



Detention for 27 days in personal space of less than 3 square metres was inhuman and degrading treatment

In today's **Grand Chamber** judgment¹ in the case of **Muršić v. Croatia** (application no. 7334/13) the European Court of Human Rights held that there had been:

unanimously, a violation of Article 3 (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights for the period 18 July-13 August 2010, during which the applicant had less than 3 sq. m of personal space in Bjelovar Prison;

by ten votes to seven, **no violation of Article 3** in respect of the other, non-consecutive, periods of detention during which he had less than 3 sq. m of personal space; and

by thirteen votes to four, **no violation of Article 3** in respect of the periods in which he had personal space of between 3 sq. m and 4 sq. m in Bjelovar Prison.

The Court confirmed that 3 sq. m of surface area per detainee in a multi-occupancy cell was the prevalent norm in its case-law, being the applicable minimum standard for the purposes of Article 3. When that area fell below 3 sq. m, the lack of personal space was regarded as so serious that it gave rise to a strong presumption of a violation of Article 3.

Having regard to the documents produced by the Government and to the applicant's statements, the Court found that the conditions in which the applicant had been held in Bjelovar Prison were generally appropriate, but that there had been a violation of Article 3 for the consecutive period of 27 days during which he had been confined in less than 3 sq. m of personal space.

The other periods during which Mr Muršić had disposed of less than 3 sq. m could be regarded as short and minor reductions of personal space, while at the same time Mr Muršić had sufficient freedom of movement and activities outside the cell and was being held in a generally appropriate detention facility.

Principal facts

The applicant, Kristijan Muršić, is a Croatian national who was born in 1987 and lives in Kuršanec (Croatia).

In February 2009 Mr Muršić was sent to prison for two years for armed robbery and in July 2010 he was sentenced to a further year after being convicted of theft. On 26 August 2011, combining the two terms, Čakovec County Court sentenced him to a single term of two years and eleven months' imprisonment.

On 16 October 2009 Mr Muršić was transferred from a semi-open regime in Turopolje State Prison to Bjelovar County Prison, where he remained until 16 March 2011. He alleged that during his time there he was held in overcrowded cells and, in particular, that for a period of 50 days in total, including 27 consecutive days, he had been confined in less than 3 sq. m of personal space. He added that his cells were badly maintained, damp and dirty. He had not been given any opportunity to engage in prison work and in general had not had sufficient access to recreational and educational activities.

1. Grand Chamber judgments are final (Article 44 of the Convention).

All final judgments are transmitted to the Committee of Ministers of the Council of Europe for supervision of their execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

On 24 March 2010 Mr Muršić applied to the Bjelovar Prison administration asking to be transferred to Varaždin Prison for personal and family reasons. He reiterated his request in May 2010, again citing personal and family reasons, particularly his family's lack of financial means, which made it difficult for them to visit him at Bjelovar. In August 2010 he complained about the conditions of his detention to a sentence-execution judge. After obtaining a detailed report from the prison about the conditions of detention and hearing the applicant in person, the sentence-execution judge dismissed his complaints as ill-founded. Mr Muršić appealed against that decision and in October 2010 a three-judge panel of Bjelovar County Court dismissed his appeal, endorsing the reasoning of the sentence-execution judge. He challenged the County Court's decision and lodged a constitutional complaint with the Constitutional Court, complaining in general terms of a lack of personal space and work opportunities in Bjelovar Prison. On 5 June 2012 the Constitutional Court declared the applicant's constitutional complaint inadmissible as manifestly ill-founded.

Complaints, procedure and composition of the Court

Relying on Article 3 (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights, Mr Muršić complained that he had been held in poor conditions at Bjelovar Prison. He alleged that he had disposed of less than 3 sq. m of personal space in his cell for a number of non-consecutive periods of a total duration of 50 days and personal space of between 3 and 4 sq. m in other periods. He also complained that the sanitary facilities, conditions of hygiene, food, the possibility of engaging in prison work and access to recreational or educational activities in the prison had been insufficient.

