

THE CASE-LAW OF THE EUROPEAN COURT OF HUMAN RIGHTS ON ART. 3 ECHR

AND ITS IMPACT ON PRISON OVERCROWDING

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(ECtHR, Campbell and Fell v. UK, 1984)

**“Justice cannot stop at the
prison gate”**

ART. 3 ECHR
Prohibition of torture

**No one shall be subjected to torture
or to inhuman or degrading treatment
or punishment**

(ECtHR, Labita c. Italy, 2000)

“ Even in the most difficult circumstances, such as the fight against terrorism and organized crime, the Convention **prohibits in absolute terms** torture and inhuman or degrading treatment or punishment”

Protection arising from the absolute nature of the prohibition in art. 3:

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There aren't any circumstances excluding or attenuating the duty of a State to prevent inhuman or degrading treatment.



if the State is unable to ensure that prison conditions comply with the requirements of Article 3 of the Convention, because of financial or logistical difficulties, it must abandon its strict penal policy in order to reduce the number of incarcerated persons or put in place a system of alternative means of punishment (see Mamedova v. Russia, 2006)

Protection arising from the **absolute nature** of the prohibition in art. 3:



- ❑ not to subject the inmate to ill-treatment within the State: **direct breach**;
- ❑ not to remove the inmates to a State where they would run the risk of being subjected to prohibited ill-treatment: **indirect breach** (see e.g. Cass. 31.3.2015, n. 1383);

Protection arising from the **absolute nature** of the prohibition in art. 3:



- ❑ not only **negative**, but also **positive** obligations
- ❑ not only **substantive**, but also **procedural** obligations



“....after the Court has given notice of the applicant’s complaint to the Government, **the burden is on the latter to collect and produce relevant documents**” (Varga and others v. Hungary).

From art. 3 ECHR:

Punishment prohibited:

- ▶ capital punishment
- ▶ corporal punishment
- ▶ irreducible life sentence

Execution of punishment not prohibited:



in a way that it ensures respect for
the dignity of detainees

Detention conditions

Inhuman detention stem from **cumulative effects** of several conditions:

- ❑ lack of personal space;
- ❑ insufficient access to outdoor exercise;
- ❑ inadequate natural light and air;
- ❑ inadequate ventilation and hearing;
- ❑ basic sanitary and hygienic requirements
- ❑

Lack of space

When it's present **one of the following elements** the Court finds a violation of Art. 3 (Ananyed v. Russia, 2012):

- (a) each detainee must have an individual sleeping place in the cell (Kalashinkov v. Russia 2012)
- (b) the overall surface of the cell must be such as to allow the detainees to move freely between the furniture items (Yevgeniy Alekseyenko v. Russia, 2011)
- (c) each detainee must dispose of at least three square metres of floor space (Sulejmanovich v. Italy, 2009)

Lack of space: less than 3m²

“ Where the applicants have at their disposal **less than three square metres** of floor surface, the overcrowding must be considered to be so severe as to justify of itself a finding of a violation of Article 3” (Sulejmanovic v. Italy, 2009)

Lack of space: from 3m² to 4m²

In cases where a larger prison cell was at issue – measuring in the **range of three to four square metres per inmate** – the Court found a violation of Article 3 since the space factor was coupled with the established lack of ventilation and lighting (see, e.g., Vlasov v. Russia, 2008)’’ .

Pilot-judgments

- Orchowski v. Poland, 22 october 2009
- Norbert Sikorski v. Poland, 22 october 2009
- Ananyev v. Russia, 10 January 2012**
- Iacov Stanciu v. Romania, 24 July 2012
- Torreggiani v. Italy, 8 January 2013** → adjournment
- Vasilescu v. Belgium, 25 November 2014
- Neshkov v. Bulgaria, 27 January 2015**
- Vargas v. Hungary, 10 March 2015**

[http://www.echr.coe.int/Documents/
FS_Pilot_judgments_ENG.pdf](http://www.echr.coe.int/Documents/FS_Pilot_judgments_ENG.pdf)

Avenues for improvement of detention conditions

General measures

- ▶ reduce recourse to pre-trial detention
- ▶ reduce recourse to prison sentence and increase alternative instruments

