



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

FOURTH SECTION

CASE OF CLASENS v. BELGIUM

(Application no. 26564/16)

JUDGMENT

STRASBOURG

28 May 2019

FINAL

28/08/2019

This judgment became final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Clasens v. Belgium,

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

Jon Fridrik Kjølbro, *President*,

Paul Lemmens,

Faris Vehabović,

Iulia Antoanella Motoc,

Carlo Ranzoni,

Stéphanie Mourou-Vikström,

Georges Ravarani, *judges*,

and Andrea Tamietti, *Section Registrar*,

Having deliberated in private on 28 May 2019,

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

PROCEDURE

1. The case originated in an application (no. 26564/16) against the Kingdom of Belgium lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Belgian national, Mr John Clasens (“the applicant”), on 13 May 2016.

2. The applicant was represented by Ms M. Jadoul, a lawyer practising in Rixensart. The Belgian Government (“the Government”) were represented by their Agent, Mr I. Niedlispacher.

3. The applicant alleged that his conditions of detention in Ittre Prison had been incompatible with Article 3 of the Convention during a prison staff strike from 25 April to 22 June 2016. He also complained that he had not benefited from an effective remedy within the meaning of Article 13 of the Convention in respect of this complaint.

4. The application was communicated to the Government on 15 June 2017.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1983.

6. On 25 April 2016, prisons in Brussels and Wallonia were affected by a prison staff strike. The lack of any guaranteed minimum service in the Belgian prisons led to the suspension of the ordinary prison regime, to degrees which varied from prison to prison.

7. During the strike the applicant was being held in Ittre Prison, as he still is, pursuant to a final criminal conviction. In 2016 Ittre Prison had a total of 386 prisoners, with a total capacity of 420 places. The great majority

of the cells are single-occupancy, measuring 9 m². They are fitted with wash basins and partitioned toilets.

8. On 2 May 2016 the applicant, together with other prisoners, lodged an urgent application under Article 584 of the Judicial Code (see paragraph 19 below) with the President of the Walloon Brabant Court of First Instance (CFI), asking her to order the Belgian State immediately to reinstate the ordinary prison regime in pursuance of the 12 January 2005 Prison Administration and Prisoners' Legal Status (Principles) Act. Relying, in particular, on a violation of Article 3 of the Convention, the applicant complained of the inhuman conditions of detention resulting from the strike.

9. On the basis of the information provided by the parties at the hearing on 3 May 2016, the President of the CFI, sitting as the judge responsible for urgent applications, issued an order on that same day describing the conditions of detention pertaining in Ittre Prison since 26 April 2016 as follows:

“B. In Ittre, the detention regime has been as follows for each prisoner since 26 April 2016:

- Telephone calls on 26, 29, and 30 April and 1 May,
- Showers on 27 and 29 April and 1 May,
- Exercise yard on 28 and 30 April,
- Healthcare, distribution of medicines and psychiatric consultations as per normal,
- No family visits;
- It transpires from the statement drawn up by the Chair of the Supervisory Board that the pickets are currently blocking lorries attempting to deliver food, and that if that situation continues the prisoners will no longer have food supplies as of Thursday [5 May 2016].”

10. The President of the CFI partly allowed the applicant's request, finding against the Belgian State as follows:

“We order the respondent to provide applicant with the following services:

- three meals per day, one of which must be hot,
 - access to showers every other day,
 - access to telephones every other day,
 - two family visits per week,
 - organisation of two days per week for lawyers and the Supervisory Board,
- on pain of a 10,000-euro fine per infringement within 24 hours from the serving of this order.”

11. Subsequently, the State contacted all the CFIs whose territories comprised prisons affected by strikes, inviting them to prohibit blockades at prison entrances by strikers such as to guarantee access to the premises by members of the prison staff wishing to work and by vehicles delivering

goods to the prisons. As regards Ittre Prison, an order of this type was issued by the President of the Walloon Brabant CFI on 6 May 2016.

12. The authorities also adopted other measures, such as calling on the local and Federal police forces, members of the prison directorates, civil protection agencies, the Red Cross and the army.

13. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (“CPT”) conducted an *ad hoc* visit to Ittre Prison from 7 to 9 May 2016 in order to assess the consequences of industrial action on prisoners’ conditions of detention. In its report published on 18 November 2016 the CPT pointed out that the prisoners had been subject to the following conditions since the beginning of the strike: limited access to showers, medicines to alleviate anxiety and stress, collective access to the exercise yard once a week, confinement to cells 24 hours a day, interrupted supplies to stores for canteens, drinks, coffee and tobacco, access to showers once or twice a week, no cleaning products or hygiene items, no visits since the beginning of the strike, and lack of staff to top up telephone accounts.

14. The strike at Ittre Prison ended on 22 June 2016. On 23 June the Ittre Prison Supervisory Board drew up a capitulatory document on the conditions of detention experienced by prisoners during the strike, reaching the following conclusions:

“- The inmates of Ittre Prison had no visits by their lawyers before 16 June 2016 and no family visits, except on the weekends of 4-5 and 11-12 June 2016;

- Only one meal a day was distributed;

- Contact with the outside was therefore limited to one telephone call every three days or so.

- Night regime was applied in such a way as to confine the prisoners to their cells. Until 16 June 2016 they only left the cells once every three days to exercise in the yard or take a shower.

- The Supervisory Board was unable to discharge its duties pursuant to the law, that is, in the framework of confidential and unsupervised interviews.

- No other activities were provided.”

15. These findings were also made by the President of the CFI on the basis of information provided by the Prison Director in an unannounced visit to the prison on 25 May 2016, in the framework of urgent proceedings brought by other inmates. As regards the presence of prison staff on the premises, the visit report noted the following:

“Ms [A., a member of the Director’s office] explained ... that the administration kept a daily register of staff entering the prison to work, in order to plan for the requisite police reinforcements required.

Staff presence depends on the location of the strike picket, which is located sometimes at the roundabout some distance from the prison entrance, and sometimes just in front of the entrance doors, blocking access to the building.

The picket at the entrance doors has already caused confrontation, with injuries sustained, and demotivates staff wishing to work, which has led to an increase in the number of days off sick.

The number of staff working varies from 4 to 20.

The number of staff present has no impact on the “service provided for inmates” since the quota of 21 staff members required for operating the 7 a.m. to 3 p.m. shift is made up by police reinforcements in accordance with the number of staff present.

The 3 to 10 p.m. shift is covered by 8 persons (night regime).

As a general rule, all doors are now kept locked during the night...

Regular service requires the presence of 45 staff members under the normal regime, although officially there should be a total of staff (which is never the case).

At the current time the police are on guard duty, but are seldom involved in service provision...”

16. On 23 May 2016, owing to the difficulties in enforcing the 3 May 2016 order, the applicant, together with other prisoners, forwarded to the Belgian State an order to pay the outstanding fines. The Belgian State appealed against that order on 3 June 2016. According to the applicant, the judge initially dealing with the case had had to be replaced for health reasons. Oral submissions were reportedly made on 7 February 2018, but the parties have not kept the Court abreast of developments in the proceedings.

17. In the meantime, by judgment of 26 April 2017, the Brussels Court of Appeal, to which the State had appealed against the 3 May 2016 order (see paragraphs 9-10 above), largely upheld the latter, apart from the amount of the fines, which the Court of Appeal considered should be a maximum 250 euros per day.

18. Relying on the general principles set out in the judgments in the cases of *Vasilescu v. Belgium* (no. 64682/12, 25 November 2014) and *Muršić v. Croatia* ([GC], no. 7334/13, ECHR 2016), the Court of Appeal determined as follows as regards compliance with Article 3 of the Convention in the present case:

“... this court has previously decided, in another case, by judgment of 17 March 2016, that compliance with Article 3 of the [Convention], as regards the material conditions of detention, requires prisoners not to be treated like objects, at the mercy of prison staff refusing to work, not knowing when the strike would end and being forced, for reasons beyond their control, to accept extreme conditions of detention, that is to say confinement to their cells without any activities, particularly physical exercise, deprived of contact with their families and lawyers, or making do with irregular and uncertain exercise in the open air, contact and basic healthcare, which unavoidably leads to distress surpassing the inevitable degree of suffering inherent in imprisonment. The fact that they can listen to the radio or watch television, where such facilities are available, receive medical treatment in emergencies and have a washbasin or even a toilet ... is insufficient to conclude that their treatment during the strike did not attain the requisite degree of severity for a *prima facie* finding of degrading treatment within the meaning of the provision of the [Convention].

...

The present orders are being issued during the critical period when the respondents are suffering profoundly degrading treatment...

