



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

FIFTH SECTION

CASE OF ŠTRUCL AND OTHERS v. SLOVENIA

(Applications nos. 5903/10, 6003/10 and 6544/10)

JUDGMENT

STRASBOURG

20 October 2011

FINAL

20/01/2012

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

In the case of Štrucl and others v. Slovenia,

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

Dean Spielmann, *President*,

Elisabet Fura,

Karel Jungwiert,

Boštjan M. Zupančič,

Mark Villiger,

Ganna Yudkivska,

Angelika Nußberger, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 27 September 2011,

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

PROCEDURE

1. The case originated in three applications (nos. 5903/10, 6003/10 and 6544/10) against the Republic of Slovenia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by Slovenian nationals, Mr Jakob Štrucl, Mr Henrik Klanšek and Mr Anes Dukić (“the applicants”), on 19, 24 and 18 December 2009 respectively.

2. The applicants were represented by Odvetniška Družba Matoz O.P. D.O.O., a law firm practising in Koper. The Slovenian Government (“the Government”) were represented by their Agents, Mrs T. Mihelič Žitko and Mrs N. Aleš Verdir, State Attorneys.

3. The applicants alleged, in particular, that the conditions of their detention in Ljubljana prison amounted to a violation of Articles 3 and 8 of the Convention and that they had no effective remedy in this regard as required by Article 13 of the Convention.

4. On 27 April 2010 the Court decided to give notice of the applications to the Government. It also decided to rule on the admissibility and merits of the applications at the same time (Article 29 § 1) and to give priority to them under Rule 41 of the Rules of the Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants were born in 1985, 1974 and 1977 and live in Kamnik, Zagoraje ob Savi and Kranj respectively.

6. The applicants served their sentence in the closed section of Ljubljana prison, which is the third largest prison in Slovenia. It holds sentenced prisoners, remand prisoners and prisoners in administrative detention. It has an official capacity of 128 inmates, which includes 55 places designated for prisoners on remand, who by law must be held in a separate section of the prison. In principle there are two types of cells in which the prisoners are held. Small cells measuring about 7.5 square metres (8.8 square metres including the sanitary annex) and normally containing two sleeping places, and large cells measuring 16.28 square metres (18 square metres including the sanitary annex) and normally containing six sleeping places. The windows of the cells face either west or east. Remand prisoners are held on the ground floor, which contains sixteen small and five large cells, and on the first floor, which has fourteen cells, including three small and eleven large cells. On the second floor, which contains fifteen cells, thirteen of which are large cells, both remand prisoners and sentenced prisoners are held. In the loft, which contains fourteen large cells, only sentenced prisoners seem to be held.

7. According to the Government, plans for constructing a new prison to replace Ljubljana prison were in progress. However, completion depended on financial resources and no definite date could be given.

A. The applicants' individual situations

1. Application no. 5903/10 (Mr Štrucl)

8. The applicant served his sentence in Ljubljana prison in the period between 15 June 2009 and 15 June 2010. He was held in the following cells:

- Between 15 June and 17 November 2009 and between 10 May and 15 June 2010 he was held in cell no. 119 measuring 16.28 square metres. The cell contained six sleeping places (three bunk beds). According to the applicant, six prisoners were held in the cell in the period of his detention. The Government, however, submitted that the number varied between five and six.

- Between 17 November 2009 and 26 February 2010 the applicant was held in cell no. 5 measuring 16.28 square metres. The cell contained five

sleeping places (two bunk beds and a single bed). The number of prisoners held in this cell varied between four and five.

- Between 26 and 28 February 2010 the applicant was held in cell no. 132 measuring 16.28 square metres. The cell contained five sleeping places (two bunk beds and a single bed). Three prisoners were held in this cell.

- Between 28 February and 23 March 2010 the applicant was held in cell no. 129 measuring 7.5 square metres. The cell contained one bunk bed and the applicant was alone in the cell as he had been placed under a high security regime (see paragraph 10 below), after attacking another inmate.

- Between 23 March and 10 May 2010 the applicant was held in cell no. 123 measuring 16.28 square metres. The cell contained six sleeping places (three bunk beds). According to the applicant, six prisoners were held in the cell in the period of his detention. The Government, however, submitted that the number varied between five and six.

9. Cells no. 119 and 123 had four windows measuring 91x57 centimetres each. Cell no. 132 had two such windows. Cell no. 5 had one window measuring 107x110 centimetres and cell no. 129 had two windows measuring 89x54 centimetres each.

10. In the period between 28 February and 23 March 2010 the applicant was placed in a cell under a high security regime which implied that he could only have two hours of outdoor exercise and was not allowed to spend time in the recreation room. He ate his meals in the cell and was allowed to receive visits two hours a week and use the telephone no more than twenty minutes a week.

11. According to a personal plan set up on 26 February 2010 it was anticipated that the applicant would enrol in a catering and hotel services training programme. However, there is no information in the file indicating if and when he attained this training course. According to the prison records the applicant was also involved in certain work activities in the period between 1 July 2009 and 31 December 2009; however, there is no indication as to what kind of work this was and where it took place.

12. According to the prison records, the applicant had an opioid dependency and was undergoing methadone maintenance treatment during his detention. He had visited a general practitioner forty times. According to the Government the reasons for these visits related to common health problems such as flu and attempts to obtain anti-anxiety and sleeping medication and analgesics. In addition, the Government submitted that the applicant had had seven appointments at the psychiatric office, five of which he had actually attended. The prison records, however, state that he underwent four examinations at the psychiatric office. Likewise, the report given by the psychiatrist mentions four sessions attended by the applicant in August and October 2009 and in February and March 2010. The psychiatrist also mentioned in his report that the applicant refused to undergo urine

testing and consultations in the period before August 2009 and in the period between October and February 2010.

2. Application no. 6003/10 (Mr Klanšek)

13. The applicant served his sentence in the closed section of Ljubljana prison in the period between 22 June 2009 and 18 February 2010 and between 2 April and 3 July 2010. In the period between 18 February and 2 April 2010 the applicant was held in Maribor prison, to which he was temporarily transferred further to a decision issued on 16 February 2010 by the director-general of the Administration for the Execution of Penal Sentences of the Republic of Slovenia (hereinafter referred to as “the General Administration”). The latter decision was issued at the request of the governor of Ljubljana prison and cited overcrowding as grounds for transfer. On 2 April 2010 the applicant was transferred back to Ljubljana prison, further to a court order, to serve another pending sentence of imprisonment.

The applicant’s complaints relate to the conditions of detention in Ljubljana prison only.

14. During his detention in Ljubljana prison the applicant was held in the following cells:

- Between 22 June and 2 July 2009 the applicant was held in cell no. 124 measuring 7.5 square metres. The cell contained two sleeping places (one bunk bed) and two prisoners were held therein. It had two windows measuring 98x54 centimetres each.

- Between 2 and 7 July 2009 the applicant was held in cell no. 120 measuring 16.28 square metres. The cell contained six sleeping places (three bunk beds). It had four windows measuring 91x57 centimetres each. According to the applicant, six prisoners were held in the cell in the period of his detention. The Government, however, submitted that the number varied between five and six.

- Between 7 July 2009 and 21 January 2010 the applicant was held in cell no. 119, in which the material conditions were the same as in cell no. 120 (see above).

- Between 21 and 28 January 2010 the applicant was held in cell no. 132 measuring 16.28 square metres. The cell contained five sleeping places (two bunk beds and a single bed) and, according to the Government, four prisoners were held therein. It had two windows measuring 91x57 centimetres each.

- Between 28 January and 18 February 2010 the applicant was held in cell no. 121, in which the material conditions were the same as in cell no. 120 (see above).

- Between 2 and 20 April 2010 the applicant was held in cell no. 117, in which the material conditions were the same as in cell no. 120 (see above).

- Between 20 April and 22 June 2010 the applicant was held in cell no. 5 measuring 16.28 square metres. The cell had one window measuring 107x110 centimetres. The cell contained five sleeping places (two bunk beds and a single bed). According to the Government, the number of prisoners held in this cell varied between four and five.

- Between 22 June and 3 July 2010 the applicant was held in cell no. 46, measuring 7.5 square metres. The cell contained two sleeping places (one bunk bed) and two inmates stayed therein. It had two windows measuring 98x54 centimetres each. The applicant was placed under a high security regime after he had attacked another inmate.

15. During the time the applicant spent under the high security regime, he could only have two hours of outdoor exercise per day and was not allowed to spend time in the recreation room. He ate his meals in the cell and was allowed to receive visits two hours a week and use the telephone no more than twenty minutes a week. On 29 June 2010 the prison governor decided that the applicant's visits should be carried out behind a glass partition, since he had been suspected of receiving drugs from his visitors. This decision was entered into his personal plan and he was informed of the possibility to appeal against it to the director-general of the General Administration. The applicant did not appeal.

16. According to the prison records, the applicant had an opioid dependency and underwent methadone maintenance treatment during his imprisonment. He made one request for consultation with a psychologist, which was also carried out. He had nine consultations with a psychiatrist and visited a general practitioner a number of times.

3. Application no. 6544/10 (Mr Dukić)

17. The applicant served his sentence in the closed section of Ljubljana prison in the period between 29 June and 19 November 2009. On the latter date he was transferred to Celje prison, where he stayed until his conditional release on 9 December 2009. The transfer was made on the basis of a decision issued by the director-general of the General Administration at the request of the governor of Ljubljana prison. The decision referred to amendment no. 62/2008 (see paragraph 42 below) and cited overcrowding as grounds for transfer.