The application was lodged with the European Court of Human Rights on 17 December 2012.

In its Chamber [judgment](#) delivered on 12 March 2015 the European Court of Human Rights held, by six votes to one, that there had been no violation of Article 3 of the Convention, because the conditions in which the applicant had been held had not attained the threshold of severity for the treatment in question to be regarded as inhuman or degrading.

On 10 June 2015 the applicant requested that the case be referred to the Grand Chamber under Article 43 (referral to the Grand Chamber) and on 6 July 2015 the panel of the Grand Chamber accepted that request. The applicant and the Government each filed observations on the merits of the case. In addition, joint third-party comments were received from the Observatoire international des prisons – section française (OIP-SF), the Ligue belge des droits de l'homme (LDH) and the Réseau européen de contentieux pénitentiaire (RCP). Further third-party comments were received from the Documentation Centre "L'altro diritto onlus". The third parties had been given leave by the President to intervene in the written procedure. A hearing took place in public in the Human Rights Building, Strasbourg, on 6 January 2016.

Judgment was given by the Grand Chamber of 17 judges, composed as follows:

Guido **Raimondi** (Italy), *President*,
András **Sajó** (Hungary),
Luis **López Guerra** (Spain),
Mirjana **Lazarova Trajkovska** ("The former Yugoslav Republic of Macedonia"),
Angelika **Nußberger** (Germany),
Kristina **Pardalos** (San Marino),
Vincent A. **de Gaetano** (Malta),
Paulo **Pinto de Albuquerque** (Portugal),
Paul **Mahoney** (the United Kingdom),
Aleš **Pejchal** (the Czech Republic),
Krzysztof **Wojtyczek** (Poland),
Faris **Vehabović** (Bosnia and Herzegovina),

Ksenija Turković (Croatia),
Jon Fridrik Kjølbro (Denmark),
Yonko Grozev (Bulgaria),
Armen Harutyunyan (Armenia),
Pauliine Koskelo (Finland),

and also Roderick Liddell, *Registrar*.

Decision of the Court

Article 3

The Grand Chamber, like the Chamber in its judgment of 12 March 2015, found that Mr Muršić had duly exhausted domestic remedies.

The Court confirmed that 3 sq. m of floor surface area per detainee in a multi-occupancy cell was the prevalent norm in its case-law, being the applicable minimum standard for the purposes of Article 3. When that area fell below 3 sq. m, the lack of personal space was regarded as so serious that it gave rise to a strong presumption of a violation of Article 3. The respondent Government could, however, rebut that presumption by demonstrating that there were factors capable of adequately compensating for the lack of space. The strong presumption of an Article 3 violation would normally be rebutted where: reductions in the required personal space of 3 sq. m were only short, occasional and minor; they were accompanied by sufficient freedom of movement outside the cell and out-of-cell activities; the prisoner was held in a facility which could generally be regarded as providing adequate conditions. In the present case, the Court decided to look more closely at the complaints concerning the periods in which Mr Muršić disposed of less than 3 sq. m of personal space in Bjelovar Prison.

The Court observed at the outset that it had not so far considered that conditions of detention in Croatia disclosed a structural problem from the standpoint of Article 3 of the Convention. Moreover, none of the previous cases about overcrowding in Croatian prisons had specifically concerned the conditions of detention in Bjelovar Prison. While the present case did not raise a structural issue concerning the conditions of detention in Croatia, the Court's task was to address Mr Muršić's particular complaint of overcrowding in Bjelovar Prison, where he had been serving a prison sentence in the period between 16 October 2009 and 16 March 2011.

The Court noted that the particular details of the personal space allocated to Mr Muršić were based on the documentation provided by the respondent Government and not contested by him. Specifically, during his stay in Bjelovar Prison, which lasted for one year and five months he was detained in four cells in which he had between 3 and 6.76 sq. m of personal space. He had only 2.62 sq. m of personal space once for one day, once for two days and three times for three days; and 2.55 sq. m once for eight days and once for three days; lastly, he had 2.62 sq. m for a consecutive period of 27 days.

