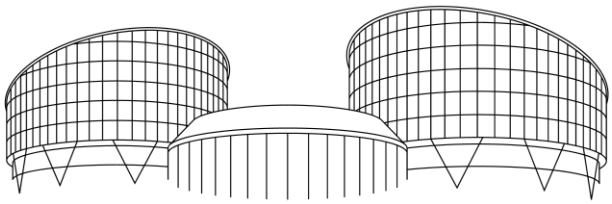

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASES OF MANDIĆ AND JOVIĆ v. SLOVENIA

(Applications nos. 5774/10 and 5985/10)

JUDGMENT

STRASBOURG

20 October 2011

FINAL

20/01/2012

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Mandić and Jović v. Slovenia**,**

The European Court of Human Rights (Fifth Section), sitting as a Chamber composed of:

Dean Spielmann, *President,*
Elisabet Fura,
Karel Jungwiert,
Boštjan M. Zupančič,
Mark Villiger,
Ganna Yudkivska,
Angelika Nußberger, *judges,*
and Claudia Westerdiek, *Section Registrar,*

Having deliberated in private on 27 September 2011,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in two applications (nos. 5774/10 and 5985/10) against the Republic of Slovenia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Slovenian national, Mr Petar Mandić, ("the first applicant") and a Serbian national, Mr Vladan Jović ("the second applicant"), on 24 December 2009.

2. The applicants were represented by Odvetniška Družba Matoz O.P. D.O.O., a law firm practising in Koper. The Slovenian Government ("the Government") were represented by their Agents, Mrs T. Mihelič Žitko and Mrs N. Pintar Gosebica, State Attorneys.

3. The applicants alleged, in particular, that the conditions of their detention in Ljubljana prison amounted to a violation of Articles 3 and 8 of the Convention and that they had no effective remedy in this regard as required by Article 13 of the Convention.

4. On 27 April 2010 the Court decided to give notice of the applications to the Government. It also decided to rule on the admissibility and merits of the applications at the same time (Article 29 § 1) and to give priority to the applications under Rule 41 of the Rules of the Court.

5. The Serbian Government, having been informed of their right to intervene in the case of Mr Jović (Article 36 § 1 of the Convention and Rule 44 § 1 of the Rules of Court), stated in a letter of 4 April 2011 that they did not wish to avail themselves of that right.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicants were born in 1959 and 1963 and live in Ljubljana and Trbovlje respectively.

7. The applicants were detained in Ljubljana prison pending their trial. Mr Mandić was detained in the period between 10 July 2009 and 2 February 2010 and Mr Jović in the period between 5 June 2009 and 13 January 2010.

8. Ljubljana prison is the third largest prison in Slovenia. It holds sentenced prisoners, remand prisoners and prisoners in administrative detention. It has an official capacity of 128 inmates, which includes 55 places designated for prisoners on remand, who by law must be held in a separate section of the prison. In principle there are two types of cells in which the prisoners are held. Small cells measuring about 7.5 square metres (8.8 square metres including the sanitary annex) and normally containing two sleeping places, and large cells measuring 16.28 square metres (18 square metres including the sanitary annex) and normally containing six sleeping places. The windows of the cells face either west or east. Remand prisoners are held on the ground floor, which contains sixteen small and five large cells, and on the first floor, which has fourteen cells, including three small and eleven large cells. On the second floor, which contains fifteen cells, thirteen of which are large cells, both remand prisoners and sentenced prisoners are held. In the loft, which contains fourteen large cells, only sentenced prisoners seem to be held.

9. According to the Government, plans for constructing the new prison to replace Ljubljana prison were in progress. However, completion depended on financial resources and no definite date could be given.

A. Material conditions in the applicants' cell

10. The applicants were both detained in cell no. 100, which was situated on the first floor.

11. The cell, with a ceiling 2.88 metres high, measured 16.28 square metres. It was equipped with three bunk beds with a total of six sleeping places, one large and one small table, six chairs and a set of cupboards for each of the detainees. The cell had four windows measuring 91x57 centimetres each, which the prisoners were free to open and close. According to the applicants, six prisoners were held in the cell in the period of their detention. The Government, however, submitted that the number varied between five and six.

12. The cell had no artificial ventilation. It was aired by opening the windows and, also, opening the doors in the summer when the detainees were out. During the summer, the detainees were also allowed to bring in ventilators, but they rarely did so. The cell was also equipped with a functioning radiator, which the detainees were free to regulate.

13. The applicants were allowed to bring in a small TV or, with the approval of the prison governor, radios or other electronic devices. In addition, they could borrow books from the prison library and read them in their cells.

14. According to the data provided by the Government, the average temperature in the cells in the late afternoon (5-5.30 p.m.) in the second half of July and August 2009 was approximately 28 ^{o}C, exceeding 30 ^{o}C on seven days.

15. The applicants received their meals in their cell.

B. Sanitary conditions

16. A sanitary annex, measuring 1.72 square metres, was attached to cell no. 100. It was a room with floor-to-ceiling walls and a door, equipped with one basin with warm and cold water, a toilet, a drain and a mirror. It had a functioning artificial ventilation system.

17. The applicants had access to the shower room situated on the same floor and containing five showers with partitions. According to the Government, the applicants could use the shower for ten minutes every day in accordance with the daily schedule.

18. Detergents and products for personal hygiene were distributed to the detainees on a weekly basis. Their bed linen was washed once a week and they were given a clean blanket on arrival at the prison. Regular everyday cleaning and thorough weekly cleaning was carried out by the prisoners under the supervision of the prison staff.

C. Out of cell time

19. In the remand section of the prison the cells were locked throughout the day. The applicants could leave the cell only for scheduled activities, such as visits, phone calls, exercising, cleaning, etc.

20. According to the information supplied by the Government, the applicants were allowed to spend by average two hours and a half out of their cell per day. In particular, they could spend two hours per day in the outside yard, which measured 610 square metres and was not covered by any roof. It was usually used by less than 30 prisoners at a time. In addition, they could use a recreation room, measuring around 17 square metres, twice a week for one hour and also for one hour every third Sunday. This room was equipped with two benches, two exercise mats and some weights. The

room had natural light. It was usually used by four prisoners simultaneously.

D. Health-care

21. A medical office operated in the prison subject to the general regime of the national health-care system. It was open for six hours, three times a week. A dental-care office was open once a week for six hours. A psychiatric clinic was open twice a week for half a day. The prison also employed two psychologists. All detainees underwent a medical examination upon their arrival. Detainees who were using intravenous drugs received vaccinations against hepatitis B following the standard protocol used in such cases.

22. The prison provided the detainees with the possibility to undergo testing for hepatitis B and C and HIV. In 2009 107 detainees were tested. Five were diagnosed with Hepatitis C; other tests were negative, but one person was diagnosed with TBC.

23. According to the prison records, none of the applicants required special medical treatment. Mr Mandić, however, visited the medical office sixteen times, including three visits to a psychiatrist. He also received dental care. Mr Jović only underwent a general medical examination upon arrival at the prison.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Legislation concerning detention on remand

24. Article 18 of the Constitution of the Republic of Slovenia (*Ustava Republike Slovenije*) reads as follows:

> "No one may be subjected to torture, or inhuman or degrading punishment or treatment. ..."

25. The Criminal Procedure Act (*Zakon o kazenskem postopku*, Official Gazette no. 63/1994 with amendments) regulates, *inter alia*, the right of a remand prisoner to a two-hour recreation in the open air and the regime of visits, correspondence and other contact with the outside world. It reads, in the relevant part, as follows:

213. a

"(1) A remand prisoner shall have the right to an uninterrupted rest of eight hours within twenty-four hours. In addition to the above he must be given at least a two-hour recreation in the open air every day.

