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

Press Release
issued by the Registrar of the Court

ECHR 041 (2020)
30.01.2020

The French authorities must put an end to overcrowding in prisons and to degrading conditions of detention

In today's **Chamber** judgment[1] in the case of J.M.B. and Others v. France (application no. 9671/15 and 31 others) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 13 (right to an effective remedy) of the European Convention on Human Rights, and

a violation of Article 3 (prohibition of inhuman or degrading treatment).

The 32 cases concerned the poor conditions of detention in the following prisons: Ducos (Martinique), Faa'a Nuutania (French Polynesia), Baie-Mahault (Guadeloupe), Nîmes, Nice and Fresnes, as well as the issue of overcrowding in prisons and the effectiveness of the preventive remedies available to the prisoners concerned.

The Court considered that the personal space allocated to most of the applicants had fallen below the required minimum standard of 3 sq. m throughout their period of detention; that situation had been aggravated by the lack of privacy in using the toilets. With regard to the applicants who had more than 3 sq. m of personal space, the Court held that the prisons in which they had been or continued to be held did not, generally speaking, provide decent conditions of detention or sufficient freedom of movement and activities outside the cell.

The Court further held that the preventive remedies in place – an urgent application to protect a fundamental freedom and an urgent application for appropriate measures – were ineffective in practice, and found that the powers of the administrative judges to make orders were limited in scope. Furthermore, despite a positive change in the case-law, overcrowding in prisons and the dilapidated state of some prisons acted as a bar to the full and immediate cessation of serious breaches of fundamental rights by means of the remedies available to persons in detention.

Under Article 46 the Court noted that the occupancy rates of the prisons in question disclosed the existence of a structural problem. The Court recommended to the respondent State that it consider the adoption of general measures aimed at eliminating overcrowding and improving the material conditions of detention, while putting in place an effective preventive remedy.

Principal facts

The 32 applicants in this case are 29 French nationals, one Cape Verde national, one Polish national and one Moroccan national, who were born between 1945 and 1995.

Ducos Prison, located fourteen kilometres from Fort-de-France, is the only prison in Martinique. On 1 January 2015 the occupancy rate was 213.7% in the short-stay section and 124.6% in the rest of the prison. On 1 January 2019 it was 134% in the short-stay section and 86.1% in the rest of the prison. A first phase of work led to some areas being refurbished and extended and a new building being constructed, resulting in a 60% increase in capacity. There are plans to reorganise the sanitary facilities. The applicants complained of a lack of personal space, which averaged 3 sq. m per person.

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.

All of them complained about the proximity of the dining area to the toilets, which were separated from the rest of the cell by a curtain. They complained of the insalubrious state of the cells, which were infested with rats, cockroaches, mice and ants, of the dirty state of the toilets and of inadequate hygiene and ventilation. Some of the applicants complained of a lack of light, while others reported a climate of violence. Some alleged a lack of, or inadequate, healthcare. All the applicants maintained that they were locked up for between fifteen and twenty-two hours a day.

In July 2014 the applicants (with the exception of two) brought an action for damages against the State in the Martinique Administrative Court, seeking compensation for the damage they had sustained. The Administrative Court found that the conditions of detention were degrading within the meaning of Article 3 of the Convention and amounted to negligence. The State was ordered to pay the claimants amounts of compensation ranging from 2,880 euros (EUR) to EUR 7,300.

Faa'a-Nuutania Prison in French Polynesia, with a capacity of 119 places, was built in 1970 on the island of Tahiti. On 1 September 2016, three months after the applicants applied to the Court, the rate of occupancy of the short-stay section was 143%, while that of the rest of the prison was 185.7%. The construction of a new prison was completed in March 2017, with the aim of accommodating 410 prisoners and relieving congestion in Faa'a-Nuutania, which was overcrowded and very dilapidated. At the time their application was lodged, the applicants were sharing cells of between 8 and 12 sq. m, including sanitary facilities and furnishings, with three other occupants. As a result, each of them had between 2 and 3 sq. m of personal space. All the applicants complained of the presence of vermin in the cells and the communal areas of the prison. They complained of the dilapidated state of the communal areas and the sanitary facilities, inadequate hygiene in the cells, unpleasant smells, a lack of hot water and drinking water and inadequate food rations. They also described a climate of tension and violence. Several of the applicants complained that waiting times for medical treatment were unreasonable, and one complained that his letters were being opened. The Government stated that the inside of the prison had undergone extensive refurbishment since 2013.