Individual measures

- ▶ preventive remedy

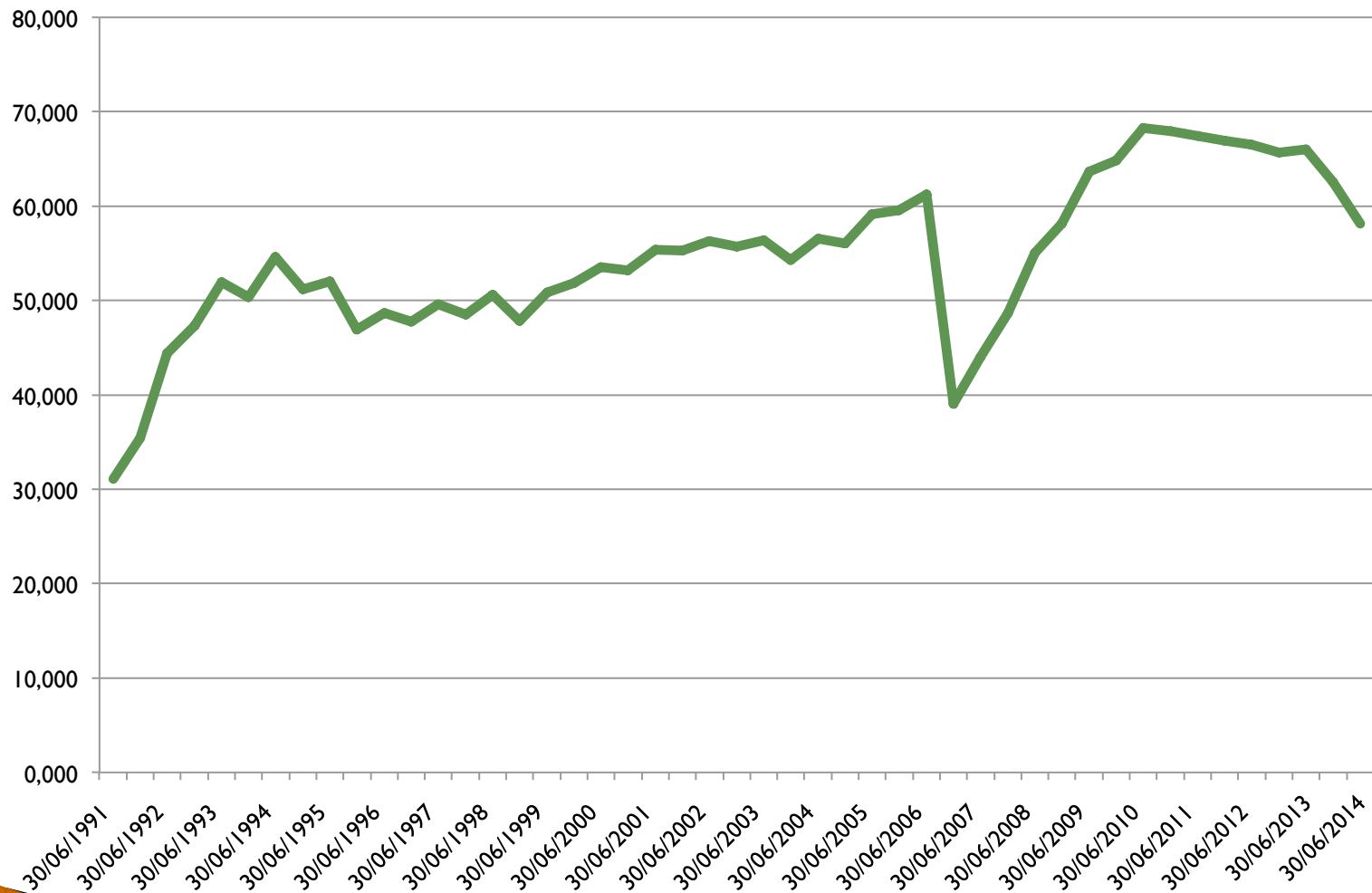
a remedy capable of bringing the ongoing violation to an end quickly

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- ▶ compensatory remedy

a remedy capable of compensating the inmate for any breach that has already taken place

Italian prison population 1991-2014



Concluding remarks

- ❑ Not rely solely on building new prisons
- ❑ Use a common language: the minimum living space per inmate



minimum rate per person in the national legislations:

Poland: 3m

Czech Republic: 3, 5m

Bosnia and Herzegovina: 4 m²

Bulgaria, Romania, Spain and Austria: 6 m²

Germany, Portugal and Finland: 7 m²

Croatia: 8 m²

Turkey :8-9 m²

Belgium, Cyprus, Italy: 9 m²

Greece, Ireland and the Netherlands: 10 m²

Concluding remarks

- ❑ Take into account not only the quantity, but also the *quality* of the space available



strive for *open prison regimes*

- ❑ Set up effective domestic remedies to protect inmates' rights

Concluding remarks

- ❑ propose workable solutions to enhance the use and the effectiveness of alternatives to imprisonment on the basis of the national experiences
- ❑ disseminate the results of our researches and get out the message that open prison regimes and alternatives to detention, if well implemented, works better than imprisonment in terms of public security