



Overcrowding in Oporto prison constituted degrading treatment for inmates

In today's **Chamber** judgment¹ in the case of [Bădulescu v. Portugal](#) (application no. 33729/18) 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.

The case concerned the conditions of detention in Oporto prison (Portugal), where Mr Bădulescu had been held between October 2012 and March 2019.

The Court noted that Oporto Prison had been overcrowded for the entire period in which Mr Bădulescu had been serving his sentence (six and a half years) and that he had had less than 3 sq. m of personal space in his cells.

The Court found in particular that Mr Bădulescu had been subjected to hardship of an intensity exceeding the unavoidable level of suffering inherent in detention, thus constituting degrading treatment. It also found that the lack of heating had been an aggravating factor, in view of the discomfort, or even distress, that it must have caused the applicant throughout his detention. It further noted that the overcrowding in this prison and its consequences had been the primary concern of the Ombudsman in his report of 20 April 2017.

Principal facts

The applicant, Ionuț-Marian Bădulescu, is a Romanian national who was born in 1981. He is currently imprisoned in Tulcea (Romania).

On an unspecified date Mr Bădulescu was sentenced to prison for nine years and six months having been convicted of theft in Portugal. On 19 October 2012 he was arrested and imprisoned in Oporto prison, then released on 6 March 2019.

Mr Bădulescu complained that during this period he had been held in overcrowded cells with limited personal space; that the cells were insalubrious, too cold in winter and too hot in summer; and that the toilets were not partitioned. He also complained about belated and inadequate dental care and the fact that telephone calls to his family were limited to five minutes a day.

Complaints, procedure and composition of the Court

Relying on Article 3 (prohibition of inhuman or degrading treatment) of the Convention, Mr Bădulescu complained that the conditions of his detention in Oporto prison had been inhuman and degrading. He also complained that the dental care he received was unduly delayed and inadequate.

Mr Bădulescu also submitted that the length of his telephone calls to his family had been insufficient. The Court decided to examine the latter complaint under Article 8 (right to respect for private and family life).

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 application was lodged with the European Court of Human Rights on 7 July 2018.

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

Paul Lemmens (Belgium), *President*,
Georgios A. Serghides (Cyprus),
Helen Keller (Switzerland),
Alena Poláčková (Slovakia),
María Elósegui (Spain),
Gilberto Felici (San Marino),
Ana Maria Guerra Martins (Portugal),

and also Milan Blaško, *Section Registrar*.

Decision of the Court

Article 3 (prohibition of torture and inhuman or degrading treatment)

As to the conditions of detention, the Court observed that it had found a violation of Article 3 as a result of similar complaints in the case of *Petrescu v. Portugal*² ([link to press release](#)).

Having examined all the material submitted to it, it did not detect any facts or arguments which might persuade it to reach a different conclusion in the present case. Oporto prison was unquestionably overcrowded throughout the period in which Mr Bădulescu had served his sentence. Thus, although intended to accommodate 686, Oporto prison was occupied by 1,070 inmates on 31 December 2012, 1,159 inmates on 31 December 2013, 1,207 inmates on 31 December 2014, 1,197 inmates on 31 December 2015, 1,183 inmates on 31 December 2016, 1,128 inmates on 31 December 2017, and 1,070 inmates on 31 December 2018. Moreover, the overcrowding of this prison and its consequences constituted the primary matter of concern raised by the Ombudsman in his report of 20 April 2017.

Throughout his imprisonment in Oporto prison, Mr Bădulescu had therefore had less than 3 sq.m of personal space, more precisely 2.8 sq.m in cells designed for two people and 2.1 sq. m in multiple-occupancy cells, where up to six inmates were housed. In view of the lengthy period of imprisonment (six and a half years), the Court took the view that Mr Bădulescu had been subjected to hardship of an intensity exceeding the unavoidable level of suffering inherent in detention, thus constituting degrading treatment in breach of Article 3 of the Convention. It also found that the lack of heating had been an aggravating factor, in view of the discomfort, or even distress, that it must have caused the applicant throughout his detention in the prison. **There had therefore been a violation of Article 3 of the Convention.**

As regards the complaint concerning belated and inadequate access to dental care, the Court noted that Mr Bădulescu had not indicated the dates on which he had allegedly requested to be seen by a dentist or received dental treatment, nor had he explained how the treatment he received had been inadequate. Consequently, **this complaint was insufficiently substantiated and was rejected as manifestly ill-founded.**

Article 8 (right to respect for private and family life)

Mr Bădulescu complained that his telephone calls to his family had been limited to five minutes per day.

² *Petrescu v. Portugal*, no. 23190/17, 3 December 2019.

The Court found in particular that having regard to the need to allow all inmates to make calls, the limitation of the time of daily telephone calls was not a disproportionate measure. In its report of a visit to Portugal in 2016, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) had taken the view that five minutes per day was adequate. In addition Mr Bădulescu had not claimed that he had been prevented from contacting his family by other means. **This complaint was thus manifestly ill-founded and was rejected.**

[Just satisfaction \(Article 41\)](#)

The Court held that Portugal was to pay the applicant 14,000 euros (EUR) in respect of non-pecuniary damage.

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.