



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

FIFTH SECTION

CASE OF JIRSÁK v. THE CZECH REPUBLIC

(Application no. 8968/08)

JUDGMENT

STRASBOURG

5 April 2012

FINAL

24/09/2012

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

In the case of Jirsák v. the Czech Republic,
The European Court of Human Rights (Fifth Section), sitting as
a Chamber composed of:
Dean Spielmann, *President*,
Elisabet Fura,
Karel Jungwiert,
Mark Villiger,
Ann Power-Forde,
Ganna Yudkivska,
André Potocki, *judges*,
and Claudia Westerdiek, *Section Registrar*,
Having deliberated in private on 6 March 2012,
Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 8968/08) against the Czech Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Czech national, Mr Zdeněk Jirsák (“the applicant”), on 13 February 2008.
2. The applicant was represented by Mr W. Firla, a lawyer practising in Havířov. The Czech Government (“the Government”) were represented by their Agent, Mr Vít A. Schorm, of the Ministry of Justice.
3. The applicant alleged, in particular, that the conditions of his detention were inhuman and degrading in violation of Article 3 of the Convention.
4. On 10 January 2011 the President of the Fifth Section decided to give notice of the application to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant, Mr Zdeněk Jirsák, is a Czech national who was born in 1953 and is currently serving a sentence in Karviná Prison.

A. The conditions of the applicant's of detention and his injury

6. The applicant served his prison sentence in Valdice Prison in Sections C and D between 2000 and 2005.

7. Between 10 November 2000 and 29 January 2001, he shared cell no. 223, of a total surface area of 35.816 sq. m., with nine other prisoners. The cell was rectangular in shape with bunk beds along both of the longer walls. Next to the entrance, which was at one end of the cell, was a separate room with a toilet. At the opposite end of the cell were two large windows, measuring 1.44 sq. m each. One window and half of the second one could be opened. Yellow translucent pieces of fibreglass covered them from the outside at a distance of approximately 1.5 m. It was up to the detainees how and when the windows were opened. The cell was equipped with ten lockers, two tables and ten chairs.

8. During the whole period of his detention in cell no. 223 the applicant was employed in the prison laundry where he spent nine hours every working day. He was allowed to spend one hour a day outside in the yard. He could also watch television or take part in other recreational activities outside his cell. The applicant could take a hot shower twice a week and wash after work. He was guaranteed one warm meal per day and two hot meals four times a week. He had access to a range of cultural and sports activities, books, newspapers and magazines.

9. On 28 January 2001 at 7.30 p.m. the applicant broke his ankle in his cell while climbing down from his bunk bed. According to him, he fell because he was dizzy due to the stuffy air in the cell. He did not call for medical assistance as he thought that his ankle was just sprained. He took some pills containing Ibuprofen as a painkiller. In the morning, he was unable to walk due to a severe pain in his ankle, so his cell mates took him to the prison infirmary.

10. The prison doctor visually examined the applicant and considered him to be heavily intoxicated with medicaments, although he did not conduct a medical test. The doctor did not send him for an x-ray, because the person operating the prison's x-ray machine was on holiday and due to the applicant's alleged intoxication, his transfer to a hospital was, in his view, impossible. The applicant, having been proclaimed intoxicated, was sent to solitary confinement.

11. On the next day, 30 January 2001, the applicant was x-rayed and it was found that his ankle was broken. He was transferred to a prison hospital in Prague. The record shows that the applicant fully cooperated with the medical staff and was operated on at the hospital on 31 January 2001. He then stayed in Prague Prison, where he was treated until 20 March 2001. He was subsequently transferred to Brno Prison, where he continued his treatment, including physiotherapy. The treatment lasted for seven months

overall, but the applicant has continued to see a doctor afterwards as he has developed arthritis in his broken ankle.

12. On 26 March 2001 the applicant was found guilty of the disciplinary offence of self-intoxication. He was sentenced to five days under the “closed prison” regime (*uzavřené oddělení*). He did not appeal.

13. He was also dismissed from his prison job because it was considered that on 29 January 2001 he had been absent from work due to his self-intoxication.

B. Complaints against the prison authorities

14. In November 2001 the applicant lodged a criminal complaint against the director of Valdice Prison alleging inadequate treatment of his injury.

