

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

FIFTH SECTION

CASE OF ŠEMIĆ v. SLOVENIA

(Application no. 5741/10)

JUDGMENT

STRASBOURG

5 June 2014

This judgment is final but it may be subject to editorial revision.



In the case of Šemić v. Slovenia,

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

Ann Power-Forde, *President,*
Boštjan M. Zupančič,
Helena Jäderblom, *judges,*
and Stephen Phillips, *Deputy Section Registrar,*

Having deliberated in private on 13 May 2014,

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

PROCEDURE

1. The case originated in an application (no. 5741/10) against the Republic of Slovenia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Slovenian national, Mr Sanel Šemić ("the applicant"), on 18 December 2009.

2. The applicant was represented by Odvetniška Družba Matoz o.p. d.o.o., a law firm practising in Koper. The Slovenian Government ("the Government") were represented by their Agent, Mrs T. Mihelič Žitko, State Attorney.

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

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

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1985 and lives in Ljubljana.

6. The applicant served his prison sentence in Ljubljana prison from 16 July 2009 to 31 December 2010, but he was released on 27 December 2010.

7. From 16 July 2009 to 23 September 2009 and from 24 February 2010 to 27 December 2010 the applicant was held in the closed section of

Ljubljana prison. According to the applicant, five prisoners were being held in each of the cells where he was held during his detention. From 16 July 2009 to 23 September 2009 he was held in cell 6 (third floor) measuring 18 square metres (including a separate 1.72 square metre sanitary facility). The Government submitted that the number of prisoners held there varied between four and five. From 24 February 2010 to 2 April 2010 he was held in cell 130 (second floor) measuring 18 square metres (including a separate 1.72 square metre sanitary facility). The Government submitted that the number of prisoners held there varied between five and six. From 2 April 2010 to 5 October 2010 he was held in cell 132 (second floor) measuring 18 square metres (including a separate 1.72 square metre sanitary facility). The Government submitted that the number of prisoners held there varied between three and five. From 6 October 2010 to 16 December 2010 he was held in cell 117 measuring 17.66 square metres (including a separate 1.68 square metre sanitary facility). The Government submitted that the number of prisoners held there varied between two and five and that for the most part the applicant had more than four square metres of personal space. From 17 December 2010 to 27 December 2010 he was held in cell 123 measuring 17.47 square metres (including a separate 1.72 square metre sanitary facility). The Government submitted that the number of prisoners held there varied between four and six.

8. In the period between 23 September 2009 and 24 February 2010 the applicant was held in the semi-open section of Ljubljana prison, in cell 147 (third floor) measuring 18.8 square metres (including a separate 1.72 square metre sanitary facility).

9. The cells in the closed and semi-open sections contained, apart from the furniture, five to six sleeping places. Each cell had one 107 x 110 cm double casement window, which the prisoners could freely open or close.

10. The general characteristics of the cells in the closed and semi-open sections, material conditions inside the cells therein, sanitary conditions and health care are set out in the Court's judgment *Štrucl and Others v. Slovenia* (nos. 5903/10, 6003/10 and 6544/10, §§ 21 to 32, 20 October 2011).

11. As to the out-of-cell time in the closed section, the Court found in the aforementioned judgment that sentenced prisoners in the closed section of the prison were locked up in their cells and were only able to leave them if they applied for certain activities, most of which were to take place in the recreation room. There was, however, only one 50-square-metre recreation room per floor, which was to be used by ten inmates at most (*Štrucl and Others* § 86).

12. As to the out-of-cell time in the semi-open section, the Government submitted that the cell doors in the semi-open section of the prison were unlocked, except from 9.45 p.m. (on Fridays, Saturdays and before holidays from midnight) until 6.00 a.m. (on Saturdays, Sundays and during holidays until 8.30 a.m.). During this time prisoners could move freely in the corridor

(35.7 square metres), living quarters of co-prisoners or in the indoor or outdoor exercise areas, in accordance with prison rules. The Government alleged that this regime had been in place for several years.

13. During his imprisonment the applicant had twenty-seven consultations with a general practitioner and two treatments by a dentist. He did not attend sessions with a psychologist.

14. As regards the cell temperature, the data provided by the Government showed that the average temperature in the cells in the late afternoon (5- 5.30 p.m.) in the second half of July and August 2009 had been approximately 28°C, exceeding 30°C on seven days.