The applicant's complaints relate to the conditions of detention in Ljubljana prison only.

18. During his detention in Ljubljana prison the applicant was held in cells nos. 119 and 121. Each cell measured 16.28 square metres and contained six sleeping places (three bunk beds). It had four windows measuring 91x57 centimetres each. According to the applicant, six prisoners were held in each of the cells in the period of his detention. The Government, however, submitted that the number varied between five and six.

19. The applicant received one visit during his detention, namely on 21 July 2009. On 24 July 2009 the prison governor decided that the applicant's visit should be carried out behind a glass partition since he had been suspected of receiving drugs from his visitors. This decision was entered into his personal plan and he was informed of the possibility to appeal against it to the director-general of the General Administration. It was stated in the decision that the situation would be reviewed at the end of August. The applicant did not appeal.

20. According to the prison records, the applicant had an opioid dependency and underwent methadone maintenance treatment during his imprisonment. He made one request for consultation with a psychologist, which was also carried out. He had two consultations with a psychiatrist and visited a general practitioner a number of times.

B. Material conditions inside the cells

21. All the cells contained one large and one small table, a number of chairs depending on the number of beds and a set of cupboards for each of the detainees. The prisoners were free to open and close the windows.

22. The prisoners were allowed to bring in a small TV or, with the approval of the prison governor, radios or other electronic devices. In addition, they could borrow books from the prison library and read them in their cells.

23. The cells had no artificial ventilation. They were aired by opening the windows and, also, opening the doors in the summer when the detainees were out. During the summer, the detainees were also allowed to bring in ventilators, but they rarely did so. The cells were also equipped with functioning radiators, which the detainees were free to regulate.

24. According to the data provided by the Government, the average temperature in the cells in the late afternoon (5-5.30 p.m.) in the second half of July and August 2009 was approximately 28 °C, exceeding 30 °C on seven days.

C. Sanitary conditions

25. A sanitary annex measuring 1.72 square metres was attached to each of the large cells. As regards the smaller cell no. 129, a sanitary annex of 1.3 square metres was attached to it. The sanitary annex was a room with floor-to-ceiling walls and a door, equipped with one basin with warm and cold water, a toilet, a drain and a mirror. It had a functioning artificial ventilation system.

26. The applicant had access to the shower room situated on the same floor and containing five showers with partitions. According to the

Government, the applicant could use the shower for ten minutes every day in accordance with the daily schedule.

27. Detergents and products for personal hygiene were distributed to the prisoners on a weekly basis. Their bed linen was washed once a week and they were given a clean blanket on arrival at the prison. Regular everyday cleaning and thorough weekly cleaning was carried out by the prisoners under the supervision of the prison staff.

D. Out-of-cell time

28. In the closed section of the prison the cells were locked throughout the day. The prisoners could leave the cell for the purpose of taking part in scheduled activities. The Government explained that out-of-cell time consisted of the following:

- The applicants could have their meal in the prison canteen for thirty minutes three times a day.
- Twice a day the applicants could use the telephone booth, which was situated on the corridor.
- Every day between 10 a.m. and midday the applicants could visit the recreation room (see paragraph 30 below).
- Twice a week they were allowed to visit the prison shop.
- Between 7.30 p.m. and 9.45 p.m. and on Fridays and Saturdays until midnight the applicants could watch TV in the aforementioned recreation room
- On Saturdays and Sundays they could receive visits lasting no longer than two hours.
- Between 3.30 p.m. and 5.30 p.m. and during weekends between 2.30 p.m. and 5.30 p.m. the applicants could use the outside yard which measured 1,740 square metres and allowed for the possibility to play basketball, football and bowling. It was not covered by a roof. In bad weather, the prisoners were instructed to use the recreation room.

29. According to the Government the applicants could spend nine hours and fifteen minutes out of their cells per day. On Fridays, Saturdays and Sundays even more time was allowed.

30. The Government further submitted that sentenced prisoners could use the recreation room for the purpose of playing table tennis every day between 10 a.m. and 12 a.m. and for the purposes of gym exercise between midday and 1.30 p.m. During the week, in the afternoon the recreation room was used for the purpose of gym exercise by those inmates who worked in the morning. There was one recreation room on each floor, measuring 50 square metres, which was supposed to be available to all the inmates accommodated on that floor. At a time, ten inmates were allowed to use the room; however, in practice, the average number was six. In addition, there

was a creativity room of 12 square metres, a library of 25 square metres and a room used for reading and lecturing of 20 square metres at the prison.

E. Health care

31. A medical office operated in the prison subject to the general regime of the national health-care system. It was open for six hours, three times a week. A dental-care office was open once a week for six hours. A psychiatric clinic was open twice a week for half a day. The prison also employed two psychologists. All prisoners underwent a medical examination upon their arrival. Prisoners who were using intravenous drugs received vaccinations against hepatitis B in conformity with the standard protocol applied in such cases.

32. The prison provided the prisoners with the possibility to undergo testing for hepatitis B and C and HIV. In 2009 107 prisoners were tested. Five were diagnosed with Hepatitis C; the other tests were negative, but one person was diagnosed with TBC.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Legislation concerning imprisonment

33. Article 18 of the Constitution of the Republic of Slovenia (*Ustava Republike Slovenije*) reads as follows:

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

34. The Enforcement of Criminal Sanctions Act (*Zakon o izvrševanju kazenskih sankcij*, Official Gazette, nos. 22/2000, since amended, hereinafter referred to as “the ECS Act”) regulates, *inter alia*, the rights of sentenced prisoners and the conditions of their detention. The relevant provisions read as follows:

Section 42

“...

(2) A sentenced prisoner shall be allocated to a single cell in accordance with the space available in the prison. Shared cells shall not have more than eight beds.

...”

Section 43

“A sentenced prisoner must be provided with an opportunity to spend at least two hours in the open air each day.”

Section 71

“(1) A sentenced prisoner shall be allowed unrestricted correspondence with immediate family members. A sentenced prisoner may exchange letters with others if his or her personal plan allows it. The decision shall be made by the governor at the sentenced prisoner’s request.

...

3) Sentenced prisoners must be guaranteed privacy of correspondence and communication.”

Section 72

“(1) Inspection of mail shall only be allowed if there is suspicion that objects which a sentenced prisoner is not allowed to have in his or her possession are being brought in or taken out.

...”

Section 73

“(1) A sentenced prisoner must be allowed visits from immediate family members, foster parents or guardians at least twice a week. A sentenced prisoner may also be visited by other persons with the permission of the prison governor. A visit may not be restricted to less than one hour.

...”

Section 74

“(1) Visits to sentenced prisoners shall take place in suitably equipped internal or external premises and may be either supervised or unsupervised, whereby supervised visits may be carried out behind glass partitions. The method of visits shall be decided by the prison governor. The decision on the method of visits shall be entered in the sentenced prisoner’s personal plan.

...”

Section 75

“(1) A sentenced prisoner must be given an opportunity to hold telephone conversations with immediate family members, his authorised representative, a consular...

...”

35. The Regulation on the Execution of Prison Sentences (*Pravilnik o izvrševanju kazni zapora*, Official Gazette no.102/2000 with amendments, hereinafter referred to as “the Regulation”) regulates the treatment of sentenced prisoners in more detail. The relevant provisions read as follows:

Section 27

“Dormitories must be bright, dry, well ventilated and big enough. There must be 9 sq. m of surface area available for every sentenced prisoner in a single cell and at least 7 sq. m of surface area for every sentenced prisoner in a cell with multiple beds.”

Section 72

“Supervised visits may last no longer than two hours and unsupervised visits no longer than three hours.”

Section 75

“Sentenced prisoners shall be allowed to make telephone calls to immediate family members at least twice a week.

...”

Section 138 (transitional rules)

“The standards provided in section 27 of this regulation shall apply to newly built facilities or, where possible, following the renovation of existing facilities.”

36. The Rules concerning Sentenced Prisoners in Ljubljana Prison (*Hišni red Zavoda za prestajanje kazni zapora Ljubljana*, hereinafter referred to as “the Prison Rules”) regulate the regime in the closed section of the prison in which sentenced prisoners are held. They provide that on work days, sentenced prisoners are woken up at 5.45 a.m. and on non-working days at 8.15 a.m. and retire for the night at 9.45 p.m. As a rule, prisoners are expected to leave for work, go to the canteen, events or clinics in an organised manner. Meals, except for breakfast, must be eaten in the prison canteen in accordance with the daily schedule. As regards telephone conversations, the Rules provide that they should not exceed ten minutes and may exceptionally be longer, subject to conditions in prison.

37. The Daily Schedule (*dnevni red*) is annexed to the rules and determines the timetable of activities in the closed section of the prison.

38. Since 1 January 2009, the Health Care and Health Insurance Act (*Zakon o zdravstvenem varstvu in zdravstvenem zavarovanju*, Official Gazette no. 9/1992 with amendments) provides for sentenced prisoners and prisoners on remand to be insured and therefore included in the public health system. They can exercise their rights under the Act with certain

exceptions. For example, they cannot choose their own general practitioner but are, as regards general health care, limited to the medical service provided in the prison establishment. However, the prisoners are also entitled to medical services for which other insured persons have to take out supplementary insurance.