..."

213. b

"(1) With the authorisation of the investigating judge who is conducting the investigation and under his supervision, ..., within the limits of the Prison Rules, a remand prisoner may be visited by his close relatives and, upon his/her request, also by doctors and others. Certain visits may be prohibited if they might be to the detriment of the [criminal] proceedings.

...

(4) A remand prisoner may have correspondence with other persons outside prison. If required ... the investigating judge ... may order the verification of items of correspondence ..."

26. The Regulation on the Execution of Remand (*Pravilnik o izvrševanju pripora*, Official Gazette no. 36/1999 with amendments) regulates the treatment of remand prisoners in more detail.

27. Section 2 lays down rules for the allocation of remand prisoners. It states that a person whose detention on remand is ordered by the Ljubljana or Kranj District Court should be placed in Ljubljana prison. Until 27 February 2009, when the Regulation was amended (Official Gazette no. 16/09), it had provided that if the prison in which the remand prisoner was to be placed under the aforementioned rule was overcrowded, the court could order the placement of the remand prisoner in another facility with available space. The prison governors were then under obligation to send information concerning occupancy levels to the presidents of Slovenia's district courts.

28. Other relevant provisions of the Regulation on the Execution of Remand read as follows:

Section 22

"...

(2) Sleeping quarters of remand prisoners may be single or shared, with up to four beds, exceptionally more if so required because of the lack of space in a prison."

Section 31

"(1) Within 48 hours of admittance to prison, every remand prisoner shall be examined by a doctor...

(2) If, upon the admittance of a remand prisoner, there is a reasonable suspicion that he is physically injured or has a contagious disease, he must immediately be examined by a prison doctor."

Section 32

"(1) A remand prisoner who is taken ill or injured shall be given medical assistance in a prison health clinic.

(2) If a remand prisoner needs to undergo medical treatment in a medical institution outside the prison, such treatment shall be ordered by a competent court on the proposal of a prison doctor.

..."

Section 45

"(1) As a rule, close relatives may visit a remand prisoner once a week.

(2) The Prison Rules may provide for more frequent visits by close relatives, but not more than three visits a week.

...

(4) At the request of a remand prisoner, the competent court may allow visits by other persons as well.

..."

Section 51

"To contact persons outside the prison, a remand prisoner may use a prison telephone at his own expense. The Prison Rules shall lay down the times when calls may be made and their duration.

..."

29. The Rules concerning Remand Prisoners in Ljubljana Prison (*Hišni red o izvrševanju pripora v zavodu za prestajnje zapora Ljubljana*, adopted on 1 January 2005) regulate the regime in the remand section of the prison in more detail. They provide, in so far as relevant:

Section 4

"(1) As a rule, cells occupied by remand prisoners are kept locked ...

..."

Section 10

"(1) Remand prisoners shall spend time in the open air in the recreation yard in accordance with the daily schedule. The time spent in the open air shall be organised in groups and shall be in two parts, with each group spending one hour in the morning and one hour in the afternoon in the open air. Sports and recreational activities may be practised in the recreation yard.

(2) The prison shall provide an opportunity for remand prisoners to use the recreation room three times a week, in accordance with the daily schedule."

Section 11

"Remand prisoners shall shower in shared bathrooms every day."

Section 18

"(1) All meals shall be served to remand prisoners in their cells in accordance with the daily schedule. ...

..."

Section 23

"(1) Visits to remand prisoners shall take place on days and at times determined in the daily schedule.

(2) Remand prisoners who receive visits from close family members very rarely because they live a long way away may request an extension of the period allowed for visits and also a change of the day assigned for visits, which shall be permitted by the prison governor, who shall also take into consideration the space available in the prison."

Section 26

"(1) Remand prisoners shall be allowed to make telephone calls in telephone booths located in the remand section of the prison. Remand prisoners may call people outside the prison twice a week. The timetable for telephone calls by remand prisoners is determined in the daily schedule. Remand prisoners shall be allowed to use telephone for at least 10 minutes. Requests to make telephone calls shall be made to a guard during the morning roll-call."

..."

30. The Daily Schedule (*dnevni red*) is annexed to the rules and determines the timetable of activities in the remand section of the prison.

31. Since 1 January 2009, the Health Care and Health Insurance Act (*Zakon o zdravstvenem varstvu in zdravstvenem zavarovanju*, Official Gazette no. 9/1992 with amendments) provides for sentenced prisoners and prisoners on remand to be insured and therefore included in the public

health system. They can exercise their rights under the Act with certain exceptions. For example, they cannot choose their own general practitioner but are, as regards general health care, limited to the medical service provided in the prison establishment. However, the prisoners are also entitled to medical services for which other insured persons have to pay a supplementary insurance.

B. Remedies

1. Transfer of remand prisoners under the Criminal Procedure Act and Regulation on the Execution of Remand

32. The relevant provisions of the Criminal Procedure Act read as follows:

Section 212

"...

(3) For the purpose of guaranteeing safety, order and discipline or the successful and economical conduct of criminal proceedings, the competent court may transfer a remand prisoner from one prison to another at the proposal of the governor of the prison in which the remand prisoner is placed."

Section 273

"(1) The indictment shall be served on an accused person who is at liberty without delay; if the person is on remand it shall be served within 24 hours following its receipt.

(2) If detention is ordered for the accused person by a decision of the panel (Section 212) the accused person shall, at the time of imprisonment, be served an indictment together with a decision ordering detention.

(3) If an accused person who has been deprived of liberty is not in any of the prisons in the territory of the court at which the main hearing should be held, the president of the panel shall order the accused person to be brought immediately to such a prison, where he shall be served the indictment."

33. The relevant provisions of the Regulation on the Execution of Remand provide:

Section 54

"An accused person whose detention has been ordered shall be transferred by the prison governor on the basis of an order issued by the president of the panel referred to in the third paragraph of Section 273 of the ZKP. In the prison located in the territory of the court where the main hearing will be held, the remand prisoner shall be placed in a cell for remand prisoners.

In the prison referred to in the preceding paragraph, a protected person must be separated from other remand prisoners and sentenced prisoners in accordance with the instructions of the unit."

Section 55

"For the purpose of guaranteeing safety, order and discipline, for reasons of overcrowding or to secure the successful and economical conduct of criminal proceedings, a remand prisoner may be transferred from one prison to another. The transfer may be temporary or for the whole duration of the detention.

The competent court shall decide on the said transfer at the proposal of the prison governor.

The written proposal referred to in the preceding paragraph shall contain the reasons for the transfer. The competent court shall decide on the proposal by an order which shall be served on the remand prisoner, the prison in which the remand prisoner is on remand and the prison to which the remand prisoner has been transferred.

..."

2. Claim to an Administrative Court

34. The Administrative Disputes Act (*Zakon o upravnem sporu*, Official Gazette no. 105/2006 with amendments) provides in so far as relevant:

Section 4

"(1) In an administrative dispute the court shall also decide on the legality of individual acts and actions by which the authorities infringe the human rights and fundamental freedoms of an individual if no other judicial protection is provided.

(2) If actions of public authorities are challenged in an administrative dispute, the provisions of this Act referring to the challenging of an administrative act shall apply."

Section 32

"...

