

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

FIFTH SECTION

DECISION

Application no. 5971/10
Matjaž ŠUŠTERŠIČ
against Slovenia

The European Court of Human Rights (Fifth Section), sitting on 25 June 2013 as a Chamber composed of:

Mark Villiger, *President,*
Angelika Nußberger,
Boštjan M. Zupančič,
Ann Power-Forde,
Ganna Yudkivska,
Helena Jäderblom,
Aleš Pejchal, *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 Matjaž Šušteršič, is a Slovenian national, who was born in 1969 and lives in Kranj. He is represented before the Court by Odvetniška Družba Matoz D.O.O., a law firm 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 was serving a sentence in the closed section of Dob Prison from 25 July 2007 until 23 July 2010.

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 27 July 2007 and 17 June 2008 the applicant was held in cell no 2, Block 3 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 26 June 2008 to 30 July 2008, from 19 August 2008 to 28 November 2008 and from 10 July 2009 to 17 July 2010 he 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). From 30 July 2008 to 19 August 2008 and from 17 July 2009 to 23 July 2010 he was held in cell no 31 – 34, Block 1 which measured 32.22 to 32.39 square metres and held four inmates (8.05 to 8.09 square metres of personal space available to each inmate). From 17 June 2008 to 26 June 2008 and from 28 November 2008 to 9 July 2009 he was in a hospital room which measured 15.83 to 17.96 square metres and held three inmates (5.27 to 5.99 square metres of personal space available to each inmate).

According to the Government's submissions there was a physical conflict on 14 November 2008 between the applicant and another prisoner, who 'head-butted' the applicant after the applicant had angered the prisoner by changing a television programme and pushed him away. After the incident the prisoner was transferred, disciplinary proceedings were instituted against him and the District State Prosecutor's Office was informed of the incident. The applicant sustained a fracture of nasal bones and consequently had difficulties with breathing. He later rejected reposition of the nasal bones and the operation; however after few months he asked for a corrective operation and was referred to a plastic surgeon. Prior to the incident the applicant never informed prison staff about feeling threatened by this prisoner or asked for a transfer due to feeling threatened by this or any other prisoner. The Government submitted the incident was therefore unpredictable for prison staff and that they could not have had prevented it. However, they reacted immediately and took the applicant to health centre for a medical examination and to general hospital for medical treatment.

As regards an incident on 9 July 2009 the Government submitted that there was a physical conflict between the applicant and another prisoner. On

5 July 2009 the other prisoner had supposedly provoked the applicant; they ended up in several fights, with the applicant allegedly hitting the other prisoner in the eye, which led to the incident on 9 July. The applicant however never informed prison staff about these fights and never informed them that he felt threatened by this prisoner or asked for a transfer due to feeling threatened by this or any other prisoner, therefore again the incident was unpredictable and unpreventable. After the incident prison staff promptly took the applicant to a health centre for a medical examination and the same day to general hospital, where he was admitted for 24-hour medical monitoring. On the return to prison, the applicant was transferred to another section and on the request of a nurse put under higher supervision of prison guards. The other prisoner was placed in a special room under video surveillance and disciplinary and criminal proceedings were instituted against him.

After the two events, no further incidents occurred between the applicant and these two prisoners. According to the Government's submissions on 16 June 2011 prison staff, when conflicts are detected, conduct a talk with prisoners who have conflicts and makes an official note about it. However, until the incident on 14 November 2008, no conflict between the applicant and a prisoner was detected or recorded by prison staff.

According to a doctor's report dated 13 August 2010 the applicant was treated on seventy-five occasions, mostly for his back pain.

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 been injured in physical conflicts with two other inmates and that the prison authorities had not taken appropriate measures to prevent such incidents. He further submitted that the incidents had been predictable and preventable, as prison authorities had had knowledge of the conflicts. Regarding the first incident, he complained that he had sustained a fracture of nasal bones and had since had difficulties with breathing.

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 allegations relating to the incidents of 14 November 2008 and 9 July 2009. It seems that the prison authorities' reaction to both incidents was prompt and adequate, as in both cases prison staff had immediately taken the injured applicant for a medical examination to health centre and to hospital and after the second incident the applicant was transferred to another section and on a request of a nurse put under higher supervision of prison guards. Further, regarding the other two prisoners, the first one was promptly transferred to another section, the second one was placed in a special room with video surveillance and against both of them proceedings were instituted for their punishment. As regards the alleged predictability and preventability of the applicant's conflicts, it has to be noted that there was no note in prison files of the applicant or any other prisoner ever informing prison staff of the applicant's

supposedly conflicting relations with other prisoners. Moreover, the applicant did not claim that he had ever informed prison authorities of that problem or even requested a transfer for that reason. He only claimed that other prisoners had informed prison staff of his conflicts; however he did not identify who those prisoners were and when they had supposedly informed prison staff of the applicant's conflicts. Therefore, his claims that prison authorities knew of his conflicts and did not react appropriately are not plausible. As to his nose injury, it has to be noted that even though he had difficulties with breathing, he rejected reposition of the nasal bones and the operation; when he later asked for a corrective operation he was referred to a plastic surgeon.

The Court therefore concludes that this part of the application has not been properly substantiated by the applicant. The Court further does not find any omissions on the part of the State as regards the prevention of both incidents. Accordingly, this part of the application should be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 (a) 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 (a) and 4 of the Convention.

For these reasons, the Court by a majority

Declares the application inadmissible.

Claudia Westerdiek
Registrar

Mark Villiger
President