B. Remedies

1. Transfer of sentenced prisoners under the Enforcement of Criminal Sanctions Act

39. The ECS Act regulates the transfer of sentenced prisoners from one prison to another prison or section of a prison. The relevant provisions read as follows:

Section 79

“1) A sentenced prisoner may be transferred from one prison or section of a prison to another prison or section on the territory of the Republic of Slovenia if this is necessary in order to implement his or her personal plan or the prison’s work programme, is necessary for reasons of security, is in the interest of maintaining order and discipline in the prison, has been proposed by the unit responsible for the protection of persons whose security is at risk in compliance with the Act governing protection of witnesses in order to ensure the security of the sentenced prisoner.

...”

Section 81

“(1) The procedure for transfer shall begin at the proposal of the prison governor or the head of the prison unit responsible for the protection of persons at risk in compliance with the Witness Protection Act or at the request of the sentenced prisoner or his immediate family members, foster parent or guardian.

(2) A decision to transfer a sentenced prisoner within the same prison shall be made by the prison governor after obtaining an opinion from the head of the section, whereas a decision on transfer from one prison to another prison shall be made by the director-general of the Administration for the Execution of Penal Sentences of the Republic of Slovenia [hereinafter referred to as “the General Administration”] after receiving opinions from the prison in which the sentenced prisoner is serving the sentence of imprisonment and from the prison to which the sentenced prisoner is to be transferred.

(3) If a sentenced prisoner is transferred within the same prison in compliance with section 80 of this Act, this shall be recorded in his or her personal plan.

...

(5) If a sentenced prisoner is transferred at his or her request or that of his or her immediate family members, the cost of the transfer shall be borne by the sentenced prisoner himself; in other cases, the cost shall be borne by the prison from which he or she has been transferred.

(6) An appeal against a decision on the transfer shall be allowed. An appeal against a decision referred to in section 79 of this Act shall not stay its execution.

(7) A request for transfer for the same reasons may be repeated after the expiry of six months from the day the decision on the earlier request was taken.

...”

40. Section 8 of the ECS Act prescribes the use of the Administrative Procedure Act in respect of the procedure under section 81 of the Act. It also provides:

“...

(2) The ministry responsible for justice shall decide on admissible appeals against decisions issued at first instance by the General Administration. The director-general shall decide at second instance on matters on which the prison governor decides at first instance.

(3) Authorities responsible for deciding on matters according to the provisions of the first paragraph of this section shall decide in a summary proceeding without hearing the parties.

(4) The entry of the decision in the personal plan based on this Act shall replace a written decision. A sentenced prisoner shall have the right to appeal against a decision entered in his personal plan to the director-general of the General Administration within eight days of being informed of the decision.

...”

41. Section 84 of the Regulation provides that the proposal of the prison governor for the transfer of a sentenced prisoner from one prison to another under sections 79 and 80 of the Act must be duly reasoned. The decision of the director-general of the Administration for the Execution of Penal Sentences (“the General Administration”) shall be served on the sentenced prisoner. Furthermore, section 85 provides:

“The petitioner shall lodge a request for transfer to another prison or section under Section 81 of the ECS Act with the prison in which the sentenced prisoner is serving the sentence. The prison or section shall send the request within no more than eight days to the General Administration together with the personal file of the sentenced prisoner, the report on the sentenced prisoner’s behaviour and work and the opinion on the merits of the request and the suitability of transfer.

The prison or section to which the sentenced prisoner should be transferred must send its opinion to the director-general within eight days at the latest.

...”

42. In the period between 21 June 2008 and 14 March 2009 an amendment published in Official Gazette no. 62/2008 was in force. It obliged prison governors to immediately request transfer of a prisoner if the occupancy level of the prison exceeded the average occupancy level of prisons in Slovenia by ten percent or more. This provision was abolished by the amendment published in Official Gazette no. 19/2009.

2. Judicial protection under the Enforcement of Criminal Sanctions Act

43. The ECS Act contains a special chapter which concerns the exercise and protection of sentenced prisoners' rights. The Act distinguishes between two types of treatment, that is, "torture or other cruel forms of inhumane or degrading treatment" and "other violations of rights or other irregularities for which judicial protection is not guaranteed". The relevant provisions read as follows:

Section 83

"(1) A sentenced prisoner who believes that he has been subjected to torture or other cruel forms of inhumane or degrading treatment may apply for judicial protection by means of a request.

(2) The prison must also forward the request referred to in the preceding paragraph to the competent state prosecutor."

Section 84

"If a sentenced prisoner has suffered harm as a result of actions referred to in the first paragraph, he or she may request compensation directly from the person who caused the harm, in accordance with the law."

Section 85

"(1) If other violations of rights or other irregularities are involved, for which no judicial protection is guaranteed, the sentenced prisoner may lodge a complaint with the director-general of the General Administration.

..."

3. Claim to the Administrative Court and claim for injunction and damages under the Civil Code

44. For the relevant domestic legislation concerning proceedings under the Administrative Disputes Act and proceedings for injunction and damages under the Civil Code, see *Mandić and Jović v. Slovenia*, nos. 5774/10 and 5985/10, §§ 34-36, 27 September 2011.

45. Sections 4 and 33 of the Administrative Disputes Act, referred to in paragraph 125 below, read as follows:

Section 4

“(1) In an administrative dispute the court shall also decide on the legality of individual acts and actions by which the authorities infringe the human rights and fundamental freedoms of an individual if no other judicial protection is provided.

(2) If actions of public authorities are challenged in an administrative dispute, the provisions of this Act referring to the challenging of an administrative act shall apply.”

Section 33

“...

(2) A claim may be filed against the violation of human rights and fundamental freedoms under this Act seeking:

- to annul, issue or amend an individual act,
- to declare that an action infringed a human right or fundamental freedom of the plaintiff,
- to prohibit further action,
- to undo the consequences of an action.”

4. Supervision by the president of a district court and the Human Rights Ombudsman

46. The ECS Act provides in so far as relevant:

Section 212

“(1) Supervision of the legality of the treatment of sentenced prisoners shall be exercised by the ministry responsible for justice and the president of the district court in whose territory a prison or its section is located. An authorised official from the ministry responsible for justice or the president of the district court shall, at the request of sentenced prisoners also without the presence of prison staff, interview sentenced prisoners about the treatment they are receiving and about the exercise of their rights.

(2) If the ministry ... or the president of the district court ... establishes in the course of supervision that sentenced prisoners’ rights have been violated, they shall take all measures necessary to ensure [respect for] sentenced prisoners’ rights.

(3) In accordance with the Human Rights Ombudsman Act and international legal acts, the Human Rights Ombudsman and authorised bodies responsible for the protection of human rights and the prevention of torture, inhumane and degrading treatment or punishment, shall also be enabled to exercise supervision referred to in the first paragraph of this section.

...

(5) Expert supervision and administrative supervision of the provision of health care services in the prison shall be exercised in accordance with the law governing health care services.”

47. The Regulation sets out in more detail the supervision of the conditions in prisons by the president of a district court:

Section 119

“If the sentenced prisoner files a complaint to the president of the competent district court exercising supervision under section 212 of the Act, the latter shall examine it and if he or she considers it well-founded, shall order the necessary measures; the president of the district court may also inform the prison governor thereof together with instructions, if necessary, or [inform] the General Administration writing.”

Section 126

“The president of the district court ... shall exercise supervision under section 212 of the Act at least once a month.

If the president of the district court establishes in the course of supervision that sentenced prisoners’ rights have been violated, he shall inform the prison governor in whose prison he exercised supervision, the General Administration and the Ministry of Justice thereof.”

III. RELEVANT CPT STANDARDS

48. The relevant extracts from the general reports by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) are set out in *Mandić and Jović*, cited above, §§ 38-40.

IV. INTERNATIONAL AND DOMESTIC REPORTS CONCERNING THE SITUATION IN LJUBLJANA PRISON

A. Reports by the CPT

49. The CPT visited Ljubljana prison in 1995 and 2001. During its most recent visit in 2006 the CPT visited the remand section of Ljubljana prison.

50. In 1995 the number of prisoners held in the prison was 188 prisoners, which is significantly lower than it is currently (see document CPT/Inf (96) 18). Following the visit in 2001, the following recommendations were made to the Slovenian authorities (CPT/Inf (2002) 36):

“ii. Ljubljana prison

59. ... the CPT reiterates its recommendation that efforts be made to reduce to a maximum of four the number of prisoners held in the cells measuring 18 m², and to accommodate only one prisoner in each cell measuring 8 m².”

51. Following the visit in 2006 of the remand section of Ljubljana Prison, the following recommendations were made to the Slovenian authorities which are relevant also to the situation of sentenced prisoners (CPT/Inf (2008) 7):

“49. ... The CPT calls upon the Slovenian authorities to implement its long-standing recommendation to reduce cell occupancy rates at Ljubljana prison. Cells measuring 18 m² should not accommodate more than four prisoners, and the 8 m² cells should preferably not accommodate more than one prisoner.

...

88. At all the establishments visited, sentenced prisoners had adequate access to telephones.”

B. Annual Reports by the Administration for the Execution of Penal Sentences (“the General Administration”).

52. In the chapter concerning the living conditions in Slovenian prisons, the reports include information on prison overcrowding. The rate of overcrowding is calculated on the basis of the domestic statutory personal space requirement for sentenced individuals in prison, which is 9 square metres for a single occupancy cell and 7 square metres per person in a shared cell (see paragraph 35 above). According to the 2009 and 2010 reports nationwide prison occupancy exceeded the official capacity by 29 and 23 percent respectively. Almost all closed prison facilities accommodating male prisoners were overcrowded. Ljubljana prison was the most overcrowded prison in Slovenia. With an official capacity of 128 prisoners, it held 261 and 245 prisoners in 2009 and 2010 respectively. This meant that the level of overcrowding was 204 and 191 percent respectively (2009 Report, pp. 97 and 98; 2010 Report, pp. 98 and 99). According to the 2008 Report, the level of overcrowding in 2007 and 2008 was 200 and 196 percent respectively (p. 98). These figures include both sentenced and remand prisoners.