Baie-Mahault Prison, on the outskirts of Pointe-à-Pitre, was built in 1996. It has a theoretical capacity of 503 places. In March 2017 the rate of overcrowding was 150%. In January 2019 the occupancy rate of the short-stay section was 189%, while that of the rest of the prison was 89%. Work is scheduled to be carried out in 2020. The applicant stated that he shared his cell with two other inmates and slept on a mattress on the floor, 80 cm from the toilets. He complained of a climate of tension and violence and alleged that he had been attacked on several occasions.

Nîmes short-stay prison, with a capacity of 192 places, came into operation in 1974 and is the only prison in the Gard *département*. In February 2015 the rate of overcrowding was 215%. The same year, the French section of International Prison Watch ("the OIP") and the Nîmes Bar Council lodged an urgent application for protection of a fundamental freedom, seeking to put an end to serious breaches of prisoners' fundamental freedoms. In January 2019 the rate of overcrowding was 205%. The applicants complained of the dilapidated state of the cells, which they sometimes had to share with very elderly prisoners whom they had to care for. They complained of noise and unpleasant smells, inadequate ventilation and heat insulation, and poor hygiene.

Nice short-stay prison was built at the end of the 19th century. It is severely overcrowded and conditions in the women's section of the prison have been described repeatedly as intolerable. This prison is included in the 2022-2027 prison-building programme.

Lastly, Fresnes short-stay prison, which has a capacity of 1,320 places, forms part of the Fresnes prison complex. It was built in 1898 on the outskirts of Paris in the Val-de-Marne *département*. On 1 November 2017 the rate of overcrowding was 195.6%, and on 1 January 2019 it was 197%. On 3 October 2016 the OIP lodged an urgent application for protection of a fundamental freedom with the Melun Administrative Court, seeking, among other measures, action to halt the spread of vermin in the buildings. The applicants complained that they had had personal space in their cells ranging

from below 3 sq. m to 4 sq. m. They said that they were locked in their cells for twenty-two hours a day. They complained of the poor standard of meals, of inadequate hygiene in the cells, which were infested with bed bugs and cockroaches, and of the presence of rats in the communal areas. They alleged that there was a climate of tension and violence, and all of them complained of being strip-searched systematically after each prison visit.

Complaints, procedure and composition of the Court

Relying on Article 3 (prohibition of inhuman and degrading treatment), Article 8 (right to private and family life) and Article 13 (right to an effective remedy), the applicants alleged that their conditions of detention were or had been inhuman and degrading and that they had no effective remedy in that regard.

The applications were lodged with the European Court of Human Rights between 20 February 2015 and 20 November 2017.

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

Angelika **Nußberger** (Germany), *President*,
Gabriele **Kucsko-Stadlmayer** (Austria),
Ganna **Yudkivska** (Ukraine),
André **Potocki** (France),
Síofra **O'Leary** (Ireland),
Mārtiņš **Mits** (Latvia),
Lado **Chanturia** (Georgia),

and also Milan **Blaško**, *Deputy Section Registrar.*

Decision of the Court

The Court declared admissible the applicants' complaints concerning their conditions of detention, with the exception of three applicants who were no longer in detention when their applications were lodged, who should have submitted a claim for compensation to the domestic courts, and two applicants who had obtained recognition of the demeaning nature of their conditions of detention and obtained redress for the alleged violation of Article 3. The Court likewise declared admissible the complaint submitted by all the applicants concerning the lack of an effective preventive remedy in domestic law.

Article 13

The Court noted that the remedies advocated by the Government as preventive remedies within the meaning of its case- law consisted in urgent applications to an administrative judge.

The Court observed that following a change in the case-law, applications to the urgent-applications judge for protection of a fundamental freedom had resulted in the implementation of measures designed to remedy serious breaches of prisoners' rights, especially with regard to conditions of hygiene. The developments in the case-law had been brought about mainly by applications made by the OIP for the collective defence of prisoners' rights. An urgent application for protection of a fundamental freedom was a remedy available to individual prisoners. The Court noted that urgent-applications judges delivered their rulings promptly and in accordance with the general principles set out in the Court's case-law on Article 3.

The question to be addressed was whether this remedy actually made it possible to put an end to conditions of detention contrary to the Convention.

Firstly, with regard to the effectiveness of urgent applications of this kind, the Court noted that the power of the judges to give orders was limited in scope. The judge was not empowered to require that work be carried out on a sufficient scale to eliminate the consequences of overcrowding in prisons, or to order measures to reorganise the public justice system.

Secondly, the Court noted that the role of the urgent-applications judge was conditional on the funding available to the prison authorities and the measures already taken by them. Prison governors were required to accept persons placed in detention, including when the prison was overcrowded. The need to take account of the actions and undertakings of the authorities led the urgent-applications judge to order transitional measures with little binding effect which were not capable of putting a swift end to inhuman or degrading conditions. Furthermore, the prison authorities could impede the judge's power to issue orders by referring to the scale of the work to be carried out or the cost.