They are experiencing these privations in absolute uncertainty as to their duration, because ... the strikers have still not announced the end of their industrial action, it being impossible to forecast when it will end.

During this uncertain period they must make do with a reduced number of undoubtedly stressed prison officers who cannot be sure that they can perform work which obviously exceeds the bounds of their own specific duties, especially since the requisitioned police officers lack the requisite competences to replace prison wardens and are only discharging security duties in the prison.

The respondents' conditions of detention have therefore seriously deteriorated when the first judge decided that they amounted to a *prima facie* infringement of Article 3 of the [Convention] and issued the impugned orders."

II. RELEVANT DOMESTIC LAW AND PRACTICE

19. The remedies available in Belgian law to complain of conditions of detention, as well as their practical evaluation by the Commissioner for Human Rights of the Council of Europe, the United Nations Human Rights Committee and the CPT, are described in *Vasilescu*, cited above (§§ 32-41 and 54-56).

20. At the material time no Belgian legislative text guaranteed minimum services in prisons during strikes. However, a provision of that type had been *in statu nascendi* for several years. In reply to the CPT's questions on this issue (see paragraphs 23-24 below), the 2014 Federal Government Agreement set out the aim of introducing a guaranteed service in prisons during strikes. On 31 October 2018 the Government tabled a bill on the organisation of prison services and the status of prison staff. The bill was enacted by the House of Representatives on 14 March 2019 and became the 23 March 2019 Organisation of Prison Services and Status of Prison Staff Act.

21. The new Act is intended, in particular, to introducing mechanisms to ensure the uninterrupted exercise of the prison's tasks. It lists the minimum services to be provided throughout the duration of a strike within a prison (section 17). It provides for advisory committees made up of representatives of the authorities and the trade unions responsible for drawing up, for each prison, a plan "setting out the services to be provided and the measures to be adopted by staff members" in order to guarantee essential services; where the advisory committee is unable to submit such a plan within three months of the Act's entry into force, the Minister of Justice must determine the requisite services and measures (section 19). The Act also empowers specified public authorities to order specific staff members to attend their workplace in order to engage in activities aimed at guaranteeing minimum services (section 16 [2]).

22. The provisions of the above-mentioned 23 March 2019 Act relating to uninterrupted prison service during strikes will come into force on 1 July 2019.

III. DOCUMENTS OF THE EUROPEAN COMMITTEE FOR THE PREVENTION OF TORTURE AND INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

23. The report prepared by the CPT on the occasion of its visit from 6 to 9 May 2016, during the initial phases of the strike (see paragraph 13 above), pointed out that since its 2005 visit to Belgium it has emphasised the need to introduce a guaranteed service in prisons, while respecting the rights and liberties of prison staff.

24. In March 2014, in the absence of such a service, the CPT decided to launch a procedure under Article 10 § 2 of the Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, which resulted in the adoption of a Public Statement concerning Belgium, which was published on 13 July 2017. It reads as follows:

“...

2. For 12 years, the CPT has consistently expressed its deep concern regarding the serious consequences which can result from industrial action by prison staff in Belgium. These consequences have a direct impact (for prolonged periods) on the detention conditions, health and security of the persons placed under their responsibility. They entail, in particular, almost continuous confinement of inmates in cells in conditions already deemed intolerable, serious disruption in the distribution of their meals, a dramatic deterioration of their personal hygiene conditions and conditions in cells, frequent cancellation of daily outdoor exercise, serious restrictions on their access to health care and a virtual halt to their contacts with the outside world (including with lawyers).

Such industrial action, which at times takes place without any prior notice and without any limit on the number of prison staff involved or the duration of the action, generally gives rise to a significant increase in tension in the establishments concerned. Further, the occurrence, during prison strikes, of several serious incidents, which in some cases have led to deaths, raises worrying questions about the ability of the authorities and those responsible for the industrial action to deal appropriately with the consequences.

During its many visits to the 47 Council of Europe member States over the last 27 years, the Committee has never observed a similar phenomenon, in terms of both the extent of the phenomenon in question and the risks involved.

...

4. The question of establishing a service guaranteeing the basic rights of persons held in prison establishments (“guaranteed minimum service”) was raised in the CPT’s reports on the 2005, 2009, 2012 and 2013 visits in order to address the challenges referred to above.

...