15. On 1 February 2002 the Hradec Králové Regional Prosecutor’s Office informed him that his complaints were unjustified.

16. On 22 August 2002 the High Prosecutor’s Office expressed doubts about the conduct of the prison authorities towards the applicant and forwarded the complaints to the Ministry of Justice, Department of Prison Inspections (*odbor generální inspekce, oddělení vězeňství*) to investigate the matter. The prosecutor noted with concern that even though a medical report had found that the applicant had no longer been intoxicated at 3.10 p.m. on 29 January 2001, he still had not been sent for an x-ray but had been kept in solitary confinement until the next day; that the applicant had been dismissed from his prison job during the time of his injury; that he had not been paid sickness benefit; and that he had been subjected to disciplinary punishment for intoxication without any consideration to his claim that he had taken painkillers due to the injury he had suffered. The applicant did not inform the Court about the outcome of this investigation.

17. On 13 February 2004, in reply to another complaint by the applicant alleging overcrowding in the prison, the High Prosecutor’s Office informed him that it was aware of the fact that some sections in Valdice Prison were overcrowded and that the competent prosecutor had been taking steps to remedy the situation.

18. On 20 October 2005 the applicant sent another complaint challenging his treatment on 29 and 30 January 2001 to the Prison Directorate General (*Generální ředitelství Vězeňské služby*) which, on 29 November 2005, found it unsubstantiated.

C. Civil proceedings for damages against the State

19. The applicant instituted civil proceedings against the Czech Republic claiming compensation in respect of pecuniary damage arising from his injury, which had been caused by the unsatisfactory conditions of detention

in cell no. 223 in Valdice Prison and inadequate treatment of the injury by the prison doctor.

20. In a judgment of 7 April 2005 the Jičín District Court (*okresní soud*) rejected his action, finding that at the material time the applicant had been held together with nine other inmates in a cell measuring 35.816 sq. m. (or 107,448 cubic metres) including a toilet, which was in accordance with Order of the Minister of Justice no. 20/1977 in force at the relevant time, which had required a minimum of 7 cubic metres per prisoner. The court based its findings on the testimony of the applicant, two of his cellmates at the time of the injury, other witnesses and several documents. The information about the cell dimensions was based on a report by the prison authorities and the court did not consider it necessary to measure the cell itself, as requested by the applicant. It did not find any illegality in the prison doctor's conduct. It dismissed the applicant's request to admit additional evidence as unnecessary.

21. The applicant appealed, arguing that the conditions of his detention had been unsatisfactory. He claimed that the court had rejected his request to admit in evidence a medical expert report to assess the conditions of his detention and his request that the court measure the cell itself and not rely on the prison report.

22. On 19 October 2005 the Hradec Králové Regional Court (*krajský soud*) upheld the first-instance judgment endorsing the District Court's opinion.

23. On 10 May 2007 the Supreme Court (*Nejvyšší soud*) dismissed the applicant's appeal on points of law (*dovolání*). It upheld the conclusions of the lower courts that the conditions of the applicant's detention, including the dimensions of his cell, complied with domestic law.

24. The applicant lodged a constitutional appeal (*ústavní stížnost*) complaining about the conditions of his detention and violations of his right to a fair trial in the precedent proceedings.

25. The Constitutional Court (*Ústavní soud*) sent the appeal to the lower courts that had previously been involved in the case for comments.

26. On 24 October 2007 the Constitutional Court dismissed the applicant's constitutional appeal as manifestly ill-founded, holding that the applicant had merely disagreed with the outcome of the proceedings. It added that the decisions of the ordinary courts had been logical and sufficiently reasoned without any appearance of arbitrariness. The court did not refer in its reasoning to the written observations submitted by the lower courts. It appears from the decision that the District Court maintained, in a short submission, that its decision had not violated the applicant's constitutional rights and that the Regional Court referred only to the text of its judgment. None of these observations were sent to the applicant, the court finding that they did not bring anything new to the case.

D. Other proceedings instituted by the applicant

27. In 2007 the applicant instituted proceedings against the prison doctor who treated him on 29 January 2001, for the protection of his personality rights. On 3 December 2010 the claim was dismissed on the ground that the doctor had been acting in his official capacity and therefore it was the State which should have been sued. At the same time, the prescription period for the claim had already expired.

