

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

FIFTH SECTION

DECISION

Application no. 5959/10
Danijel FABIJANČIČ
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 Danijel Fabijančič, is a Slovenian national, who was born in 1978 and lives in Sežana. He is represented before the Court by Odvetniška Družba Matoz O.P. D.O.O., a lawyer practising in Koper.

The Slovenian Government ("the Government") are represented by their Agent, Mrs T. Mihelič Žitko, State Attorney.

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 12 October 2004.

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 8 November 2004 to 24 July 2007 the applicant was held in a cell no 31 – 34, Block 1 which measured 32.22 – 32.39 square metres and held four inmates (8.06 – 8.09 square metres of personal space available to each inmate). Since 24 July 2007 he has been held in a cell no 1, Block 3 which measured 59.89 square metres and held fifteen inmates (3.99 square metres of personal space available to each inmate).

According to the Government's submissions dated 21 December 2010 the applicant had on a daily basis a possibility of taking walks outside and inside the prison building, however he did not avail himself of that opportunity. The applicant has been regularly treated by a psychiatrist and occasionally by a psychologist. According to the report by the prison clinic dated 13 October 2010 the applicant received medical treatment on ninety-seven occasions due to different medical problems, underwent Methadone treatment and was treated by a psychiatrist due to an anxiety and depressive disorder. According to the Government's submissions dated 8 June 2011 the applicant was not Roma and this fact was also confirmed by the applicant himself.

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 had suffered severe mental distress and that he had not received adequate psychological and psychiatric treatment. Further, he complained about being harassed by other prisoners for being Roma and not being able to take a walk in prison for four years.

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.

As regards the applicant's complaint that he did not receive adequate psychological and psychiatric assistance, the Court recalls that Article 3 imposes an obligation on the States to ensure that the health and well-being of detainees are adequately secured by, among other things, providing them with the requisite medical assistance (see *Kudła v. Poland* [GC], no. 30210/96, § 94, ECHR 2000-XI). The Court would further note 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 allegations on inadequate medical treatment, on being harassed for being Roma and on him not being able to take walks in prison for four years. He also did not dispute or at least comment on the Government's submissions that he had had on a daily basis an opportunity for taking walks and that it had been entirely his choice not to avail himself of that possibility. Nor did he dispute

the submission that he had been on ninety-seven occasions treated in the prison clinic. As regards his complaint about him being harassed for being Roma, the applicant himself later confirmed that he was actually not Roma. It follows that these complaints are manifestly ill-founded and must be rejected in accordance with 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