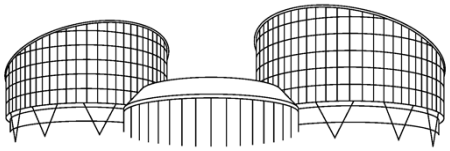

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF STORY AND OTHERS v. MALTA

(Applications nos. 56854/13, 57005/13 and 57043/13)

JUDGMENT

STRASBOURG

29 October 2015

FINAL

29/01/2016

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

In the case of Story and Others v. Malta,

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

Josep Casadevall, *President,*
Angelika Nußberger,
Boštjan M. Zupančič,
Vincent A. De Gaetano,
André Potocki,
Aleš Pejchal,
Síofra O'Leary, *judges,*
and Claudia Westerdiek, *Section Registrar,*

Having deliberated in private on 22 September 2015,

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

PROCEDURE

1. The case originated in three applications (nos. 56854/13, 57005/13 and 57043/13) against the Republic of Malta lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by three Polish nationals, Mr Edward Story, Mr Bartosz Gołdziński and Mr Tomasz Przewłocki ("the applicants"), on 22 August 2013.

2. The applicants, who had been granted legal aid, were represented by Ms M. Gąsiorowska, a lawyer practising in Warsaw, Poland. The Maltese Government ("the Government") were represented by their Agent, Dr P. Grech, Attorney General.

3. The applicants alleged that they were being detained in inhuman and degrading conditions, contrary to Article 3 of the Convention.

4. On 10 September 2014 the complaints concerning the applicants' conditions of detention were communicated to the Government and the remainder of applications nos. 56854/13 and 57043/13 were declared inadmissible.

5. On 29 October 2014 the Government of Poland, who had been notified by the Registrar of their right to intervene in the proceedings (Article 36 § 1 of the Convention and Rule 44), indicated that they did not intend to do so.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicants were born in 1983, 1984 and 1974 respectively and are currently detained in the Corradino Correctional Facility (Paola, Malta).

A. Mr Story ("the first applicant")

7. The first applicant was arraigned in court on 8 May 2012 and was remanded on the same day on drug-related charges. He is currently in pre-trial detention.

8. The first applicant submitted that in May 2012 when he arrived in prison he had been placed in Division 6, a disciplinary division with very strict standards and no privacy. No one spoke his language in that division. He was eventually moved to Division 13, where again no one spoke his language. The applicant alleged that items belonging to him had been stolen and the prison authorities had ignored his complaints, as a result of which he went on hunger strike for three days between 11 and 13 June 2012 (the latter action is indicated in the applicant's medical records submitted to the Court). According to the Government, from the official records (which were not submitted to the Court) it did not appear that the applicant had ever complained about the matter to the prison authorities.

9. After two weeks the first applicant was transferred to Division 3. The records held by the prison authorities show that he is currently being held in cell no. 152, which is situated in Division 3. This division is located in the older section of the prison building that has undergone various stages of upgrading and renovation. However, the possibilities for further improvements are limited owing to the manner in which the building is constructed, such as with high windows and thick walls.

10. The first applicant has been occupying cell no. 152 as sole occupant.

11. The applicant submitted that in order to make his cell habitable he had had to paint it himself and equip it with proper lighting. By the Government's admission, the painting of cells appears to be the normal procedure amongst inmates and the paint is provided by the authorities free of charge. However, the Government contended that the cell had already been equipped with artificial lighting, which was dealt with by the prison electrician, not inmates.

12. There are two ventilators and a window in cell no. 152. The wall-mounted ventilator measures 20 cm by 15 cm and is covered by a rectangular piece of cardboard and there is another smaller ventilator in the ceiling. The applicant submitted that when it rained, water would pour in through the wall-mounted ventilator, which he considered was simply a hole in the wall, and which was covered by cardboard to stop the wind entering

in the winter months – in consequence it rendered the room devoid of any ventilation.

13. The cell has a window, behind which are two iron grids and a third layer of exterior iron bars. The window consists of both a perspex section that allows daylight to enter and a wooden part. Both sections can in principle be opened and closed from within the cell. The window is situated at a height of 250 cm and measures 76.5 cm in width by 46 cm in height. According to the Government (and from the photographs submitted) the window in cell no. 152 is always kept closed by the occupant, despite the fact that he could open and close it by climbing onto the bed. The applicant submitted that windows in other divisions were much lower.

14. In his cell, in order to attempt to open the window he had to stand on the sink and reach for the lock by means of a piece of wood. The window, once opened, had to be kept open by means of some support, such as a metal or wooden plank, which was not usually allowed in prison. The applicant, who is of a heavy build, is unable to open such a window without the help of other lighter inmates. The Government contested that allegation, arguing that the window could be opened by using a tool (a two-foot arm) which is available to inmates for opening and closing windows as necessary. In any case, the applicant could climb onto the bed to open and close the window.

15. Lighting in cell no. 152 consists of a ceiling light and two wall-mounted portable lamps, which may be moved about throughout the cell as required (both 25 Watts).

16. According to the first applicant, there was often no running water in the cell and any water was surely not potable. However, according to the Government, running water was available in each cell, including cell no. 152 (photographs submitted), and Maltese tap water flowing through the Corradino Correctional Facility was certified for human consumption, as outlined by the certificate issued by the Director of Environmental Health, dated 24 January 2014, submitted to the Court. Furthermore, according to the Government, each division was equipped with a purified potable water system, which could be accessed by all inmates.

17. Inmates are also permitted to buy bottled water from the tuck-shop (a pack of six bottles cost 2.10 euros (EUR) or EUR 0.35 per bottle). Every inmate is given "gratuity" money for such purchases amounting to EUR 27.95 monthly. The first applicant received EUR 117 as gratuity money during 2012 and EUR 363.35 during 2013. Inmates are also given the opportunity to work against a nominal payment of EUR 18.63 monthly. The first applicant received EUR 13.39 during 2012 and EUR 242.19 during 2013 for his work.

18. The Government admitted that there was no combined flushing toilet system installed in Division 3 due to the nature of the structure of the building, so inmates had to flush their own personal toilet by means of a

water bucket provided within each cell. To this end, there were wall-mounted water taps in order to fill the buckets with water. Combined flushing toilets were available in the new part of the prison. The first applicant alleged that there was often no running water for flushing.

19. All inmates have access to showers at divisional level and no cell is provided with an in-cell shower. Furthermore, all inmates can use the showers numerous times daily, for as long as necessary; the showers are open for approximately twelve hours a day. However, the first applicant claimed that there were only three shower cubicles, one of which had no running water but just a plastic bottle of water, while another did not have a showerhead. Thus, only one of the showers was functional. The Government contested that allegation, arguing that sometimes the showers were damaged by the inmates. Other inmates fixed them temporarily until the authorities in turn fixed the outlets appropriately.

20. According to the first applicant, hot water was often not available in winter and frequently no water was available in summer. He submitted that complaints about the lack of water were often made to the prison guards, but they were not noted down. The Government submitted that water supply was available all year round. The same applied to hot water, which was however subject to short time lags until the water reheated whenever the water was running continuously. The authorities also made available an external water supply in the event of shortages (particularly in summer, when water bowsers were brought in to increase the water supply).

21. According to the Government, no cell in any part of the prison building (either the old block or the new block) is equipped with a heater. During summer, the inmates are allowed fans to cool down their cells. The first applicant has two fans in his cell.

22. According to the photographs submitted, the state of cell no. 152 was tidy.

23. Inmates were permitted to purchase other non-essential items for their cells, including televisions or monitors, DVD players, or game consoles upon request. The first applicant's requests have all been granted.

24. The first applicant claimed that his cell was damp and humid. According to the Government, an inspection of cell no. 152 conducted by prison officials detected no mould in the cell.

25. The first applicant alleged that he had been asked to pay for his own medication, but as he had been unable to pay, he had remained in pain. The Government submitted that he had been in receipt of various medicines provided free of charge through the Public Health Service (PHS) in line with Regulation 31 of the Prisons Regulations (Subsidiary Legislation 260.03). According to the records held by the authorities (submitted to the Court), it also transpired that the first applicant had been visited eleven times by a doctor between 27 August 2012 (following the applicant's admission on remand) and 30 December 2013. On eight occasions, the

prescription of medicines had been required and in fact twelve medicines had been provided to the applicant. Those medicines were supplied by the PHS except for the Bioflor sachets, where a generic alternative was provided instead. It transpires that the applicant has not made any purchases relative to "self-recommendations" (the non-acceptance of generic medicine against branded medicine, see paragraph 53 below).

26. The first applicant claimed that he had not been allowed to make telephone calls at 12.15 p.m., which was the only time he could reach his relatives.

27. The Government referred to the relevant regulations (see Relevant Domestic Law, paragraph 56 below) but stated that in practice, all inmates were allowed any number of calls between 9.30 a.m. and 11.45 a.m. As from 1 January 2014 the times were changed to between 8.30 a.m. and 11.45 a.m. and between 2 p.m. and 8 p.m. Inmates who work were granted a specific period between noon and 12.15 p.m. No calls could be made between 12.25 p.m. and 2 p.m., during which time inmates were confined to their cells.