28. On 22 July 2010 the applicant instituted proceedings for damages against the State before the Prague 2 District Court (*obvodní soud*) under the State Liability Act for inhuman conditions of detention for the whole period of his sentence. Those proceedings are pending.

II. RELEVANT DOMESTIC LAW

A. The Civil Code (Act no. 40/1964)

29. Under Article 11, natural persons have the right to protection of their personality rights (personal integrity), in particular their life and health, civil and human dignity, privacy, name and personal characteristics. Under Article 13 § 1, natural persons have the right to request that any unjustified infringement of their personality rights be ended and that the consequences of such infringement be eliminated. They also have the right to appropriate just satisfaction. Paragraph 2 provides that, in cases where the satisfaction obtained under paragraph 1 is insufficient, in particular because the injured party's dignity or social standing has been considerably diminished, the injured party is also entitled to financial compensation for non-pecuniary damage. Under Article 16 if pecuniary damage was caused by unjustified interference with personality rights the liability of the perpetrator is governed by the provisions of the Civil Code on liability for damage.

30. Articles 420 et seq. regulate civil liability for causing damage. Everybody is liable for damage caused by his or her unlawful conduct. Only pecuniary damage can be claimed under those provisions

B. Act no. 82/1998 on State liability for damage caused in the exercise of public authority by an irregularity in a decision or the conduct of proceedings (as in force at the material time)

31. Section 13 provided that the State is liable for damage caused by an irregularity in the conduct of proceedings, including non-compliance with the obligation to perform an act or give a decision within the statutory time-limit. A person who has suffered loss on account of such an irregularity was entitled to damages under section 31.

C. Execution of Prison Sentences Act (no. 169/1999)

32. Section 16(2) provides that each prisoner must have a bed and a place to store his personal belongings. Under section 16(5) a prisoner has the right to medical care in accordance with a special law, subject to the limitations associated with the aim of the punishment. Section 26(1) provides that a prisoner has a right to file complaints and requests to the competent authorities in order to enforce those rights and interests protected by law. Such complaints and requests must be made without delay.

D. Rules on the Execution of Prison Sentences (Decree of the Ministry of Justice no. 345/1999) as in force at the relevant time

33. Section 17 regulated the accommodation of prisoners, but did not specify cell dimensions. Under section 5 cells had to have a toilet and a sink, separated from the rest of the room by a non-transparent curtain.

E. The Amendment to the Rules on the Execution of Prison Sentences (Act no. 378/2004), which entered into force on 1 July 2004

34. The amendment provides that there must be at least 4 sq. m of cell surface per each inmate. Placing a person in a multiple occupancy cell that will result in less than 4 sq. m for an inmate is permitted only when the total nationwide number of prisoners exceeds the capacity of that type of prison, rendering it impossible to satisfy the minimum surface requirement. Under section 17(7) bunk beds can be used only if the distance between the two storeys is at least 80 cm and the cell has at least 7 cubic metres of space per prisoner.

F. Order of the Minister of Justice no. 20/1977 as in force at the relevant time

35. Section 24 regulated the accommodation of prisoners. It stipulated the minimum cell space per prisoner as 7 cubic metres and the minimum height of the cell as 2.8 m. Bunk beds were allowed if the distance between the two storeys was at least 100 cm.

III. RELEVANT INTERNATIONAL DOCUMENTS

A. Report to the Czech Government on the visit to the Czech Republic carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 21 to 30 April 2002 (CPT/Inf (2004) 4)

36. The CPT stated, *inter alia*, as follows:

“60. Recent legislative changes concerning remand imprisonment have resulted in a substantial decrease of prisoners in Czech prisons. However, the delegation’s findings during the 2002 visit indicated that there was still a lack of sufficient living space for many prisoners in Czech prisons.

In this connection, the CPT was concerned to learn that the already modest standard of 3.5 m² per person, which had been criticized by the Committee (cf. paragraph 47 of the report on the 1997 visit), had recently been formally abolished. The CPT recommends that an official standard be re-established in the Czech prison system, guaranteeing at least 4 m² per prisoner in multiple occupancy cells.