5. However, the situation reached its peak almost two years later, between April and June 2016, when there was unusually severe strike action affecting most prisons in the French-speaking areas. For almost two months, prison, administrative and health-care staff were prevented from entering their workplace. The staff present in the establishments concerned was reduced in most cases to management staff assisted by a few health-care staff and prison officers. The police had to be mobilised once again and deal with the challenge facing them and others brought in to help out, of carrying out very specialised duties that they were not competent to perform. For the first time, the Belgian authorities were obliged to call on the armed forces to help the management and a handful of prison staff on the brink of exhaustion to ensure security in the prisons.

...

[T]hose with whom the delegation spoke were unanimous on one point: a “red line” had been crossed during the 2016 strikes. The general impression was that persons deprived of their liberty in the prisons concerned had, because of this action, been placed in conditions which could amount to inhuman or degrading treatment or lead to the aggravation of conditions already held to be incompatible with Article 3 of the European Convention on Human Rights.

The information gathered by the delegation during the 2017 visit also suggested that, despite their considerable efforts, prison management and the few other members of the staff who were at work during the 2016 strikes did not have the resources required to ensure the physical and psychological integrity of remand or sentenced prisoners, and even less so those subject to a psychiatric detention measure.

...”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

25. The applicant alleged that the physical conditions of detention imposed on him during the prison staff strike had amounted to inhuman and degrading treatment. He complained that despite the judicial orders to restore the ordinary prison regime, the State had taken no effective, practical action to change the situation, which had persisted until the staff had returned to work. He relied on Article 3 of the Convention, which provides:

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

A. Admissibility

26. The Government objected that the applicant had not exhausted the available domestic remedies, and submitted that the action for damages based on Article 1382 of the Civil Code and the urgent application were complementary under Belgian law (see paragraph 19 above), and that both had to be exhausted before an application was lodged with the Court. It followed that the applicant should also have lodged an application with a

civil court in order to seek redress for the damage caused by State negligence. In fact, such an application had been lodged during the strike by the inmates of other prisons. One of them had been declared ill-founded and the proceedings in the other were ongoing.

27. The applicant argued that the action under Article 1382 of the Civil Code was intended to provide *a posteriori* redress for damage, and was therefore powerless to restore Convention-compatible conditions of detention.

28. The Court notes that the compensatory remedy would in no way have changed the situation in which the applicant found himself during the prison staff strike. A favourable decision by the courts would merely have afforded the applicant financial compensation for the damage stemming from State negligence, which is not considered as an effective remedy for allegations of poor conditions of detention (see *Torreggiani and Others v. Italy*, nos. 43517/09 and 6 others, § 50, 8 January 2013). In any event the Court notes that the Government has provided no examples of decisions showing that an action for damages was likely to succeed in this type of situation and constituted an effective remedy which had to be exhausted (see the relevant general principles in *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, § 229, 10 January 2012, and, to converse effect, *Latak v. Poland* (dec.), no. 52070/08, §§ 77-82, 12 October 2010).

29. Nevertheless, the Court considers that this part of the application cannot be dismissed for failure to exhaust domestic remedies. It therefore rejects the objection as to inadmissibility raised by the Government (see, *mutatis mutandis*, *Sylla and Nollomont v. Belgium*, nos. 37768/13 and 36467/14, § 21, 16 May 2017).

30. Moreover, 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. The parties' submissions

31. The applicant submitted that the situation in which he had found himself in Ittre Prison during the strike had already been assessed by the domestic courts, which had ruled that it had constituted treatment contrary to Article 3 of the Convention. He emphasised that in the Belgian context, the frequency of prison staff strikes meant that they were not unforeseeable events, and the authorities were well aware of their dramatic consequences in human terms. For fifteen years now the Belgian State had failed to provide a solution to that recurrent situation by, for example, introducing a mandatory legal minimum service.

32. The Government emphasised that the conditions described in the CPT's report and reprised by the Brussels Court of Appeal in its judgment of 26 April 2017 had to be differentiated depending on the prison, and interpreted in the context of the initial period of the strike. The conditions described did not reflect the situation in the prisons in question for the duration of the strike. Indeed, the situation had evolved and improved thanks to the efforts of the reinforcements brought in by the Government. That demonstrated their concern to ensure that the prisoners benefited from conditions compatible with respect for human dignity. In fact, the utmost had been done to minimise the disadvantages and suffering experienced by inmates during the strike. Lastly, the Government had pointed out in their observations that at the time of the strike they had been working on legislation in the sphere of a guaranteed minimum service to be provided by prison staff.