28. Inmates are given two EUR 5 telephone cards every month on the first day of the month. The first applicant has been in receipt of those cards since his arrival in prison. From the records held by the authorities it also transpires that the applicant availed himself of the opportunity to call abroad using his cards on average 4.5 times a day during the period 1 January to 6 February 2014. This refers to calls lasting a minimum of three minutes. Shorter calls were also made. A detailed analysis of the calls lasting more than three minutes shows that seventy-six of them lasted over ten minutes, while some lasted over twenty minutes. In terms of the time during which the calls were made, fifty (30% of the calls) were registered during the morning between 9.08 a.m. and 11.58 a.m., while the remaining 117 calls (70%) were registered between 2.30 p.m. and 7.54 p.m. It also transpires that the applicant has availed himself of incoming call times ranging from 10 a.m. to 12.11 p.m. (69% of the calls were registered between 22 May 2012 and 7 December 2013). The rest of the calls (31%) were registered between 2.05 p.m. and 6.44 p.m. He received thirty-five incoming calls in 2012 and 175 in 2013. According to the Government the applicant has never submitted a written request to the director for permission to make calls at 12.15 p.m.

B. Mr Gołdziński ("the second applicant")

29. The second applicant is currently serving a term of imprisonment for drug-related offences. He was sentenced to nine years' imprisonment and fined EUR 23,000 by the Criminal Court on 5 December 2013.

30. From the prison authorities' records, it transpires that the second applicant is being held in cell no. 130, situated in Division 3 of the

Corradino Correctional Facility. While the applicant complained of a lack of living space in the dormitories of ten persons (sic.), the Government argued that he had been occupying the said cell as sole occupant. It does not appear that he has made any prior complaint about his cell or any specific aspect of his detention to the prison authorities, nor has he requested to change cell.

31. The complaint and the general conditions of detention pertaining to the second applicant are the same as described in respect of the first applicant (above), with a few differences as set out below.

32. The second applicant submitted that he generally left his window open. He claimed that it was not possible to open the window by climbing onto the bed. The window was situated 1.5 metres above the sink, and thus it was only by standing on the sink that one could open it. Lighting consisted of a ceiling light and one wall-mounted portable lamp, which he had purchased himself – he had not requested an additional lamp, although inmates were in fact allowed two lamps.

33. According to the second applicant there was often no running water in the cell. However, according to the Government, tap water was available in each cell, including cell no. 130 (photographs submitted).

34. The second applicant received gratuity money amounting to EUR 293.44 during 2012 and EUR 363.35 during 2013, as well as EUR 130.41 during 2012 and EUR 242.19 during 2013 for work carried out by him.

35. The second applicant submitted that he had two fans in his cell. He claimed that in winter the cold was terrible and made him ill. He maintained that he often did not have bed linen or blankets, sometimes not even a bed to sleep on. The Government contested the allegation, asserting that each inmate, including the second applicant, was provided with two sets of bed linen and two blankets, that further blankets were available on request and that beds were a staple in every cell. No record of such a complaint had been found by the Government.

36. According to the Government, the second applicant kept his cell in a disorderly and unkempt state. When the prison authorities, through the correctional supervisor, had brought this to the applicant's attention, he had replied that the mess was due to his ongoing personal family troubles and he promised to clean his room.

37. The second applicant's requests for non-essential items have all been granted.

38. A part of cell no. 130 shows signs of dampness, which produces mould (approximately one square metre as transpires from a photograph submitted). The applicant submitted that the photograph was not realistic and that in reality there was mould in a larger part of the cell. This had given him asthma, a condition he had never suffered from before.

39. The Government pointed out that the second applicant had been in receipt of various medicines provided free of charge through the PHS.

According to the Government, it transpires from the records held by the authorities that he had been visited forty-three times by a doctor between 5 October 2011 (date of the applicant's admission on remand) and 23 January 2014. On twenty-nine occasions, prescriptive medicines had been required and in fact fifty medicines had been provided to him. Those medicines had been supplied by the PHS, except for a specific shampoo, where a generic alternative had been provided instead.

40. The second applicant claimed that he had had to purchase some medicines himself. However, according to the Government, that was a choice made by the applicant himself. From the records held by the authorities, it transpires that a number of "self-recommendations" (see paragraph 53 below) were registered on the applicant's behalf. They concerned ear drops to remove ear wax, Voltaren gel, a number of vitamins and Daktarin powder.

41. Lastly, the second applicant claimed that he had been made to take medicine without any explanations, and that he was not allowed access to the yard.

C. Mr Przewłocki ("the third applicant")

42. On 30 January 2012 the Criminal Court sentenced the third applicant to twelve years' imprisonment and to a fine of EUR 23,000 for drug-related offences.

43. From the prison authorities' records, it transpires that the third applicant is being held in cell no. 137, which is situated in Division 3. At the time of the introduction of the application he had been in Division 3 for three years and ten months. He has been occupying the said cell as sole occupant. He has never made any complaint relative to his cell or to any specific aspect of his detention to the prison authorities, nor has he requested a transfer from one division to another. The general conditions of detention pertaining to the third applicant are the same as for the other two applicants (above), with a few differences as set out below.

44. According to the third applicant, there was only one ceiling ventilator in his cell, which he claimed did not work. The Government contested that statement. The applicant submitted that there were two portable lamps –the ceiling lamp was controlled centrally and could not be switched on or off as needed. From the photographs submitted it appears that cell no. 137 is kept in a relatively tidy state. The third applicant has been allowed to acquire other non-essential items in the cell. He claimed that they did not require authorisation. He also alleged that one of his personal fans had been removed from his cell after the photographs had been taken. The Government submitted that apart from the ceiling fan, the applicant had another fan in his cell, and that only one box fan per inmate was allowed.

45. According to the Government, an inspection of cell no. 137 conducted by the prison officials did not detect any mould. However, the third applicant submitted that there was some 50 cm of mould around his sink.

46. The third applicant also complained of a lack of running water (contested by the Government) and flushing toilet system. He claimed that the lack of water, particularly the inability to flush the toilet, created unhygienic conditions. Also, the relevant equipment to clean the room was not provided. He alleged that he had been regularly sick because of the tap water in his room and that the doctor had told him that he should not drink it. The Government submitted that according to the doctor's report (submitted to the Court), the applicant had never complained of bowel problems or complained to the doctor about the tap water. Nor had it been substantiated that he had received such a reply from the doctor. The applicant pointed out that the result of the tests carried out by the Government had not referred to water collected in his room, as no water had been collected.

47. The third applicant received EUR 101.28 as gratuity money during 2011, EUR 363.55 during 2012 and EUR 363.35 during 2013. He also received EUR 18.63 during 2011, EUR 111.78 during 2012 and EUR 93.15 during 2013 (between August and December 2013) for work he had carried out.

48. The third applicant also received various medicines provided free of charge through the PHS. From the records held by the authorities it also transpires that he was visited thirty-one times by a doctor between 26 April 2011 (following the applicant's admission in detention on remand) and 21 January 2014. On fifteen occasions, the prescription of medicines was required and in fact twenty-eight medicines were provided to him. Those medicines were supplied by the PHS, except for cold-relief tablets and a cream, for which a generic alternative was provided. It transpires that two "self-recommendations" were registered on behalf of the applicant: a pain killer and a cream which was only available free of charge through the PHS if it had been prescribed by a consultant dermatologist, which was not the case for the applicant.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Prison Regulations (Subsidiary Legislation 260.03)

49. Regulation 3(1) reads as follows:

> "In the application of these regulations the following basic principles and treatment objectives shall at all times be observed:

(*a*) The aim of these regulations is to instil in prisoners a sense of discipline and responsibility and, so far as possible, to enable them to reform their character while undergoing their punishment according to law with the dignity and respect due to the human person, to educate them about the impact of crime on their victims, families and communities, and to improve their prospect of successful resettlement in society after release; and

(*b*) The deprivation of liberty, by the keeping of a person in prison, is a punishment in itself and the conditions of that deprivation of liberty and the prison's regime shall not be aggravated except as required for justifiable segregation or the maintenance of security, good order and discipline."

50. Regulations 17 and 18 read as follows:

Regulation 17

"(1) Every request by a prisoner to see the Director, the Board [of Visitors of the Prisons] or a member thereof, and any complaint made by a prisoner, shall be recorded by the prison officer to whom it is made and promptly passed on to the Director.

(2) The Director shall, without undue delay, see prisoners who have asked to see him and take cognizance of any request or complaint made to him.

(3) Where a prisoner has asked to see the Board or a member thereof, the Director shall ensure that the Board or the member is told of the request on their next visit to the prison.

(4) Prison officers in direct contact with prisoners, shall, at their request, supply prisoners with an appropriate form approved by the Director for the purpose of making requests, complaints or petitions. Prisoners may, however, submit any request, complaint or petition in any other proper written form and even verbally."

Regulation 18

"(1) If a prisoner so requests the Director may interview him without any other person being present.

(2) If a prisoner so requests the Board and any members thereof may interview him without the Director or any other person being present.

(3) Every prisoner shall be allowed to make a request or complaint to the Director, to the Board or to the Minister, or to petition the President of Malta, or to an internationally recognised human rights body, under confidential cover.

(4) Every request, complaint or petition of a prisoner shall be dealt with and replied to without undue delay."

51. Under Regulation 23(3), the cleanliness of the cell, including the toilet situated within it, is the responsibility of the particular inmate occupying the cell.

52. Regulation 25 specifically deals with the provision of food to prisoners. Regulation 25(4) provides that sentenced persons are not allowed to have any food other than that ordinarily provided, unless duly authorised by the director or medical officer. In addition, as from 1994, a privilege was granted to all sentenced prisoners: they could receive a meal prepared by

their family once a week, on Sundays. The rule was subsequently changed to an option of either Saturday or Sunday. In accordance with the prison's operational procedure, every meal has to be inspected in front of the person delivering it. Any other method of delivery of food items, including postal delivery, is prohibited.