[T]he CPT invites the Czech authorities to continue to pursue their efforts to bring about a permanent end to overcrowding; success in this area will require *inter alia* that full use be made of existing possibilities for non-custodial sanctions.

61. ...Valdice Prison is located on the premises of a seventeenth-century monastery, which was converted into a prison some 140 years ago. Its official capacity had been more than halved since the 1980s (from 2,700 to 1,280 prisoners); at the time of the visit, the prison was accommodating 1,387 male inmates (an occupancy rate of 108%).”

B. Report to the Czech Government on the visit to the Czech Republic carried out by the CPT from 27 March to 7 April 2006 and from 21 to 24 June 2006 (CPT/Inf (2007) 32)

37. The CPT stated, *inter alia*, as follows:

“30. The Committee was pleased to note that the amendments to the Confinement Act and to the Remand Act in 2004 introduced the norm of a minimum of 4m² per prisoner in multi-occupancy cells. However, an exemption to this rule was introduced and, as the Czech authorities noted in their follow-up response of 14 April 2005 (cf. CPT/Inf (2005) 5), ‘based on a minimum accommodation area of 4m² per prisoner, most prisons are significantly overcrowded’.

Valdice Prison, described in paragraph 61 of the 2002 CPT visit report (cf. CPT/Inf (2004) 4), has a capacity of 1,094 and held 1,197 sentenced prisoners, of whom 629 were under the high security regime (Category D).”

C. Concluding Observations of the Human Rights Committee on the Czech Republic, 27 August 2001 (CCPR/CO/72/CZE)

38. The Committee observed, *inter alia*, as follows:

“19. The Committee is concerned about overcrowding in prisons (art. 10). The State party should take measures to overcome overcrowding in prisons and to ensure compliance with the requirements of article 10. Information should be provided on prison capacity and the actual prison population so as to permit the Committee to assess the level of overcrowding.”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

39. The applicant complained that the conditions of his detention in cell no. 223 in Valdice Prison had been inhuman and degrading and that his medical treatment had been inadequate, contrary to what is required by Article 3 of the Convention, which reads as follows:

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

40. The Government contested that argument.

A. Admissibility

41. The Government argued that the two complaints must be considered separately and that the applicant had failed to exhaust domestic remedies for his complaint about the conditions of his detention. They maintained that in the civil proceedings the applicant had instituted before the Jičín District Court he had claimed damages only for the alleged inadequate medical care. Regarding his claim of unsatisfactory conditions of detention, he should have instituted separate civil proceedings for protection of personality rights against the State or proceedings for damages against the State under Act no. 82/1998.

42. They added that if the Court found that none of the remedies proposed by the Government could be considered effective, the application had in any case been lodged outside the six-month time-limit because the applicant's detention in cell no. 223 had ended on 29 January 2001.

43. The applicant disagreed.

44. The Court reiterates that under Article 35 § 1 it may only deal with a matter after all domestic remedies have been exhausted. Applicants must have provided the domestic courts with the opportunity, in principle

intended to be afforded to Contracting States, of preventing or putting right the violations alleged against them. That rule is based on the assumption, reflected in Article 13 of the Convention – with which it has close affinity – that there is an effective remedy available in the domestic system in respect of the alleged breach. The only remedies which Article 35 § 1 requires to be exhausted are those that relate to the breach alleged and are available and sufficient. The existence of such remedies must be sufficiently certain not only in theory but also in practice, failing which they will lack the requisite accessibility and effectiveness: it falls to the respondent State to establish that these conditions are satisfied. Moreover, an applicant who has exhausted a remedy that is apparently effective and sufficient cannot be required also to have tried others that were available but probably no more likely to be successful (see *McFarlane v. Ireland* [GC], no. 31333/06, § 107, 10 September 2010, and *T.W. v. Malta* [GC], no. 25644/94, § 34, 29 April 1999).

45. In cases regarding unsatisfactory conditions of detention that have already ended a civil action for damages is an effective remedy for the purposes of Article 35 of the Convention (see *Łomiński v. Poland* (dec.), no. 33502/09, § 72, 12 October 2010).

46. Turning to the present case, the Court observes that the applicant instituted civil proceedings against the State before the Jičín District Court claiming compensation for pecuniary damage under Articles 420 et seq. of the Civil Code on account of his injury caused by the inadequate conditions of his detention. The domestic courts rejected his claim based on the lack of any unlawfulness on the part of the Government and the compliance of the conditions of the applicant's detention with domestic law. Accordingly, they scrutinised both parts of the applicant's present complaint before the Court.

