



## Lack of space for a prisoner in Croatia was compensated for by him having access to sports facilities and sufficient time out of his cell

In today's **Chamber** judgment<sup>1</sup> in the case of [Muršić v. Croatia](#) (application no. 7334/13) the European Court of Human Rights held by majority (six votes to one) that there had been:

**no violation of Article 3 (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights**

The case concerned an allegation of prison overcrowding and generally poor prison conditions in a Croatian prison.

The Court found in particular that, whilst there were some elements for concern with regard to Mr Muršić's lack of personal space during certain short non-consecutive periods of his detention, his overall conditions of detention – including in particular three hours a day outside of his cell in an otherwise entirely appropriate facility – had not met the threshold of severity required to characterise his detention as inhuman or degrading.

The judgment is noteworthy in that it re-affirmed the general principles on the question of prison overcrowding and clarified the Court's related case-law. In particular, whilst there is a strong presumption of inhuman and degrading treatment under Article 3 of the Convention when a detainee disposes of less than 3 square metres of personal space, this could sometimes be compensated for by the cumulative effects of the conditions of detention, such as freedom of movement and the appropriateness of the detention facility.

### Principal facts

The applicant, Kristijan Muršić, is a Croatian national who was born in 1987 and lives in Kuršanec (Croatia). In 2008 Mr Muršić was sent to prison for two years for robbery and in 2010 an additional charge of theft was brought against him. In total Mr Muršić was sentenced to two years and eleven months in prison.

Mr Muršić's complaint focused on the conditions at Bjelovar Prison where he spent 17 months of his jail term. Between 2010 and 2012 he lodged numerous complaints with the prison authorities, Bjelovar County Court, the Ombudsman, and the Constitutional Court in relation to his detention. His initial request to the prison authorities was for a transfer to another prison closer to his family but his subsequent complaints to the courts focused predominantly on overcrowding in the cells. During his detention at Bjelovar Prison he was moved between four different cells in the prison which he shared with between two and seven other prisoners and where he had between 3 and 7.39 square metres of personal space. Occasionally his personal space fell slightly below 3 square metres for short, non-consecutive periods of time, including one period of 27 days. He was transferred to another prison in 2011.

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](http://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 Muršić essentially complained about the inadequate detention conditions at Bjelovar Prison. In particular he complained about the lack of personal space, poor sanitary and hygiene conditions, the poor quality of the food, a lack of work opportunities, and insufficient access to recreational and educational activities.

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

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

Isabelle **Berro** (Monaco), *President*,  
Khanlar **Hajiyev** (Azerbaijan),  
Julia **Laffranque** (Estonia),  
Linos-Alexandre **Sicilianos** (Greece),  
Erik **Møse** (Norway),  
Ksenija **Turković** (Croatia),  
Dmitry **Dedov** (Russia),

and also *Søren Nielsen*, *Section Registrar*.

## Decision of the Court

### Article 3 (inhuman and degrading treatment)

The Court was mindful that that the personal space afforded to Mr Muršić fell short of the CPT's recommendation of 4 square metres of personal space per prisoner, but it did not consider it so extreme as to justify in itself finding a violation of Article 3 of the Convention.

Specifically, the Court noted that Mr Muršić had between 3 and 7.39 square metres of personal space and that occasionally his personal space fell slightly below 3 square metres for short, non-consecutive periods of time, including one period of 27 days, which the Court noted with concern.

However, the Court observed that Mr Muršić had been allowed three hours a day to move freely outside his cell; that the cell where he had been detained had unobstructed access to natural light and air, as well as drinking water; that he had been provided with an individual bed and nothing impeded him from moving freely within the cell. Moreover, the Court noted various out-of-cell activities which the prisoners at Bjelovar Prison had at their disposal, such as a library and access to recreational facilities.

In these circumstances, as Mr Muršić's detention had been accompanied by sufficient freedom of movement, and his confinement had been in an otherwise appropriate facility, the Court observed that the conditions of his detention had not reached the threshold of severity required to consider his treatment as inhuman and degrading under Article 3.

The Court re-affirmed the general principles laid down in its judgment *Ananyev and Others v. Russia* of 10 January 2012 (application nos. 42525/07 and 60800/08) and clarified the case-law on the question of prison overcrowding. The test set out in *Ananyev and Others* for deciding whether or not there has been a violation of Article 3 as concerned detainees' lack of personal space was three-fold, namely: each detainee must have an individual sleeping place in the cell; each detainee must dispose of at least three square metres of floor space; and the overall surface of the cell must be such as to allow detainees to move freely between furniture.

Whilst in general the Court would consider that a detainee disposing of less than 3 square metres of floor space would create a strong presumption that the conditions of detention had amounted to

degrading treatment and were in breach of Article 3, the Court considered that in certain circumstances that strong presumption could be rebutted by the cumulative effects of the conditions of detention, such as established in Mr Muršič's case.

The Court therefore held that there had been no violation of Article 3.

The judgment is available only in English.

## Separate Opinion

Judge Sicilianos expressed a separate opinion, which is appended to the judgment.

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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.