Thirdly, the time taken to implement the orders given was incompatible with the requirement to afford prompt redress. Prisoners who had obtained a decision in their favour could not be expected to make multiple applications to ensure that their fundamental rights were recognised by the prison authorities. Lastly, irrespective of the procedures for implementation, the Court noted that the measures implemented did not always produce the desired results. Ultimately, the measures ordered by the urgent-applications judge, in so far as they concerned overcrowded prisons, were difficult to implement in practice. The fact that prisons were overcrowded and dilapidated, especially in areas where there were few prisons and where transfers were not a realistic option, meant that the use of an urgent application to protect a fundamental freedom did not enable persons in detention to secure the immediate and complete cessation of serious breaches of Article 3 or to have their situation improved substantially.

The Court concluded that the Government had not demonstrated that an urgent application to protect a fundamental freedom could be regarded as the preventive remedy required by the Court. The same was true of urgent applications for appropriate measures, which, in addition to the fact that they were secondary to urgent applications to protect a fundamental freedom, encountered the same practical obstacles. The applicants – with the exception of one who did not lodge a complaint to that effect – had thus had no effective remedy. There had therefore been a violation of Article 13 of the Convention.

Article 3

The Court reiterated that where an applicant's description of his or her conditions of detention was credible and reasonably detailed, the burden of proof shifted to the respondent Government, who alone had access to information capable of corroborating or refuting the applicant's allegations. The respondent Government were thus required to collect and produce the relevant documents and provide a detailed account of the applicant's conditions of detention. In examining the case the Court also took account of information provided by international bodies such as the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) or the relevant national authorities and institutions.

In the applications under consideration the Court noted that the information provided by the Government concerning the amount of personal space allocated to the applicants was limited and in some cases non-existent (in the case of the prisoners in Faa'a Nuutania, Baie-Mahault and Nice). In other cases the information was incomplete, as it did not always specify the surface area of the cells or make clear whether or not the figure given included the sanitary facilities. Only in the case of Nîmes short-stay prison did the information provided allow the Court to establish with accuracy how much personal space the applicants had had and the length of time for which that situation had applied. Accordingly, the Court considered that the Government had not refuted the allegations of the applicants in Ducos, Faa'a Nuutania, Baie-Mahault, Nice and Fresnes prisons (two applicants in

the case of Fresnes), to the effect that they had had less than 3 sq. m of personal space each throughout their detention. Moreover, those allegations were corroborated by the information provided by national authorities such as the General Inspector of Prisons and international bodies such as the CPT.

The Court observed, in relation to all the prisons concerned, that the Government had cited security reasons to justify the fact that the sanitary facilities, and especially the toilets, were not completely sectioned off. In the Court's view, the reasons given were incompatible with the requirement to protect prisoners' privacy when they were sharing overcrowded cells.

The Court concluded that there had been a violation of Article 3 on account of the conditions of detention with regard to all the applicants whose complaints had been declared admissible.

The Court rejected, for failure to exhaust domestic remedies, Mr Mixtur's complaint of a violation of Article 3 owing to the violence to which he had allegedly been subjected in Baie-Mahault Prison.

Article 8

In view of its finding concerning Article 3, the Court considered it unnecessary to ascertain whether there had also been a breach of Article 8 on account of the applicants' conditions of detention. As to the complaint of one of the applicants (R.I.) that some of his letters had been opened, the Court found that the complaint had not been substantiated and should therefore be rejected as manifestly ill-founded.

Article 46

The Court recommended to the respondent State that it should consider the adoption of general measures in order to ensure that prisoners' conditions of detention were compatible with Article 3 of the Convention. The measures taken to that end should include putting a permanent end to overcrowding in prisons. This might entail revising the method of calculating prison capacity and improving compliance with maximum occupancy standards.

Furthermore, an effective preventive remedy should be put in place, which, together with the compensatory remedy, would enable prisoners to obtain redress for the situation of which they were victims and prevent the continuation of alleged violations.

Just satisfaction (Article 41)

The Court held that France was to pay the applicants sums ranging from 4,000 euros (EUR) to EUR 25,000 in respect of non-pecuniary damage (see Appendix II to the judgment).

The judgment is available only in French.

Press contacts
echrpress@echr.coe.int | tel.: +33 3 90 21 42 08

Denis Lambert (tel: + 33 3 90 21 41 09)
Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)
Inci Ertekin (tel: + 33 3 90 21 55 30)
Patrick Lannin (tel: + 33 3 90 21 44 18)

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.