47. The Court considers that the remedy chosen by the applicant, who considered that he had suffered primarily pecuniary damage, can be considered an effective remedy. If he had been successful with his claim, he would have been compensated for his injury, which, in his view, was caused by unsatisfactory conditions of detention.

48. It might be true, as maintained by the Government, that the applicant could also have lodged an action against the State for protection of personal rights under Articles 13 and 16 of the Civil Code seeking compensation for both pecuniary and non-pecuniary damage.

49. However, given that the remedy pursued by the applicant must be considered an effective remedy for his present complaints before the Court, he cannot be required to have had recourse to another available remedy which, moreover, did not offer a better prospect of success. Here the Court notes that the remedy suggested by the Government requires the claimants to prove the unlawfulness of the defendant's conduct in the same way as the remedy the applicant pursued. In fact, Article 16 of the Civil Code, which regulates claims for compensation for pecuniary damage within the

framework of the protection of personal rights, expressly states that such claims are regulated by the general provisions on claims for damages, which are to be found in Articles 420 et seq. of the Civil Code. Consequently, this kind of claim would be governed by the same rules as the claim made by the applicant

50. The same conclusion is valid in respect of a possible action against the State under the State Liability Act, being just an alternative avenue at that time for claiming compensation in respect of pecuniary damage against the State which would also require a finding of illegality in the conduct of the State in order to be successful.

51. Accordingly, the Court dismisses the Government's objection of non-exhaustion of domestic remedies.

52. It adds that as far as the applicant can be understood to be complaining about the conditions of his detention in other cells in Valdice Prison, as seems to be the case in his reply to the Government's observations, such a complaint would be inadmissible for non-exhaustion of domestic remedies under Article 35 § 1 of the Convention, because he did not include that complaint in the civil proceedings he instituted before the Jičín District Court for damages against the State, and the proceedings instituted in 2010 before the Prague 2 District Court are pending.

53. Regarding the Government's objection that the complaint concerning the inadequate conditions of the applicant's detention was introduced too late, the Court has no reason to doubt the effectiveness of the civil remedy pursued by the applicant, which was terminated by the decision of the Constitutional Court on 24 October 2007. It therefore dismisses this objection as well.

54. The Court notes that this 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.

B. Merits

1. Arguments of the parties

55. The applicant maintained that overcrowding in prisons was a systemic problem in the Czech Republic and that it was the cause of his injury. He argued that the conditions of his detention in cell no. 223 had reached the threshold of inhuman and degrading treatment in that the cell had been overcrowded, there had been no ventilation system and only one toilet for ten people. In his reply to the Government's observations he maintained that the temperature in the cell had been between 10 and 14 degrees Celsius.

56. He further maintained that his injury had not been treated promptly and that instead of an appropriate and timely treatment having been provided to him, he had been sent to solitary confinement.

57. The Government maintained that the conditions of the detention of the applicant in cell no. 223 had not reached the minimum level of severity to fall within the scope of Article 3. Actually, even though the floor space per person in the applicant's cell had been only 3.6 sq. m, the other conditions had been wholly satisfactory and there had been other factors that militated against the conditions being described as inhuman or degrading.

58. They held that a lack of personal space could to a certain extent be compensated for by the large overall space of a cell, which in the present case had been 36 sq. m. The applicant had only been detained in the cell for two and a half months and he had spent nine hours a day outside the cell while working in the laundry room, and had been able to spend another hour every day outside in the exercise yard. Additionally, he had been able to take part in other cultural or sport activities outside the cell, although at the material time he had limited himself to watching television.

59. Regarding the other conditions, the Government maintained that the two large windows, which could be opened at any time, had guaranteed the availability of fresh air and sufficient daylight despite fibreglass panels that had been installed about 1.5 metres from the outside of the windows to prevent visual contact with a neighbouring residential house. The temperature in the cell had been between 20 and 22 degrees Celsius.

