

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

FIFTH SECTION

DECISION

Application no. 6408/10
Milorad DRAGANIĆ
against Slovenia

The European Court of Human Rights (Fifth Section), sitting on 2 October 2012 as a Committee composed of:

Ann Power-Forde, *President,*
Boštjan M. Zupančič,
Angelika Nußberger, *judges,*

and Stephen Phillips, *Deputy Section Registrar,*

Having regard to the above application lodged on 18 December 2009,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Milorad Draganić, is a national of Bosnia and Herzegovina, who was born in 1969 and lives in Ljubljana. He is represented before the Court by Odvetniška Družba Matoz O.P. D.O.O., a lawyer practising in Koper.

The Government of Bosnia and Herzegovina had been informed of their right to intervene (Article 36 § 1 of the Convention and Rule 44 § 1 of the Rules of Court), however they did not avail themselves of that right.

The Slovenian Government ("the Government") are represented by their Agent, Mrs N. Pintar Gosenca.

A. The circumstances of the case

The facts of the case, as submitted by the parties, may be summarised as follows.

The applicant has been serving a sentence in the closed section of Dob Prison since 11 December 2008.

As regards the facilities available to the applicant in the cells and common areas, as well as the health care regime in the prison, the conditions imposed on the applicant regarding activities outside the cells and contact with the outside world in general, see the Court's decision in the case of *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.

From 11 December 2008 to 14 August 2009 the applicant was held in a cell no 2, Block 2 which measured 59.89 square metres and held fourteen inmates (4.28 square metres of personal space available to each inmate). He was later transferred several times. From 14 August 2009 to 17 August 2009 he was held in a cell no 31 - 34, Block 1 which measured 32.22 – 32.39 square metres and held four inmates (8.06 – 8.1 square metres of personal space available to each inmate). From 17 August 2009 to 5 January 2010 he was held in a cell no 6, Block 2 which measured 59.25 square metres and held fifteen inmates (3.95 square metres of personal space available to each inmate). Since 5 January 2010 he has been held in a cell no 3/1, Block 2 which measured 20.89 square metres and held four inmates (5.22 square metres of personal space available to each inmate).

According to the Government's submissions dated 23 December 2010 smoking is prohibited in common premises of the prison and also in the cell where the applicant has been held. However, smoking is permitted in a corridor in front of this cell, where there are larger windows and cigarette smoke extraction devices which ventilate the space, therefore the desired ventilation is provided. According to the doctor's report the applicant has never complained that he has not been feeling well due to cigarette smoke nor has he been diagnosed with any chronic or acute respiratory disease. There is also no note in prison documents of the applicant ever requesting a transfer to a non-smoking room or him complaining to prison staff about not feeling well due to the smoke or him informing them of any violation of prohibition of smoking in the cell.

B. Relevant domestic law and practice

For the relevant domestic law and practice, see paragraphs 33-35 and 38-47 of the Court's judgment in the case of *Štrucl and Others v. Slovenia* (nos. 5903/10, 6003/10 and 6544/10, 27 September 2011), and paragraphs 34-36 of *Mandić and Jović v. Slovenia* (nos. 5774/10 and 5985/10,

27 September 2011), *Lalić and Others*, cited above, as well as *Mešić v Slovenia* (no. 5767/10, 22 November 2011) and *Ferenc v. Slovenia* (no. 6682/10, 13 March 2012).

COMPLAINTS

The applicant complained that the conditions of his detention in Dob Prison amounted to a violation of Articles 3 and 8 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 restrictions on time spent outside the cell, high temperatures in the cells, inadequate health care and psychological assistance, inadequate measures as regards the rehabilitation of drug addicts, and exposure to violence from other inmates owing to insufficient prison security. He further submitted that the situation amounted to a structural problem, which had been acknowledged by the domestic authorities.

In addition, the applicant complained that he has shared a cell with prisoners who have smoked therein, that ventilation system has not been functioning or effective and that prison authorities have not done enough to reduce exposure of non-smoking prisoners to cigarette smoke.

Citing Articles 3 and 8 of the Convention, the applicant also complained of restrictions on visits, telephone conversations and correspondence.

The applicant lastly complained, under Article 13, that he did not have any effective remedy at his disposal as regards his complaints under Articles 3 and 8 of the Convention.

THE LAW

The Court does not find it necessary to examine the Government's objections concerning the issue of exhaustion of domestic remedies and compliance with the six-month rule, as the application should in any event be declared inadmissible for the reasons set out below.

The Court notes that information relating to detention often falls within the knowledge of the domestic authorities. Accordingly, applicants might experience certain difficulties in procuring evidence to substantiate a complaint in that connection. Still, in such cases applicants may well be expected to submit at least a detailed account of the facts complained of and to provide – to the greatest possible extent – some evidence in support of their complaints (see, *mutatis mutandis*, *Visloguzov v. Ukraine*, no. 32362/02, § 45, 20 May 2010; *Mešić v. Slovenia*, cited above; and *Ferenc v. Slovenia*, cited above).

Turning to the circumstances of the present case, the Court notes that the applicant provided no evidence or details as regards his additional allegations, whereas the Government submitted that smoking has been permitted in a corridor in front of the applicant's cell, where with larger windows and cigarette smoke extraction devices the desired ventilation has been provided. The applicant also did not dispute nor comment on the Government's submissions that he has not requested a transfer to a non-smoking cell due to cigarette smoke or informed prison staff about violation of smoking rules or complained to a doctor about feeling unwell due to cigarette smoke. The Court therefore concludes that this part of the application has not been properly substantiated and developed by the applicant. Accordingly, it should be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

As regards the remainder of the applicant's complaints on general conditions of detention in the closed section of Dob Prison, the Court notes that these complaints are identical to those of the applicants in the case of *Lalić and Others* (cited above). In that case the Court found the general conditions of detention in the closed section of Dob Prison, including the medical and psychological care provided to the prisoners held therein, as well as the arrangements concerning security measures, and the restrictions on maintaining contact with people outside the prison to be adequate *vis-à-vis* the Convention standards. It accordingly also rejected the applicant's complaint under Article 13 of the Convention, as no arguable claim for the purpose of the aforementioned provision had been established.

The Court takes note of the similar factual background of the aforementioned case and the present application, including the fact that the present applicant always had sufficient personal space in the cell in which he was detained. It follows that these complaints are manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Stephen Phillips
Deputy Registrar

Ann Power-Forde
President