

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

FIFTH SECTION

DECISION

Application no. 6682/10
Srečko FERENC
against Slovenia

The European Court of Human Rights (Fifth Section), sitting on 13 March 2012 as a Chamber composed of:

Karel Jungwiert, *President,*
Boštjan M. Zupančič,
Mark Villiger,
Ann Power-Forde,
Ganna Yudkivska,
Angelika Nußberger,
André Potocki, *judges,*

and Claudia Westerdiek, *Section Registrar,*

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

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Srečko Ferenc, is a Slovenian national who was born in 1968 and lives in Maribor. He was represented before the Court 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.

A. The circumstances of the case

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

The applicant was serving his sentence in the closed section of Dob Prison in the period between 24 February 2009 and 26 March 2011.

As regards the facilities available in the cells and common areas, as well as the health care regime in the prison, the conditions regarding activities outside the cells and contact with the outside world, see the Court's decision in the case of *Lalić and Others v. Slovenia* (dec.), no. 5711/10 etc., 27 September 2011.

1. Material conditions of detention in the applicant's cells and his activities outside the cells

Between 24 February 2009 and 2 June 2010 the applicant was held in Block 4, in cell no. 8 which measured 58.96 square metres and accommodated seventeen prisoners. After his brief hospitalisation (see below) he was returned to the same cell, which continued to accommodate seventeen prisoners. He therefore at all times had about 3.5 square metres of personal space while being held in the prison cell.

At the beginning of his imprisonment the applicant participated in work therapy sessions, but soon dropped out for unspecified reasons.

2. Medical assistance to the applicant during his imprisonment

The applicant suffers from a large ulceration on his left tibia (the part of the leg below the knee), which had already appeared in 2003. According to the Government, in the period between 24 February 2009 and 9 July 2010, the applicant visited the prison clinic sixty-six times.

The applicant's medical record shows that the wound was cleaned and dressed systematically (every few days and, during certain periods, every day) in the prison clinic. Medication was occasionally prescribed to the applicant. The applicant's comments concerning his condition, in particular as regards his pain and discomfort, were also noted in his medical record.

Reports from the prison doctor, which appear to have been prepared at the Government's request, note that the applicant's ulcer was regularly cleaned by nurses under the supervision of a general practitioner, that he was also regularly treated by the prison psychiatrist, and was undergoing methadone substitution treatment. It was also noted in one of the reports that the medical assistance provided to the applicant was of a higher standard than that commonly received by individuals with a similar medical problem in Slovenia.

During the period of his imprisonment the applicant was twice admitted to the Department for Plastic and Reconstructive Surgery at the Maribor Hospital, in order to undergo surgical treatment for his ulcer. On both

occasions it was envisaged that the surgery would be performed under general anaesthesia. The first time, on 1 December 2008, complications arose when the anesthetist was inserting the intravenous catheter. The applicant was given the option of the catheter being inserted through his inguinal canal (in the groin) or his neck, but he refused, and the surgery was aborted for that reason. The same occurred following the applicant's second admission to the aforementioned hospital on 2 June 2010. A hospital report dated 4 June 2010 notes that the applicant's ulcer was not infected. It also advised that the applicant's status in prison be appropriate to his state of health.

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), as well as *Lalić and Others*, cited above.

In addition, the Patient Rights Act (Official Gazette no. 15/2008, entry into force on 26 August 2008) provides for procedures for dealing with complaints concerning, *inter alia*, inadequate medical treatment or care. In accordance with the provisions of that Act, a patient can lodge a complaint directly with a health-care provider. If unsatisfied, he or she can complain to the Commission for Protection of Patients Rights. Ultimately, a patient whose complaint has been unsuccessful can challenge the decisions made in his or her case before the Administrative Court. The Act also regulates the work of the Representative for Patients' Rights, whose main role is to assist, provide advice to and represent patients in the exercise of their rights provided therein.

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 his 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 been denied the basic care he needed in respect of the serious ulceration on his leg.