60. The Government maintained that the applicant had received entirely appropriate treatment for his injury, including treatment in specialised clinics, an operation on his foot, regular check-ups and physiotherapy, which had led to a full recovery. Admittedly, there had been a delay in the treatment, but it had been for several hours only and moreover it had been caused by the applicant himself, as an experienced doctor had concluded that the applicant's immediate transfer to hospital was not possible due to his intoxication. In their view, the delay had not been serious enough to amount to a violation of Article 3 of the Convention.

2. The Court's assessment

61. The Court reiterates that ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3 of the Convention. The assessment of this minimum is, in the nature of things, relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical or mental effects and, in some cases, the sex, age and state of health of the victim (see *Ireland v. the United Kingdom*, 18 January 1978, § 162, Series A no. 25, and *M.S.S. v. Belgium and Greece* [GC], no. 30696/09, § 219, 21 January 2011).

62. The State must ensure that a person is detained in conditions which are compatible with respect for his human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well being are adequately secured by, among other things, providing him with the requisite medical assistance. When assessing conditions of detention, account has to be taken of the cumulative effects of those conditions, as well as the specific allegations made by the applicant (see *Kudla v. Poland* [GC], no. 30210/96, § 94, ECHR 2000-XI, and *Kalashnikov v. Russia*, no. 47095/99, § 95, ECHR 2002-VI).

a) Complaints about the conditions of the applicant's detention in cell no. 223

63. The Court reiterates that it cannot decide, once and for all, how much personal space should be allocated to a detainee in terms of the Convention. That depends on many relevant factors, such as the duration of detention in particular conditions, the possibilities for outdoor exercise, the physical and mental condition of the detainee, and so on. This is why, whereas the Court may take into account general standards in this area developed by other international institutions, such as the CPT, these cannot constitute a decisive argument (see *Trepashkin v. Russia*, no. 36898/03, § 92, 19 July 2007).

64. Nevertheless, if the personal space available to a prisoner is in the range of 3 to 4 sq. m, other aspects of the physical conditions of detention must be examined to assess the compliance of the detention with Article 3 of the Convention. Such elements include, in particular, the possibility of using the toilet in private, ventilation, access to natural light and air, adequacy of heating arrangements, and compliance with basic sanitary requirements (see, for example, *Moiseyev v. Russia*, no. 62936/00, § 123, 9 October 2008, and *Sulejmanovic v. Italy*, no. 22635/03, § 42, 16 July 2009). Furthermore, a scarce space in relative terms can be compensated for by the large size in absolute terms of the dormitories, as well as the freedom of movement allowed (see *Valašinas v. Lithuania*, no. 44558/98, § 107, ECHR 2001-VIII).

65. Turning to the present case, the Court notes at the outset that the applicant complained of overcrowding only. The Court will not, therefore, examine other factors relevant for compatibility of conditions of detention with Article 3 of the Convention (see *Valašinas*, cited above, § 108-111) which, moreover, do not seem to give rise to any issue under that provision in the present case.

66. Regarding the conditions in cell no. 223, the Court first observes that the applicant was detained there for two and a half months, which is a considerable time (see, for example, *Trepashkin*, cited above, § 94, where the relevant period of detention was about five weeks). The total space of

the cell, which housed ten prisoners, was 36 sq. m, that is, 3.6 sq. m per inmate. The Court must therefore scrutinise the conditions carefully.

67. It firstly notes that the total space of the cell, 36 sq. m, allowed for enough movement, and it cannot be said that the applicant would be practically confined to his bed during the times when he was in the cell (see, *a contrario*, *Peers v. Greece*, no. 28524/95, § 75, ECHR 2001-III). The Court also considers it highly significant that the applicant spent nine hours of each working day outside the cell at his workplace and an additional hour outside in the exercise yard. Furthermore, it was open to him to undertake other recreational activities outside his cell.

68. The cell was equipped with two large windows, which could be opened any time. Admittedly, the windows were blocked by a fibreglass barrier at a distance of 1.5 m outside the windows. Nevertheless, the Court does not consider that this prevented fresh air from entering the cell. The applicant himself maintained that the reason for the lack of fresh air in the cell had been the rather cold weather outside. Yet the truth remains that the applicant, together with his co-detainees, could open the windows at anytime.

69. The Court accepts that the translucent fibreglass barrier must have somehow hindered the inflow of natural light into the cell. Nevertheless, it did not block the natural light altogether and in any case the applicant has not made any special complaints in this respect.