(3) For the reasons referred to in the preceding paragraph, the plaintiff may also request the issue of an interim order for the provisional regulation of the situation with regard to the disputed legal relationship, if such regulation, in particular in still existing legal relationships, proves necessary.

(4) The interim order referred to in the preceding paragraphs shall be issued by the court competent for the decision on the dispute

(5) The court shall decide on the request for the issue of an interim order within 7 (seven) days following the receipt of the request...

(6) The parties may lodge an appeal against the decision referred to in the preceding paragraph within 3 (three) days. The appeal shall not stay the execution of the issued interim order. The competent court shall decide on the appeal against the decision without delay, but no later than 15 days after receiving the appeal."

Section 33

"...

(2) A claim may be filed against the violation of human rights and fundamental freedoms under this Act seeking:

– to annul, issue or amend an individual act,

– to declare that an action infringed a human right or fundamental freedom of the plaintiff,

– to prohibit further action,

– to undo the consequences of an action."

Section 66

"(1) In the administrative dispute referred to in the first paragraph of section 4 of the Act the court may establish the illegality of an act or action, prohibit the continuation of an individual action, decide on the plaintiff's request for compensation for damage and order whatever is necessary to eliminate the infringement of human rights and fundamental freedoms and restore lawfulness.

(2) The court shall decide without delay on putting an end to the continuation of actions, and on measures aimed at restoring lawfulness if an unlawful action is still ongoing; an appeal is admissible against the decision within three days. The Supreme Court shall adjudicate on the appeal within 3 (three) days following its receipt.

(3) If the court cannot decide without delay in the case referred to in the preceding paragraph, it may issue an interim order of its own motion in accordance with section 32 of this Act."

35. According to the Constitutional Court's decision of 2 April 2009 (no. Up-1618/08), the conditions for admission of a claim to an Administrative Court on the basis of the first paragraph of section 4 of the Administrative Disputes Act are as follows: it must allege a violation of a human right or fundamental freedom; there must be a causal link between the violation and the action of the state body; the result of the action must be unlawful hindrance or limitation of the enjoyment of the human right or fundamental freedom or the prevention of such an enjoyment; there should be no other judicial protection available; and the victim must lodge an action for protection from such unlawful action (ibid., §7).

3. Claim for injunction and damages under the Civil Code

36. The relevant parts of the Civil Code (*Obligacijski zakonik*, Official Gazette, no. 83/2001 with amendments) read as follows:

Request for termination of infringements of personal rights

Section 134

"(1) Every person shall have the right to request the court or any other competent authority to order the termination of an action infringing the integrity of the human personality, private and family life, or any other personal right, to prevent such action or remedy its consequences.

(2) The court or another competent authority may order that the offender terminate his or her action, failing which he or she may be obliged to pay the injured party a certain amount assessed in total or with regard to a unit of time."

Monetary compensation

Section 179

"(1) For physical pain endured, for psychological anguish resulting from a general loss of the ability to perform life functions, disfigurement, defamation (injuring a person's good name and reputation), or infringement of personal freedom or personal rights, or for the death of a next-of-kin, and for fear experienced, the injured party may, if it is established that the circumstances of a case, and in particular the degree of pain and fear and their duration, justify it, be awarded just monetary compensation irrespective of any compensation for material damage, and even if there is no material damage.

(2) The amount of compensation for non-pecuniary damage shall depend on the importance of what was at stake and the objective of such compensation; it should, however, not nurture aspirations that are not consistent with its nature and objective."

4. Supervision by the president of a district court

37. Section 213.d of the Criminal Procedure Act provides:

"(1) Supervision of the treatment of remand prisoners is carried out by the president of a district court.

(2) The president of the court or any other judge appointed by the president must visit the remand prisoners at least once per week and must, in the absence of prison guards if necessary, ask them about their treatment. He is required to take the necessary steps to resolve any irregularities observed during the visit. The judge appointed should not be the investigating judge.

(3) A president of a court and an investigating judge may visit a remand prisoner at any time, talk to him and hear complaints. "

III. RELEVANT CPT STANDARDS

38. The relevant extracts from the 2nd General Report by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) (CPT/Inf (92) 3) read as follows:

> "46. Overcrowding is an issue of direct relevance to the CPT's mandate. All the services and activities within a prison will be adversely affected if it is required to cater for more prisoners than it was designed to accommodate; the overall quality of life in the establishment will be lowered, perhaps significantly. Moreover, the level of overcrowding in a prison, or in a particular part of it, might be such as to be in itself inhuman or degrading from a physical standpoint.
>
> 47. A satisfactory programme of activities (work, education, sport, etc.) is of crucial importance for the well-being of prisoners ... [P]risoners cannot simply be left to languish for weeks, possibly months, locked up in their cells, and this regardless of how good material conditions might be within the cells. The CPT considers that one should aim at ensuring that prisoners in remand establishments are able to spend a reasonable part of the day (8 hours or more) outside their cells, engaged in purposeful activity of a varied nature ...
>
> 48. Specific mention should be made of outdoor exercise. The requirement that prisoners be allowed at least one hour of exercise in the open air every day is widely accepted as a basic safeguard ... It is also axiomatic that outdoor exercise facilities should be reasonably spacious ...
>
> 49. Ready access to proper toilet facilities and the maintenance of good standards of hygiene are essential components of a humane environment ...
>
> 50. The CPT would add that it is particularly concerned when it finds a combination of overcrowding, poor regime activities and inadequate access to toilet/washing facilities in the same establishment. The cumulative effect of such conditions can prove extremely detrimental to prisoners."

39. The CPT's 7th General Report (CPT/Inf (97) 10) contains the following passage:

> "13. As the CPT pointed out in its 2nd General Report, prison overcrowding is an issue of direct relevance to the Committee's mandate (cf. CPT/Inf (92) 3, paragraph 46).
>
> An overcrowded prison entails cramped and unhygienic accommodation; a constant lack of privacy (even when performing such basic tasks as using a sanitary facility); reduced out-of-cell activities, due to demand outstripping the staff and facilities available; overburdened health-care services; increased tension and hence more violence between prisoners and between prisoners and staff. This list is far from exhaustive.
>
> The CPT has been led to conclude on more than one occasion that the adverse effects of overcrowding have resulted in inhuman and degrading conditions of detention ..."

40. The CPT's 11th General Report (CPT/Inf (2001) 16) provides:

"28. The phenomenon of prison overcrowding continues to blight penitentiary systems across Europe and seriously undermines attempts to improve conditions of detention. The negative effects of prison overcrowding have already been highlighted in previous General Reports ...

29. In a number of countries visited by the CPT, particularly in central and eastern Europe, inmate accommodation often consists of large-capacity dormitories which contain all or most of the facilities used by prisoners on a daily basis, such as sleeping and living areas as well as sanitary facilities. The CPT has objections to the very principle of such accommodation arrangements in closed prisons and those objections are reinforced when, as is frequently the case, the dormitories in question are found to hold prisoners under extremely cramped and insalubrious conditions ...

Large-capacity dormitories inevitably imply a lack of privacy for prisoners in their everyday lives... All these problems are exacerbated when the numbers held go beyond a reasonable occupancy level; further, in such a situation the excessive burden on communal facilities such as washbasins or lavatories and the insufficient ventilation for so many persons will often lead to deplorable conditions."

IV. INTERNATIONAL AND DOMESTIC REPORTS CONCERNING THE SIUATION IN LJUBLJANA PRISON

A. Reports by the CPT

41. The CPT visited Ljubljana prison in 1995 and 2001. During its most recent visit in 2006 the CPT visited the remand section of Ljubljana prison.

