



The Court recommends that Belgium envisage adopting general measures guaranteeing prisoners adequate conditions of detention

In today's **Chamber judgment**¹ in the case of [Vasilescu v. Belgium](#) (application no. 64682/12) 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 regarding the physical conditions of the applicant's detention.

The case mainly concerned Mr Vasilescu's condition of detention in Antwerp and Merksplas Prisons.

The Court found, in particular, that Mr Vasilescu's physical conditions of detention in those prisons had subjected him to hardship exceeding the unavoidable level of suffering inherent in detention and amounted to inhuman and degrading treatment.

The Court observed that the problems arising from prison overcrowding in Belgium, and the problems of unhygienic and dilapidated prison institutions, were structural in nature and did not concern Mr Vasilescu's personal situation alone. It recommended that Belgium envisage adopting general measures guaranteeing prisoners conditions of detention compatible with Article 3 of the Convention and affording them an effective remedy by which to put a stop to an alleged violation or allow them to obtain an improvement in their conditions of detention.

Principal facts

The applicant, Mr Marin Vasilescu, is a Romanian national who was born in 1970 and lives in Romania.

On 10 October 2011, Mr Vasilescu was arrested and placed in pre-trial detention in Antwerp Prison. He alleged that he had been obliged to sleep on a mattress on the floor in a cell measuring 8 sq. m which he had shared with two other inmates who smoked heavily and took drugs in the cell.

On 23 November 2011 Mr Vasilescu was transferred to Merksplas Prison. He alleged that for nine weeks he had been kept in the pavilion "cells", in a cell without water or toilets and with a fellow inmate who smoked. He had then been put in another cell, measuring 16 sq. m, which he had shared with three fellow inmates who were smokers, despite his request to be put in a non-smoking cell. On several occasions he had unsuccessfully asked the prison doctor for a number of medical tests for health problems and to be admitted to hospital. The prison doctor had merely prescribed him painkillers.

In the meantime Mr Vasilescu lodged an application for conditional release, which was rejected by the Antwerp Sentencing Court on 7 November 2011. That court's judgment was upheld on appeal. On 6 April 2012 the Sentencing Court rejected a further request by Mr Vasilescu for conditional release. Mr Vasilescu was finally released on 22 October 2012 and sent back to Romania.

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.

Complaints, procedure and composition of the Court

Relying on Article 3 (prohibition of inhuman or degrading treatment), Mr Vasilescu complained that his physical conditions of detention had been inhuman and degrading. He also complained that he had not received appropriate medical care for his physical state of health while in detention. Relying on Article 14 (prohibition of discrimination) taken in conjunction with Article 3, he also claimed that in Belgium foreign prisoners were discriminated against as compared with Belgian prisoners both regarding the conditions of detention and the possibility of obtaining conditional release. Relying on Article 6 § 1 (right to a fair hearing), Mr Vasilescu complained of the procedure conducted before the Sentencing Court regarding his applications for conditional release. He alleged, further, that he had been detained fifteen days longer than the sentence imposed on him, in violation of Article 5 (right to liberty and security). He complained, lastly, under Article 8 (right to respect for private and family life), that the Belgian authorities had illegally tapped his home telephone number between 2009 and 2012.

The application was lodged with the European Court of Human Rights on 23 July 2012.

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

Guido **Raimondi** (Italy), *President*,
İşıl **Karakaş** (Turkey),
András **Sajó** (Hungary),
Helen **Keller** (Switzerland),
Paul **Lemmens** (Belgium),
Robert **Spano** (Iceland),
Jon Fridrik **Kjølbro** (Denmark),

and also Stanley **Naismith**, *Section Registrar*.

Decision of the Court

Article 3 (physical conditions of detention)

The Government submitted that Mr Vasilescu had not exhausted the available domestic remedies to complain about his conditions of detention, as he had not used the possibility of making an urgent application to the appropriate judge under Article 584 of the Judicial Code or to the civil judge under Article 1382 of the Civil Code, of seeking financial assistance from the State social welfare office or applying to a monitoring commission attached to the prisons in question.