70. Regarding the temperature in the cell, the Government maintained that it was kept between 20 and 22 degrees Celsius. The applicant, in his reply to the Government's observations, alleged that it had only been between 10 and 14 degrees Celsius. The Court notes that this was the first time that the applicant made such an allegation, including before the domestic authorities. The Court considers it hard to believe that, had it indeed been the case, the applicant would not have complained about such a serious issue before in his numerous complaints to the domestic authorities or in his application to the Court. Moreover, his allegation is not corroborated by any other evidence, and therefore the Court cannot give any weight to it.

71. The Court accepts that the presence of a single toilet in a cell where ten people were held could have at times caused an inconvenience to the applicant. On the other hand, it observes that the toilet was in a separate room with a functioning door, and therefore offered an adequate sense of privacy.

72. The cell was also equipped with a washbasin with running cold water at all times. It is true that the applicant did not have access to hot showers at all times but it does not seem that this limitation deprived him of the opportunity to keep himself clean to a degree which might have been incompatible with Article 3, as he was able to wash everyday after work (see *Valašinas*, cited above, § 108).

73. In light of the above considerations, the Court considers that the conditions of the applicant's detention did not attain the minimum level of severity amounting to degrading or inhuman treatment within the meaning of Article 3 of the Convention

b) Complaints about the lack of medical treatment of the applicant's injury

74. The Court notes at the outset that the key issue in the present case of which the applicant complains is the alleged delay in treating his injury.

75. The Court reiterates that the authorities are under an obligation to protect the health of persons deprived of liberty. The lack of appropriate medical care may amount to treatment contrary to Article 3 (see *Keenan v. the United Kingdom*, no. 27229/95, § 111, ECHR 2001-III). Part of the appropriateness of the treatment is also its promptness (see *Paladi v. Moldova*, no. 39806/05, § 81, 10 July 2007 upheld by the Grand Chamber in *Paladi v. Moldova* [GC], no. 39806/05, § 72, 10 March 2009). Leaving a detained person without essential medical treatment as prescribed by medical experts over a substantial period of time and without satisfactory explanation amounts to inhuman and degrading treatment in breach of Article 3 of the Convention (see *Mikhaniv v. Ukraine*, no. 75522/01, § 74, 6 November 2008).

76. Delays that have been found incompatible with the Convention as far as illnesses are concerned have generally been a matter of weeks (see *Koval v. Ukraine*, no. 65550/01, § 81, 19 October 2006, and *Mikhaniv*, cited above, § 72) or even months (see *Paladi*, cited above, § 79). Moreover, in *Gavriliță v. Romania* (no. 10921/03, § 35, 22 June 2010) a two-week long delay in adequate treatment of tuberculosis was not found to constitute a violation of the Convention.

77. Regarding injuries, a six-day delay in treating a broken rib was found to be a violation of Article 3 by the Commission in *Hurtado v. Switzerland* ((dec.), no. 17549/90, § 80, 8 July 1993). Under Article 2 of the Convention a delay of two hours in treating a fractured skull, which eventually led to death, was found incompatible with the obligation to provide timely medical care (*Anguelova v. Bulgaria*, no. 38361/97, § 130, ECHR 2002-IV).

78. In *Răducu v. Romania* (no. 70787/01, § 59-62, 21 April 2009), the Court, when concluding that the State could not be held responsible under Article 2 of the Convention for the applicant's death despite a two-week delay in dispensing appropriate medical treatment for his numerous serious illnesses, took into account the good quality of medical treatment he subsequently received and which stabilised his condition.

79. In the present case the Court notes that the applicant broke his ankle on the evening of 28 January 2001 but reported the accident to the prison authorities only the next morning. Following a visual examination, the prison doctor found the applicant to be intoxicated and thus unfit for

transport to hospital for an x-ray. Consequently, the applicant's foot was x-rayed only on the following day and the treatment of his injury started afterwards.

80. The Court is not persuaded by the reasons put forward for the delay by the State authorities. Neither the prison authorities nor the Government provided a convincing explanation as to why the applicant's transfer to the hospital on 29 January 2001 was not possible. The reasons that were advanced, such as, the applicant's allegedly intoxicated state or the radiographer's absence on holiday, are wholly unacceptable since the applicant was in the custody of the respondent State and it owed him a duty of care. Consequently, it remains the case that there was a one-day delay in treating his injury that is attributable to the State authorities.