42. In 1995 the number of prisoners held in the prison was 188 prisoners, which is significantly lower than it is currently (see document CPT/Inf (96) 18). Following the visit in 2001, the following recommendations were made to the Slovenian authorities (CPT/Inf (2002) 36):

"ii. Ljubljana prison

59. ... the CPT reiterates its recommendation that efforts be made to reduce to a maximum of four the number of prisoners held in the cells measuring 18 m², and to accommodate only one prisoner in each cell measuring 8 m²."

43. Following the visit in 2006, the following observations were made to the Slovenian authorities in respect of the remand section of Ljubljana prison (CPT/Inf (2008) 7):

"48. The objective of the 2006 follow-up visit to the Ljubljana Prison was to examine measures taken by the Slovenian authorities aimed to implement the CPT's recommendations with respect to remand prisoners. It should be stated from the outset that the CPT is concerned by the lack of progress as regards remand prisoners' conditions of detention.

49. With an official capacity of 73, the remand section of the Ljubljana prison was accommodating 123 persons (including three juveniles) at the time of the visit [the whole establishment was accommodating 238 prisoners (with an official capacity of 128)]. Prisoners continued to be accommodated under cramped conditions, with generally five persons in 18 m² cells and two persons in cells measuring 8 m² (including the sanitary annexe). Naturally, this situation had negative repercussions for all aspects of life, both for prisoners and staff. The CPT calls upon the Slovenian authorities to implement its long-standing recommendation to reduce cell occupancy rates at Ljubljana prison. Cells measuring 18 m² should not accommodate more than four prisoners, and the 8 m² cells should preferably not accommodate more than one prisoner.

...

50. At the time of the 1995 and 2001 visits, Ljubljana prison was not in a position to offer remand prisoners anything which remotely resembled a programme of activities. Apart from two hours of daily outdoor exercise and access to a recreation room twice a week, the vast majority of those prisoners spent up to 22 hours a day confined to cramped cells, their only distraction being watching television, listening to the radio or reading books or newspapers. Regrettably, the situation observed in 2006 was hardly any different. The only positive developments concerned increased access to the recreation room (one-hour sessions three times a week) and the installation of a table tennis table in the exercise yard. Only five prisoners were provided with work and two had access to education. The CPT reiterates its recommendation that the Slovenian authorities intensify their efforts to develop a programme of activities for remand prisoners at Ljubljana prison. As stressed by the Committee in previous visit reports, the aim should be to ensure that those prisoners are able to spend a reasonable part of the day outside their cells engaged in purposeful activities of a varied nature (work; education; sport; recreation/association) ...

...

86. In respect of remand prisoners, the CPT is pleased that the Slovenian authorities have implemented its recommendation made in the 2001 visit report, enabling remand prisoners to receive open visits from their relatives (e.g. without a glass partition). However, material conditions in the visiting facilities at Ljubljana prison remained unsatisfactory; especially, they offered little privacy to inmates and visitors and were insufficient for the number of prisoners held.

...

88. At all the establishments visited, sentenced prisoners had adequate access to telephones. The situation was less favourable in respect of remand prisoners. Although entitled to a 10-minute conversation every week, a number of them complained that their calls were in practice shorter. The CPT reiterates the recommendation made in the 2001 visit report (paragraph 93, CPT/Inf (2002) 36) that the Slovenian authorities seek ways of improving opportunities for telephone contact for remand prisoners."

B. Annual Reports by the Administration for the Execution of Penal Sentences

44. According to the Annual reports issued by the Administration for the Execution of Penal Sentences, the remand section of Ljubljana prison held on average 148 remand prisoners in 2009 (2009 Report, 9. 31) and 139 remand prisoners in 2010 (2010 Report, p. 31).

45. In the chapter concerning the living conditions in Slovenian prisons, the reports include information on prison overcrowding. The rate of overcrowding is calculated on the basis of the domestic statutory requirement for the imprisonment of sentenced individuals, which is 9 square metres for a single occupancy cell and 7 square metres per person in a shared cell. According to the 2009 and 2010 reports nationwide prison occupancy exceeded the official capacity by 29 and 23 percent respectively. Almost all closed prison facilities accommodating male prisoners were overcrowded. The Ljubljana prison was the most overcrowded prison in Slovenia in 2009 and 2010. With an official capacity of 128 prisoners, it held 261 and 245 prisoners in 2009 and 2010 respectively. This meant that the level of overcrowding was 204 and 191 percent respectively (2009 Report, pp. 97 and 98; 2010 Report, pp. 98 and 99). According to the 2008 Report, the level of overcrowding in 2007 and 2008 was 200 and 196 percent respectively (p. 98). These figures include both sentenced and remand prisoners.

46. The 2010 Report noted that in respect of Ljubljana prison the maximum number of prisoners allowed was set at 245; if this number was exceeded the prison administration was required to institute a transfer procedure (p. 100). The report also noted (p. 100):

> "... Poor living conditions are coupled with overcrowding, which is most present in the large prisons in Slovenia, Dob, Ljubljana and Maribor. The urgency of improving living conditions has been stressed by the Human Rights Ombudsman the CPT and other institutions.
>
> ... It is understandable that such living conditions adversely affect prisoners' hygiene and privacy. Poor living conditions sometimes also obstruct the exercise of prisoners' rights (work, exercise and recreation, religious ceremonies). In some establishments, prisoners on remand live in worse conditions than sentenced prisoners. The outdated and inadequate furniture in living rooms and other areas presents an additional problem ..."

C. Reports by the Slovenian Human Rights Ombudsman

47. On 17 and 18 February 2009 the Human Rights Ombudsman conducted a visit to Ljubljana prison in her capacity as a "national preventive mechanism" under the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or

Punishment ("the Optional Protocol"). The report published following the visit reads as follows:

> "Official capacity is still 128 prisoners. This includes 55 places designated for prisoners on remand, 65 places for sentenced prisoners and 8 places for prisoners in administrative detention. On the day of the visit, the prison held 254 prisoners (126 prisoners on remand, 126 sentenced prisoners and two prisoners in administrative detention). The official capacity was therefore exceeded by 98%.
>
> ... the prison administration has replied that in the present circumstances all realistic possibilities for reducing the occupancy level have been exhausted ... The Ministry has also warned that the conditions are unacceptable and the Government should be aware of the problem ... As regards the information about the construction of a new prison, the prison administration has stated that it is not realistic to expect the construction to be completed in a short time ...
>
> We are therefore not surprised that in all the cells the number of beds has only increased since our last visit ...
>
> ... In the light of the critical overcrowding and all the consequences which relate to it, we consider the conditions unacceptable.
>
> The prison still does not have a special drug-free unit. ... The prison administration said that in the current overcrowding conditions it is impossible to organise such a unit. The administration estimated that about 50% of the prison population have drug-related problems. ...
>
> Smoking is allowed only in the cells, whereas the prison does not have permanent smoking or non-smoking cells. Efforts are made to separate the smoking and non-smoking prisoners, but due to overcrowding this is often very difficult or impossible. ...
>
> Prisoners on remand are locked in their cells for on average more than 21 hours a day. The only everyday activity outside cells is exercise in the small internal courtyard ... However, a roof has still not been constructed to allow the use of the courtyard in bad weather as well. This has not been improved due to lack of financial means. Other activities which allow remand prisoners to spend time out of their cells include fitness (twice a week), visits (one hour per week), use of telephone (ten minutes twice a week), short visits to the prison shop (three times a week) and showering (ten minutes per day). The remand prisoners are also allowed to participate in general cleaning on Saturdays, which is welcomed, but insufficient.
>
> Our request to allow remand prisoners to spend more time out of their cells was rejected by the prison administration with the explanation that special conditions do not in principle allow for this. ..."