53. Regulation 31 provides for a prison medical service. The PHS provides a list of medicines that may be obtained free of charge, and where the prescribed medicine is not supplied by the Government, it is substituted by generic medicine. This is the same system that is applicable to all Maltese citizens and all recipients of the PHS (including all inmates). Should a patient decline or refuse the generic medicines offered, he or she may opt to buy other similar medicines. The non-acceptance of generic medicine against branded medicine is registered as a "self-recommendation". The prison authorities have a special fund in order to buy medicines that are not on the PHS list. The fund is reserved for cases requiring immediate intervention.

54. In so far as relevant, Regulation 51 reads as follows:

> "(1) Except as provided by these regulations, every letter and communication to or from a prisoner may be read or examined by the Director or a prison officer deputed by him, and the Director may stop any letter or communication if its contents are objectionable or if it is of inordinate length."
>
> "(2) A convicted prisoner shall be entitled:
>
> (*a*) to send and receive a letter on his admission to prison and thereafter once a week; and
>
> (*b*) to receive a visit once a week.
>
> (3) The Director may allow a prisoner to send or receive an additional letter or visit where necessary for his welfare or that of his family.
>
> (4) The Director may allow a prisoner entitled to a visit to send and receive a letter instead."

55. Regulation 54 reads as follows:

> "(1) A prisoner who is a party to any legal or judicial proceedings may correspond with his legal adviser in connection with those proceedings and, unless the Director has reason to suspect that any such correspondence contains matter not relating to the proceedings, the said correspondence shall not be read or stopped under regulation 51(1).
>
> (2) A prisoner shall on request be provided with writing material for the purposes of the foregoing subregulation and of subregulation (4).
>
> ...
>
> (4) A prisoner may correspond with an advocate or legal procurator for the purpose of obtaining legal advice on matters other than those referred to in subregulation (1)."

56. Regulation 59 deals with telephone communication by inmates. Regulation 59(3) provides that it is the prerogative of the prison director,

with the approval of the Minister, to determine the frequency and duration of telephone calls made or received by inmates as well as the persons with whom such communications can be held. Regulation 59(4) specifically deals with foreign inmates who do not have any relatives in Malta, who may be allowed one free call a month to a relative overseas. The duration of the call is determined by the director.

57. Regulation 63 reads as follows:

"(1) Except as provided by these regulations, a prisoner shall not be permitted to communicate with any outside person or organisation.

(2) The Minister may, with a view to securing discipline and good order or for the prevention of crime or in the interests of any persons, impose restrictions, either generally or in particular cases, upon the communications to be permitted between a prisoner and other persons or organisations other than communications as are referred to in regulation 53(1)."

58. Regulations 106 to 109 read as follows:

Regulation 106

"(1) The Board shall visit and inspect the prison not less than once a month and regularly see each prisoner either at his place of work or confinement or in such other manner as the Board deems convenient.

(2) If the Board so requests, such visits and inspections shall be attended by the Director and any other prison officer or officers designated by the Director.

(3) The prisoners shall be asked if they have any complaints to make with regard to their treatment in the prison and any prisoner wishing to make a complaint shall be heard in such part of the prison as the Board may deem fit:

Provided that no sanction shall be ordered, applied, permitted or tolerated against any person or organization for having communicated to the Board any information, whether true or false, and no such person or organization shall be otherwise prejudiced in any way.

(4) Neither the Director nor any other prison officer shall be present while a prisoner is making a complaint before the Board. The Director, however, shall be heard on any such complaint.

(5) The Board shall keep a record of all complaints made to it by prisoners and its decision thereon, and shall, if it deems necessary, take the sworn evidence of the complainant and of such prison of fleers and other prisoners or other persons as the Board may deem relevant. The oath shall be administered by the Chairman or other member presiding.

(6) Unless it is evidently frivolous or groundless, every request or complaint shall be promptly dealt with and replied to without undue delay."

Regulation 107

"It shall also be the duty of the Board to hear and decide upon, as soon as practicable, any request or complaint made to it by a prisoner, or any person on his behalf, other than those made directly to it or to any of its members during the course of a visit or inspection."

Regulation 108

"(1) The decisions of the Board shall be taken by a majority of the members present and voting. In the case of an equality of votes the Chairman shall have a casting vote in addition to his original vote.

(2) The decisions of the Board shall not be binding upon the Director but it shall be the duty of the Director to take serious cognizance of the recommendations of the Board following a decision taken as provided in subregulation (1) and to enter into a dialogue with the Board on possible implementation measures. Subject to the provisions of subregulation (3), where the Director, or any other prison officer acting on his behalf, is of the opinion that the recommendations of the Board cannot be implemented for reasons which are in the best interests of the prison administration, an explanation in writing of these reasons shall, within one month of the date of receipt of the Board's recommendations, be forwarded to the chairman of the Board and copied to the Minister, or to a person delegated by him. The Minister, or the person delegated by him, may confirm or vary the decision of the Director.

(3) Where the recommendation of the Board entails, in the opinion of the director, a security issue requiring strict confidentiality the Director, within the period of one month mentioned in subregulation (2), shall make a statement to this effect to the Chairman of the Board and shall concurrently submit a personal report directly to the Minister, or to the person delegated by him, giving his own comments on the recommendation, together with his opinion as to whether or not such recommendation should be accepted. The Minister 's decision, or that of the person delegated by him, shall be final and conclusive."

Regulation 109

"1) The members of the Board shall make a note in the official Visitors' Book of every visit or inspection made by them, with such remark as they deem proper in regard to the prisons and the prisoners.

(2) The official Visitors' Book shall be produced to the Board at each monthly meeting and at such other times as the Board may require.

(3) The Minister may request to examine the official Visitors' Book and the minutes book of the Board."

B. Prison Act

59. Section 8 of the Prison Act, Chapter 260 of the Laws of Malta, provides for the establishment of the Board of Visitors of the Prisons. In so far as relevant, it reads as follows:

"(1) There shall be a Board of Visitors of the Prisons, composed of such members as shall be appointed annually by the President of Malta.

(2) The Visitors shall hold office from the 1st January of the year for which they shall be appointed.

(3) If any vacancy in the Board occurs during the year, on account of death, resignation or for any other cause, the President shall, as soon as practicable, appoint another person to fill the vacancy:

Provided that the Board and the members thereof may act notwithstanding any such vacancy.

(4) The members of the Board shall exercise such functions as shall be assigned to them by regulations made under article 6 of this Act.

(5) The Minister responsible for justice, the Chief Justice, the judges, the magistrates and the Attorney-General shall be *ex officio* Special Visitors of the prisons, and as such it shall be lawful for them to have at any time access to the prisons for the purpose of inspecting such prisons and any of the prisoners therein. They shall enter in the official Visitors' Book any remarks which they may deem proper in regard to the prisons and prisoners, and the book shall be produced to the members of the Board of Visitors on their next visit to the prisons."

C. Code of Organisation and Civil Procedure

60. Article 469A of the Code of Organisation and Civil Procedure ("the COCP"), Chapter 12 of the Laws of Malta, provides for judicial review of administrative action and, in so far as relevant, reads as follows:

"(1) Saving as is otherwise provided by law, the courts of justice of civil jurisdiction may enquire into the validity of any administrative act or declare such act null, invalid or without effect only in the following cases:

(*a*) where the administrative act is in violation of the Constitution;

(*b*) when the administrative act is *ultra vires* on any of the following grounds:

(i) when such act emanates from a public authority that is not authorised to perform it; or

(ii) when a public authority has failed to observe the principles of natural justice or mandatory procedural requirements in performing the administrative act or in its prior deliberations thereon; or

(iii) when the administrative act constitutes an abuse of the public authority's power in that it is done for improper purposes or on the basis of irrelevant considerations; or

(iv) when the administrative act is otherwise contrary to law.

(2) In this article -

"administrative act" includes (*tfisser*) the issuing by a public authority of any order, licence, permit, warrant, decision, or a refusal to any demand of a claimant, but does not include any measure intended for internal organization or administration within the said authority ...

"public authority" means the Government of Malta, including its Ministries and departments, local authorities and any body corporate established by law.

(4) The provisions of this article shall not apply where the mode of contestation or of obtaining redress, with respect to any particular administrative act before a court or tribunal is provided for in any other law.

(5) In any action brought under this article, it shall be lawful for the plaintiff to include in the demands a request for the payment of damages based on the alleged responsibility of the public authority in tort or quasi tort, arising out of the administrative act.

The said damages shall not be awarded by the court where notwithstanding the annulment of the administrative act the public authority has not acted in bad faith or unreasonably or where the thing requested by the plaintiff could have lawfully and reasonably been refused under any other power."

III. RELEVANT EUROPEAN REPORTS

61. In so far as relevant, the Report to the Maltese Government on the visit to Malta carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment ("the CPT") (from 26 to 30 September 2011) published on 4 July 2013, reads as follows:

"In Divisions 2 and 3, material conditions were also far below any acceptable standard. Cells were in a very poor state of repair and had only very limited access to natural light. Another major problem was the high level of humidity in many cells, caused by water leaking from the ceiling. In this regard, cell no. 51 in Division 2 (which also had no window) and cell no. 114 in Division 3 were particularly affected. The latter cell was extremely dilapidated and so humid (with water running down the walls) that the prisoner could not keep any personal belongings in his cell. Moreover, in many cells, the toilet flush was not functioning, and, in particular in Division 3, most of the shower facilities (including the sinks) were broken.

In the light of the above, the CPT urged the Maltese authorities to draw up a comprehensive plan to renovate the entire CCF as soon as possible and to provide a timetable for the implementation of the different stages. Divisions 2 and 3 should be renovated as a matter of priority."