2. *The Court's assessment*

33. The Court reiterates that when assessing conditions of detention, regard must be had to the cumulative effects of those conditions, as well as to the applicant's specific allegations. Apart from the need for sufficient personal space, other aspects of physical conditions of detention remain relevant in determining the adequacy of an applicant's conditions of detention under Article 3 (see *Muršić v. Croatia* [GC], no. 7334/13, § 140, 20 October 2016). Those aspects include access to outdoor exercise, natural light or air, availability of ventilation, adequacy of heating arrangements, the possibility of using the toilet in private, and compliance with basic sanitary and hygiene requirements. The length of an individual's detention under specified conditions must also be taken into account (see, for example, *Story and Others v. Malta*, nos. 56854/13 and 2 others, §§ 112-113, 29 October 2015). In that connection the Court reiterates the importance of the CPT's preventive role in monitoring conditions of detention and of the standards which it develops in that connection. When deciding cases concerning conditions of detention it remains attentive to those standards and to the Contracting States' observance of them (see *Muršić*, cited above, § 141), as well as to the CPT's findings during its visits.

34. In particular, the Court has on many occasions held that a very short period of outdoor exercise constitutes a factor which worsens the applicant's situation, confined as he is to his cell for the remainder of the day with no freedom of movement (see, for example, *Canali v. France*, no. 40119/09, § 50, 25 April 2013). As regards sanitary and hygiene facilities, the Court reiterates that access to decent toilets when required and the maintenance of proper conditions of hygiene were of paramount importance for human dignity, and that inmates should have ready access to sanitation such as to protect their privacy (see *Ananyev and Others*, cited above, §§ 156-157).

35. In the present case, the Court notes that there was a consensus on the description of the material conditions of detention in Ittre Prison during the strike on the part of all the observers who visited the premises during the period in issue (see paragraphs 14 and 15 above). That description was also reprised by the Brussels Court of Appeal in its judgment of 26 April 2017 in upholding the finding against the Belgian State on account of the conditions of detention which had been incompatible with human dignity in breach of Article 3 of the Convention throughout the duration of the strike (see paragraphs 17 and 18 above). Although it would appear, as the Government emphasised, that the early stages of the strike saw even more extreme conditions in the prisons, as noted by the CPT during its *ad hoc* visit (see paragraph 13 above), it is not disputed before the Court that for the duration of the strike, that is to say for almost two months, the applicant had no access to activities outside his cell, was confined to his cell 24 hours a day, apart from one hour in the exercise yard every three days, and was only allowed to shower once or twice per week, with no opportunities to purchase hygiene items, which were no longer being distributed.

36. Those material conditions of detention were compounded by the consequences of the failure to provide for uninterrupted service by prison staff in periods of industrial action, which is to say that the prisoners were left at the mercy of the refusal of a large section of the prison staff to work, and were reduced to accepting irregular and precarious minimum services, not knowing when the strike would end and therefore having no prospect of an improvement in the situation, and deprived of virtually all contact with the outside world, whether by telephone, family visits or meetings with their lawyers.

37. As noted by the President of Walloon Brabant CFI during the unannounced visit to the premises on 25 May 2016, there were severe prison staff shortages (see paragraph 15 above). Contrary to the Government's affirmations, none of the reports drawn up following the visits to the prison during the strike state that the presence of police officers, who had been assigned mainly security-oriented and supervisory tasks, had noticeably improved the inmates' daily lives.

38. Having regard to the foregoing considerations, the Court is convinced by the conclusion reached by the Brussels Court of Appel in its judgment of 26 April 2017 (see paragraphs 17 and 18 above). It considers that the cumulative effect of the continued lack of physical activities, the repeated breaches of hygiene regulations, the lack of contact with the outside world and the uncertainty as to whether his basic needs would be met must have caused the applicant distress surpassing the inevitable degree of suffering inherent in imprisonment.

39. Therefore, the Court finds that the said conditions of detention amounted to degrading treatment within the meaning of Article 3 of the Convention and that there was a violation of that provision.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

40. The applicant complained that he had had no effective remedy to compel the Belgian authorities to enforce the judicial decision which he had obtained during the strike. He relied on Article 13 of the Convention, which provides:

“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.”