The Court found that in the period of 27 consecutive days in which Mr Muršić disposed of less than 3 sq. m of personal space, he had been subjected to conditions of detention which clearly subjected him to hardship going beyond the unavoidable level of suffering inherent in detention and thus amounting to degrading treatment prohibited by Article 3 of the Convention. As regards the remaining periods, which were of short duration, the Court would have regard to other relevant factors. The burden of proving the existence of such factors was on the Government.

The Government had explained that the inmates were allowed to move freely outside their cells in the morning and afternoon, and to use the indoor and outdoor facilities of Bjelovar Prison. This in particular included two hours of outdoor exercise and in addition free out-of-cell movement inside

the prison between 4 and 7 p.m. Mr Muršić had sought to challenge the Government's submission only in very general terms, emphasising the fact that he had not been engaged in any work. The Court observed that the Government's submissions were very detailed and there was no reason for it to doubt the authenticity, objectivity and relevancy of the documents they had produced. On the other hand, in the absence of any detailed information from Mr Muršić about his daily routines at Bjelovar Prison, the Court was unable to accept the applicant's submissions as sufficiently established or credible. It also attached particular importance to the fact that the applicant never complained at the domestic level about certain aspects of his confinement, such as the alleged lack of outdoor exercise or insufficient time for free movement around the prison.

The Court noted that in the ordinary daily regime Mr Muršić had been allowed the possibility of two hours of outdoor exercise, which was a standard under the relevant domestic law and above the minimum standards of the CPT (the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment). Moreover, it was undisputed by the applicant that he was allowed three hours per day of free movement outside his cell within the prison facility.

Even taking into account the fact that Mr Muršić had been unable to obtain work, which related not only to the objective impossibility on account of a lack of jobs, but also arguably to the applicant's previous behaviour, the possibility of free out-of-cell movement and the facilities available to him could be seen as significantly alleviating factors in relation to the scarce allocation of personal space.

The other periods during which Mr Muršić had disposed of less than 3 sq. m of personal space could be regarded as short and minor reductions in personal space, during which sufficient freedom of movement and out-of-cell activities were available to him, in a generally appropriate detention facility. The conditions of Mr Muršić's detention, although not completely adequate as regards personal space, had not reached the threshold of severity required for the treatment to be regarded as inhuman or degrading within the meaning of Article 3 of the Convention. The fact that the relevant domestic law provided for a standard of 4 sq. m of personal space per detainee could not be considered a decisive argument for the Court's assessment under Article 3, as when the Croatian Constitutional Court had examined the question of the minimum personal space to be allocated to a detainee, it had referred to Strasbourg's own minimum standard of 3 sq. m of personal space as set out in the *Ananyev and Others* judgment.

The Court thus considered that the conditions of the applicant's detention during the other periods in which he disposed of less than 3 sq. m of personal space did not amount to degrading treatment prohibited by Article 3 of the Convention.

The Court found that there had been a violation of Article 3 of the Convention with regard to the consecutive period of 27 days in which Mr Muršić disposed of less than 3 sq. m of personal space. However, with regard to the other periods in which Mr Muršić disposed of less than 3 sq. m the Court found that there had been no violation of Article 3. Lastly, it could not be considered that the conditions of his detention in the periods when he disposed of between 3 and 4 sq. m of personal space amounted to inhuman or degrading treatment within the meaning of Article 3, so there had been no violation of that Article in respect of those periods either.

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

The Court held that Croatia was to pay the applicant 1,000 euros (EUR) in respect of non-pecuniary damage and EUR 3,091.50 in respect of costs and expenses.

Separate opinions

Judges Sajó, López Guerra and Wojtyczek expressed a joint partly dissenting opinion; Judges Lazarova Trajkovska, De Gaetano and Grozev expressed a joint partly dissenting opinion; and Judge

Pinto de Albuquerque expressed a partly dissenting opinion. These opinions are annexed to the judgment.

The judgment is available in English and French.

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Press contacts

echrpess@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)

George Stafford (tel: + 33 3 90 21 41 71)

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.