THE LAW

I. JOINDER OF THE APPLICATIONS

62. In accordance with Rule 42 § 1 of the Rules of Court, the Court decides to join the applications, given their similar factual and legal background.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

63. The applicants complained that they were being detained in inhuman and degrading conditions, contrary to Article 3 of the Convention, which reads as follows:

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

64. The Government contested that allegation.

A. Scope of the complaint

65. The Court notes that, in so far as the first applicant also referred to his short stay in Divisions 6 and 13, even assuming that any complaint concerning that period of his detention is not inadmissible for non-compliance with the six-month rule (see *Aden Ahmed v. Malta*, no. 55352/12, §§ 67-73, 23 July 2013, for general principles and their application), no detailed factual information has been provided on the matter, nor have any specific observations been made concerning those divisions.

66. In consequence, the Court considers that the present case is limited in scope to the conditions of detention in Division 3.

B. Admissibility

1. The Government's objection of non-exhaustion of domestic remedies

(a) The parties' submissions

67. The Government submitted that the applicants had failed to institute proceedings before the domestic authorities to complain about the alleged breach. They considered that the applicants could have lodged a complaint to the Board of Visitors of the Prisons under Regulation 107 of the Prison Regulations (S.L. 260.03) (hereinafter "the Board"). The members of the Board regularly visited various divisions of the prison and received complaints from inmates; however, they were also competent to deal with complaints other than those made directly to them during the visits. The Government contended that complaints to the Board were not limited, thus there was no impediment to an applicant complaining about the material conditions of his or her cell. They emphasised that the Board had a duty to reply to such complaints (Regulation 107) and even though their decisions were not binding (Regulation 108(2)), where the director, or any other prison officer acting on his behalf, was of the opinion that the recommendations of the Board could not be implemented for reasons which were in the best interests of the prison administration, a written explanation of those reasons had to be forwarded to the chairman of the Board and copied to the Minister, or to a person delegated by him, within one month of the date of receipt of the Board's recommendations. The Minister, or the person delegated by him, may confirm or vary the decision of the director. According to the Government, that regulation thus imposed on the director the duty to issue a decision, which could be challenged in court through an action of judicial review (Article 469 A of the COCP), which the applicants could have brought with the assistance of a legal aid lawyer, in the event that they did not have sufficient funds to appoint their own lawyer.

68. The Government considered that the applicants could also have instituted an action in tort, seeking damages for any loss sustained on account of their conditions of detention, if they could prove on the basis of probabilities that they had suffered damage which was attributable to the Government's acts or omissions.

69. Lastly, the Government submitted that the applicants had failed to institute constitutional redress proceedings before the relevant jurisdictions, which had wide-ranging powers to deal with Convention violations. The Government submitted that such proceedings could also be heard with urgency, reducing the duration of the proceedings to two months from the date of filing an application. For example, in the case of *Richard John Bridge vs Attorney General*, the case (in connection with the Hague Convention on the Civil Aspects of International Child Abduction proceedings) had been decided by two levels of jurisdiction in approximately a month and a half (from 6 July to 24 August 2012). Although the Court had previously criticised the duration of such proceedings, in the Government's view any delays in constitutional proceedings were counterbalanced by the fact that those jurisdictions could issue interim orders pending proceedings. They cited for example a decree in the case of *Emanuel Camilleri vs Inspector Louise Callejja and the Commissioner of Police* (no. 50/2013), where the Civil Court (First Hall), in its constitutional jurisdiction, had released a sentenced person from prison pending the proceedings. In the particular circumstances of that case, the main witness who had testified in the applicant's trial, at which a guilty verdict had ultimately been returned, was subsequently put on trial for perjury in connection with her testimony. Thus, in the Government's view, in the absence of speedy proceedings there nevertheless existed a speedy interim remedy which could be decreed by the constitutional jurisdictions under Article 46(2) of the Constitution and Article 4(2) of the European Convention Act.

70. According to the Government it was evident that those remedies were effective. They formed part of the normal process of redress, were accessible and offered reasonable prospects of success where this was justified. The applicants had never even asked the prison authorities to change cell or made specific complaints about the factors which they considered inappropriate.

71. The applicants submitted that they had been unable to lodge a complaint with the Board as none of its members was ever present on (or was ever shown) the premises in Division 3.

(b) The Court's assessment

(i) General principles

72. In the context of complaints of inhuman or degrading conditions of detention, the Court has already observed that two types of relief are possible: an improvement in the material conditions of detention, and compensation for the damage or loss sustained on account of such conditions (see *Roman Karasev v. Russia*, no. 30251/03, § 79, 25 November 2010, and *Benediktov v. Russia*, no. 106/02, § 29, 10 May 2007). If an applicant has been held in conditions in breach of Article 3, a domestic remedy capable of putting an end to the on-going violation of his or her right not to be subjected to inhuman or degrading treatment is of the greatest value. However, once the applicant has left the facility in which he or she has endured the inadequate conditions, what remains relevant is that he or she should have an enforceable right to compensation for the violation that has already occurred (see *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, § 97, 10 January 2012).

73. Where the fundamental right to protection against torture, inhuman and degrading treatment is concerned, the preventive and compensatory remedies have to be complementary in order to be considered effective. The existence of a preventive remedy is indispensable for the effective protection of individuals against the kind of treatment prohibited by Article 3. Indeed, the special importance attached by the Convention to this provision requires, in the Court's view, the States parties to establish, over and above a compensatory remedy, an effective mechanism in order to put an end to such treatment rapidly (see *Ananyev and Others,* cited above, § 98, and *Torreggiani and Others v. Italy*, nos. 43517/09, 46882/09, 55400/09, 57875/09, 61535/09, 35315/10 and 37818/10, § 50, 8 January 2013). The need, however, to have both of these remedies does not imply that they should be available in the same judicial proceedings (see *Mikalauskas v. Malta*, no. 4458/10, § 46, 23 July 2013).

74. According to the Court's case-law, compensation for the non-pecuniary damage flowing from the breach should in principle be available as part of the range of possible remedies in the event of a breach of Articles 2 and 3, which rank as the most fundamental provisions of the Convention (see *Z and Others v. the United Kingdom* [GC], no. 29392/95, § 109, ECHR 2001-V; *Keenan v. the United Kingdom*, no. 27229/95, § 130, ECHR 2001-III; and *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, §§ 97-98, ECHR 2002-II).

75. It is incumbent on the Government claiming non-exhaustion of domestic remedies to satisfy the Court that a remedy was effective and available, both in theory and in practice, at the relevant time (see ibid., and *Menteş and Others v. Turkey*, 28 November 1997, *Reports of Judgments and Decisions* 1997-VIII, § 57).

76. The Court reiterates that in order to satisfy the requirements of Article 13, which has a close affinity with the rule of exhaustion of domestic remedies, a decision must be binding and enforceable and must come from an authority that has a sufficiently independent standpoint (see *Silver and Others v. the United Kingdom*, 25 March 1983, §§ 115-16, Series A no. 61, and *Leander v. Sweden*, 26 March 1987, § 80, Series A no. 116).

(ii) Application to the present case

77. The Court considers that before turning to an international court, it would have been advisable for the applicants to make an oral or written request to the prison director for a change in cell, or with regard to specific faults or omissions concerning their cells (under Regulation 17(2)). However, the Government have not explained how such general requests are dealt with in the prison; nor have they provided information on the powers of the prison authorities and the prospects for such arrangements and cell switching, if at all possible. Furthermore, had the applicants complained of inadequate prison conditions to the prison authorities, it would necessarily have called into question the way in which the latter had discharged their duties and complied with the relevant law. Accordingly, the Court does not consider that the prison authorities would have a sufficiently independent standpoint to satisfy the requirements of Article 13 (see *Silver and Others*, § 116, and *Ananyev and Others*, § 101, both cited above) as, in deciding on a complaint concerning conditions of detention for which they are responsible, they would in reality be judges in their own cause (ibid.).

78. In connection with the remedy before the Board of Visitors, again, the Court considers that it would have been preferable for the applicants to make a request to the Board (Regulation 17(3) or 106)). Nevertheless, as admitted by the Government, the decisions of the Board are not binding. Thus they fall short of Article 13 requirements and can only be considered as "recommendations" to the director, who, as held above, could not be considered as an authority satisfying the independence guarantees.

79. The director's decision has subsequently to be confirmed or varied by the Minister. In this connection, even assuming that the guarantee of independence could be satisfied in relation to a complaint before the Minister concerning the misapplication of the regulations resulting in inadequate conditions of detention – as opposed to a complaint concerning the substance of the regulations made by the Minister him or herself, in respect of which the Minister could not be independent (see, *mutatis mutandis*, *Silver*, cited above § 116) – other deficiencies taint the adequacy of this procedure. In particular, the Court notes that there is no legal requirement on the Minister to hear the complainant or ensure his or her effective participation in the process, which would thus be entirely a matter between the Minister and the director, whose decisions and actions are at issue. The complainant would therefore not be a party to any proceedings

and would only, if at all, be entitled to obtain information about the way in which the supervisory body (the Minister) had dealt with the complaint. The Court considers that such a remedy consists of a hierarchical complaint which does not give the person making it a personal right to the exercise by the State of its supervisory powers, and which according to its case-law, cannot be regarded as an effective remedy for the purposes of Article 35 of the Convention (see, for example, *Ananyev and Others*, cited above, § 104 and the cases cited therein, and, *mutatis mutandis, Horvat v. Croatia*, no. 51585/99, § 47, ECHR 2001-VIII).