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

A. Alleged inadequate medical treatment

1. The parties' submissions

The Government submitted that the applicant had failed to exhaust domestic remedies, as he had not availed himself of the remedies available under the Patient Rights Act.

They also argued that the applicant's complaint in this regard was unsubstantiated. In the Government's submission, the applicant had received very extensive medical care, which was evidenced by the medical records. They further submitted that the applicant should have participated more proactively in his treatment.

The applicant argued that he had not received adequate medical assistance in respect of his leg ulceration. The medical assistance in prison was generally inadequate. There was only one prison doctor at a time and that was insufficient *vis-à-vis* the number of prisoners seeking medical assistance. The applicant therefore had had to wait several weeks for an appointment with the doctor. He also argued that although he had raised this issue before the prison administration, he had nevertheless not received adequate health care.

2. The Court's assessment

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

The Court notes 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 mere fact that a detainee was seen by a doctor and prescribed a certain form of

treatment cannot automatically lead to the conclusion that the medical assistance was adequate. The authorities must also ensure that a comprehensive record is kept concerning the detainee's state of health and the treatment he underwent while in detention, that the diagnoses and care are prompt and accurate, 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. The authorities must also show that the necessary conditions were created for the prescribed treatment to be actually followed through (see *Visloguzov v. Ukraine*, no. 32362/02, § 69, 20 May 2010 and the case-law cited therein).

Turning to the present case, the Court observes that the applicant suffered from a large ulceration on his leg, a condition which he had already when entering prison. Contrary to the applicant's submissions, there is no indication in the case file that the medical care provided to him was not appropriate or adequate. It appears from the medical records that the applicant received regular care for his wound, and was twice admitted to hospital in order to undergo surgery which, however, failed due to the impossibility of administering anaesthesia in the manner initially envisaged. The applicant opposed the alternative means for the administration of anesthesia subsequently suggested to him.

Furthermore, the Court observes that the applicant alleged that there had been only one doctor at a time in the prison, which had been insufficient to treat all the prisoners in need of medical assistance. The Court finds that, even assuming that the allegation concerning insufficient medical personnel is correct, the applicant has failed to show in what way he has been consequently affected. In particular, the applicant's claim that he had had to wait several weeks for medical assistance is not supported by any documents and, moreover, is contradicted by the medical records and doctor's reports which indicate that he had been taken care of in the prison clinic every few days, and that he had also had regular consultations with the prison psychiatrist. According to the Government, the applicant in the period of one year and four months had been provided medical assistance on sixty-six occasions. The applicant did not challenge the Government's submissions concerning the frequency of his medical appointments and did not provide any further details on the matter.

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*, cited above, § 45). The

Court notes that the applicant in the present case failed to provide any evidence or at least details in respect of his complaint alleging inadequate medical treatment in prison.

The Court therefore concludes that this part of the application has not been properly substantiated and developed by the applicant (see, *mutatis mutandis*, *Golubev v. Russia* (dec.) no. 26260/02, 9 November 2006; *Istratii and Others v. Moldova*, nos. 8721/05, 8705/05 and 8742/05, § 49, 27 March 2007; and *Valašinas v. Lithuania*, no. 44558/98, § 105, ECHR 2001-VIII). Accordingly, it should be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

B. Remaining complaints

The Court notes that the remaining complaints are identical to those of the applicants in the case of *Lalić and Others*, cited above, and relate to similar factual background. In that case the Court found the general conditions of detention in the closed section of Dob Prison, including the 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* Convention standards. It accordingly also rejected the applicants' complaint under Article 13 of the Convention, as no arguable claim for the purpose of the aforementioned provision could have been established.

The Court further notes that in the present case the applicant was detained in Dob prison in cells where he always had 3.5 square metres of personal space. It finds that the personal space available to him could not be considered to raise an issue under Article 3 of the Convention (see *Lalić and Others*, cited above).

Having regard to the foregoing, the Court finds that these complaints should be rejected as being manifestly ill-founded pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court unanimously

Declares the applications inadmissible.

Claudia Westerdiek
Registrar

Karel Jungwiert
President