48. In her report concerning her activities under the Optional Protocol in 2009, the Human Rights Ombudsman also noted:

> "The problem of overcrowding in prisons is one of the most critical and complex problems in the area of enforcing criminal sanctions, especially when it comes to detention on remand. It seems that virtually everything that was possible was done to

resolve this problem, by means of the reasonable transfer of prisoners between prisons or their departments.

...

A critical point has obviously been reached when it will be necessary to consider more systemic solutions if the country is to meet its [domestic and international] obligations at all ...

...

With regard to remand detainees a presumption of innocence applies and therefore it is wrong that they serve the measure imposed in an even worse situation than sentenced persons who are serving a prison sentence. In addition to poor material conditions, the overcrowding has an impact on several other aspects of serving and executing detention (problems with organising activities, access to showers, providing an escort outside the institution when necessary, etc.)."

49. As regards the temperatures in the cells, the following was noted in the 2007 Annual report of the Human Rights Ombudsman:

"... During the visit to Ljubljana prison the official capacity was exceeded by almost 95 percent ... At the time of the visit it was ... typically summer weather, therefore the air in the cells was hot and humid. On the third day of the visit (19 July 2007) we measured, at around noon, 31.9 degrees Celsius in some cells. By using their own ventilators and by means of putting shades on the windows, the prisoners tried to lessen the effect of the scorching ... heat, as their rooms were locked and the air could not circulate. We considered that the living conditions, as observed by us during the summer, were inhuman."

THE LAW

I. JOINDER OF THE APPLICATIONS

50. Pursuant to Rule 42 § 1 of the Rules of Court, the Court decides to join the applications, given their common factual and legal background.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

51. The applicants complained that the conditions of their detention in Ljubljana prison amounted to a violation of Article 3 of the Convention. In particular, they complained of severe overcrowding, which had led to a lack of personal space, and poor sanitary conditions and inadequate ventilation, as well as excessive restrictions on out-of-cell time, high temperatures in the cell, inadequate health care and psychological assistance, and exposure to violence from other inmates due to insufficient security.

52. They submit that the situation amounted to a structural problem, which has been acknowledged by the domestic authorities.

53. The applicants also complained about restrictions on visits, telephone conversations and correspondence. However, these complaints fall to be examined only under Article 8 of the Convention.

54. Article 3 of the Convention reads as follows:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

A. Admissibility

1. Complaint relating to physical conditions of detention

55. The Government raised an objection arguing that the applicants had not exhausted the domestic remedies available to them. The Court considers that the question whether the requirement that the applicants must exhaust domestic remedies has been satisfied in the instant case is closely linked to the complaint concerning the existence of an effective remedy within the meaning of Article 13 of the Convention. It therefore considers that this objection raised by the Government under Article 3 of the Convention should be joined to the merits of the complaint under Article 13 of the Convention. It further notes that this part of the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and that it is not inadmissible on any other grounds. It must therefore be declared admissible.

2. Complaints relating to inadequate health care and psychological assistance and insufficient security measures

56. The Government argued that these complaints were wholly unsubstantiated. According to the Government the applicants had never reported any conflict with other inmates. Had they done so, the prison authorities would have ensured an adequate and prompt response. As regards health care, the Government argued that the applicants did not substantiate their complaints by at least showing that their requests for any kind of medical assistance had been refused. Both applicants had undergone a general medical examination upon arrival at the prison. Upon his arrival, Mr Mandić had informed the staff that he had been depressed because of the custodial measure. As a result he had been referred to the psychiatrist and had had two consultations with a psychologist, on 15 July 2009 and 31 August 2009. The Government submitted records of the consultations which show that they had been conducted at the initiative of the prison staff. The Government also submitted a confirmation showing that Mr Mandić had been examined four times by a psychiatrist, who had found that he had

suffered from a problem of adjustment (*prilagoditvena motnja*) and had prescribed him antidepressants and sleeping pills. According to the Government, Mr Mandić had visited the medical office on seven occasions. As to Mr. Jović, he had not reported any medical problems upon his arrival. He had been treated by a dentist on one occasion and had consulted the psychologist once, but had made no further request to that effect. Lastly, the Government submitted that the prisoners had constantly had any medical service they needed at their disposal and that there had been no particular delays in obtaining such service.

57. The applicants complained of inadequate health care and psychological assistance and of exposure to violence from other inmates due to insufficient security. According to the applicants these inadequacies had resulted mainly from the insufficient staffing. As regards health care, the applicants submitted that they had suffered mental distress as a result of their imprisonment but had never received proper psychological and psychiatric help, despite requesting it.

58. The Court reiterates that allegations of ill-treatment which fall within the scope of Article 3 of the Convention must be supported by appropriate evidence. To assess this evidence, the Court adopts the standard of proof "beyond reasonable doubt" but adds that such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see *Enea v. Italy* [GC], no. 74912/01, § 55, ECHR 2009-..., and *Kalashnikov v. Russia*, no. 47095/99, § 95, ECHR 2002-VI). The distribution of the burden of proof is intrinsically linked to the specificity of the facts, the nature of the allegation made and the Convention right at stake (see *Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, § 147, ECHR 2005-VII).

59. The Court notes that information about the physical conditions of detention falls within the knowledge of the domestic authorities. Accordingly, applicants might experience certain difficulties in procuring evidence to substantiate a complaint in that connection. Still, in such cases applicants may well be expected to submit at least a detailed account of the facts complained of and provide – to the greatest possible extent – some evidence in support of their complaints (see *Visloguzov v. Ukraine*, no. 32362/02, § 45, 20 May 2010).

60. The Court finds that the applicants' allegations were formulated as general statements. While it is aware of the fact that the overcrowding could adversely affect services within the prison, including the security system and health care, the Court cannot ignore that the applicants failed to provide any information about any incident involving violence or the threat of violence which might have affected them, nor did they give details of any inadequately answered need for medical or psychological assistance, either on a regular basis or in an emergency (see, for example, *Visloguzov*, cited above, §§ 48-9; *Istratii and Others v. Moldova*, nos. 8721/05, 8705/05

and 8742/05, § 49, 27 March 2007; and *Valašinas v. Lithuania*, no. 44558/98, § 105, ECHR 2001-VIII).

61. While the Court notes some discrepancies between the information contained in the prison administration's records (see paragraph 23 above) and that submitted by the Government (see paragraph 56 above) as regards the number of visits to the medical office by Mr Mandić, it also observes that the applicant did not clarify the issue, or submit any concrete information as to his health condition or the medical assistance he received. In these circumstances, the Court cannot make any inference on the matter.

62. In view of the foregoing, the Court considers that this part of the application has not been substantiated by the applicants. Therefore it should be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

B. Merits

1. The applicants' arguments

63. The applicants argued that the size of their cell, in which six prisoners were held, had been too small to allow for a dignified life. The Government ignored the fact that the cell size had been further reduced by the sanitary annex and various furniture. Due to the severe overcrowding the applicants could not have had any privacy which had affected their mental state.

64. Furthermore, prisoners would often have to share furniture with other inmates. The toilet had also been shared by several prisoners and the shower had been situated at the end of the corridor and had been constantly occupied. There had been no functional ventilation system in the cell. The solutions relied on by the Government were in practice ineffective because of high temperatures in the summer and low temperatures in the winter.