II. RELEVANT DOMESTIC LAW AND PRACTICE

15. For the relevant domestic law and practice as well as relevant international documents see *Štrucl and Others*, cited above, §§ 33-56.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

16. The applicant complained that the conditions of his detention in Ljubljana prison amounted to a violation of Article 3 of the Convention. In particular, he complained of severe overcrowding which had led to a lack of personal space, poor sanitary conditions and inadequate ventilation, as well as excessive restriction on out-of-cell time, high temperatures in the cells, inadequate health care and psychiatric support and exposure to violence from other inmates due to insufficient security.

17. He submitted that the situation amounted to a structural problem, and that this has been acknowledged by the domestic authorities.

18. The applicant also complained about restrictions on telephone conversations. However, this complaint falls to be examined under Article 8 of the Convention only.

Article 3 of the Convention reads as follows:

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

A. Admissibility

1. Complaint relating to physical conditions of detention

19. In *Jevšnik v. Slovenia*, no. 5747/10, §§ 25 – 26, 9 January 2014 the Court found that the conditions in which the applicant was held in the

semi-open section in Ljubljana prison, personal space (about 3.3 or 3.4 square metres) taken together with the time he could spend outside the cell (from Monday to Thursday fifteen hours and forty five minutes per day, on Fridays eighteen hours, on Saturdays fifteen and a half hours and on Sundays thirteen hours and fifteen minutes), could not be considered as to be contrary to Article 3 of the Convention, as the restricted space in the sleeping facilities was compensated by the freedom of movement enjoyed by the applicant during the day-time. As regards the temperatures in cells in the summer of 2009, the Court found that although the applicant was imprisoned also in the second half of July and August 2009, his situation during that period could not be considered as being further exacerbated by high temperatures as he was held in the semi-open section and could therefore spent a considerable amount of time outside the cell.

20. Likewise, in the present case, the applicant was also held in the semi-open section with 3.4 square metres of personal space and enjoyed the same out-of-cell time as the applicant in the case of *Jevšnik v. Slovenia*. Therefore, this part of the application should be rejected as being manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention.

21. As regards the rest of the application, in the present case as well as in the case of *Štrucl and Others* and *Praznik v. Slovenia*, no. 6234/10, 28 June 2012, the Government raised an objection of non-exhaustion of domestic remedies, relying on the same arguments as in the above cases. In *Štrucl and Others* the Court joined the issue of exhaustion of domestic remedies to the merits of the complaint under Article 13 of the Convention. After finding a violation of the latter provision it rejected the Government's objection (§§ 62 and 98-113). The Court sees no reason to reach a different conclusion in the present case. It further finds that this part of the complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention nor is it inadmissible on any other grounds. It should therefore be declared admissible.

2. Complaints relating to inadequate health care and psychiatric support and insufficient security measures

22. The parties in the present case adduced the same arguments as in *Štrucl and Others*, where the Court found the part of the application concerning inadequate health care, psychiatric support and insufficient security measures manifestly ill-founded (§§ 63-69). The Court decided the same in *Praznik*. In the absence of any reasons that would lead the Court to reach a different conclusion in the present case, the Court finds these complaints to be manifestly ill-founded and should therefore be rejected pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

B. Merits

23. The parties relied on the same arguments as in the case of *Štrucl and Others* (cited above, §§ 70-79).

24. The Court refers as regards the relevant principles to paragraphs 72-76 of its judgment in the case of *Mandić and Jović v. Slovenia*, nos. 5774/10 and 5985/10, 20 October 2011.

25. The Court notes that the applicant was held in the closed section of Ljubljana prison from 16 July 2009 to 23 September 2009 and from 24 February 2010 to 27 December 2010.

26. The Government suggested that not all the beds in the cells, where the applicant was held, were occupied all the time. As regards the applicant's detention until 28 September 2010, the Government submitted no official documents indicating the exact number of prisoners being held in a particular cell to substantiate the argument. Therefore, like in *Štrucl and Others*, the Court rejects it (see *Štrucl and Others*, cited above, § 81). In cell 6 the applicant had 3.26 square metres of personal space and in cell 130 he had 2.7 to 3.26 square metres of personal space.