53. The 2010 Report noted that in respect of Ljubljana prison the maximum number of prisoners allowed was set at 245; if this number was exceeded the prison administration was required to institute a transfer procedure (p. 100). The report also noted (p. 100):

“... Poor living conditions are coupled with overcrowding, which is most present in the large prisons in Slovenia: Dob, Ljubljana and Maribor prisons. The urgency of

improving living conditions has been stressed by the Human Rights Ombudsman, the CPT and other institutions.

... It is understandable that such living conditions adversely affect prisoners' hygiene and privacy. Poor living conditions sometimes also obstruct the exercise of prisoners' rights (work, exercise and recreation, religious ceremonies). In some establishments, prisoners on remand live in worse conditions than sentenced prisoners. The outdated and inadequate furniture in living rooms and other areas presents an additional problem ..."

C. Reports by the Slovenian Human Rights Ombudsman

54. On 17 and 18 February 2009 the Human Rights Ombudsman conducted a visit to Ljubljana prison in her capacity as a "national preventive mechanism" under the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment ("the Optional Protocol"). The report published following the visit reads as follows:

"Official capacity is still 128 prisoners. This includes 55 places designated for prisoners on remand, 65 places for sentenced prisoners and 8 places for prisoners in administrative detention. On the day of the visit, the prison held 254 prisoners (126 prisoners on remand, 126 sentenced prisoners and two prisoners in administrative detention). The official capacity was therefore exceeded by 98%.

... the prison administration has replied that in the present circumstances all realistic possibilities for reducing the occupancy level have been exhausted ... The Ministry has also warned that the conditions are unacceptable and the Government should be aware of the problem ... As regards the information about the construction of a new prison, the prison administration has stated that it is not realistic to expect the construction to be completed in a short time ...

We are therefore not surprised that in all the cells the number of beds has only increased since our last visit ...

... In the light of the critical overcrowding and all the consequences which relate to it, we consider the conditions unacceptable.

The prison still does not have a special drug-free unit. ... The prison administration said that in the current overcrowding conditions it is impossible to organise such a unit. The administration estimated that about 50% of the prison population have drug-related problems. ...

Smoking is allowed only in the cells, whereas the prison does not have permanent smoking or non-smoking cells. Efforts are made to separate the smoking and non-smoking prisoners, but due to overcrowding this is often very difficult or impossible ..."

55. In her report concerning her activities under the Optional Protocol in 2009, the Human Rights Ombudsman also noted:

“The problem of overcrowding in prisons is one of the most critical and complex problems in the area of enforcing criminal sanctions, especially when it comes to detention on remand. It seems that virtually everything that was possible was done to resolve this problem, by means of the reasonable transfer of prisoners between prisons or their departments.

...

A critical point has obviously been reached when it will be necessary to consider more systemic solutions if the country is to meet its [domestic and international] obligations at all ...

...”

56. As regards the temperatures in the cells, the following was noted in the 2007 Annual report of the Human Rights Ombudsman:

“... During the visit to Ljubljana prison the official capacity was exceeded by almost 95 percent ... At the time of the visit it was ... typically summer weather, therefore the air in the cells was hot and humid. On the third day of the visit (19 July 2007) we measured, at around noon, 31.9 degrees Celsius in some cells. By using their own ventilators and by means of putting shades on the windows, the prisoners tried to lessen the effect of the scorching ... heat, as their rooms were locked and the air could not circulate. We considered that the living conditions, as observed by us during the summer, were inhuman.”

THE LAW

I. JOINDER OF THE APPLICATIONS

57. Pursuant to Rule 42 § 1 of the Rules of Court, the Court decides to join the applications, given their common factual and legal background.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

58. The applicants complained that the conditions of their detention in Ljubljana prison amounted to a violation of Article 3 of the Convention. In particular, they complained of severe overcrowding, which had led to a lack of personal space, poor sanitary conditions and inadequate ventilation, as well as excessive restrictions on out-of-cell time, high temperatures in the cells, inadequate health care and psychological assistance, and exposure to violence from other inmates due to insufficient security.

59. They submitted that the situation amounted to a structural problem, which has been acknowledged by the domestic authorities.

60. The applicants also complained about restrictions on visits, telephone conversations and correspondence. However, these complaints fall to be examined under Article 8 of the Convention only.

61. Article 3 of the Convention reads as follows:

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

A. Admissibility

1. Complaint relating to physical conditions of detention

62. The Government raised an objection arguing that the applicants had not exhausted the domestic remedies available to them. The Court considers that the question whether the requirement that an applicant must exhaust domestic remedies has been satisfied in the instant case is closely linked to the complaint concerning the existence of an effective remedy within the meaning of Article 13 of the Convention. It therefore considers that this objection raised by the Government under Article 3 of the Convention should be joined to the merits of the complaint under Article 13 of the Convention. It further notes that this part of the applications is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and that it is not inadmissible on any other grounds. It must therefore be declared admissible.

2. Complaints relating to inadequate health care and psychological assistance and insufficient security measures

63. The Government argued that these complaints were wholly unsubstantiated. According to the Government the applicants had never reported any conflict with other inmates and had not requested transfer to another cell on that or any other account. Had they done so, the prison authorities would have ensured an adequate and prompt response. As regards health care, the Government argued that the applicants had received the medical, including psychiatric, care they needed. As regards the applicant Mr Štrucl, his claim that he had had suicidal tendencies was unsubstantiated, as there had been no indication in his medical records to that effect. As regards the applicant Mr Klanšek, he had never requested an appointment at the dental office. The applicant Mr Dukić had been treated by a dentist twice and had failed to attend four further scheduled appointments at the dental office. In particular, the Government emphasized that none of the applicants had shown that any request on their part for any kind of medical assistance had been refused or remained unanswered.

64. The applicants alleged that the health care and psychological assistance had been inadequate and that they were exposed to violence from other inmates due to insufficient security. According to the applicants, the mentioned inadequacies had resulted mainly from insufficient staffing. In particular, they alleged to have had several conflicts with other inmates, in particular drug users. They also mentioned that they had asked to be transferred to another cell but this had been impossible due to overcrowding. They had allegedly never received proper psychological and psychiatric help, despite requesting it. Moreover, the applicant Mr Štrucl argued that he had suffered mental distress and had considered committing suicide as a result of his imprisonment. In their written submissions of 29 November 2011, the applicants Mr Klanšek and Mr Dukić also alleged that they had not received any dental treatment although they had needed it.

65. The Court reiterates that allegations of ill-treatment which fall within the scope of Article 3 of the Convention must be supported by appropriate evidence. To assess this evidence, the Court adopts the standard of proof “beyond reasonable doubt” but adds that such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see *Enea v. Italy* [GC], no. 74912/01, § 55, ECHR 2009-..., and *Kalashnikov v. Russia*, no. 47095/99, § 95, ECHR 2002-VI). The distribution of the burden of proof is intrinsically linked to the specificity of the facts, the nature of the allegation made and the Convention right at stake (see *Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, § 147, ECHR 2005-VII).

66. The Court notes that information about the physical conditions of detention falls within the knowledge of the domestic authorities. Accordingly, applicants might experience certain difficulties in procuring evidence to substantiate a complaint in that connection. Still, in such cases applicants may well be expected to submit at least a detailed account of the facts complained of and provide – to the greatest possible extent – some evidence in support of their complaints (see *Visloguzov v. Ukraine*, no. 32362/02, § 45, 20 May 2010).

67. The Court finds that the applicants’ allegations were formulated as general statements. While it is aware of the fact that the overcrowding could adversely affect services within the prison, including the security system and health care, the Court cannot ignore the fact that the applicants failed to provide any information about any incident involving violence or the threat of violence which might have affected them, nor did they give details of any inadequately answered need for medical or psychological assistance. This also applies to the applicant Mr Štrucl’s allegations concerning a lack of an adequate response to his alleged suicidal tendencies, in respect of which the applicant provided no details (see, for example, *Visloguzov*, cited above, §§ 48-9; *Istratii and Others v. Moldova*, nos. 8721/05, 8705/05

and 8742/05, § 49, 27 March 2007; and *Valašinas v. Lithuania*, no. 44558/98, §§ 105 and 110, ECHR 2001-VIII).

68. The Court further observes from the information submitted by the Government that the applicants, who all had an opioid dependency, were involved in a specific program in this connection and were offered a psychiatric treatment. The applicants themselves did not provide any comments on this issue. Nor did they submit any concrete information as to their health condition or the medical assistance they had received.

69. In view of the foregoing, the Court considers that this part of the applications has not been substantiated by the applicants. Therefore it should be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

B. Merits

1. The applicants' arguments

70. The applicants argued that the size of the cells in which they had been held had been too small to allow for a dignified life. In particular they complained that they had had 2.8 square metres of personal space, which had been further reduced by various items of furniture. Due to the severe overcrowding the applicants had not had any privacy, which had affected their mental state.

