, proliferative retinopathy, myopia, and optic atrophy in a private clinic. Prior to his detention, BigoviÄž suffered several injuries to both his legs for which doctors recommended in 2015 surgery and off-site rehabilitative treatment, which was approved by the High Court.

In 2014, the applicant applied for release to the High Court on the basis of a lack of medical care and poor detention conditions. He claimed that he required a special diet and medical treatment for ulcerative colitis. The Court of Appeal dismissed BigoviÄž's application in January 2015 based on the detention facility's evidence that BigoviÄž had been provided adequate medical care, including visits to public health institutions and examinations by specialists outside the prison where necessary, and that his family was permitted to provide him with a specialized diet while in prison. In May 2015, Bigovic launched a constitutional appeal, stating that the detention conditions and medical care were inadequate. The Constitutional Court dismissed Bigovic's application in part by stating that he was provided adequate care and diet and that his health had been continually monitored and he reasonable access to timely medical care.

In his application to the European Court of Human Rights, the applicant claimed that the conditions of detention and lack of adequate medical care violated Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms (âœthe Conventionâœ). The applicant claimed that the cells were overcrowded, the toilets were only partially partitioned, and that he lacked running water and daily exercise. Doctors stated that BigoviÄž's gastro-intestinal issues were exacerbated by inadequate hygienic conditions. In terms of the inadequacy of his medical care, BigoviÄž claimed that he paid for the medication to treat his ulcerative colitis, fearing that there was a high risk of infection if surgery was performed to remove his colon. He further alleged that the prison delayed his required eye surgery, leading to the loss of sight in his left eye. BigoviÄž also

claimed he never received a required endoprosthesis in his leg nor continued psychiatric examinations for depression connected to his ongoing health issues. Furthermore, all medical examinations were conducted in the presence of prison guards, violating his confidentiality.

## RELEVANT LEGAL PROVISIONS

Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms – “Prohibition of Torture

– “No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

On the issue of the detention conditions, the Court held that the conditions Bigovi was subjected to between February 2006 and August 2009 violated Article 3 of the Convention. The Court stated that detention conditions cannot subject prisoners to distress or hardship beyond what is necessary and that their health and well-being must be adequately observed. The Court accepted that from 2009 onward, conditions at the prison had improved; however, from February 2006 to August 2009, the Court found that the prison was overcrowded, sanitary areas were only partially partitioned, and inmates spent 23 hours per day in their cells, falling short of the requirements of Article 3.

The Court further held that there was no violation of Article 3 as the state had provided an adequate level of medical care to the applicant. The Court recognized a state’s obligation to provide medical assistance to those in their care, including prisoners; however, the Court also recognized that medical care in prison will likely be of an inferior quality to that offered to the general public. To determine if the lack of medical care received by an inmate resulted in a violation of Article 3, the Court was required to make an overall assessment of the care received. The Court accepted that Bigovi obtained care both in the prison and at numerous hospitals and clinics throughout Montenegro, the state paid for some of his VDZ medications even though it was not obligated to, operations on both his eye and knee occurred within a month of examination of these issues and Bigovi was permitted to receive extended rehabilitative treatment for his leg. Although the prison could not provide the medically-prescribed diet for his ulcerative colitis, it did allow Bigovi’s family to provide him meals. Finally, while the Court recognized the importance of confidentiality, it observed that medical facilities may not have the appropriate security measures when handling prisoners, rendering the necessity for prison guards to accompany Bigovi to his medical examinations and treatments, especially since the applicant had been sentenced to a serious offense.

## Decision Excerpts

“The Court reiterates that Article 3 requires the State to ensure that prisoners are detained in conditions which are compatible with respect for human dignity, that the manner and method of the execution of the measure do not subject them to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, their health and well-being are adequately secured” (Para 142)

“In particular, Article 3 of the Convention imposes an obligation on the State to protect the physical well-being of persons deprived of their liberty, for example by providing them with the requisite medical assistance. There may be no derogation from this obligation.

“The Court accepts that the medical assistance available in prison hospitals may not always be at the same level as that offered by the best medical institutions for the general public. Nevertheless, the State must ensure that the health and well-being of detainees are adequately secured” (Paras 164-165)

“In the Court’s further examination of the applicant’s complaint based on the lack of adequate medical care, the Court places emphasis on the need to refrain from examining individual aspects alone and in isolation from the entire medical assistance provided to the applicant regularly and over the years. In other words, the Court will adopt an overall assessment in its examination of whether the minimum level of severity has been attained within the meaning of Article 3 of the Convention.” (Para 168)

“The Court notes at the outset that it is mindful of the importance of medical confidentiality, which should not be encroached upon, unless it is strictly necessary in the specific circumstances of a case, as distress may certainly be caused by the presence of prison officers during hospital visits. However, the Court acknowledges that there might be situations where a prisoner has to be taken to a medical facility outside prison to receive treatment which the prison itself does not or cannot provide. Such situations may inevitably entail a risk of prisoners absconding or posing a danger either to themselves or to someone else. The Court is also mindful of the fact that medical staff in ordinary public hospitals cannot be expected to have the same level of preparedness and training as prison officers to deal with possible risks posed by prisoners’ unpredictable or violent behavior. The State authorities must be particularly vigilant when they have sufficient prior knowledge about the possible danger the prisoner might pose, in particular those, like the applicant, who have been convicted of the most serious types of offences, like aggravated murder” (Para 172)

