



Stojanovic v. Serbia

Application No. 34425/04

Country: Serbia

Region: Europe

Year: 2009

Court: European Court of Human Rights European Court of Human Rights

Health Topics: Health care and health services, Health systems and financing, Poverty, Prisons

Human Rights: Right to privacy, Right to social security

Facts

The applicant is a 53 year-old prisoner in Serbia who complains of the refusal of the State to provide free dentures and of interference with his correspondence by prison authorities.

The applicant suffered from paradontosis which caused the loss of teeth. On February 13, 2004 the applicant was examined by the prison dentist and was diagnosed as toothless. On March 5, 2004, the prison dentist recommended that the applicant be supplied with dentures. In May of 2004, the applicant wrote to the Ministry of Health to request dentures and was subsequently informed that convicted persons are required to contact the Ministry of Justice to exercise their rights. The applicant was notified that under national law, an insured person is required to contribute 60% to the cost of acquiring dentures. At some point in 2004, the applicant was advised by prison authorities that he would need to pay 10,000 dinars (approximately 110 euros) towards the cost of the dentures. Although the applicant requested that he be allowed to pay this amount in installments from his prison salary, that plan was not accepted and he was not supplied with dentures. The applicant subsequently suffered from a loss of appetite and anxiety. He was unable to consume solid food, including meats and fruits. Although the prison provided him with extra portions of soft bread at meals, the applicant's health suffered. On two occasions (one in 2004 and one in 2005), the applicant fainted and suffered injuries to the head and face from his falls. In June 2006, the applicant again requested that he be permitted to pay for dentures using monthly installments. On June 25, 2007, the applicant was provided with dentures free of charge after the prison authority affirmed that this was for humanitarian reasons only, as nothing in domestic law required the authorities to provide the dentures.

Throughout the process of seeking dentures, the applicant had correspondence with multiple agencies. This mail was processed through the prison administration where it was opened and stamped under the standard practices and the applicable prison regulations.

The prisoner complains about the refusal of the State to provide free dentures and also of the interference with his correspondence. Individual complaints are permitted under Article 34 of the European Convention on Human Rights (the "Convention"; at the date of application, the Convention for the Protection of Human Rights and Fundamental Freedoms). The case was initiated by application in 2004 and the Court communicated the complaints to the Serbian Government in September of 2005. The failure to provide dentures was communicated to the Serbian Government under Article 3 (prohibition of torture) and Article 8 (right to respect for private and family life) of the Convention. The complaint regarding the interference with correspondence was communicated under Article 8 (right to respect for private and family life). Under Article 29 Â§ 3 of the Convention, the Court decided that the merits of the case would be decided together with the admissibility of the complaints.

Decision and Reasoning

With regards to the failure to provide dentures, the Court held that this part of the application was struck out of the case under Article 37 Â§ 1 (b) of the Convention. This Article of the Convention provides that the Court may strike an application where the circumstances demonstrate that the matter has been resolved. In determining whether that provision is applicable, the Court must decide: (1) "whether the circumstances complained of directly by the applicant still obtain"; and (2) "whether the effects of a possible violation of the Convention and/or of Protocol No. 12 have been redressed." The Court reasoned that the applicant, at the time of the proceeding, had been provided with dentures free of charge and that there was no evidence that he suffered remaining health problems associated with the failure to receive the dentures at an earlier date. Therefore, this part of the application was struck.

In a partly dissenting opinion, Judge Zagrebelsky emphasized that the applicant suffered from the refusal of the authorities to provide dentures for over three years. The opinion expressed a deep concern about this precedent established by the majority opinion in using Article 37 to consider a matter resolved and to strike a complaint under Article 3 of the Convention when the applicant suffered for a considerable period before the matter was resolved. In this case, Judge Zagrebelsky explains that part of the violation was the Government's inaction for over three years and that in that regard no redress has been granted with respect of the violation complained of.

With regards to the interference with the applicant's correspondence, the Court held that that the practice of the prison authority was in violation of Article 8 because the practice violated Serbia's constitution and thus was not in accordance with the law.

Decision Excerpts

80. The Court reiterates that, under Article 37 §1 (b), it may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to the conclusion that the matter has been resolved. In order to ascertain whether that provision applies to the present case, the Court must answer two questions: first, whether the circumstances complained of directly by the applicant still obtain; and, secondly, whether the effects of a possible violation of the Convention and/or Protocol No. 12 have been redressed.

80. The Court notes that the applicant has been provided with dentures free of charge on 25 June 2007. Moreover, there is no indication that he has suffered any related health problems thereafter. Nor is there any medical evidence that he had been starved or otherwise unable to receive sufficient sustenance before the said date. The matter giving rise to the applicant's complaint can therefore now be considered to have been resolved within the meaning of Article 37 § 1 (b).

Partly dissenting opinion of Judge Zagrebelsky: I am unable to see how it can be said that the issue of the case has been resolved by the sole fact that a possible violation of Article 3 has finally ended and am deeply worried by a judgment that sets such a precedent in the Court's Article 3 case-law. Moreover, one can easily conceive of possible developments and applications of this new precedent, capable of spreading across a broader range of Convention violations such as serious violations of Article 3, or of Article 5 and so forth.