71. Furthermore, prisoners would often have to share furniture with other inmates. The toilet had also been shared by several prisoners and the shower had been situated at the end of the corridor and had been constantly occupied. There had been no functional ventilation system in the cells. The solutions relied on by the Government were in practice ineffective because of high temperatures in the summer and low temperatures in the winter.

72. As regards out-of-cell time, the applicants argued that because of overcrowding they had not had the possibilities of recreation referred to in the domestic regulations. In particular, the communal premises, including the recreation room, had been completely overcrowded. In practice, they had not been able to spend more than four hours a day out of their cells.

73. Lastly, the applicants pointed to difficulties in obtaining evidence in support of their allegations. However, they alleged that the conditions to which they referred were proved by the official reports describing the severe overcrowding in the prison.

2. The Government's arguments

74. The Government argued that the conditions of the applicants' detention had not amounted to a violation of Article 3 of the Convention.

75. They submitted that the applicants had been held in several cells which had contained six prisoners at most. The limited personal space in the cells had been compensated for by the possibility of outdoor exercise for two hours every day during the week and two hours and a half during weekends, use of the recreation room, watching television and listening to the radio, and reading books.

76. The cells could be sufficiently well ventilated by opening the windows and, at the height of the summer, the doors, and using fans. While it is true that the temperature in summer 2009 as well as 2010 had occasionally been high because of the unusually hot summers, this had been an unpleasant condition that most of the population in that part of Slovenia had had to put up with for a limited period of time.

77. As regards sanitary conditions, a number of measures had been taken to ensure that they had been adequate. The applicants had failed to point to any inadequacies in this area and their complaints were wholly unsubstantiated.

78. The Government proposed that, in order to ascertain the conditions of detention in Ljubljana prison, a counsellor, an administrator and the governor of that prison be heard by the Court.

79. The Government lastly submitted that the domestic authorities should not be considered to have acknowledged a violation of Article 3 of the Convention. They had only affirmed that the situation in certain Slovenian prisons had not complied with the national statutory requirements, which were higher than those set by the Court's case-law relating to Article 3.

3. The Court's assessment

(a) General principles

80. The Court refers to the relevant principles set out at paragraphs 72-76 of its judgment in the above-cited *Mandić and Jović* case.

(b) Application of these principles to the present case

81. The Court notes at the outset that the Government implied that not all the beds in the cells had always been occupied, but provided no official documents indicating the exact number of prisoners held in the cells in question during the applicants' detention. In this connection, the Court notes that Ljubljana prison was severely overcrowded, the official capacity being almost twice exceeded (see paragraphs 52 to 54 above). It therefore finds it hard to accept that the beds placed in the respective cells were not always occupied, except for perhaps short periods, which, however, have not been specifically identified by the Government.

82. The Court further notes that the applicant Mr Štrucl was held for one year in the closed section of Ljubljana prison. He was held in five different cells. Except for about a month of his detention when he occupied a single room, he was held in cells measuring 16.28 square metres, which contained six sleeping places (period between 15 June and 17 November 2009 and between 23 March and 15 June 2010) or five sleeping places (between 17 November 2009 and 26 February 2010).

83. The applicant Mr Klanšek was held for about eleven months in the closed section of Ljubljana prison, divided into two periods (between 22 June 2009 and 18 February 2010 and between 2 April and 3 July 2010). During that time, for about eight months, he had been held in cells which measured 16.28 square metres and contained six sleeping places (cells nos. 120, 119, 121 and 117). The Court further notes that for most of the remaining period in Ljubljana prison the applicant was held in cells also measuring 16.28 square metres but containing five sleeping places (cells nos. 132 and 5).

84. The applicant Mr Dukić was held for almost five months in the closed section of Ljubljana prison in two cells, each measuring 16.28 square metres and containing six sleeping places.

85. The Court observes that the applicants Mr Štrucl and Mr Klanšek were for eight months detained in cells where most of the time they had only 2.7 square metres of personal space. The same was true for Mr Dukić's detention, which lasted almost five months. This state of affairs in itself raises an issue under Article 3 of the Convention (see *Sulejmanovic*, cited above, §§ 43 and 44). Moreover, while the applicants Mr Štrucl and Mr Klanšek were for the remaining part of their detention allocated more personal space, during three and two months of that period, respectively, they still stayed in cells where they had no more than 3.25 square metres of personal space, which was further reduced by the furniture in the cells (see *Modarca v. Moldova*, no. 14437/05, § 63, 10 May 2007).

86. Furthermore, the Court observes that the facilities referred to by the Government (see paragraphs 30 and 75 above) may have perhaps provided for purposeful recreation in normal conditions. However in such overcrowded conditions as faced by Ljubljana prison, it is hard to see how sentenced prisoners could reasonably spend their time out of their cells apart from time spent in the outside yard during dry weather conditions and when taking their meals in the prison canteen. In particular, the Court notes that the sentenced prisoners held in the closed section of the prison were locked up in their cells and were only able to leave them if they applied for certain activities, most of which were to take place in the recreation room (see paragraphs 28 to 30 above). Given the fact that there was only one 50-square-metre recreation room per floor, which was to be used by ten inmates at most (see paragraphs 6 and 30 above), the Court finds it difficult

to accept the Government's argument that the applicants were actually able to spend most of their out-of-cell time in that room.

87. That said, the Court notes that even if the applicants could have watched TV, listened to the radio and read books in their cells, this could not make up for the lack of opportunity to exercise or spend time outside of the overcrowded cells. It moreover notes that the information supplied by the Government indicates that the temperatures in the cells in the late afternoon during the summer of 2009 were on average around 28 °C and could occasionally even exceed 30 °C (see paragraphs 23, 24 and 76 above). The applicants' complaint concerning high temperatures in the cells was further supported by the Human Rights Ombudsman's findings which, although they concerned the year 2007, are of relevance as the methods of ventilation of prison cells, namely, opening the windows and using personal fans, appear to have been the same then as in 2009 (see paragraph 56 above). The Court therefore finds that during the summer the conditions of the applicants' detention were further exacerbated by the high temperatures in the cells.

88. On the other hand, the Court notes that the applicants were able to use the sanitary annex, containing a basin and toilet, in private. The sanitary annex was attached to each cell and was constantly at the disposal of the prisoners accommodated in the cell. There is no indication in the file that the applicants were unable to shower once a day in a shower room which contained partitions between the shower heads. It further observes that the sanitary annex contained a functioning ventilation system. While it can accept that the sanitary conditions might have been affected by the fact that the facilities were overcrowded, the Court does not find on the basis of the material before it that the cleanliness of the cells and of the relevant areas of the prison was inadequate *vis-à-vis* the Convention standards.

89. The Court accepts that in the present case there is no indication that there was a positive intention to humiliate or debase the applicants. However, having regard to above findings, the Court considers that the distress and hardship endured by the applicants exceeded the unavoidable level of suffering inherent in detention and went beyond the threshold of severity under Article 3 and therefore amounted to degrading treatment. In view of these findings, the Court does not find it necessary to undertake the fact-finding measures suggested by the Government (see paragraph 78 above) as these measures would not be able to alter the above conclusion.

Therefore, there has been a violation of Article 3 of the Convention on account of the conditions in which the applicants were detained.

III. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

90. The applicants complained that their allegations in respect of Article 3 also gave rise to a violation of Article 8 of the Convention. In addition, they complained about restrictions on visits and telephone calls. As regards the latter, the applicants submitted that they had had the right to use a telephone only twice a week and that they had often been under pressure from other inmates to terminate their telephone conversations before the allotted time had expired.

91. Moreover, in their written observations of 29 November 2010 the applicants submitted that their correspondence had been limited only to certain identified persons and that it had often been opened or had not reached them at all.

92. Article 8 of the Convention reads as follows:

“1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

93. The Government contested the applicants’ arguments and argued that the restrictions provided for in the domestic regulations were necessary to maintain order and were completely reasonable. According to the Government, the applicants had been able to receive visits twice a week for two hours and use the telephone for at least ten minutes twice a week. The Government further submitted that the applicants Mr Klanšek and Mr Dukić made no complaints as regards their visiting arrangements. The applicant Mr Štrucl had not indicated any person whom he had wished to call or have written correspondence with. However, he had received and sent a number of letters, like the other two applicants, which was confirmed by the prison records of incoming and outgoing letters submitted to the Court. According to the Government, the applicants’ allegations that the situation as regards visits, use of the telephone and correspondence had amounted to a violation of Article 8 of the Convention were unsubstantiated.

94. The Court notes that in so far as the complaints under Article 8 overlap with those under Article 3, they should be for the same reasons and to the same extent declared admissible. However, in view of the applicants’ submissions and having regard to the finding relating to Article 3, the Court considers that no separate issue arises under Article 8 in this regard (see *Orchowski v. Poland*, no. 17885/04, § 198, ECHR 2009-... (extracts)).

95. As regards the complaints under Article 8 concerning contact with persons outside the prison, the Court reiterates that detention, like any other measure depriving a person of his liberty, entails inherent limitations on his

private and family life. However, it is an essential part of a detainee's right to respect for his family life that the authorities enable him or, if need be, help him to maintain contact with his close family. Such restrictions as limitations imposed on the number of family visits, supervision of those visits and, if so justified by the nature of the offence, subjection of a detainee to a special prison regime or special visiting arrangements constitute an interference with his rights under Article 8 but are not, by themselves, in breach of that provision. Nevertheless, any restriction of that kind must be applied "in accordance with the law", must pursue one or more of the legitimate aims listed in paragraph 2 and, in addition, must be justified as being "necessary in a democratic society" (see, among other authorities, *Moiseyev v. Russia*, no. 62936/00, § 246, 9 October 2008).