80. In so far as the Government argued that such a decision could also be subject to judicial review, even assuming that the latter proceedings had the required scope, the Government have not indicated any time-lines concerning these proceedings, nor given any examples relevant to the context. The Court reiterates that the speed of the procedure for remedial action may also be relevant to whether it is practically effective in the particular circumstances of a given case for the purposes of Article 35 § 1 of the Convention (see *Mikalauskas*, cited above § 50, and, *mutatis mutandis*, *McFarlane v. Ireland* [GC], no. 31333/06 § 123, ECHR 2010). In this light, the Court is not convinced that judicial review proceedings would constitute an adequate preventive remedy for the purposes of conditions of detention. This is even more so given that such proceedings would have to be undertaken subsequent to a preliminary three-tier procedure (the Board, the director and the Minister), which would have inevitably taken a certain amount of time.

81. In so far as the Government referred to an action in tort, the Court has already held in the above-mentioned *Mikalauskas* judgment that the Maltese law of tort did not provide for compensation for non-pecuniary damage. It noted that this was different from a loss of opportunity, which is considered as pecuniary damage in Convention case-law. It followed that an action in tort could not give rise to compensation for the non-pecuniary damage suffered (see ibid., § 49, and, conversely, *Nocha v. Poland*, (dec.) no. 21116/09, 27 September 2011). Nor was it a preventive remedy which could put an end to such treatment rapidly (see *Čuprakovs v. Latvia*, no. 8543/04, § 55, 18 December 2012). In consequence, the Court held that an action in tort could not be considered an effective remedy under Article 3 for the purposes of a complaint of inadequate conditions of detention. The Court finds no reason to hold otherwise in the present case.

82. As to the remedy provided by the constitutional courts, in the same *Mikalauskas* judgment the Court was satisfied that the existing legal framework rendered this remedy capable, at least in theory, of affording appropriate redress, in so far as, such an action provides a forum that guarantees due process of law and effective participation for the aggrieved individual. In such proceedings, courts can take cognisance of the merits of the complaint, make findings of fact and order redress that is tailored to the

nature and gravity of the violation. Such courts can also make an award of compensation for non-pecuniary damage and there is no limit on the amount which can be granted to an applicant for such a violation. The ensuing judicial decision will be binding on the defaulting authority and enforceable against it (see paragraph 50 of the *Mikalauskas* judgment). Nevertheless, the Court held that the speed of the procedure for remedial action may also be relevant to whether it is practically effective in the particular circumstances of a given case for the purposes of Article 35 § 1 (see paragraph 75 above). Bearing in mind the examples given by the Government in that case, the Court considered that such a remedy could not put an end to the treatment complained of rapidly. The Court concluded that while it could not rule out the possibility that constitutional redress proceedings dealt with as urgent may in other cases be considered an effective remedy for the purposes of complaints about conditions of detention and lack of adequate medical treatment under Article 3, the domestic case-law at the time of that case did not allow the Court to find that the applicant had been required to have recourse to that remedy (see *Mikalauskas*, cited above §§ 68-69).

83. In the present case, the Government again referred to the case of *Richard John Bridge vs Attorney General*, as its sole example to prove the speediness of such proceedings. Nevertheless, the Court has already indicated in *Suso Musa v. Malta* (no. 42337/12, § 53, 23 July 2013) that that case referred to the specific context of Hague Convention proceedings, where the domestic courts were bound by a strict time-limit established by law. It follows that, once again, the Government have been unable to prove that constitutional redress proceedings, a remedy that is effective in principle, are currently also effective in practice, due to their duration.

84. In so far as the Government relied on the possibility of the constitutional courts issuing interim measures (pending the completion of lengthy proceedings), the Court notes that the example put forward by the Government is indeed very specific and unrelated to circumstances such as those of the present case. In the absence of any other comparable examples, the Court finds no indication that the constitutional jurisdictions would be willing on a regular basis to release convicted prisoners pending a decision on their claims on conditions of detention. Indeed, the Court has doubts as to the adequacy of such measures. It follows that, in circumstances such as those of the present case, the hypothetical possibility that interim measures might be issued pending proceedings does not make up for the deficiencies detected in the remedy at issue – a remedy which would be effective if it were carried out in a timely manner.

85. Thus, while the Court cannot rule out the possibility that constitutional redress proceedings dealt with speedily may in a future case be considered an effective remedy for the purposes of complaints of conditions of detention under Article 3, current domestic case-law does not allow the Court to find that the applicants were required to have recourse to

such a remedy. Given the size of the country and the limited number of similar cases, the Government should be able to introduce a proper administrative or judicial remedy capable of ensuring the timely determination of such complaints, and where necessary, to prevent the continuation of the situation.

86. In conclusion, none of the remedies put forward by the Government, alone or in aggregate, satisfy the requirements of an effective remedy in the sense of preventing the alleged violation or its continuation, in a timely manner. It follows that the Government's objection must be dismissed.

2. Conclusion

87. The Court notes that 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.

C. Merits

1. The parties' submissions

(a) The applicants

88. The applicants submitted that the conditions in which they were being detained were very poor and that the prison was overcrowded (fifty-five persons were currently detained in Division 3). The applicants described the conditions of their detention and their complaints as set out in the facts, and claimed that the photographs submitted by the Government had not been taken in the division in which they were detained. They also complained about the medical treatment provided as well as the limited access to facilities such as the telephone (see paragraphs 25-26, and 38-41).

89. The applicants submitted that not enough water was available for showers, and that a water heater of 270 litres could not cater for the needs of the inmates. It took two hours to warm up the water, and the water pressure was so low that it was impossible to shower. Furthermore, the shower room could only accommodate three persons.

90. The applicants alleged that, in their experience, no guard had ever distributed hot drinks and the possibility of obtaining hot drinks in the evening was limited, given that only two litres of water were provided for fifty-five inmates. The applicants strongly objected to the water quality tests performed by the Government and presented as evidence before the Court, insisting that the tap water tested could not have been taken from their cells, but may have come from the kitchens, which were equipped with filters.

91. The applicants further submitted that in three years they had never had their bed sheets changed, and had only been given one small towel. They were never given extra clothes in the winter time, despite temperatures ranging from two to six degrees Celsius and humidity levels of between 71% and 91%. Moreover, they had no heater, despite the fact that other inmates had managed to obtain a heater.

92. The applicants denied that it was possible to open the windows by climbing onto the beds and claimed that it was only possible to so do by climbing on the sinks. In particular, the first applicant's cell had a faulty window which would not remain open. Despite his repeated requests for two years, nothing had been done and a prison officer (no. 75) had only replied to him in Maltese, a language he could not understand. Furthermore, the windows were heavily barricaded, with three types of metal, a measure which only applied to Divisions 2 and 3.

93. The applicants also complained that they had to paint their own cells and that the authorities tampered with their correspondence, as well as about the lack of natural light and the limited access to water, including that necessary to flush the toilets. Furthermore, they considered that they had limited access to the tuck shop, which caused difficulties since they could not receive parcels of food from Poland.

94. In the applicants' view, they were treated worse than Maltese detainees. In conclusion, and relying on the findings of the CPT, the applicants considered that the cumulative conditions of their detention had reached the relevant threshold to amount to inhuman treatment.

(b) The Government

95. The Government referred to the general principles of the Court's case-law on the subject matter as established in *Poltoratskiy v. Ukraine* (no. 38812/97, ECHR 2003-V), *A. and Others v. the United Kingdom* ([GC], no. 3455/05, ECHR 2009) and *Mikalauskas v. Malta* (cited above). They submitted that according to the Court's case-law, the facts of a particular case must be viewed in the light of the circumstances as a whole, and referred to the Court's findings in *Peers v. Greece* (no. 28524/95, ECHR 2001-III), *Kalashnikov v. Russia* (no. 47095/99, ECHR 2002-VI) and *Modarca v. Moldova* (no. 14437/05, 10 May 2007).

96. The Government submitted that the Prison Regulations regulated all matters relating to prisons as well as the proper treatment of prisoners. The regulations' objectives were outlined in Regulation 3(1) (see Relevant Domestic Law above) and Part II of the regulations dealt with the physical welfare and work of prisoners. In particular, Regulation 19 provided that every prisoner should be lodged in an individual cell and provided with a bed and bedding appropriate for warmth and health. The bedding must be changed often enough to ensure cleanliness. It was however the inmates' responsibility to wash the linen once it had been given to him/her. The

Government submitted that inmates were provided with blankets and warm clothing during the winter months, and that contrary to the applicants' allegations, it did not transpire from the records (not submitted to the Court) that they had ever requested further blankets.

97. The Government submitted that the full capacity of Division 3 was sixty inmates and that since the applicants had been detained, the number of inmates had never exceeded fifty-five. Each of the three applicants had been allocated a single cell measuring 3.6 m by 2.5 m (an area of 9 sq. m) which was equipped with its own sanitary facilities (toilet and washbasin).

98. Only cold water was provided in the cells for security reasons (as there had been instances when inmates had thrown hot water at prison officials). Nevertheless, each division was equipped with a hot water dispenser for hot drinks, and inmates were allowed to keep a small thermos flask of hot water in their cells overnight for the same purpose. Division 3 was also equipped with a four-cubicle hot-and-cold shower room, to which inmates had access during opening hours, namely from 7.45 a.m. to 12.30 p.m. and from 2 p.m. to 8.30 p.m. Cells were unlocked at 7.30 a.m. by prison guards distributing hot drinks to prisoners and were left open until 12.30 p.m. They were unlocked again at 2 p.m. and locked at 8.30 p.m., during which time inmates were free to move around and access the exercise yard, which was adjacent to the division. Other available amenities included a library, a gym, a church, a school and workshops. Occasional cultural events were organised.

