



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

SECOND SECTION

CASE OF SZÉL v. HUNGARY

(Application no. 30221/06)

JUDGMENT

STRASBOURG

7 June 2011

FINAL

07/09/2011

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Szél v. Hungary,

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

Françoise Tulkens, *President*,

David Thór Björgvinsson,

Dragoljub Popović,

Giorgio Malinverni,

András Sajó,

Guido Raimondi,

Paulo Pinto de Albuquerque, *judges*,

and Stanley Naismith, *Section Registrar*,

Having deliberated in private on 17 May 2011,

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

PROCEDURE

1. The case originated in an application (no. 30221/06) against the Republic of Hungary lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Hungarian national, Mr László Szél (“the applicant”), on 23 May 2006.

2. The applicant was represented by Mr A. Cech, a lawyer practising in Budapest. The Hungarian Government (“the Government”) were represented by Mr L. Höltzl, Agent, Ministry of Public Administration and Justice.

3. The applicant alleged, in particular, that his detention in overcrowded prison cells amounted to inhuman and degrading treatment in breach of Article 3 of the Convention.

4. On 18 November 2010 the President of the Second Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1965 and lives in Budapest.

6. Detained at Unit II of the Budapest Correctional Facility from 9 September 2003 until 30 May 2005, the applicant was finally convicted of

aggravated murder and sentenced to fifteen years of imprisonment on 20 April 2006 (case no. 1.Bf.931/2005/33).

7. Subsequently he has been detained at Budapest Prison. At this prison, he has spent altogether over 21 months in various cells of 8.3 m² ground surface (accommodating three inmates, i.e. 2.76 m² per person), 21 months in various cells of 6.3 m² ground surface (accommodating two inmates, i.e. 3.15 m² per person), over 9 months in a 6.3 m² cell with single occupancy, and 9 months in a cell of 25 m² ground surface (accommodating eight inmates, i.e. 3.125 m² per person). In the material period, the average rate of occupancy of Budapest Prison was 150%; the national rate was 132% in October 2007 and 122% in July 2008.

8. The applicant's complaint about the overcrowding addressed to the prosecutorial authorities in charge of the lawfulness of detention was to no avail. In reply to his similar complaint, the National Headquarters of Penitentiary Institutions admitted in its letter of 23 July 2008 the existence of the problem of overcrowding but pointed out that the prison authorities had no influence on the number of detainees to be held in the penitentiary institutions.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

9. The applicant complained that his detention at Budapest Prison in overcrowded cells amounted to inhuman and degrading treatment which infringed Article 3 of the Convention. Article 3 reads as follows:

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

10. The Government contested that argument.

A. Admissibility

11. The Government submitted that the applicant should have complained to the prison authorities and the public prosecutor in charge of penitentiary supervision about the conditions of his detention, failing which he did not exhaust domestic remedies. The applicant contested this view, submitting copies of the complaints he filed with the authorities.

12. The Court recalls the findings of the European Commission of Human Rights (“the Commission”) concerning the effectiveness of those remedies in the context of alleged violations of Articles 3 and 8 (see *Sárközi v. Hungary*, no. 21967/93, Commission's report of 6 March 1997). In that

case, the Commission held as follows: “As far as the National Headquarters of Penal Institutions is concerned, it may, in practice, proceed to a full examination of complaints. Nevertheless, it is subject to Government control and there remain doubts whether, at least in practice, it performs its supervisory functions independently” (§ 121). It went further on to conclude that “although the possibility of recourse to the competent public prosecutor is, in the relevant legal texts, couched in vague terms as to whether there is a duty to investigate such individual complaints and whether the complainant is entitled to a decision in his or her individual case, this control mechanism has proved to be an effective remedy” (§ 123).

The Court moreover recalls that in the case of *Kokavec v. Hungary* ((dec.), no. 27312/95, 20 April 1999), the applicant’s complaint about the conditions of his detention was declared inadmissible, since “the applicant has failed to show that in this respect he exhausted the remedies available to him under Hungarian law, notably, the complaint proceedings before either the police and prison or the prosecution authorities”.

13. In the present case, the Court notes that the parties do not agree as to whether the applicant has actually availed himself of these remedies. However, it considers it unnecessary further to examine this question for the following reason. In the recent judgment of *Slawomir Musiał v. Poland* (no. 28300/06, ECHR 2009-... (extracts)), it held as follows: “The Court is also mindful of the fact that at the relevant time the governors of detention facilities, in which the applicant was held, acknowledged officially the existence of overcrowding and made decisions to reduce the statutory minimum standard of three square metres per person ... In these circumstances, it cannot be said that any attempt by the applicant to seek with the penitentiary authorities an improvement of the conditions of his detention would give sufficient prospects of a successful outcome” (§ 75). In the present case, the authorities acknowledged that the Hungarian prisons were overcrowded and that in the material period the average rate of occupancy of Budapest Prison was 150% (see paragraphs 7 and 8 above). Consequently, the Court observes that, in the circumstances of the present case, the remedies referred to by the Government were not capable of providing redress in respect of the applicant’s complaint. Having regard to the above considerations, the Court dismisses the Government’s preliminary objection as to the non-exhaustion of domestic remedies. The Court also considers that the instant complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further finds that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

14. The Government submitted that the conditions of the applicant’s detention at Budapest Prison, quite independently of the ground surface

available, did not amount to inhuman or degrading treatment, given that the cells were clean, well-maintained and with sufficient light and ventilation, and moreover because the applicant spent only part of his days in them, as he had been assigned outside work. The applicant contested these views, emphasising that, apart from overcrowding, in each of the cells where he had been accommodated, the toilets were separated only by a curtain, which did not provide the requisite privacy.