96. In the present case, the Court notes that the restrictions on phone calls, written correspondence and the number and duration of visits, which were provided for in the relevant legislation, do not appear to be unreasonable in themselves, given the necessity to uphold the prison regime (see, *mutatis mutandis*, *A.B. v. the Netherlands*, no. 37328/97, §§ 92 and 93, 29 January 2002, and *Boyle and Rice v. the United Kingdom*, 27 April 1988, § 74, Series A no. 131). In so far as the applicants may be understood as complaining that their contact with other people by telephone or visits was restricted more than was required by the legislation, the Court finds that the applicants have not submitted any evidence or concrete information which would indicate that they had been unable to use the facilities in question in accordance with the law. This part of the applications is therefore not substantiated and should be considered as manifestly ill-founded pursuant to Article 35 § 3 (a).

97. Lastly, with regard to the complaints concerning written correspondence, the Court notes that the applicant Mr Dukić's allegations were not introduced until November 2010. The applicant was transferred from Ljubljana prison in November 2009 and released from Celje prison in December 2010. This part of his application has therefore been introduced too late, outside the six-month time-limit laid down in Article 35 § 1. The allegations made by the applicants Mr Štrucl and Mr Klanšek concerning interference with their written correspondence are not substantiated by any evidence or at least a detailed account of the events which allegedly gave rise to a violation. This part of their applications is therefore manifestly ill-founded pursuant to Article 35 § 3 (a).

Having regards to the foregoing, the complaints concerning the applicants' contact with persons outside the prison should be rejected under Article 35 § 4 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

98. The applicants complained that owing to the systemic nature of the inadequate prison conditions they did not have any effective remedy at their disposal as regards their complaints under Articles 3 and 8 of the Convention. In any event, there is no evidence that the remedies which were available in theory could work effectively in practice when it came to prison conditions and the treatment of prisoners. They invoked Article 13 of the Convention, which reads as follows:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

A. Admissibility

99. In so far as the applicants’ complaint under Article 13 of the Convention refers to the lack of effective remedies in respect of inadequate physical conditions of detention, the Court finds that this aspect of the complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

100. As to the lack of effective remedies in respect of the allegedly inadequate medical and psychological care, inadequate security measures and the restrictions on maintaining contact with persons outside the prison, having declared the relevant issues under Articles 3 and 8 of the Convention inadmissible, the Court concludes that the applicants have no arguable claim for the purpose of Article 13 of the Convention (see *Visloguzov*, § 74-5, cited above). It follows that this aspect of the applicants’ complaint under Article 13 of the Convention should be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

B. Merits

1. The applicants’ arguments

101. The applicants argued that their allegations related to a structural problem of overcrowding in Slovenian prisons, which had been officially acknowledged. Since the prison service was overburdened, it would have been pointless for the applicants to attempt to use any of the remedies which in theory could have led to an improvement in the conditions they complained of. The only solution to the problem, as officially acknowledged, was the building of a new prison.

102. The applicants moreover argued that the complaints under the ECS Act were similar to hierarchical appeals and could not be considered effective. As regards judicial protection under section 83 of the ECS Act, they argued that it was an imprecise and inadequate remedy.

103. As regards the supervision by the president of the court, this did not constitute a formal procedure. The legislation did not provide for any deadlines and formalities as regards the taking of measures by the judge; an issue that was at his sole direction.

104. The applicants moreover argued that that there was no jurisprudence to show that they could have claimed compensation for the non-pecuniary damage suffered as a result of the alleged violation of Article 3 of the Convention. Moreover, such a claim, in any event, could not have improved their conditions. As regards lodging a claim with the Administrative Court, the applicants maintained that this remedy would have been ineffective as the claim would not have been resolved in due time. In support of this argument they referred to decision no. U 1319/2003 of 11 May 2004 issued in proceedings concerning the transfer of a sentenced prisoner because of problems relating to his mental health and conflicts with other inmates. The Administrative Court had remitted the case for re-examination one year after the prisoner's request had been rejected by the director-general of the General Administration.

105. As regards the Human Rights Ombudsman, the applicants argued that while her role might be helpful, her recommendations were not binding. In the case of noncompliance, the Ombudsman could only inform the superior body, send a special report to the Parliament or inform the public. Moreover, the Ombudsman had repeatedly raised concerns about prison conditions and still the situation had not improved.

106. As regards the constitutional appeal, it could only be lodged after all the remedies in administrative and judicial proceedings, which could take years, had been exhausted.

2. The Government's arguments

107. The Government submitted that the mere existence of doubt as regards the success of a certain legal remedy which is not clearly futile should not lead to the conclusion that such a remedy is ineffective.

108. The Government argued that the request for a transfer under sections 79 and 81 of the ECS Act had been an effective remedy. In this connection, they referred to the fact that the applicants Mr Klanšek and Mr Dukič had been transferred to another prison where the conditions of detention had been better. They also argued that Mr Klanšek had been transferred on the basis of a request made by him to that effect. The Government furthermore submitted seventy decisions issued by the director-general of the General Administration by which transfers to other less crowded prisons had been ordered in recent years. In seven cases a

transfer was ordered at the request of the prisoner – six of them were from Ljubljana prison and one from Dob prison. The reasons for transfer in most cases was the need to maintain contact with family members who lived closer to the prison to which the transfer was ordered, and in one case a reference was made to the special needs of the prisoner due to his inability to communicate in Slovenian. In all of the decisions overcrowding was also mentioned as a factor. In sixty-three cases the transfer was ordered at the request of the prison governor either from Ljubljana or Dob prison. Some of the cases concerned legislation which was in force under amendment no. 62/2008 (see paragraph 42 above). However, the majority of the requests were upheld on the basis of the interpretation that the overcrowded conditions negatively affected the implementation of personal plans, security and order and discipline within the prison, which were grounds provided in paragraph 1 of section 79.

109. The Government further argued that a request under section 81 of the ECS Act would have offered immediate redress to the applicants. The decision made by the prison governor or director-general was always served on the prisoner and the latter had the opportunity to challenge it on appeal before the Ministry of Justice and eventually before the Administrative Court. The Government acknowledged that the prison governors or the director-general had a discretionary power when deciding on requests for transfer. Their decisions were subject to the court's scrutiny only as regards the question as to whether the discretionary powers entrusted to them had been overstepped or used in a way which was incompatible with the purpose of the legislation. The Government also submitted fifteen Administrative Court judgments in which the decisions of the Ministry of Justice concerning transfer of prisoners were challenged. It transpires from these judgments that reasons relating to the prisoners' personal situations, including their behaviour, were often taken into account when decisions on transfer were made. The judgments furthermore show that a decision as to transfer was subject to the extensive discretionary powers of the director-general of the General Administration. Only one of the judgments concerned transfer due to overcrowding, which was, as in the above-mentioned cases, ordered at the initiative of the prison governor.

110. Secondly, the Government maintained that section 83 of the ECS Act did not create an additional remedy but referred to the protection afforded by civil, administrative and criminal-law remedies. In particular, they argued that the first paragraph of section 4 of the Administrative Disputes Act read together with the second paragraph of section 33, provided that a claim of a violation of human rights could be lodged by an individual against the State. The Administrative Court had full jurisdiction to decide questions of fact and law in such proceedings. According to the Government, such a claim constituted an effective remedy by which the applicant could have secured the immediate termination of the violation. In

addition, the Government argued that the applicants could have lodged a request for an interim order and for compensation. As regards the latter, the Administrative Court would rule on such a request unless it would considerably delay the proceedings.

111. In support of their argument, the Government submitted copies of twelve Administrative Court decisions, half of which were issued in proceedings instituted on the basis of section 4 of the Administrative Disputes Act, and the other half in the context of regular administrative proceedings in which administrative decisions were challenged before the Administrative Court. Eight decisions deal with issues of appointments, election and mandates. The remainder concern the refusal to issue an administrative decision, the right to examine a case-file, subscription to a nursery and the payment of compulsory contributions to a Chamber of Commerce. The Government admitted that the decisions did not concern complaints relating to overcrowding or inhuman and degrading conditions in detention. However, they were of the opinion that the applicants could nevertheless have availed themselves of this remedy, which offered all the elements of relief required in this kind of case.

112. The Government further argued that the applicants could have sought judicial protection also in civil proceedings. In this connection, they referred to section 134 of the Civil Code, which provides for a request for the termination or prevention of an infringement of personal rights or the elimination of the consequences of the infringement. In particular, claimants could seek the termination of an ongoing infringement by means of an injunction. The Government emphasised that the civil court was also competent to order the offender to pay a penalty if the infringement was not terminated.

113. Thirdly, the Government argued that a claim for compensation under section 179 of the Civil Code was an effective domestic legal remedy for suffering sustained as a result of inhuman and degrading conditions of detention. The applicants could have used that remedy. Instead, they had lodged requests for settlement with the State Attorney's Office, which had been rejected.

114. In connection with the claim for compensation under section 179 of the Civil Code, the Government maintained that the jurisprudence generally acknowledged psychological anguish caused by the restriction of liberty or the infringement of personal rights as a legally recognised form of non-pecuniary damage. In this respect they submitted copies of fifteen court decisions. Nine of them concern damage caused by environmental nuisance. The others concern damage relating to unlawful detention, defamation, unauthorised publication of photos, sexual assault, distress related to exhumation and the invasion of privacy. Since there is no reason why the domestic courts would selectively protect certain personal rights but not, for example, the right to decent treatment in detention, the applicants' doubts as

to the effectiveness of the compensation claim in the cases in question were unfounded.

