

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

FIFTH SECTION

DECISION

Application no. 5951/10
Dragutin SRPAK
against Slovenia

The European Court of Human Rights (Fifth Section), sitting on 15 January 2013 as a Committee composed of:

Ann Power-Forde, *President,*
Boštjan M. Zupančič,
Helena Jäderblom, *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 Dragutin Srpak, is a Slovenian national, who was born in 1956 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 N. Pintar Gosenca, 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 his sentence in the closed section of Dob Prison from 31 July 2007.

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.

Between 2 September 2007 and 3 June 2010 the applicant was held in cell no. 3, Block 3 which measured 59.89 square metres and held sixteen inmates (3.74 square metres of personal space available to each inmate). Between 3 June 2010 and 13 August 2010 the applicant was hospitalised in the University Clinic Ljubljana where he had on 26 June 2010 undergone a heart surgery and afterwards in the General Hospital Novo mesto for the post-operation recovery. Upon his return to Dob prison, the applicant was between 13 August and 17 August 2010 placed in cell no. 35, Block 1 that served as patients' room measuring 17.93 square metres and accommodating two inmates (8.97 square metres of personal space available to each inmate). Afterwards the applicant was transferred into cell no. 7, Block 3 in the drugs free section of the prison that measured 59.25 square metres and accommodated eleven inmates (5.39 square metres of personal space available to each inmate). On 3 September 2010 the applicant was granted a temporary stay of the execution of his prison sentence in order to facilitate post-surgery rehabilitation for the period between 6 September 2010 and 15 October 2010. Upon his return to prison he has been placed into his old cell no. 7, Block 3 in the drugs free section of the prison that measured 59.25 square metres and accommodated eleven inmates (5.39 square metres of personal space available to each inmate).

On 14 April 2008 the applicant instituted civil damages proceedings against the Republic of Slovenia on account of the allegedly inhuman prison conditions. On 9 September 2010 the Grosuplje Local Court dismissed the claim of the applicant. The court, which also heard a number of witnesses from the prison, referring to*, inter alia, Sulejmanovic v. Italy*, no. 22635/03, 16 July 2009, concluded that the situation, though difficult, was not such as to violate the claimant's personal rights. The Ljubljana Higher Court upheld the above judgment on 23 March 2011. Acknowledging that the situation was not perfect and could cause discomfort to the claimant, the Higher Court concluded that, in the aggregate, the conditions did not amount to undignified treatment or torture.

In their observations dated 21 December 2010 the Government dismissed the allegations of the applicant that the prison authorities had not been replying to his requests and complaints by submitting a copy of the register of incoming and outgoing documents from the applicant's personal file. According to the submitted document, there were 108 communications registered in the applicant's file. Between 15 February 2008 and

23 May 2011 the applicant sent 48 letters to the prison administration. The remaining correspondence consisted of writings sent by the prison administration as a reply to the applicant or to other institutions in connection with the applicant's letters.

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 the prison authorities had not been replying to his requests and complaints.

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, as the application should in any event be declared inadmissible for the reasons set out below.

As regards the applicant's complaint concerning the alleged failure of the prison authorities to reply to his requests and complaints, 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 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, apart from the general submission that he had on several occasions received no reply by the prison administration, whereas the Government submitted a copy of the register of incoming and outgoing documents from the applicant's personal file which discloses regular correspondence exchanged between the applicant and the prison authorities. In the absence on any detailed account by the applicant as to which of his complaints had remained unanswered, the Court cannot but conclude that this complaint is 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 has 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 has accordingly also rejected the applicant's complaint under Article 13 of the Convention, as no arguable claim for the purpose of the aforementioned provision could have 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