65. As regards out-of-cell time, the applicants argued that because of overcrowding they had not had the possibilities of recreation referred to in the domestic regulations. In addition, Mr. Jović submitted that he had been further limited in his ability to use his out-of-cell time by his poor health.

2. The Government's arguments

66. The Government argued that the applicant's conditions of detention had not amounted to a violation of Article 3 of the Convention.

67. They submitted that the applicants had been held in a cell of 18 square metres, including the sanitary annex. The cell had contained six sleeping places and held 5 or 6 prisoners. The limited personal space in the cell had been compensated by the possibility of outdoor exercise two hours per day, use of the recreation room, watching television, listening to the

radio, and reading books. The Government also contested Mr. Jović's allegation that he had been unable to enjoy out-of-cell time because of his medical condition as he had not reported any medical problems to the prison staff.

68. The cell could be sufficiently well ventilated, by opening the windows and, at the height of the summer, the doors, and using fans. While it is true that the temperature in summer 2009 had occasionally been high because of the unusually hot summer, this had been an unpleasant condition that most of the population in this part of Slovenia had had to put up with for a limited period of time.

69. As regards sanitary conditions, a number of measures (see paragraph 18 above) had been taken to ensure that they had been adequate. The applicants had failed to point to any inadequacies in this area and their complaints were wholly unsubstantiated.

70. The Government proposed that, in order to ascertain the conditions of detention in Ljubljana prison, a counsellor, an administrator and the governor of that prison be heard by the Court.

71. The Government lastly submitted that it should not be considered that the domestic authorities had acknowledged a violation of Article 3 of the Convention. They had only affirmed that the situation in certain Slovenian prisons had not complied with the national statutory requirements, which were higher than those set by the Court's case-law relating to Article 3.

3. The Court's assessment

(a) General principles

72. The Court reiterates that Article 3 of the Convention enshrines one of the most fundamental values of democratic societies. The Convention prohibits in absolute terms torture and inhuman or degrading treatment or punishment, irrespective of the victim's conduct (*Labita v. Italy* [GC], no. 26772/95, § 119, ECHR 2000-IV).

As the Court has held on many occasions, ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3 of the Convention. The assessment of this minimum level of severity is relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim. Furthermore, in considering whether a treatment is "degrading" within the meaning of Article 3, the Court will have regard to whether its object is to humiliate and debase the person concerned and whether, as far as the consequences are concerned, it adversely affected his or her personality in a manner incompatible with Article 3. Although the question whether the purpose of the treatment was to humiliate or debase the victim is a factor to be taken into account, the

absence of any such purpose cannot conclusively rule out a finding of violation of Article 3 (see *Peers v. Greece*, no. 28524/95, §§ 67-68 and 74, ECHR 2001-III, and *Valašinas*, cited above, § 101).

73. Measures depriving a person of his liberty may often involve an inevitable element of suffering or humiliation. Nevertheless, the suffering and humiliation involved must not go beyond the inevitable element of suffering or humiliation connected with a given form of legitimate treatment or punishment.

In the context of prisoners, the Court has already emphasised in previous cases that a detained person does not, by the mere fact of his incarceration, lose the protection of his rights guaranteed by the Convention. On the contrary, persons in custody are in a vulnerable position and the authorities are under a duty to protect them. Under Article 3 the State must ensure that a person is detained in conditions which are compatible with respect for his human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured (see *Valašinas*, cited above, § 102, and *Kudła v. Poland* [GC], no. 30210/96, § 94, ECHR 2000-XI).

74. When assessing conditions of detention, account has to be taken of the cumulative effects of these conditions, as well as of specific allegations made by the applicant (see *Dougoz v. Greece*, no. 40907/98, § 46, ECHR 2001-II). The length of the period during which a person is detained in the particular conditions also has to be considered (see, among other authorities, *Alver v. Estonia*, no. 64812/01, 8 November 2005).

75. The extreme lack of space in a prison cell weighs heavily as an aspect to be taken into account for the purpose of establishing whether the impugned detention conditions were "degrading" from the point of view of Article 3 (see *Karalevičius v. Lithuania*, no. 53254/99, 7 April 2005).

In its previous cases where applicants had at their disposal less than 3 square metres of personal space, the Court found that the overcrowding was so severe as to justify of itself a finding of a violation of Article 3 of the Convention (see, among many other authorities, *Sulejmanovic v. Italy*, no. 22635/03, § 51, 16 July 2009; *Lind v. Russia*, no. 25664/05, § 59, 6 December 2007; *Kantyrev v. Russia*, no. 37213/02, § 50-51, 21 June 2007; *Andrey Frolov v. Russia*, no. 205/02, §47-49, 29 March 2007; and *Labzov v. Russia*, no. 62208/00, § 44, 16 June 2005).

76. By contrast, in other cases where the overcrowding was not so severe as to raise in itself an issue under Article 3 of the Convention, the Court noted other aspects of physical conditions of detention as being relevant for its assessment of compliance with that provision. Such elements included, in particular, the availability of ventilation, access to natural light or air, adequacy of heating arrangements, compliance with basic sanitary

requirements and the possibility of using the toilet in private. Thus, even in cases where a larger prison cell was at issue – measuring in the range of 3 to 4 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, for example, *Babushkin v. Russia*, no. 67253/01, § 44, 18 October 2007; *Ostrovar v. Moldova*, no. 35207/03, § 89, 13 September 2005; and *Peers*, cited above, §§ 70-72) or the lack of basic privacy in the prisoner's everyday life (see, *mutatis mutandis*, *Belevitskiy v. Russia*, no. 72967/01, §§ 73-79, 1 March 2007; *Valašinas*, cited above, § 104; *Khudoyorov v. Russia*, no. 6847/02, §§ 106-107, ECHR 2005-X (extracts), and *Novoselov v. Russia*, no. 66460/01, §§ 32 and 40-43, 2 June 2005).

(b) Application of these principles to the present case

77. The Court notes that the applicants were held in the remand section of Ljubljana prison for about seven months. The cell in which they were held measured 16.28 square metres. The applicants alleged that six inmates were held in the cell. The Government, while acknowledging that there were six sleeping places in the cell, stated that the number of inmates varied between five and six but provided no official documents to demonstrate that during the period of the applicants' detention fewer then six inmates were held in their cell. In this connection, the Court notes that the overcrowding in the prison in question has been acknowledged by the prison authorities. During the relevant period the occupancy of the prison twice exceeded its official capacity (see paragraph 44 above). The situation was particularly serious as regards remand prisoners (see paragraphs 47 and 48 above). The Court therefore finds that even if occasionally they were afforded a little more than 3 square metres of personal space, the applicants were at least for a significant part of their detention held in a cell in which the personal space available to them was 2.7 square metres, which was further reduced by the furniture in the cell. This state of affairs in itself raises an issue under Article 3 of the Convention (see, *mutatis mutandis*, *Sulejmanovic*, cited above, §§ 43 and 44, and *Modarca v. Moldova*, no. 14437/05, § 63, 10 May 2007).