115. The Government moreover submitted that eight compensation claims had been filed by prisoners between 2008 and 2010. On 20 May 2011 the Government informed the Court that a first judgment on this matter was delivered by the Ljubljana Local Court on 9 May 2011. The court found in favour of the claimant, a detainee who spent about six months (in the period between July 2006 and March 2007) in Ljubljana prison as a remand prisoner. For most of that time he was held together with five other detainees in a cell of about 18 square metres. The court found that all four elements of civil tort were established, namely: unlawful act, occurrence of damage, causal link and the defendant's responsibility. The court noted that there had been no jurisprudence on this matter so far and that this was the first judgment to establish the principles for the future. Referring also to *Kalashnikov* (cited above), the court noted that the rights guaranteed by the Convention represented minimum standards and that the protection afforded by the national legislation should go beyond this minimum. It found that the personal space afforded to the claimant was far below the standard of 7 square metres for a multi-occupancy cell recommended by the CPT and provided in the section 27 of the Regulation and was therefore in breach of the claimant's personal rights. The court further observed that the overcrowding had had a negative effect also on other aspects of detention and found in this connection that the claimant's personal rights had been breached on account of poor ventilation, disturbances during the night, verbal and physical conflicts in the cell, and the impossibility for him to eat his meal at the table or use the telephone for at least ten minutes as provided in the regulations. Moreover, the court found that these conditions also amounted to a violation of Article 18 of the Slovenian Constitution, which prohibited torture or inhuman or degrading punishment or treatment. The claimant was awarded compensation for non-pecuniary damage in the amount of 2,290 euros (EUR).

116. Fourthly, the Government maintained that the applicants had had, and continued to have at their disposal, a constitutional appeal. They admitted, however, that the constitutional appeal would have to be lodged against the last decision issued in the case, after all the above-mentioned legal remedies had been duly exhausted, and could not be lodged directly against the "treatment" concerned.

117. Lastly, the Government submitted that further "less formal" remedies had been available to the applicants, such as a complaint under section 85 of the ECS Act, a petition to the Human Rights Ombudsman and supervision by the president of a district court. Although these were informal means of control, they could, precisely for that reason, often lead to the improvement of the situation. In support of their argument, they submitted twenty-five letters sent by the President of the Novo Mesto

District Court regarding complaints raised by sentenced prisoners in Dob prison. The complaints concerned issues such as placement under a special regime, employment, benefits, health care, and so on.

3. *The Court's assessment*

118. According to the Court's case-law, Article 13 guarantees the availability at national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they may happen to be secured in the domestic legal order. The scope of the Contracting States' obligations under this provision varies depending on the nature of the applicant's complaint; the effectiveness of a remedy does not depend on the certainty of a favourable outcome for the applicant. However, the remedy required by Article 13 must be effective in law as well as in practice (*Petkov and Others v. Bulgaria*, nos. 77568/01, 178/02 and 505/02, § 74, ECHR 2009-...).

119. The Court points out that the decisive question in assessing the effectiveness of a remedy concerning a complaint of ill-treatment is whether the applicant can raise this complaint before domestic courts in order to obtain direct and timely redress, and not merely an indirect protection of the rights guaranteed in Article 3 of the Convention (see *Melnik v. Ukraine*, no. 72286/01, § 68, 28 March 2006).

120. In the instant case, the Government argued that the applicant could have, but had not, made use of a number of remedies. The Court will proceed to examine whether the remedies referred to by the Government could be considered effective under Article 13 of the Convention and such as to require the applicants to exhaust them.

(a) **Transfer of a prisoner under the Enforcement of Criminal Sanctions Act**

121. The Court takes note of the six examples submitted by the Government, where the prisoners successfully obtained a transfer to another prison on the grounds of, *inter alia*, overcrowding. However, it notes that the costs of such transfers are always borne by the prisoner, that the behaviour of the prisoner is, among other things, taken into account and that the authorities deciding on the request have a wide discretionary power in applying this measure (see paragraphs 39, 108 and 109 above).

122. Moreover, the Court notes that sections 79 and 81 of the ECS Act have usually been applied by prison governors in order to transfer prisoners from one prison to another of their own motion on the grounds of overcrowding (see paragraphs 53 and 108 above). The authorities, being aware of the structural problem of overcrowding (see paragraphs 52 and 53), which included the applicants' and a number of other cells in Ljubljana prison, could have therefore ordered the applicants' transfer had this been possible. In fact, Mr Klanšek's transfer of 18 February 2010 and Mr Dukić's transfer of 19 November 2009 were ordered on the basis of

sections 79 and 81 of the ECS Act. The Court notes in this connection that the Government's suggestion that Mr Klanšek's transfer had been made on the basis of a request by him to that effect is not supported by the documents in the file. It moreover notes that the decision to transfer Mr Klanšek and Mr Dukić was issued after they had been detained for almost nine and five months, respectively, in Ljubljana prison in cells where most of the time they had less than 3 square metres of personal space.

123. Having regard to the foregoing, in particular to the features of the procedure and the fact that applicants' situation was part of a structural problem in the prison, the Court does not consider that a request for transfer under sections 79 and 81 of the ECS Act could be considered an effective remedy (see *Kalashnikov v. Russia* (dec.), no. 47095/99, ECHR 2001-XI).

(b) Judicial protection under the Enforcement of Criminal Sanctions Act

124. The Court notes that the Government relied on section 83 of the ECS Act, which concerned judicial protection of the right not to be subjected to torture or other cruel forms of inhumane or degrading treatment. They, however, submitted that this provision did not provide for an autonomous remedy but only concerned the remedies available to the prisoner, in particular, before the civil and administrative court. Noting that the means of the mentioned protection under section 83 are not clearly defined in the domestic legislation, the Court will, in the line with the Government's argument, proceed to assess the effectiveness of the remedies before the civil and administrative courts.

(c) Remedies under the Administrative Disputes Act and the Civil Code

125. The Government referred to a claim an individual can lodge under sections 4 (paragraph 1) and 33 of the Administrative Disputes Act. These provisions refer to the termination of an "act" or "action" infringing human rights when no other judicial protection is available (see paragraph 45 above). In support of their argument, the Government referred to past decisions of the Administrative Court. However, those decisions arose from situations which do not even remotely relate to that of the applicants (see paragraph 111 above). The Court moreover notes that the claim under the first paragraph of section 4 is conditional on a number of elements, one of them being that the result of the action is unlawful hindrance, limitation or prevention of the enjoyment of a human right and another being the absence of any other judicial protection (see paragraph 45 above). It is not for the Court to speculate on the possible interpretation of the provisions concerned in the context of prison conditions. The Court would limit itself to observing that it is unaware of any decision that would demonstrate that a claim concerning conditions of detention could be brought directly to the Administrative Court with any prospect of putting a timely end to an alleged violation (see, *mutatis mutandis*, *Ciorap v. Moldova*, no. 12066/02, § 57,

19 June 2007, and *Belinger v. Slovenia* (dec.), no. 42320/98, 2 October 2001).

126. The Government further alleged that the applicants could have lodged a claim under section 134 of the Civil Code seeking termination of an infringement of their personal rights. However, the Government have not submitted any decision which would demonstrate how this provision works in practice, let alone in the context of conditions of detention, which require a timely reaction.

127. Therefore, the Court finds that, even assuming that any of the above-mentioned remedies could in theory have offered adequate redress in respect of the inadequate prison conditions, the Government failed to produce any case in which the courts had ruled on such a complaint. While it is not for the Court to give a ruling on an issue of domestic law that is as yet unsettled the absence of any case-law does indicate the uncertainty of these remedies in practice (see, *mutatis mutandis*, *Horvat v. Croatia*, no. 51585/99, § 44, ECHR 2001-VIII; *Marini v. Albania*, no. 3738/02, § 156, ECHR 2007-XIV (extracts); and *De Jong, Baljet and Van den Brink v. the Netherlands*, 22 May 1984, § 39, Series A no. 77).

128. Lastly, the Court notes that the requests for compensation the applicants made to the State Attorney's Office were refused. They did not subsequently institute any civil proceedings for compensation under section 179 of the Civil Code. The Government argued that had they done so they could have been successful. In this connection, the Government submitted a number of court decisions which do not relate to inadequate conditions of detention. Subsequently, they submitted to the court a recent judgment of 9 May 2011 in which a local court found that the claimant's personal rights as well as the prohibition of torture and inhuman or degradation treatment had been violated on account of inadequate conditions in Ljubljana prison. It awarded the claimant compensation for non-pecuniary damage.

129. As regards the applicants Mr Štrucl and Mr Klanšek, the Court would emphasise that they were detained at the time they lodged their applications. To be considered effective in their situation, the remedy should have been able to lead to the improvement of the conditions they were detained in and not only to compensation for the damage sustained (*Orchowski*, cited above, § 108). Noting that the civil remedy under section 179 of the Civil Code is merely of a compensatory nature and no domestic court has so far imposed an injunction in order to change the situation which had given rise to the infringement of a prisoner's personal rights, the Court finds that the institution of civil proceedings could not have remedied the situation of the aforementioned applicants. As regards the applicant Mr Dukić, who lodged his application after his release from Ljubljana prison, the Court acknowledges that the judgment of 9 May 2011, if it becomes final, represents an important development in the domestic

jurisprudence in particular as regards circumstances where an alleged violation no longer continues because the person is already at liberty or has been transferred to a place of detention where conditions comply with the Convention standards. Welcoming this change, the Court nevertheless observes that for the time being the judgment of 9 May 2011 appears to be an isolated example which moreover has not been subject to review by the higher courts. Therefore, as things stand, the civil claim for compensation cannot be considered to be sufficiently certain in practice as regards compensation claimed in respect of allegedly inadequate prison conditions.

