

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

SECOND SECTION

CASE OF FEHÉR v. HUNGARY

(Application no. 69095/10)

JUDGMENT

STRASBOURG

2 July 2013

FINAL

02/10/2013

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



In the case of Fehér v. Hungary,

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

Guido Raimondi, *President,*
Peer Lorenzen,
Dragoljub Popović,
András Sajó,
Nebojša Vučinić,
Paulo Pinto de Albuquerque,
Helen Keller, *judges,*

and Stanley Naismith, *Section Registrar,*

Having deliberated in private on 11 June 2013,

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

PROCEDURE

1. The case originated in an application (no. 69095/10) against the Republic of Hungary lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Hungarian national, Mr Sándor Fehér ("the applicant"), on 22 November 2010.

2. The applicant was represented by Mr G. Magyar, a lawyer practising in Budapest. The Hungarian Government ("the Government") were represented Mr Z. Tallódi, Agent, Ministry of Public Administration and Justice.

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

4. On 5 September 2011 the application was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1947 and lives in Szolnok. When introducing the application, he was detained at Állampuszta Prison.

6. On 19 September 2006 the applicant was detained on charges of robbery and other offences. On 28 October 2009 he was finally convicted and sentenced to six years and eight months' imprisonment.

7. Between 19 September 2006 and 23 October 2008 he was held in pre-trial detention at Szolnok Prison (*Jász-Nagykun-Szolnok Megyei Büntetés-végrehajtási Intézet*) in cells with ground surfaces ranging from 6.33 to 7.25 m^2 for four inmates (that is, approximately 1.7 m^2 per person on average).

The applicant stated that he could leave the cell for only one hour daily and submitted corroborating statements to that effect from two fellow inmates.

The Government submitted that, during almost one year and nine months out of this period, the applicant was allowed to spend three hours daily outside his cell and another hour outdoors.

Under section 239(2) of Decree no. 6/1996. (VII.12.) IM of the Minister of Justice, it is at the prison governor's discretion whether or not to keep open during the day the doors of cells accommodating those in pre-trial detention.

8. After a short stay at Tököl Prison Hospital, the applicant was moved to Állampuszta Prison. Between 3 November 2008 and 23 July 2009 he was detained in cells whose ground surfaces were 24 m^2 for ten inmates (according to the applicant; that is, 2.4 m^2 per person) or 30.24 m^2 for fourteen inmates (according to the Government; that is, 2.16 m^2 per person). The inmates were free to leave their cells during the day.

9. Between 24 July and 21 December 2009 the applicant was held at Tiszalök Prison in good conditions.

10. Between 21 December 2009 and 10 September 2010 he was held at Budapest Prison (*Budapesti Fegyház és Börtön*) in a 25 m^2 cell for ten inmates (that is, 2.5 m^2 per person). He could freely move within the block during the day.

11. After a short stay at *Fővárosi Büntetés-végrehajtási Intézet*, the applicant was returned to Állampuszta Prison on 20 September 2010, where he has stayed ever since.

From 1 October 2010 on, he has been accommodated in a 30.24 m^2 cell with ten other inmates (that is, 2.75 m^2 per person). He can move around freely in the block during the day.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

12. The applicant complained that his detention under cramped conditions amounted to inhuman and degrading treatment in breach of Article 3 of the Convention, which reads as follows:

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

13. The Government contested that argument.

A. Admissibility

14. The Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

15. The applicant submitted that his detention in overcrowded cells, especially in the period between 19 September 2006 and 23 October 2008, had amounted to inhuman and degrading treatment, aggravated by the fact that the time he could spend outside the cell had been very limited.

16. The Government contested these views in general terms and submitted that the applicant's situation had been mitigated by the fact that he could spend a substantial amount of time outside the cells, crowded or not, the material conditions of which were otherwise satisfactory.

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

18. The Court further recalls that, according to its case-law, ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3 of the Convention. The assessment of this minimum level of severity is relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim. Furthermore, in considering whether treatment is "degrading" within the meaning of Article 3, the Court will have regard to whether its object is to humiliate and debase the person concerned and whether, as far as the consequences are

concerned, it adversely affected his or her personality in a manner incompatible with Article 3. However, the absence of such a purpose cannot conclusively rule out a finding of a violation of Article 3 (see *Peers v. Greece*, no. 28524/95, §§ 67-68, 74, ECHR 2001-III).