78. The Court finds that the applicants' situation was further exacerbated by the fact that they were confined to their cell day and night, save for two hours of daily outdoor exercise, and an additional two hours per week in the recreation room (see paragraphs 19, 20, 43 and 47 above). As there was no roof over the outdoor yard, it is hard to see how the prisoners could use the yard in bad weather conditions in any meaningful way. It is true that the applicants were allowed to watch TV, listen to radio and read books in the cell. This, however, cannot make up for the lack of possibility to exercise or spent time outside of the overcrowded cell. The Court moreover notes that the information supplied by the Government indicates that the temperatures in the cells in the late afternoon during the summer 2009 were by average

around 28 °C and could occasionally even exceed 30 °C (see paragraph 14 above). The applicant's complaint concerning high temperatures in the cell was further supported by the Human Rights Ombudsman's findings which, although they concerned the year 2007, are of relevance as the methods of ventilation of prison cells, namely opening the windows and using personal fans, appear to have been the same then as in 2009 (see paragraph 49 above). The Court therefore finds that during the summer the conditions of the applicants' detention were further exacerbated by the very high temperatures in the cell.

79. On the other hand, the Court notes that the applicants were able to use the sanitary annex, containing a basin and toilet, in private. The sanitary annex was attached to the cell and was constantly at the disposal of the prisoners accommodated in the cell. They were also allowed to shower once a day in a shower room which contained partitions between the shower heads. It further observes that the sanitary annex contained a functioning ventilation system. While it can accept that the sanitary conditions might have been affected by the fact that the facilities were overcrowded, the Court does not find on the basis of the material before it that the cleanliness of the relevant areas of the prison was inadequate *vis-à-vis* the Convention standards.

80. The Court accepts that in the present case there is no indication that there was a positive intention to humiliate or debase the applicants. However, having regard to fact that for the most part of their detention they had less than 3 square metres of personal space inside their cell for almost the entire day and night, the Court considers that the distress and hardship endured by the applicants exceeded the unavoidable level of suffering inherent in detention and went beyond the threshold of severity under Article 3 and therefore amounted to degrading treatment. In view of these findings, the Court does not find it necessary to undertake the fact-finding measures suggested by the Government (see paragraph 70 above) as these measures would not be able to alter the above conclusion.

Therefore, there has been a violation of Article 3 of the Convention on account of the conditions in which the applicants were detained.

III. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

81. The applicants complained that their allegations in respect of Article 3 also gave rise to a violation of Article 8 of the Convention. In addition, they complained about restrictions on visits and telephone calls. As regards the latter, the applicants submitted that they had had the right to use a telephone only twice a week and that they had often been under pressure from other inmates to terminate their telephone conversations before the allotted time had expired.

82. Moreover, in their written observations of 29 November 2010 the applicants submitted that their correspondence had been limited only to certain identified persons and that it had often been opened or did not reach them.

83. Article 8 of the Convention reads as follows:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

84. The Government contested the applicants' arguments and argued that the restrictions provided for in the domestic regulations were necessary to maintain order and were completely reasonable. They submitted that both applicants had been allowed to receive visits once a week for one hour. Mr Mandić had received only one visit and one package. Mr Jović had received fifteen visits and eight packages. With regard to the use of the telephone, the Government stated that there had been two telephones on each floor and that the applicants could have used them for at least ten minutes twice a week. According to the Government, the applicants' allegations that the situation as regards visits, use of the telephone and correspondence had amounted to a violation of Article 8 of the Convention were unsubstantiated.

85. The Court notes that in so far as the complaints under Article 8 overlap with those under Article 3, they should be for the same reasons and to the same extent declared admissible. However, in view of the applicants' submissions and having regard to the finding relating to Article 3, the Court considers that no separate issue arises under Article 8 in this regard (see *Orchowski v. Poland*, no. 17885/04, § 198, ECHR 2009-... (extracts)).

86. As regards the complaints under Article 8 concerning contact with persons outside the prison, the Court reiterates that detention, like any other measure depriving a person of his liberty, entails inherent limitations on his private and family life. However, it is an essential part of a detainee's right to respect for his family life that the authorities enable him or, if need be, help him to maintain contact with his close family. Such restrictions as limitations imposed on the number of family visits, supervision of those visits and, if so justified by the nature of the offence, subjection of a detainee to a special prison regime or special visiting arrangements constitute an interference with his rights under Article 8 but are not, by themselves, in breach of that provision. Nevertheless, any restriction of that kind must be applied "in accordance with the law", must pursue one or more of the legitimate aims listed in paragraph 2 and, in addition, must be

justified as being "necessary in a democratic society" (see, among other authorities, *Moiseyev v. Russia*, no. 62936/00, § 246, 9 October 2008).

87. In the present case, the Court notes that the restrictions on phone calls and the number and duration of visits, which were provided for in the relevant legislation (see paragraphs 25, 28 and 29 above), do not appear to be unreasonable in themselves, given the necessity to uphold the prison regime (see, *mutatis mutandis*, *A.B. v. the Netherlands*, no. 37328/97, §§ 92 and 93, 29 January 2002, and *Boyle and Rice v. the United Kingdom*, 27 April 1988, § 74, Series A no. 131). In so far as the applicants may be understood as complaining that their contact with other people by telephone or visits was restricted more than was required by the legislation, while noting that certain concerns in this area were raised by the CPT after its visit in 2006 (see paragraph 43 above), the Court finds that the applicants have not submitted any evidence or concrete information which would indicate that they were unable to use the facilities in question in accordance with the law. This part of the application is therefore not substantiated and must be rejected as being manifestly ill-founded pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

88. Lastly, with regard to the complaints concerning written correspondence, the Court notes that these allegations were not introduced until November 2010. The applicants were released in January and February 2010 respectively. This part of the application has therefore been introduced too late, outside the six-month time-limit laid down in Article 35 § 1. It must therefore be rejected under Article 35 § 4 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

89. The applicants complained that owing to the systemic nature of the inadequate prison conditions they did not have any effective remedy at their disposal as regards their complaints under Articles 3 and 8 of the Convention. In any event, there is no evidence that the remedies which were available in theory could work effectively in practice when it came to prison conditions and the treatment of prisoners. They invoked Article 13 of the Convention, which reads as follows:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

A. Admissibility

90. In so far as the applicants' complaint under Article 13 of the Convention refers to the lack of effective remedies in respect of inadequate physical conditions of detention, the Court finds that this aspect of the

complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

91. As to the lack of effective remedies in respect of the allegedly inadequate medical and psychological care, inadequate security measures and the restrictions on maintaining contact with persons outside the prison, having declared the relevant issues under Articles 3 and 8 of the Convention inadmissible, the Court concludes that the applicants have no arguable claim for the purpose of Article 13 of the Convention (see *Visloguzov*, § 74-5, cited above). It follows that this aspect of the applicants' complaint under Article 13 of the Convention should be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

B. Merits

1. The applicants' arguments

92. The applicants argued that their allegations related to a structural problem of overcrowding in Slovenian prisons, which had been officially acknowledged. Since the prison service was overburdened, it would have been pointless for the applicants to attempt to use any of the remedies which in theory could have led to an improvement in the conditions. The only solution to the problem, as officially acknowledged, was the building of a new prison.

93. The applicants further argued that that there was no jurisprudence to show that they could have claimed compensation for the non-pecuniary damage suffered as a result of the alleged violation of Article 3 of the Convention. Moreover, such a claim, in any event, could not have improved their conditions. As regards the claim to the Administrative Court, the applicants maintained that this remedy would have been ineffective as the claim would not have been resolved in due time. In support of this argument they referred to a decision no. U 1319/2003 of 11 May 2004 issued in proceedings concerning a transfer of a sentenced prisoner because of problems relating to his mental health and conflicts with other inmates. The Administrative Court had remitted the case for re-examination one year after the prisoner's request had been rejected by the director-general of the Administration for the Execution of Penal Sentences.