81. However, not every delay in medical treatment of detainees is incompatible with Article 3 of the Convention. What is decisive from the point of view of that provision is whether the suffering resulting from delayed treatment reached the minimum level of severity required by Article 3 of the Convention (see, for example, *Sarban v. Moldova*, no. 3456/05, § 84-87, 4 October 2005, *Paladi*, cited above, § 81 and *Hummatov v. Azerbaijan*, nos. 9852/03 and 13413/04, § 121, 29 November 2007).

82. Turning to the present case, although the Court accepts that the applicant must have suffered some pain, it cannot speculate on its intensity. It also notes that as of 30 January 2001 he received adequate treatment for his injury, including an operation in a specialised hospital, regular check-ups and physiotherapy. Moreover, he did not complain about the quality of the subsequent treatment, but maintained that he continued to suffer adverse health consequences as a result of his injury. He did not submit any evidence as to whether the continuing problems with his ankle are a consequence of the belated treatment or the injury itself. Under these circumstances the Court cannot conclude that the adverse consequences are a result of the belated treatment.

83. Regarding the applicant's argument that his injury was in the first place a result of the overcrowding in the prison, the Court refers to the conclusion made above that the conditions of his detention were in compliance with Article 3 of the Convention.

84. In view of those considerations, the Court considers that the one-day delay in treating his injury did not reach the necessary minimum level of severity to amount to inhuman or degrading treatment.

c) Overall assessment

85. The Court notes that in some cases it has considered issues of alleged inadequate conditions of detention and medical assistance separately (see, for example, *Gladkiy v. Russia*, no. 3242/03, 21 December 2010, or *Buzychkin v. Russia*, no. 68337/01, 14 October 2008). On the other hand, in

numerous cases it has made an overall evaluation of whether the conditions of detention, including overcrowding, together with inadequate medical care amounted to degrading treatment (see *Melnik v. Ukraine*, no. 72286/01, § 111, 28 March 2006, *Koval v. Ukraine*, no. 65550/01, § 82, 19 October 2006, or *Gavriliță v. Romania*, no. 10921/03, § 35-38, 22 June 2010).

86. In any case, the Court considers that even taking into account the cumulative effect of the conditions of the applicant's detention in cell no. 223 and the delay in treating his injury, they do not reach the minimum level of severity required for a violation of Article 3 of the Convention.

87. The foregoing considerations are sufficient to enable the Court to conclude that there has not been a violation of Article 3 of the Convention.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

88. Relying on Articles 6 and 13 of the Convention the applicant further complained that the courts had not conducted their own investigation of the facts surrounding his injury, that they had rejected his requests for additional evidence and that their decisions had been wrong. He finally complained that he could not reply to the observations of the other parties to the proceedings before the Constitutional Court.

89. Regarding the complaint of lack of adversarial proceedings before the Constitutional Court, the Court observes that in *Holub v. the Czech Republic* ((dec.), no. 24880/05, 14 December 2010), it declared a similar complaint under Article 6 of the Convention inadmissible because the applicant had not suffered a significant disadvantage within the meaning of Article 35 § 3 (b) of the Convention. It based its decision on the fact that the non-communicated observations had not contained anything new or relevant to the case and the decision of the Constitutional Court had not been based on them.

90. Turning to the present case, the Court considers that the applicant did not suffer a significant disadvantage when the Constitutional Court failed to communicate to him the submissions of the other parties to the proceedings. It follows that this complaint must be declared inadmissible in accordance with Article 35 § 3 (b) of the Convention, as amended by Protocol No. 14.

91. Having examined the other complaints submitted by the applicant, the Court, having regard to all the material in its possession, and in so far as these complaints fall within its competence, finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that these complaints must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaints under Article 3 of the Convention concerning the conditions of the applicant's detention in cell no. 223 and the lack of medical treatment of his injury admissible and the remainder of the application inadmissible;
2. *Holds* that there has been no violation of Article 3 of the Convention.

Done in English, and notified in writing on 5 April 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Dean Spielmann
President