19. The Court has consistently stressed that a breach of Article 3 of the Convention would generally involve suffering and humiliation beyond that which is inevitably connected with a given form of legitimate treatment or punishment. Measures depriving a person of his or her liberty may often involve such elements. Thus, under this provision, the State must ensure that a person is detained in conditions which are compatible with respect for human dignity, that the manner and method of the execution of the measure do not subject the individual to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, the prisoner's health and well-being are adequately secured (see *Kudła v. Poland* [GC], no. 30210/96, §§ 92-94, ECHR 2000-XI).

20. The Court notes that at Szolnok Prison, the applicant was accommodated for over two years and one month in cells with 1.7 m^2 ground surface per person on average (see paragraph 7 above). It observes by contrast that the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ("the CPT") considers 4 m^2 living space per inmate an acceptable minimum standard in multi-occupancy cells (see, for example, in respect of other Hungarian prisons, paragraphs 65 and 80 of the Report to the Hungarian Government on the visit to Hungary carried out by the CPT from 24 March to 2 April 2009).

For the Court, the living space available to the applicant in this instance was so limited that it cannot be considered as sufficiently mitigated by the time spent outside the cell, even if accepting the Government's version in this respect, referring to an allowance of four hours a day for the greater part of the period.

The Court further notes that, in so far as the situation of those in pre-trial detention is concerned, it is at the prison governor's discretion whether or not to keep the doors of cells open during the day, even if there is obvious overcrowding (see paragraph 7 above). In the Court's eyes, this deference falls short of the requisite guarantees in circumstances such as the present one, the overcrowding amounting to inhuman and degrading treatment.

21. As regards the remaining periods, the Court observes that at Állampuszta Prison (3 November 2008 to 23 July 2009) the applicant had 2.16 or 2.4 m^2 living space at his disposal (see paragraph 8 above); at Budapest Prison, 2.5 m^2 (see paragraph 10 above); and at Állampuszta Prison (from 20 September 2010 onwards), 2.75 m^2 (see paragraph 11 above). In all these instances, the applicant could spend the greater part of the day outside the cells. This circumstance reduces in the Court's eyes the impact of the cramped conditions. However, it cannot overlook the fact that

the available living space fell in each case under 3 m^2 per person, that is, substantially lower than the CPT standard (see paragraph 20 above).

22. The Court therefore finds that the applicant's detention in such cramped conditions, especially at Szolnok Prison, must have been prejudicial to his physical and mental state (see, *mutatis mutandis*, *Savenkovas v. Lithuania*, no. 871/02, §§ 81-82, 18 November 2008; *Sulejmanovic v. Italy*, no. 22635/03, §§ 43 to 52, 16 July 2009). Accordingly, it concludes that the overcrowded conditions of this detention amounted to inhuman and degrading treatment in breach of Article 3 of the Convention.

23. Finally, mindful of the fact that the seriousness of the problem of overcrowding and of the resultant inadequate living and sanitary conditions in Hungarian detention facilities has been acknowledged by the domestic authorities (see *Szél v. Hungary*, no. 30221/06, §§ 8 and 18, 7 June 2011), the Court considers that an effective remedy responding to this issue could be offered by taking the necessary administrative and practical measures. In the Court's view, the authorities should react rapidly in order to secure appropriate conditions of detention for detainees.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

24. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

25. The applicant claimed 20,000 euros (EUR) in respect of non-pecuniary damage.

26. The Government contested this claim.

27. The Court considers that the applicant must have sustained some non-pecuniary damage and awards him, on the basis of equity, EUR 12,000 under this head.

B. Costs and expenses

28. The applicant also claimed EUR 2,000 plus VAT for the costs and expenses incurred before the Court, which corresponds to 10 hours of legal work billable by his lawyer, charged at an hourly rate of EUR 200 plus VAT.

29. The Government contested this claim.

30. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the full sum claimed, that is, EUR 2,000.

C. Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 3 of the Convention;

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 12,000 (twelve thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 2,000 (two thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 2 July 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith Registrar	Guido Raimondi President