99. The Government claimed that positioning windows at high levels, and the absence of heaters were necessary security measures. Similarly, weekly access to the tuck shop was also based on security considerations, namely to avoid having inmates from the different divisions mingling. However, there was no limit on the amount of items inmates were allowed to purchase. The Government submitted that for health and security reasons no inmate was allowed to receive food in the prison. For the same security reasons, windows at lower levels were walled.

100. The Government further submitted that working at the facility was optional and work by inmates was governed by the Prison Regulations (Regulation 29 S.L. 360.03). They submitted that for a prisoner to pay social security contributions or to have pension entitlements, they had to be registered with Malta's Employment Authority (the Employment and Training Corporation) as a gainfully employed person. The applicants were not so registered. The Government referred to the findings of the Court in *Stummer v. Austria* ([GC], no. 37452/02, ECHR 2011), concerning the subject matter.

101. The Government contested the specific situations of the applicants as set out in the facts of the case. In addition, they noted that according to the prison medical records, the second applicant did not suffer from asthma. As to the third applicant, the Government submitted that any mould around his sink could be the result of severe and constant splashing. They noted that he kept the sink in a dirty condition, despite water being available all the time. The cells given to the applicants were in a good state of repair, with ventilation, a large window allowing natural light to enter, appropriate artificial lighting, a toilet and a washbasin allowing for privacy, and bedding and water were provided. They referred to the photographs submitted to the Court.

102. The Government pointed out that the Maltese authorities' response of 4 July 2013 to the CPT report of 2013 stated that maintenance works were being conducted at the facility on a regular basis.

103. In conclusion, the Government submitted that the cumulative conditions of the applicants' detention were not such as to arouse in them feelings of fear, anguish and inferiority capable of humiliating and debasing them in any manner by breaking their moral and physical resistance. The Government referred to *M.C. v. Poland* (no. 23692/09, 3 March 2015) in asserting that the relevant threshold had not been reached and that there had thus been no violation of Article 3.

2. The Court's assessment

(a) General principles

104. Under Article 3, 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 (see *Kudła v. Poland* [GC], no. 30210/96, § 94, ECHR 2000-XI). In examining allegations of inadequate medical care in prison, one must consider how ill the detained person is, what medical treatment he receives, and whether his state of health is compatible with detention (see *Telecki v. Poland* (dec.), no. 56552/00, 3 July 2003, and *Farbtuhs v. Latvia*, no. 4672/02, § 57, 2 December 2004).

105. On the whole, the Court takes a flexible approach in defining the required standard of health care, deciding it on a case-by-case basis. That standard should be "compatible with the human dignity" of a detainee, but should also take into account "the practical demands of imprisonment" (see *Aleksanyan v. Russia*, no. 46468/06, § 140, 22 December 2008). The "adequacy" of medical care in this respect remains the most difficult

element to determine. The mere fact that a detainee is seen by a doctor and prescribed a certain form of treatment cannot automatically lead to the conclusion that the medical care provided was adequate (see *Hummatov v. Azerbaijan*, nos. 9852/03 and 13413/04, § 116, 29 November 2007). The authorities must ensure that a comprehensive record is kept of the detainee's state of health and his treatment while in detention (see, for example, *Khudobin v. Russia*, no. 59696/00, § 83, ECHR 2006-XII), that the diagnoses and care are prompt and accurate (see *Hummatov,* cited above, § 115, and *Melnik v. Ukraine*, no. 72286/01, §§ 104-06, 28 March 2006), and that where necessitated by the nature of a medical condition, supervision is regular and systematic and involves a comprehensive therapeutic strategy aimed at curing the detainee's diseases or preventing their aggravation, rather than addressing them on a symptomatic basis (see *Hummatov*, cited above, §§ 109 and 114; *Sarban v. Moldova*, no. 3456/05, § 79, 4 October 2005; and *Popov v. Russia*, no. 26853/04, § 211, 13 July 2006). The authorities must also show that the necessary conditions were created for the prescribed treatment to be actually followed through (see *Hummatov*, cited above, § 116, and *Holomiov v. Moldova*, no. 30649/05, § 117, 7 November 2006). Failure to provide proper medical aid to a detainee would not fall under Article 3 unless there was an actual detriment to his physical or mental condition, or avoidable suffering of a certain intensity, or an immediate risk of such detriment or suffering (see *Lebedev v. Russia* (dec.), no.13772/05, § 176, 27 May 2010).

106. More generally, when assessing conditions of detention, account has to be taken of the cumulative effects of these conditions, as well as of specific allegations made by the applicant (see *Dougoz v. Greece*, no. 40907/98, § 46, ECHR 2001-II). Quite apart from the necessity of having sufficient personal space, other aspects of material conditions of detention are relevant for the assessment of whether they comply with Article 3. Such elements include access to outdoor exercise, natural light or air, the availability of ventilation, the adequacy of heating arrangements, the possibility of using the toilet in private, and compliance with basic sanitary and hygiene requirements (see *Ananyev and Others,* cited above, § 149 et seq.). The length of time a person is detained in particular conditions also has to be considered (see, among other authorities, *Alver v. Estonia*, no. 64812/01, 8 November 2005).

(b) Application to the present case

107. The Court notes that the applicants and the Government are in dispute as to the factual elements surrounding the case. The Court observes, on the one hand, that the Government have submitted certain documentation and photographic evidence; on the other hand, a number of other applications have been lodged and are currently pending before the Court in their preliminary stages by detainees of Division 3 who complain about the

same circumstances. The latter circumstances have also been commented on by the CPT (see paragraph above 61 above) as well as local NGOs[1]. Bearing in mind this conflict, the Court's considerations will be based on the materials before it.

108. Firstly, the Court notes that according to the records submitted by the Government, the applicants in the present case were not suffering from any particular health condition likely to make their detention more burdensome. Nor does it transpire that there was any actual deterioration of their physical or mental condition while they were in detention. It also appears that the applicants were regularly seen by doctors in connection with common ailments and were prescribed the relevant medical treatment, as would have been the case had they been treated in the State Hospital like any other citizen at liberty (see, *mutatis mutandis, Prestieri v. Italy*, (dec.), no. 66640/10, 29 January 2013). In this connection, the Court reiterates that medical treatment within prison facilities must be appropriate and comparable to the quality of treatment which the State authorities have committed themselves to providing for the entirety of the population. Nevertheless, this does not mean that each detainee must be guaranteed the same medical treatment that is available in the best health establishments outside prison facilities (see *Cara-Damiani v. Italy*, no. 2447/05, § 66, 7 February 2012).

109. In deciding whether or not there has been a violation of Article 3 on account of a lack of personal space, the Court has regard to whether each detainee has an individual sleeping place in the cell and relevant floor space which must allow the detainees to move freely between the furniture items. The absence of any of the above elements creates in itself a strong presumption that the conditions of detention amounted to degrading treatment and were in breach of Article 3 (see *Ananyev and Others*, cited above, § 148).

110. From the facts as established, it does not appear that there is a problem of overcrowding in Division 3. Indeed, the applicants in the present case have confirmed that the total number of detainees currently held in Division 3 is fifty-five, and they have not contested the Government's statement that the division can host sixty people. Moreover, the applicants have admitted that they each have their own cell with an individual sleeping place. As to the statement in the application form made by the second applicant that "he had sometimes not even a bed to sleep on", the Court reiterates that in cases which concern conditions of detention, applicants are expected in principle to submit detailed and consistent accounts of the facts complained of and to provide, as far as possible, some evidence in support of their complaints (see *Dougoz*, cited above, § 46, and *Visloguzov*

1. http://www.timesofmalta.com/articles/view/20150811/local/cells-not-adequate-for-prisoners.580133 published on 11 August 2015

v. Ukraine, no. 32362/02 § 45, 20 May 2010, with further references). The Court notes that that statement was not accompanied by any information as to the dates when it had occurred or any explanation as to the circumstances that led to such an alleged situation; nor were any observations made in this respect following communication of the application. In this light and from the materials in its possession, the Court cannot consider this allegation to be substantiated.

111. The Court observes that the applicants have not claimed that the overall surface of the cell does not allow them to move freely between the furniture items. Nor have they contested the dimensions put forward by the Government, namely that each cell measures nine square metres. Such an area is adequate given that according to the CPT indications, the provision of four square metres remains the desirable standard of living space per person (see *Ananyev and Others*, cited above, § 144 and *Torreggiani and Others*, cited above, § 68 and the cases cited therein).

112. In cases where the inmates appeared to have at their disposal sufficient personal space, the Court noted other aspects of physical conditions of detention as being relevant for the assessment of compliance with that provision. Such elements included, in particular, 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. Thus, even in cases where a larger prison cell was at issue – measuring in the range of three to four square metres per inmate – the Court found a violation of Article 3 since the space factor was coupled with an established lack of ventilation and lighting (see, for example, *Vlasov v. Russia*, no. 78146/01, § 84, 12 June 2008; *Trepashkin v. Russia*, no. 36898/03, § 94, 19 July 2007; and *Ostrovar v. Moldova*, no. 35207/03, § 89, 13 September 2005).

113. Noting that the applicants are detained in spacious cells, the Court will however consider the general conditions of detention in those cells.

114. While the three applicants complained of humidity in their cells (see paragraphs 24, 38 and 45), from the photographs provided, it does not appear that the cells at issue are particularly damp or mouldy, considering the climate. According to public information, Malta's climate has very high humidity levels (sometimes as high as 90% and rarely below 40 %).When coupled with high temperatures in the summer and low temperatures in winter, this causes mould and dampness, which is aggravated in winter. In this connection, ventilation and heating are key factors in preventing mould.