(d) Other remedies referred to by the Government

130. With regard to supervision by the president of a district court, the Court observes that no formal procedure for dealing with complaints was provided in the legislation, nor does it seem that the president could issue decisions which would be legally enforceable (see paragraphs 46 and 47 above). The Court therefore finds that this remedy cannot be regarded as capable of directly remedying the impugned state of affairs (see *Balogh v. Hungary*, no. 47940/99, § 30, 20 July 2004). The same is true for complaints under section 85 of the ECS Act (see paragraph 43 above). Likewise, a petition to the Human Rights Ombudsman can only lead to recommendations and has not been considered by the Court to constitute an effective remedy (see, *Lehtinen v. Finland* (dec.), no. 39076/97, ECHR 1999-VII, and *Montion v. France*, no. 11192/84, Commission decision of 14 May 1987, Decisions and Reports 52, p. 232). In this connection, the Court observes that the Ombudsman, in particular in the role of national preventive mechanism, made several recommendations in respect of the overcrowded conditions complained of by the applicants, but no significant improvements were made in this area.

(e) Constitutional appeal

131. The Court notes, as the Government acknowledged, that the applicants had no direct access to the Constitutional Court but could have lodged a constitutional appeal only after they had pursued the above-mentioned legal avenues (see paragraph 116 above).

132. In the view of the conclusion reached in respect of the other remedies invoked by the Government (see paragraphs 121 to 130 above) and the fact that the applicants could not have lodged a constitutional appeal directly, the Court finds that it could not be considered an effective remedy in this case.

(f) Conclusion

133. The Court finds that none of the remedies relied on by the Government could be regarded, with a sufficient degree of certainty, as constituting an effective remedy for the applicants. The Court concludes,

therefore, that there has been a violation of Article 13 of the Convention on account of the lack of an effective and accessible remedy under domestic law for the applicants' complaints in respect of the conditions of their detention (see, for example, *Visloguzov*, cited above, §§76-78, and *Melnik*, cited above, § 115-6). The Court therefore rejects the Government's objection of non-exhaustion of domestic remedies.

V. APPLICATION OF ARTICLE 46 OF THE CONVENTION

134. Article 46 of the Convention provides:

“1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.

2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution.”

A. The parties' submissions

135. Referring to the official reports of the General Administration, the applicants argued that their allegations related to a structural problem of overcrowding in Slovenian prisons, which could only be resolved by building new prisons.

136. The Government affirmed that the situation in certain Slovenian prisons did not comply with the national statutory requirements, which were higher than those set by the Court's case-law relating to Article 3. The situation in those highly populated prisons was not permanent but could fluctuate significantly. The Government asked the Court to decide on a case-by-case basis whether a prisoner's particular circumstances amounted to a violation of Article 3. A potential finding of a violation in a particular case could not automatically lead to the conclusion that there was a nationwide practice incompatible with the Convention.

B. The Court's assessment

137. The Court observes that the violation of Article 3 of the Convention in the present case was caused by the overcrowded conditions in Ljubljana prison, which had existed over a number of years. It further notes that the official reports and information submitted by the Government, in particular those concerning the occupancy rate of the prison and the size and number of sleeping places in the large cells, indicate that a considerable number of prisoners are and may still be affected in the future by the severe overcrowding.

138. The Court notes that the Government have not submitted any information which would indicate that any steps were taken to tackle the problem of overcrowding in Ljubljana prison and that the building of the new facility is still uncertain. In this connection, it is to be reiterated that, where the Court finds a violation, the respondent State has a legal obligation under Article 46 of the Convention not just to pay those concerned the sums awarded by way of just satisfaction under Article 41, but also to select, subject to supervision by the Committee of Ministers, the general and/or, if appropriate, individual measures to be adopted in their domestic legal order to put an end to the violation found by the Court and to redress, in so far as possible, the effects. The respondent State remains free, subject to monitoring by the Committee of Ministers, to choose the means by which it will discharge its legal obligation under Article 46 of the Convention, provided that such means are compatible with the conclusions set out in the Court's judgment (see *Scozzari and Giunta v. Italy* [GC], nos. 39221/98 and 41963/98, § 249, ECHR 2000-VIII).

139. The Court is aware that the solving of the overcrowding may necessitate the mobilisation of significant financial resources, in particular as the problem is not limited to Ljubljana prison, but exists, though to a lesser extent, in most of the closed prison facilities in the country. However, it must be observed that a lack of resources cannot in principle justify prison conditions which are so poor as to reach the threshold of treatment contrary to Article 3 of the Convention (see, among others, *Nazarenko v. Ukraine*, no. 39483/98, § 144, 29 April 2003) and that it is incumbent on the respondent Government to organise its penitentiary system in such a way that ensures respect for the dignity of detainees, regardless of financial or logistical difficulties (see *Mamedova v. Russia*, no. 7064/05, § 63, 1 June 2006).

140. Although the Court does not consider that it can at present conclude that there exists a structural problem consisting of "a practice that is incompatible with the Convention" nationwide, it would emphasize the need to take steps to reduce the number of prisoners in Ljubljana prison and by doing so to put an end to the existing situation, which appears to disregard the dignity of a considerable number of detainees held therein, and to prevent future violations of Article 3 on that account. The Court would observe in this connection that it would appear that the requirements concerning the minimum personal space in a shared cell to which the Government referred were not binding in respect of existing prison facilities (see paragraph 35 above). It would draw the Government's attention to the CPT's recommendation for Ljubljana prison that no more than four prisoners should be held in cells measuring 18 square metres (including the sanitary annex, see paragraphs 50 and 51 above).

141. Lastly, the Court takes note of the judgment of 9 May 2011 and observes that the civil claim for compensation under section 174 of the Civil

Code may, if proved effective in future, due to its compensatory nature, be of value only to persons who are no longer detained in overcrowded cells in conditions not complying with Article 3 requirements (see paragraph 129 above). A ruling of a civil court cannot, however, have any impact on general prison conditions because it cannot address the root cause of the problem. For that reason, the Court would, in addition to the measures aimed at reducing the occupancy level in cells in Ljubljana prison, encourage the State to develop an effective instrument which would provide a speedy reaction to complaints concerning inadequate conditions of detention and ensure that, when necessary, a transfer of a detainee is ordered to Convention compatible conditions (see *Orchowski*, cited above, § 154).

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

142. 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

143. The applicants each claimed EUR 15,000 in respect of non-pecuniary damage.

144. The Government contested the claim.

145. The Court awards the applicants Mr Štrucl and Mr Klanšek EUR 7,000 each and the applicant Mr Dukić EUR 6,000 in respect of non-pecuniary damage.

B. Costs and expenses

146. The applicants, who were all represented by the same law firm, also claimed EUR 1,520 each for the costs and expenses incurred before the Court. This sum consisted of EUR 1,500 in lawyer’s fees, which they claimed were calculated on the basis of statutory domestic rates, and EUR 20 for material expenses.

147. The Government argued that this claim was excessive. They also argued that the Court should take into account the fact that the applicants’ representative represented all three applicants as well as a number of others before the Court and submitted almost identical pleadings in all these cases.

148. 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 are reasonable as

to quantum. With regard to an applicant's Convention costs, the Court reiterates that it does not consider itself bound by domestic scales and practices, although it may derive some assistance from them (see, among many other authorities, *Gaspari v. Slovenia*, no. 21055/03, § 83, 21 July 2009, and *Başkaya and Okçuoğlu v. Turkey* [GC], nos. 23536/94 and 24408/94, § 98, ECHR 1999-IV). In the present case, regard being had to the information in its possession and in particular the fact that the law firm representing the applicants has submitted almost identical submissions in respect of all three applications, as well as the fact that it has already been reimbursed in two other cases for preparation of submissions almost identical to the present ones (*Mandić and Jović*, cited above, §§ 133-35), the Court considers it reasonable to award the applicants jointly the sum of EUR 1,500 for the proceedings before the Court.

C. Default interest

149. 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. *Joins* the applications;
2. *Joins to the merits* the Government's objection concerning the exhaustion of domestic remedies in respect of the physical conditions of detention under Articles 3 and 8 of the Convention, and rejects it;
3. *Declares* the complaint concerning the physical conditions of detention under Articles 3 and 8 of the Convention as well as the complaint under Article 13 of the Convention relating to the complaint concerning the physical conditions of detention admissible and the remainder of the applications inadmissible;
4. *Holds* that there has been a violation of Article 3 of the Convention;
5. *Holds* that there is no need to examine the complaint concerning the physical conditions of detention under Article 8 of the Convention;
6. *Holds* that there has been a violation of Article 13 of the Convention;

7. *Holds*

(a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following sums:

(i) Mr Štrucl and Mr Klanšek EUR 7,000 (seven thousand euros) each and Mr Dukić EUR 6,000 (six thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 1,500 (one thousand five hundred euros) jointly, plus any tax that may be chargeable to the applicants, 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;

8. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 20 October 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Dean Spielmann
President