27. As regards the applicant's detention from 28 September 2010 to 27 December 2010, the Government submitted documents with the number of prisoners held in a particular cell. In cell 132 the applicant had for the most part about 3.26 square metres of personal space. In cell 117 he was predominantly offered more than 4 square metres of personal space. In cell 123 the applicant mostly had less than 4 square metres of personal space. His personal space in the cells was further reduced by the amount of furniture (see *Modarca v. Moldova*, no. 14437/05, § 63, 10 May 2007).

28. It was found in *Praznik* that the personal space of the applicant, which was for most of the period of his detention in the closed section about 3.3 square metres, and which was slightly larger than the space available to the prisoners in *Štrucl and Others*, still fell short of the recommendation of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. It was further found in *Praznik* that the applicant's situation was exacerbated by the very limited time which could be spent outside the cell and by high temperatures in the cell in the summer (see *Praznik*, cited above, § 20) therefore, it was concluded that the conditions of detention were contrary to Article 3 of the Convention.

29. In the present case, from 16 July 2009 to 23 September 2009, from 24 February 2010 to 5 October 2010 and from 16 December 2010 to 27 December 2010 the applicant had less than 4 square metres of personal space. His situation was further exacerbated by the very limited time which could be spent outside the cell and by high temperatures in the cell in the summer. Having regard to the cumulative effects of these conditions of the applicant's detention, the Court considers, as in *Praznik*, that the hardship he endured in the period of 9 months and 28 days appears to have exceeded

the unavoidable level inherent in detention, and finds that the resulting suffering went beyond the threshold of severity under Article 3 of the Convention and that the conditions of detention in which the applicant was held then were contrary to Article 3 of the Convention (see, *Praznik*, cited above, § 21 and *mutatis mutandis*, *Szél v. Hungary*, no. 30221/06, § 18, 7 June 2011, and *Peers v. Greece*, no. 28524/95, § 75, ECHR 2001-III).

30. As regards the applicant's detention in the closed section in the period between 6 October 2010 and 16 December 2010, the applicant had more than 4 square metres of personal space. Therefore, the Court concludes that those conditions could not be considered as to be contrary to Article 3 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

31. The applicant complained that his allegations in respect of Article 3 also gave rise to a violation of Article 8 of the Convention. In addition, he complained about restrictions on telephone calls. As regards the latter, the applicant submitted that he had often been under pressure from other inmates to terminate his telephone conversations before the allotted time had expired.

32. Article 8 of the Convention reads as follows:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

33. As already found in *Praznik*, the Court notes that in so far as the complaints under Article 8 overlap with those under Article 3 they should be for the same reasons and to the same extent declared admissible. In view of the applicant's submissions and having regard to the finding relating to Article 3, the Court considers that no separate issue arises under Article 8 in this regard (see Orchowski *v. Poland*, no. 17885/04, § 198, ECHR 2009-... (extracts)). However, as regards the complaints under Article 8 overlapping with those under Article 3, which were in the present case declared inadmissible, the Court considers that the situation in which the applicant was detained has also not given rise to an issue under Article 8 of the Convention. Therefore, this part of the application should be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

34. As regards the applicant's complaints concerning his contact with persons outside the prison, the Court notes that the parties adduced the same arguments as in the case of *Štrucl and Others*. In the latter case the Court

found that these complaints were unsubstantiated (cited above, §§ 96-97). The Court sees no reason to reach a different conclusion in the present case. These complaints should therefore be rejected as manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

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

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

A. Admissibility

36. In so far as the applicant's complaint under Article 13 of the Convention refers to the lack of effective remedies in respect of inadequate physical conditions of detention in the closed section, as already found by the Court in *Štrucl and Others* and *Praznik*, this aspect of the complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention nor inadmissible on any other grounds. It must therefore be declared admissible.

37. As to the lack of effective remedies in respect of inadequate physical conditions of detention in the semi-open section of Ljubljana prison and in respect of the allegedly inadequate medical and psychological care, inadequate security measures and the restrictions on maintaining contact with people outside the prison, having declared the relevant issues under Articles 3 and 8 of the Convention inadmissible, the Court concludes that the applicant has no arguable claim for the purpose of Article 13 of the Convention (see *Visloguzov v. Ukraine*, no. 32362/02, §§ 74-5, 20 May 2010). It follows that this aspect of the applicant's complaint under Article 13 of the Convention should be rejected as manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

B. Merits

38. The parties' arguments are identical to those in the case of *Štrucl and Others* (§§ 101-117) in which the Court found that none of the remedies relied on by the Government could be regarded with a sufficient degree of

certainty as constituting an effective remedy for the applicants (ibid., §§ 118-33).

