



Worsening of a prisoner's conditions of detention during the 2016 prison wardens' strike: degrading treatment

In today's **Chamber judgment**¹ in the case of **Clasens v. Belgium** (application no. 26564/16) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 3 (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights, and

a violation of Article 13 (right to an effective remedy) taken together with Article 3.

The case concerned the deterioration in Mr Clasens's conditions of detention in Ittre Prison during a strike by prison wardens between April and June 2016.

The Court found that Mr Clasens' conditions of detention during the prison wardens' strike amounted to degrading treatment, resulting from the cumulative effect of ongoing lack of physical exercise, repeated breaches of the hygiene regulations, a lack of contact with the outside world and the uncertainty about whether his basic needs would be met. It considered that Mr Clasens had been subjected to distress of an intensity exceeding the unavoidable level of suffering inherent in detention.

The Court also held that the Belgian system, as it functioned at the relevant time, had not provided an effective remedy in practice – in other words, a remedy capable of affording redress for the situation of which Mr Clasens was a victim and preventing the continuation of the alleged violations.

Principal facts

The applicant, John Clasens, is a Belgian national who was born in 1983. He is being held in Ittre Prison (Belgium), in execution of a final criminal conviction.

In April 2016 strike action by prison wardens affected prisons in Brussels and Wallonia. As a result, the guaranteed minimum service was no longer provided and the ordinary prison regime was suspended, to a greater or lesser degree depending on the prison in question.

In May 2016 Mr Clasens lodged an urgent application with the president of the *tribunal de première instance* (TPI), asking her to order the Belgian State to restore the ordinary regime and complaining about his conditions of detention. The next day, the president of the TPI allowed this request in part, ordering the Belgian State to provide and/or restore various services, subject to a daily penalty of 10,000 euros (EUR) per offence for non-compliance. About three weeks later, in view of the difficulties in executing the order, Mr Clasens had served on the Belgian State a demand for payment of the penalties. The Belgian State lodged an appeal.

In April 2017 the court of appeal – to which the Belgian State had applied in the interim period – upheld most of the order issued by the TPI president; however, it reduced the penalty to EUR 250 per day. In its judgment the court of appeal noted, in particular, that the prisoners' conditions of detention had deteriorated significantly, in breach of Article 3 of the Convention.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day. Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

The strike action in Ittre Prison ended in June 2016. The prison supervisory board then prepared a consolidated report on the conditions of detention to which prisoners had been subjected. From 7 to 9 May 2016 the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) carried out an *ad hoc* visit to Ittre Prison.

Complaints, procedure and composition of the Court

Relying on Article 3 (prohibition of inhuman or degrading treatment), Mr Clasens complained about the material conditions of his detention during the prison wardens' strike. Under Article 13 (right to an effective remedy), he also complained that he had had no access to an effective remedy.

The application was lodged with the European Court of Human Rights on 13 May 2016.

Judgment was given by a Chamber of seven judges, composed as follows:

Jon Fridrik **Kjølbro** (Denmark), *President*,
Paul **Lemmens** (Belgium),
Faris **Vehabović** (Bosnia and Herzegovina),
Iulia Antoanella **Motoc** (Romania),
Carlo **Ranzoni** (Liechtenstein),
Stéphanie **Mourou-Vikström** (Monaco),
Georges **Ravarani** (Luxembourg),

and also Marialena **Tsirli**, *Section Registrar*.

Decision of the Court

Article 3 (prohibition of inhuman or degrading treatment)

The Court found that the observers who had visited Ittre Prison during the relevant period had been in agreement in their descriptions of the material conditions of detention in those premises. This description had also been used by the Brussels Court of Appeal in its judgment of 26 April 2017 in upholding the finding against the Belgian State on account of conditions of detention which infringed human dignity, in violation of Article 3 of the Convention, throughout the strike. Thus, for almost two months Mr Clasens had had no access to activities outside his cell, to which he had been confined for 24 hours a day with the exception of a one-hour period in the recreation yard every three days, and had been able to take a shower only once or twice a week, with no opportunity to obtain hygiene products, distribution of which had been discontinued. Moreover, the prisoners had found themselves dependent on the refusal to work of large numbers of prison wardens, and obliged to accept the unlawfulness and uncertainty of the minimum services provided, without knowing when the strike would end and thus with no prospects of seeing the situation improve. They had been deprived of almost all contact with the outside world, including by telephone, family visits or meetings with their lawyers. As a result of the strike there had been a severe shortage of staff.

In consequence, the Court echoed the conclusion reached by the Brussels Court of Appeal in its judgment of 26 April 2017. It held that the cumulative effect of a continued lack of physical exercise, repeated breaches of the hygiene regulations, the lack of contact with the outside world and the uncertainty around whether his basic needs would be met had necessarily caused the applicant distress of an intensity exceeding the unavoidable level of suffering inherent in detention. In consequence, the Court considered that these conditions of detention constituted degrading treatment and held that there had been a violation of Article 3 of the Convention.

Article 13 (right to an effective remedy)

The Court noted that Mr Clasens had – from the very beginning of the strike – applied to the urgent-applications judge, who had instructed the State to ensure, subject to penalties, a minimum service in order to provide for the basic needs of the persons being detained inside Ittre Prison. However, it had proved impossible to improve the conditions of detention significantly and to restore lawfulness in the provision of basic services.

The Court noted that the ineffectiveness of the urgent application during the prison wardens' strike, complained of by Mr Clasens, had in reality been largely the result of the structural nature of the problems resulting from such a strike. It was the lack of a framework for ensuring continuity in prison wardens' tasks during strike periods which lay at the origin of the ineffectiveness of the urgent application and which had compromised the favourable decision given by the ordinary court. Although the urgent-applications judge had exercised her jurisdiction, this had not been effective in remedying the situation complained of by Mr Clasens, given that the provision of minimum services to the prisoners was, in any event, dependant on fluctuations in the strike action.

In consequence, having regard to its analysis of the Belgian system as it functioned at the relevant time, the Court concluded that Mr Clasens had not had available an effective remedy in practice for his Convention complaints – in other words, a remedy capable of affording redress for the situation of which he was the victim and of preventing the continuation of the alleged violations. There had therefore been a violation of Article 13 of the Convention taken together with Article 3.

Just satisfaction (Article 41)

The Court held that Belgium was to pay Mr Clasens 3,480 euros (EUR) in respect of non-pecuniary damage and EUR 2,300 in respect of costs and expenses.

The judgment is available only in French.

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Press contacts

echrpess@echr.coe.int | tel.: +33 3 90 21 42 08

Inci Ertekin (tel: + 33 3 90 21 55 30)

Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)

Denis Lambert (tel: + 33 3 90 21 41 09)

Patrick Lannin (tel: + 33 3 90 21 44 18)

Somi Nikol (tel: + 33 3 90 21 64 25)

The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.