15. As the Court has held on many occasions, Article 3 of the Convention enshrines one of the most fundamental values of a democratic society. It prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the circumstances and the victim's behaviour (see *Labita v. Italy* [GC], no. 26772/95, § 119, ECHR 2000-IV).

16. The Court further recalls that, according to its case-law, ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3 of the Convention. The assessment of this minimum level of severity is relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim. Furthermore, in considering whether treatment is “degrading” within the meaning of Article 3, the Court will have regard to whether its object is to humiliate and debase the person concerned and whether, as far as the consequences are concerned, it adversely affected his or her personality in a manner incompatible with Article 3. However, the absence of such a purpose cannot conclusively rule out a finding of a violation of Article 3 (see *Peers v. Greece*, no. 28524/95, §§ 67-68, 74, ECHR 2001-III).

17. The Court has consistently stressed that a breach of Article 3 of the Convention would generally involve suffering and humiliation beyond that which is inevitably connected with a given form of legitimate treatment or punishment. Measures depriving a person of his or her liberty may often involve such elements. Thus, under this provision, the State must ensure that a person is 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 the individual to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, the prisoner's health and well-being are adequately secured (see *Kudła v. Poland* [GC], no. 30210/96, §§ 92-94, ECHR 2000-XI).

18. The Court notes that at Budapest Prison, the applicant was accommodated for altogether over 21 months in cells with 2.76 m² ground surface per person, for 21 months in cells with 3.15 m² per person, as well as for nine months in a cell with 3.125 m² per person, in each case with a toilet without sufficient privacy. It observes by contrast that the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (“the CPT”) considers 4 m² living space per

inmate an acceptable minimum standard in multi-occupancy cells (see, for example, in respect of other Hungarian prisons, paragraphs 65 and 80 of the Report to the Hungarian Government on the visit to Hungary carried out by the CPT from 24 March to 2 April 2009). The Court therefore finds that the applicant's detention under cramped conditions at Budapest Prison failed to respect basic human dignity and must therefore have been prejudicial to his physical and mental state (see, *mutatis mutandis*, *Savenkovas v. Lithuania*, no. 871/02, §§ 81-82, 18 November 2008). Accordingly, it concludes that the overcrowded and unsanitary conditions of this detention amounted to inhuman and degrading treatment in breach of Article 3 of the Convention.

19. Finally, mindful of the fact that the seriousness of the problem of overcrowding and of the resultant inadequate living and sanitary conditions in Hungarian detention facilities has been acknowledged by the domestic authorities (see paragraphs 8 and 18 above), the Court considers that an effective remedy responding to this issue could be offered by taking the necessary administrative and practical measures. In the Court's view, the authorities should react rapidly in order to secure appropriate conditions of detention for detainees.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

20. The applicant also complained that his conviction was erroneous. In so far as the applicant's complaint may be understood to concern the assessment of the evidence and the result of the proceedings before the domestic courts, the Court reiterates that, according to Article 19 of the Convention, its duty is to ensure the observance of the engagements undertaken by the Contracting Parties to the Convention. In particular, it is not its function to deal with errors of fact or law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention. Moreover, while Article 6 of the Convention guarantees the right to a fair hearing, it does not lay down any rules on the admissibility of evidence or the way it should be assessed, which are therefore primarily matters for regulation by national law and the national courts (*García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I). In the present case, the Court finds no appearance that the courts lacked impartiality or that the proceedings were otherwise unfair. It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 and must be rejected, pursuant to Article 35 § 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

21. 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

22. The applicant claimed 185,000 euros (EUR) in respect of non-pecuniary damage.

23. The Government contested this claim.

24. The Court considers that the applicant must have sustained some non-pecuniary damage on account of the conditions of his detention at Budapest Prison and awards him, on the basis of equity, EUR 12,000 in respect of non-pecuniary damage.

B. Costs and expenses

25. The applicant also claimed EUR 3,750 for the costs and expenses incurred before the Court. This sum corresponds to the fee of his lawyer, who spent, as per the time-sheet submitted, 30 hours of legal work charged at an hourly fee of EUR 125.

26. The Government contested this claim.

27. 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 have been actually and necessarily incurred and were reasonable as to quantum. 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 full sum claimed.

C. Default interest

28. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning the conditions of the applicant’s detention admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 3 of the Convention;
3. *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, to be converted into Hungarian forints at the rate applicable at the date of settlement:
 - (i) EUR 12,000 (twelve thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 3,750 (three thousand seven hundred and fifty euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
 - (b) 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;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 7 June 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith
Registrar

Françoise Tulkens
President