115. As to the amount of natural and artificial light and ventilation in the present cases, the Court observes that while not ideal (see CPT report, paragraph 61 above) there is not a sufficient indication that the installations in the applicants' cells, namely windows measuring 76.5 by 46 cm and ventilators measuring 20 by 15 cm, as well as a smaller ventilator in the ceiling, could not supply enough ventilation and light for the purposes of a

one-person cell, despite the metal grids and barriers shown in the pictures submitted. While it is rather unfortunate, for the purposes of lighting, that the windows are installed at a height of 2.5 m from the ground, the available artificial lighting should suffice to their needs in the limited hours during which they are confined to their cells. It transpires from the facts of the case that the applicants had, or were allowed, at least two other lamps per cell, apart from a ceiling light. Furthermore, the Court reiterates that in the absence of any indications of overcrowding or malfunctioning of the ventilation system and the artificial lighting, the negative impact of metal shutters does not reach, on its own, the threshold of severity required under Article 3 (see *Pavlenko v. Russia*, no. 42371/02, §§ 81-82, 1 April 2010, and *Matyush v. Russia*, no. 14850/03, § 58, 9 December 2008).

116. It would, however, be of concern to the Court if the prison authorities did not ensure that all wall-mounted ventilators are fully functional in all cells, and that they allow fresh air to enter, while barring the entrance of external elements such as strong winds and rain (see, for example the first applicant's allegations, paragraph 12 above). It would be of even more concern if, contrary to the Government's submission, the prison authorities were not making available the required equipment (be it a two-foot arm, or any other appropriate tool) to open and keep open high windows, as detainees should not have to put themselves in peril by having to climb on beds or sinks, or be dependent on other detainees to lift them up in order to access such windows.

117. As to heating, the Court has previously highlighted the need for adequate heating (see, for example, *Apostu v. Romania*, no. 22765/12, § 83, 3 February 2015, and by implication, *Bouros and Others v. Greece*, nos. 51653/12, 50753/11, 25032/12, 66616/12 and 67930/12, § 81, 12 March 2015). The Court reiterates, as it did in the *Mikalauskas* judgment, that it is uneasy about the fact that no heating whatsoever was available in the prison, in particular in Division 3. It is undeniable that in the winter months the country suffers from great humidity, with temperatures which can drop to a few degrees above zero, as was the case in December 2014, a period during which the applicants were in detention. The Court also observes that the applicants' allegations that other inmates were allowed heaters contradict the Government's claim that heaters were not allowed in cells for security reasons. The Court considers that, while the absence of a heating system (or alternatively a dehumidifying system) remains regrettable - as it would particularly help in connection with any mould or dampness present in the cells - in the current circumstances, detainees should at least make requests for further blankets or warmer clothing, which the authorities should be in a position to supply promptly.

118. In the instant case, the Court notes that only the second of the three applicants claimed that he sometimes did not have a blanket, while the Government stated that two blankets were distributed on entry to the facility and further blankets were made available on request (see paragraphs 35 and 96 above). In connection with the second applicant's allegation, the Court considers that given that it is the detainees' responsibility to take care of the material distributed, in the absence of any explanation on his part, the temporary loss of the second applicant's blankets appears to be attributable to him. In any event it has not been shown or claimed that he, or the other two applicants, requested further blankets and were refused.

119. Furthermore, the Court reiterates that access to properly equipped and hygienic sanitary facilities is of paramount importance for maintaining inmates' sense of personal dignity. Not only are hygiene and cleanliness integral parts of the respect that individuals owe to their bodies and to their neighbours with whom they share premises for long periods of time, they also constitute a condition and at the same time a necessity for the conservation of health. A truly humane environment is not possible without ready access to toilet facilities or the possibility of keeping one's body clean (See *Ananyev and Others*, cited above § 114, and the references therein).

120. Turning to the present case, as regards access to toilets, the Court notes that, although it appears to be the case, the applicants have not complained that the toilet in their cell was not separated from the living area. Indeed, the Court observes that the applicants have individual cells, and not multi-occupancy cells, and that the cell doors are solid rather than transparent panels, and thus no privacy issues arise (compare, *Aleksandr Makarov v. Russia*, no. 15217/07, § 97, 12 March 2009, and *Kalashnikov v. Russia*, no. 47095/99, § 99, ECHR 2002-VI § 99). Nevertheless, the Court finds it useful to reiterate that, beyond any privacy issues, close proximity and exposure [to the toilet] is objectionable also from a hygiene perspective (see *Ananyev and Others*, cited above, § 157).

121. In this connection, in the present case the Court takes issue with the fact that the applicants' cells are not equipped with an automated flushing system. This is even more so if, as stated by the applicants, water was not always readily available to enable them to flush by using a bucket (see also CPT comments, at paragraph 61 above). This matter raises particular concern to the Court as this may cause unpleasant smells but also a perilous hygiene situation, particularly given that the toilets were situated in the vicinity of the applicants' beds without any partition. The Court has already held that the absence of a flush, accompanied by various other factors, such as dampness and filth in a cell, rusty washbasins and beds, as well as worn-out and dirty linen amounted to degrading conditions which were unfit for decent habitation (see, for example, *Zakharkin v. Russia*, no. 1555/04, § 126, 10 June 2010). The same concerns arose in respect of toilets in cells with no water supply, accompanied by other sanitary issues (see *Iacov*

Stanciu v. Romania, no. 35972/05, § 175, 24 July 2012). It is thus imperative that running water is available at all times, together with the relevant cleaning materials to ensure the required hygienic standards in each cell. The Court reiterates that it is incumbent on the respondent Government to organise its penitentiary system in such a way as to ensure respect for the dignity of detainees, regardless of financial or logistical difficulties (see, *mutatis mutandis, Bazjaks v. Latvia*, no. 71572/01, § 111, 19 October 2010).

122. Also pertaining to the domain of hygiene, the Court observes that the applicants had wide access to the showers (approximately twelve hours daily) and that a detainee could use the shower several times daily (see, by contrast, *Iacov Stanciu*, cited above, § 173; *Čuprakovs,* cited above, 44 §; and *Varga and Others v. Hungary*, nos. 14097/12, 45135/12, 73712/12, 34001/13, 44055/13, and 64586/13, § 32, 10 March 2015). Nevertheless, the applicants' allegations made in 2013 concerning the actual functionality of the showers are supported by the CPT report (see paragraph 60 above) concerning the situation in 2011, and similar allegations continue to be made by detainees in Division 3, to date, as transpires from applications introduced with the Court in 2015 (see reference at paragraph 107). While the Government submit that the showers may be temporarily unavailable, it is surely inexcusable that over a span of five years the situation concerning the functionality of showers appears to remain problematic. However, even if, as stated by the first applicant, only one shower out of the four available was fully functional for an unspecified period of time, given that the shower room was open for approximately twelve hours daily to serve fifty-five detainees (allowing more than a ten-minute daily shower each), this cannot by itself raise an issue under Article 3. Moreover, it is not excluded that on a more regular basis the applicants had at least three showers at their disposal.

123. Further, while the Court considers that a limited waiting time for hot water usage is normal, it is unfortunate that the authorities fail to ensure a regular supply of both hot and cold water in the showers as well as to maintain the functionality of the four available showers to enable their regular use. The latter factors have a bearing on the general assessment of the conditions of detention (compare, *Iacov Stanciu*, cited above, § 175) and in this respect the Court will remain vigilant in future cases.

124. As to the quality of the water available in the cells, the Court considers that, even assuming that the tap water was undrinkable, the applicants could have made use of the hot potable water available nearly all day long or alternatively purchased their own bottled water (to which they had access from the tuck shop at least weekly, and which could be purchased with their gratuity money) if they so wished (see *Mikalauskas*, cited above, § 68). Moreover, the fact that only cold water was available in each cell cannot be considered treatment contrary to Article 3 (see ibid., and *Tellissi v. Italy*, (dec.) no. 15434/11, 5 March 2013).

125. More generally, concerning the applicants' less specific complaints, the Court does not find it demeaning for the detainees to be encouraged to paint their cells, with paint provided by the authorities. Indeed it has not been submitted that this was an obligation, nor that the authorities would not have seen to the matter had a detainee refused to do so for medical, physical or age-related reasons or on the basis of any other objection. The same considerations apply, in the present case, in relation to the applicants' responsibility to keep their cells clean, including their own linen, provided that the relevant equipment and cleansing products are supplied. Furthermore, the Court observes that work was an option the applicants voluntarily entered into, and any complaints concerning the pension system would require firstly an assessment by the domestic courts.

126. Lastly, the Court reiterates that of the other elements relevant for the assessment of the conditions of detention, special attention must be paid to the availability and duration of outdoor exercise and the conditions in which prisoners could take it. The Prison Standards developed by the Committee for the Prevention of Torture make specific mention of outdoor exercise and consider it a basic safeguard of prisoners' well-being that all of them, without exception, be allowed at least one hour of exercise in the open air every day and preferably as part of a broader programme of out-of-cell activities (see *Ananyev and Others*, cited above, § 150). In examining the cumulative effect of the above factors, the Court cannot but take account of the fact that cells were unlocked at 7.30 a.m. and left open until 12.30 p.m.; they were unlocked again at 2 p.m. and locked at 8.30 p.m. Therefore inmates were free to move around and access the exercise yard, as well as other recreational facilities, for more than ten hours a day. Such a favourable situation has a particular bearing when assessing the applicants' conditions of detention. In relation to the second applicant's claim that he was not allowed access to the yard (paragraph 41 above), again, in the absence of a detailed and consistent account of such occurrences, the Court cannot but consider the allegation as unsubstantiated.