While it was true that Mr Vasilescu had not taken any of those administrative or judicial steps, the Court considered, nonetheless, that the Government had failed to show with sufficient certainty that the use of those remedies would have afforded Mr Vasilescu compensation for his complaint about the physical conditions of his detention.

Accordingly, that part of the application could not be rejected for failure to exhaust domestic remedies and, as it could not be declared inadmissible on any other grounds, it had to be declared admissible.

The Court noted that in addition to the problem of prison overcrowding, Mr Vasilescu's allegations regarding the sanitary conditions, particularly access to running water and the toilets, were most plausible and reflected the realities described by the European Committee for the Prevention of Torture and Inhuman or Degrading Punishment ("the CPT") in the various reports drawn up following its visits to Belgian prisons.

The Court also observed that for several weeks Mr Vasilescu had been confined to individual space of less than 4 sq. m, which was below the standard recommended by the CPT for shared cells.

For fifteen days he had even been confined to individual space of less than 3 sq. m, which in itself justified finding a violation of Article 3.

That lack of individual living space had, moreover, been exacerbated by the fact that, according to Mr Vasilescu's allegations, he had had to sleep on a mattress on the floor for several weeks, which did not comply with the basic rule established by the CPT: "one prisoner, one bed". The Court had no reason to doubt those allegations in so far as the Government had failed to adduce evidence to the contrary.

With regard to the sanitary facilities and hygiene, the Court found that Mr Vasilescu had not always had access to the toilets in conformity with the CPT's recommendations. The situation in the pavilion "cells" in Merksplas Prison had, moreover, been described in 1998 as "mediocre" by the CPT, which had urged the Belgian authorities to take urgent measures in that regard. The Court observed that, sixteen years later, the situation did not appear to have improved.

Lastly, Mr Vasilescu's conditions of detention had been further exacerbated by the fact that he had been exposed to passive smoking.

While there was nothing to indicate that there had been a real intention to humiliate or debase Mr Vasilescu during his detention, his physical conditions of detention in Antwerp and Merksplas Prisons had reached the minimum threshold of seriousness required by Article 3 and amounted to inhuman and degrading treatment. Accordingly, there had been a violation of that provision.

Article 3 (medical care)

Regarding the absence, or deficiency, of appropriate medical care in prison, the Court did not see any reason to doubt the effectiveness of the remedy provided for in Article 584 of the Judicial Code, which allowed prisoners who considered that their rights had been infringed to apply to the urgent-applications judge.

The Court accordingly considered that, by failing to bring his claim before the ordinary courts, Mr Vasilescu had not exhausted domestic remedies. It therefore declared this part of the application inadmissible.

Article 14 taken in conjunction with Article 3

With regard to the alleged difference of prison regime between Belgian and foreign detainees, the Court found that Mr Vasilescu had failed to substantiate his complaint and had not convincingly demonstrated that he had suffered discriminatory treatment. Likewise, the Court did not see any appearance of such treatment with regard to the possibility of obtaining conditional release.

It followed that this part of the application had to be rejected as manifestly ill-founded.

Other Articles

The Court declared the complaint under Article 6 inadmissible on grounds of incompatibility with the provisions of the Convention. It also declared inadmissible the complaints under Articles 5 and 8 because these had neither been substantiated by Mr Vasilescu nor submitted to the national courts.

Article 46 (binding force and execution of judgments)

The Court found that the problems arising from prison overcrowding in Belgium, and the problems of unhygienic and dilapidated prison institutions, were structural in nature and did not concern Mr Vasilescu's personal situation alone. The conditions of detention about which Mr Vasilescu had complained had been criticised by national and international observers (including the CPT) for many years without any improvement apparently having been made in the prisons in which Mr Vasilescu had been detained.

Consequently, the Court recommended that Belgium envisage adopting general measures in order to guarantee prisoners conditions of detention compatible with Article 3 of the Convention and also to provide them with a remedy capable of putting a stop to an alleged violation or permitting them to obtain an improvement in their conditions of detention.

Just satisfaction (Article 41)

The Court held that Belgium was to pay the applicant 10,000 euros (EUR) in respect of non-pecuniary damage and EUR 800 in respect of costs and expenses.

The judgment is available only in French.

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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.