39. In support of their argument that a claim for compensation is an effective remedy the Government further relied on three judgments from 2013, regarding prison conditions in Dob prison. There the domestic courts dismissed compensation claims, on the ground that the conditions of detention in Dob prison were not contrary to Article 3 of the Convention. Although this finding is in line with the Court's case-law concerning Dob prison (see *Lalić and Others v. Slovenia* (dec.), nos. 5711/10, 5719/10, 5754/10, 5803/10, 5956/10, 5958/10, 5987/10, 6091/10, 6647/10 and 6893/10, 27 September 2011), these three judgments can still not serve as a proof that the remedy proposed by the Government is effective in the applicant's case where he was still detained at the time of lodging of his application to the Court.

40. Since there appear to be no reasons to reach a different conclusion in the present case, the Court finds that there has been a violation of Article 13 of the Convention on account of the lack of an effective and accessible remedy under domestic law for the applicant's complaints in respect of the conditions of his detention.

IV. APPLICATION OF ARTICLE 46 OF THE CONVENTION

41. Article 46 of the Convention provides:

> "1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.
>
> 2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution."

42. The applicant argued that his allegations related to a structural problem of overcrowding in Slovenian prisons. This assertion was disputed by the Government.

43. The parties' arguments are identical to those in the case of *Štrucl and Others*. In the latter case the Court emphasized the need to take steps to reduce the number of prisoners in Ljubljana prison (ibid., §§ 137-141). In view of the fact that the applicant's complaint of a structural problem applies to the same period of time that was addressed in *Štrucl and others* (2009), the Court considers that it raises no separate issue which would call for an examination under Article 46 in the present case.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

44. 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

45. The applicant claimed 15,000 euros (EUR) in respect of non-pecuniary damage.

46. The Government contested the claim.

47. The Court awards the applicant EUR 7,000 in respect of non-pecuniary damage.

B. Costs and expenses

48. The applicant also claimed EUR 1,520 for costs and expenses incurred before the Court. This sum consisted of EUR 1,500 in lawyer's fees, which he claimed were calculated on the basis of statutory domestic rates and EUR 20 for material expenses.

49. The Government argued that this claim was excessive. They also argued that the Court should take into account the fact that the applicant's representative was representing a number of other applicants before the Court and had submitted almost identical pleadings in all these cases.

50. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. With regard to an applicant's Convention costs, the Court reiterates that it does not consider itself bound by domestic scales and practices, although it may derive some assistance from them (see, among many other authorities, *Gaspari v. Slovenia*, no. 21055/03, § 83, 21 July 2009, and *Başkaya and Okçuoğlu v. Turkey* [GC], nos. 23536/94 and 24408/94, § 98, ECHR 1999-IV). In the present case, regard being had to the information in its possession and in particular the fact that the law firm representing the applicant has already been reimbursed in other cases for preparation of submissions almost identical to the present ones (see *Mandić and Jović*, cited above, §§ 133-35, *Štrucl and Others*, cited above, §§ 146-48 and *Praznik*, cited above §§ 38-40), the Court considers it reasonable to award the sum of EUR 500 to cover the costs of the proceedings before the Court.

C. Default interest

51. 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 complaint concerning the physical conditions of detention under Articles 3 and 8 of the Convention as regards the detention in the closed section, as well as the complaint under Article 13 of the Convention relating to the complaint concerning the physical conditions of detention in the closed section, admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 3 of the Convention as regards the detention in the closed section from 16 July 2009 to 23 September 2009, from 24 February 2010 to 5 October 2010 and from 16 December 2010 to 27 December 2010;

3. *Holds* that there has been no violation of Article 3 of the Convention as regards the detention in the closed section from 6 October 2010 to 16 December 2010;

4. *Holds* that there is no need to examine the complaint concerning the physical conditions of detention in the closed section under Article 8 of the Convention;

5. *Holds* that there has been a violation of Article 13 of the Convention;

6. *Holds*
   (a) that the respondent State is to pay the applicant, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
      (i) EUR 7,000 (seven thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 500 (five hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 5 June 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips Deputy Registrar	Ann Power-Forde President