127. Moreover, the Court observes that all the applicants have had their requests for non-essential items granted and, as transpires from the photographs of the cells at issue, the applicants have acquired more than standard means of entertainment, including televisions, DVD players and other electronic gadgets. Similarly, they have almost unlimited access to telephone services, as shown by the use made of such service by the first applicant (see paragraphs 27 and 28 above). Against the information provided, the latter's complaints on the matter do not appear to raise any concern.

128. Having regard to the preceding paragraphs, while the Court is concerned about a number of matters highlighted above, in the present case the Court is not convinced that the overall conditions of detention, and the medical treatment received by the applicants, subjected them to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention or that, given the practical demands of imprisonment, their health and well-being were not adequately protected.

129. It follows that there has been no violation of Article 3 of the Convention.

III. ALLEGED VIOLATION OF ARTICLES 8 AND 34 OF THE CONVENTION

130. The applicants complained that the Court's correspondence had been opened by the prison authorities and that it had been received in a disorderly state; thus, they were not sure that they had had access to all the documents submitted to the Court by the Government. They further alleged that the authorities had stopped their correspondence (with their lawyer) in an attempt to hinder their right to complain before the Court. They invoked Article 8 of the Convention.

131. The Court reiterates that the practice of intercepting, opening and reading prisoners' letters amounts to an interference with the right to respect for correspondence. It is of the utmost importance for the effective operation of the system of individual petition guaranteed under Article 34 of the Convention that applicants or potential applicants should be able to communicate freely with the Convention organs without being subjected to any form of pressure from the authorities to withdraw or modify their complaints (see *Akdivar and Others v. Turkey*, 16 September 1996, *Reports* 1996-IV, § 105, and *Sałapa v. Poland*, no. 35489/97, § 94, 19 December 2002). It is of prime importance for the effective exercise of the right to individual petition under the Convention that the correspondence of prisoners with the Court should not be subject to any form of control, which might hinder them in bringing their cases to the Court (ibid.).

132. The Court notes that in so far as the applicants are submitting a complaint under Article 8 concerning interference with their correspondence, they have not raised the complaint before the relevant domestic authorities, namely by means of constitutional redress proceedings, which are still available to them for the purposes of such a complaint.

133. It follows that the complaint under Article 8 must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

134. It is unclear whether the applicants are also raising an issue under Article 34 of the Convention in connection with the authorities'

examination of their correspondence with the Court and their lawyer. In this respect the Court emphasizes the necessity of abiding by the Prison Regulations in such matters (see Relevant Domestic Law above, in particular paragraphs 50 and 55). Nevertheless, the Court notes that there is no hard evidence that the authorities stopped the applicants' letters. Furthermore, there is no evidence of threats or other concrete attempts to dissuade the applicants from applying to the Court. Indeed, no allegations of undue pressure have been made in the present case. In practice, the applicants were able to lodge their applications and continued corresponding with the Court and their lawyer without any serious obstacles (see, a contrario, *Maksym v. Poland*, no. 14450/02, § 33, 19 December 2006 and *Drozdowski v. Poland*, no. 20841/02, § 31, 6 December 2005). Thus, without prejudice to any findings under Article 8 which may be made by the domestic courts, the Court considers that in the present case, any checks of the applicants' correspondence, even if slightly delaying their receipt, did not disclose any prejudice in the presentation of these applications (see, *mutatis mutandis, Apandiyev v. Russia*, (dec.), no. 18454/04, 21 January 2014) and the subsequent submissions.

135. It follows that the authorities of the respondent State cannot thus be held to have hindered the applicants in the exercise of their right of individual petition and therefore the respondent State has not failed to comply with its obligations under Article 34 of the Convention in respect of the alleged interference with the applicants' correspondence.

FOR THESE REASONS, THE COURT

1. *Decides*, unanimously, to join the applications;

2. *Declares*, unanimously, the complaint concerning Article 3 admissible and the remainder of the applications inadmissible;

3. *Holds*, by six votes to one, that there has not been a violation of Article 3 of the Convention;

4. *Holds*, unanimously, that the respondent State has not failed to comply with its obligations under Article 34 of the Convention in respect of the alleged interference with the applicants' correspondence.

Done in English, and notified in writing on 29 October 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek	Josep Casadevall
Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of judge Casadevall is annexed to this judgment.

J.C.M.
C.W.

PARTLY DISSENTING OPINION OF JUDGE CASADEVALL

(Translation)

1. I am unable to follow the majority's decision in finding that there has been no violation in the present case. In my opinion the conditions of detention to which the applicants have been subjected in Division 3 of the CCF centre, taking the cumulative effect into account, constitute degrading treatment and a violation of Article 3 of the Convention.

2. I share the opinion of the majority when they state that the issue is neither the medical conditions (paragraph 108 of the judgment) nor the prison overcrowding, as the applicants had individual cells of 9 sq.m. (paragraphs 97 and 110). However, the other general living conditions endured by the prisoners appear to me to be deplorable and, to use the words of the CPT report (paragraph 61) "far below any acceptable standard". The applicants' remaining complaints (paragraphs 89-94) focus on: a lack of water in the showers; difficulty in obtaining hot water; limited availability of hot drinks; water from basins not drinkable; lack of clean sheets on beds; no heating in cells (cold and humidity in winter); difficulty in opening windows (2.5 metres from floor) and in ventilating cells; lack of natural and artificial light and inability to flush toilets (hygiene problems).

3. The Government disputed the complaints and claimed, in general, that the cumulative effect of the detention conditions in Division 3 of the CCF centre "were not such as to arouse in [the applicants] feelings of fear, anguish and inferiority capable of humiliating and debasing them in any manner ..." (paragraph 103). However, at the same time they recognised that the centre provided no hot water or heating in the cells and that the toilets could not be flushed, and minimised all the other shortcomings. The Government merely observed that "the Maltese authorities' response of 4 July 2013 to the CPT report of 2013 stated that maintenance works were being conducted at the facility on a regular basis" but without giving any further details (paragraph 102).

4. In addition, the Government sought to make up for the manifest deficiencies of the facilities by pointing out that "[o]ther available amenities included a library, a gym, a church, a school and workshops" and that "[o]ccasional cultural events were organised". They overlooked the fact, however, that this assessment was not shared by the CPT. In the reference report cited in paragraph 61 of the judgment the CPT added a commentary (no. 23) and the following recommendation (see complete report on CPT website):

> "The CPT recommends that the Maltese authorities redouble their efforts to significantly expand the activities and training available to prisoners at the CCF. The aim should be to ensure that all prisoners are able to spend a reasonable part of the day engaged in varied, purposeful activities. ... Further, the Committee would like to receive detailed information on the workshop activities currently being offered to prisoners (number of prisoners and hours per week)."

5. In paragraph 106 of the Court's judgment it is observed that, going beyond the requirement of a sufficient living area for the prisoners, the other conditions of detention and their cumulative effects, such as "...natural light or air, the availability of ventilation, the adequacy of heating arrangements, the possibility of using the toilet in private, and compliance with basic sanitary and hygiene requirements" are important for an assessment of conformity with Article 3 (see *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, §§ 149, 153 and 156, 10 January 2012), adding that the length of the detention under certain conditions must also be taken into account. Thus in the case of *Zakharkin v. Russia* (no. 1555/04, 10 June 2010) the applicant, who was alone in a cell, had complained not about a lack of space but about other aspects of his detention conditions and the Court reiterated the principle that "... such factors as access to natural light or air, adequacy of heating arrangements, compliance with basic sanitary requirements, the opportunity to use the toilet in private and the availability of ventilation are relevant to the assessment ..." (ibid., § 122), in finding that there had been a violation of Article 3 in that case (ibid., §§ 129 and 130). That situation was perfectly comparable to that of the applicants in the present case (see also *Apostu v. Romania*, no. 22765/12, § 79, 3 February 2015).

6. From paragraph 107 of the judgment onwards, after finding that "... a number of other applications have been lodged and are currently pending before the Court in their preliminary stages by detainees of Division 3 who complain about the same circumstances", the majority carry out a detailed analysis of all the applicants' complaints. With all due respect, I find somewhat shocking the arguments put forward to reject those complaints. As regards the humidity in the cells (paragraph 114) the majority's argument is based on the photographs provided by the Government, which are clearly at odds with the CPT's report finding the contrary (see paragraph 61 of the judgment, cited above). The natural and artificial light "while not ideal" and "while it is rather unfortunate" (paragraph 115), does not seem to raise an issue. The same applies to the opening of windows – it could have been worse, according to the majority (paragraph 116). The lack of a heating system "remains regrettable – as it would particularly help in connection with any mould or dampness present in the cells", but can be compensated for by additional blankets (paragraph 117)! As to the access to toilets, there is no problem either, even though "... close proximity and exposure (to the toilet) is objectionable also from a hygiene perspective"

(paragraph 120). As regards the poor state of the showers, it is "surely inexcusable that over a span of five years the situation concerning the functionality of showers appears to remain problematic" (paragraph 122) and the lack of hot water is "unfortunate" but – luckily – "in this respect the Court will remain vigilant in future cases" (paragraph 123). What vigilance is being referred to here exactly?

7. Lastly, the Court reiterates (paragraph 128) its "concern about a number of matters highlighted above" but does not reach the conclusions which, in my opinion, are called for in view of the deplorable situation to which the applicants have been subjected. On the contrary, it merely states that it is not convinced that the general conditions of detention, although "far below any acceptable standard" to use the words of the CPT, exceeded the level of suffering inherent in any deprivation of liberty. It adds that it takes into consideration the "medical treatment received by the applicants", as if medical treatment (which must necessarily be provided to any prisoner) could provide some compensation for all the aspects of the poor conditions endured in the prison.