41. The Government contested that argument. They submitted that an urgent application was an effective and remedy that was available both theoretically and in practice. The applicant’s urgent application had been successful, and the authorities had complied with the court order by mobilising the prison directors and bringing the police into Ittre Prison.

A. Admissibility

42. The Court notes that this complaint 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. The Court declares it admissible.

B. Merits

43. The Court reiterates that Article 13 guarantees the availability at national level of a remedy by which to complain of a breach of the Convention rights and freedoms. Therefore, although Contracting States are afforded some discretion as to the manner in which they conform to their obligations under this provision, there must be a domestic remedy allowing the competent national authority both to deal with the substance of the relevant Convention complaint and to grant appropriate relief (see *De Tommaso v. Italy* [GC], no. 43395/09, § 179, 23 February 2017; see also *Bamouhammad v. Belgium*, no. 47687/13, §§ 165-166, 17 November 2015, for the general principles relating to Article 13 read in conjunction with Article 3 in connection with conditions of detention).

44. In the instant case, at the beginning of the strike the applicant, together with other prisoners, applied to the urgent applications judge, who, by order of 3 May 2016, enjoined the State to provide, on pain of day-fines, a minimum service to meet the basic needs of the persons detained in Ittre Prison (see paragraphs 9-10 above). The Court notes that despite the Government’s affirmation that the mobilisation of the prison director and the police involvement should be considered as measures to enforce the aforementioned order, the conditions of detention were not substantially improved and the regular supply of basic services was not restored (see paragraphs 36 and 37 above).

45. The Court observes that, in fact, the ineffectiveness of the urgent application during the prison staff strike complained of by the applicant was closely bound up with the structural nature of the problems arising from such a strike. It was the failure to ensure the continuity of the prison officers' work in a period of industrial action that led to the ineffectiveness of the remedy and jeopardised the enforcement of the favourable decision given by the ordinary court. Indeed, even though the urgent applications judge did exercise his jurisdiction, the situation complained of by the applicant could not have been remedied since the provision of minimum services to the prisoners was in any case dependent on the fluctuations in the strike action (see, *mutatis mutandis*, *W.D. v. Belgium*, no. 73548/13, § 152, 6 September 2016).

46. In the light of the analysis of the Belgian system in force at the material time in the present case, the Court concludes that the applicant did not, in order to put forward his complaints under the Convention, have an effective remedy in practice, that is to say a remedy likely to redress the situation of which he was a victim and to prevent the continuation of the alleged violations (see *W.D. v. Belgium*, cited above, § 154).

47. There was therefore a violation of Article 13 read in conjunction with Article 3 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

48. 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

49. The applicant claimed 3,480 euros (“EUR”) in respect of the non-pecuniary damage caused by his conditions of detention during the prison staff strike, which amount was calculated on the basis of a daily award of EUR 60 per day of detention at variance with Article 3 of the Convention.

50. The Court considers that the applicant indisputably suffered non-pecuniary damage on account of his conditions of detention incompatible with Article 3 of the Convention (see paragraph 39 above) and that he is entitled to compensation. Having regard to the length of the impugned detention and making its assessment on an equitable basis, the Court considers that the applicant should be awarded the sum claimed in respect of non-pecuniary damage.

B. Costs and expenses

51. Supplying the relevant vouchers, the applicant claims EUR 1,500 in respect of costs and expenses incurred before the domestic courts, and EUR 2,600 in respect of those incurred before the Court. He has deducted from those sums the amounts received by his legal representatives in respect of procedural costs awarded and legal aid.

52. The Government denied that the applicant had had to pay the sums claimed.

53. According to the Court's case-law, an applicant is entitled to reimbursement of his or her costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum.

54. In the present case the Court considers it reasonable to award the applicant the sum of EUR 1,500 which he has claimed for his defence before the domestic courts, as well as the sum of EUR 800 in respect of costs and expenses incurred before the Court, plus any tax that may be chargeable to the applicant.

C. Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 13 of the Convention;
3. *Holds* that there has been a violation of Article 13 read in conjunction with Article 3 of the Convention;
4. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following sums:
 - (i) 3,480 EUR (three thousand four hundred and eighty euros), plus any tax that may be chargeable to the applicant, in respect of non-pecuniary damage;
 - (ii) 2,300 EUR (two thousand three hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in French, and notified in writing on 28 May 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Marialena Tsirli
Registrar

Jon Fridrik Kjølbro
President