94. As regards the Human Rights Ombudsman, the applicants argued that while her role might be helpful, her recommendations were not biding. In the case of noncompliance, the Ombudsman could only inform the superior body, send a special report to the Parliament or inform the public. Moreover, the Ombudsman had repeatedly raised concerns about the prison conditions and still the situation had not improved.

95. As regards the constitutional appeal, it could only be lodged after all the remedies in administrative and judicial proceedings, which could take years, had been exhausted.

2. The Government's arguments

96. The Government submitted that the mere existence of doubt as regards the success of a certain legal remedy which is not clearly futile should not lead to a conclusion that such a remedy is ineffective.

97. Firstly, the Government argued that the applicants could have requested a transfer from one prison to another under sections 212 and 273 of the Criminal Procedure Act, read together with sections 54 and 55 of the Regulation on the Execution of Remand. A request for transfer should be made by the prison governor to the competent domestic court. Section 55 includes overcrowding in the list of grounds for transfer. The Government submitted photocopies of 21 court orders concerning transfers of remand prisoners from Ljubljana prison to other prisons in Slovenia. Most of the orders refer to paragraph 1 of section 55 of the Regulation on the Execution of Remand but do not disclose the exact reasons for the transfer, merely referring to the justification given by the prison governor in his requests, copies of which were not enclosed. The Government argued that the orders demonstrated that this remedy should be considered capable of preventing a violation of Article 3 of the Convention.

98. Secondly, the Government maintained that the applicants could have lodged a claim under the first paragraph of section 4 of the Administrative Disputes Act read together with the second paragraph of section 33, for violation of human rights. The Administrative Court had full jurisdiction to decide questions of fact and law in such proceedings. According to the Government, such a claim constituted an effective remedy by which the applicants could have secured the immediate termination of the violation. In addition, the Government argued that the applicants could have lodged a request for an interim order and for compensation. As regards the latter, the Administrative Court would rule on such a request unless it would considerably delay the proceedings.

99. In support of their argument, the Government submitted copies of twelve Administrative Court decisions, half of which were issued in proceedings instituted on the basis of section 4 of the Administrative Disputes Act, and the other half in the context of regular administrative proceedings in which administrative decisions were challenged before the Administrative Court. Eight decisions deal with issues of appointments, election and mandates. The remainder concern the refusal to issue an administrative decision, the right to examine a case-file, subscription to a nursery and the payment of compulsory contributions to a Chamber of Commerce. The Government admitted that the decisions did not concern complaints relating to overcrowding or inhuman and degrading conditions

in detention. However, they were of the opinion that the applicants could nevertheless have availed themselves of this remedy, which offered all the elements of relief required in this kind of case.

100. Thirdly, the Government argued that applicants could seek redress in civil proceedings. In this connection, they referred to section 134 of the Civil Code, which provides for a request for the termination or prevention of an infringement of personal rights or the elimination of the consequences of the infringement. In particular claimants could seek the termination of an ongoing infringement by means of an injunction. The Government emphasised that the civil court was also competent to order the offender to pay a penalty if the infringement was not terminated.

101. The Government argued that a claim for compensation under section 179 of the Civil Code was an effective domestic legal remedy for the suffering sustained as a result of inhuman and degrading conditions of detention. The applicants could have used that remedy. Instead, they had lodged requests for settlement with the State Attorney's Office, which had all been rejected.

102. In connection with the claim for compensation under Section 179 of the Civil Code, the Government maintained that the jurisprudence generally acknowledged psychological anguish caused by the restriction of liberty or the infringement of personal rights as a legally recognised form of non-pecuniary damage. In this respect they submitted copies of 15 court decisions. Nine of them concern damage caused by environmental nuisances. The others concern damage relating to unlawful detention, defamation, unauthorised publication of photos, sexual assault, distress related to exhumation and the invasion of privacy. Since there is no reason why the domestic courts would selectively protect certain personal rights but not for example the right to decent treatment in detention, the applicants' doubts as to the effectiveness of the compensation claim in the cases in question were unfounded.

103. The Government further submitted that eight compensation claims had been filed by prisoners between 2008 and 2010. On 20 May 2011 the Government informed the Court that a first judgment on this matter was delivered by the Ljubljana Local Court on 9 May 2011. The court found in favour of the plaintiff, a detainee who spent about six months (in the period between July 2006 and March 2007) in Ljubljana prison as a remand prisoner. For most of that time he was held together with five other detainees in a cell of about 18 square metres. The court found that all four elements of civil tort were established, namely: unlawful act, occurrence of damage, causal link and the defendant's responsibility. The court noted that there had been no jurisprudence on this matter so far and that this was the first judgment to establish the principles for the future. Referring also to *Kalashnikov v. Russia*, no. 47095/99, ECHR 2002-VI, the court noted that the rights guaranteed by the Convention represented minimum standards

and that the protection afforded by the national legislation should go beyond this minimum. It found that the personal space afforded to the claimant was far below the standard of 7 square metres for multi-occupancy cell recommended by the CPT and provided in the section 27 of the Regulation on the Execution of Sentence and was therefore in breach of the claimant's personal rights. The court further observed that the overcrowding had had a negative effect also on other aspects of dentition and found in this connection that the claimant's personal rights had been breached also on account of poor ventilation, disturbances during night, verbal and physical conflicts in the cell, the impossibility for him to eat his meal at the table and to use the telephone for at least ten minutes as provided in the regulations. Moreover, the court found that these conditions amounted also to a violation of Article 18 of the Slovenian Constitution which prohibited torture or inhuman or degrading punishment or treatment. The claimant was awarded compensation for non-pecuniary damage in the amount of 2,290 euros (EUR).

104. Fourthly, the Government maintained that the applicants had had and continued to have at their disposal a constitutional appeal. They admitted, however, that the constitutional appeal would have to be lodged against the last decision issued in the case, after all the above-mentioned legal remedies had been duly exhausted, and could not be lodged directly against the "treatment" concerned.

105. Lastly, the Government submitted that the applicants could have availed themselves of a petition to the Human Rights Ombudsman and supervision by the president of a district court. Although these were informal means of control, they could, precisely for that reason, often lead to the improvement of the situation. In support of their argument, they submitted twenty-five letters sent by the President of the Novo Mesto District Court regarding complaints raised by sentenced prisoners in Dob prison. The complaints concerned issues such as placement under a special regime, employment, benefits, health care, and so on.

3. The Court's assessment

106. According to the Court's case-law, Article 13 guarantees the availability at national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they may happen to be secured in the domestic legal order. The scope of the Contracting States' obligations under this provision varies depending on the nature of the applicant's complaint; the effectiveness of a remedy does not depend on the certainty of a favourable outcome for the applicant. However, the remedy required by Article 13 must be effective in law as well as in practice (*Petkov and Others v. Bulgaria*, nos. 77568/01, 178/02 and 505/02, § 74, ECHR 2009-...).

107. The Court points out that the decisive question in assessing the effectiveness of a remedy concerning a complaint of ill-treatment is whether the applicant can raise this complaint before domestic courts in order to obtain direct and timely redress, and not merely an indirect protection of the rights guaranteed in Article 3 of the Convention (see *Melnik v. Ukraine*, no. 72286/01, § 68, 28 March 2006).

108. In the instant case, the Government argued that the applicants could have, but had not, made use of a number of remedies. The Court will proceed to examine whether the remedies referred to by the Government could be considered effective under Article 13 of the Convention and such as to require the applicants to exhaust them.

(a) Transfer of remand prisoner under section 212 of the Criminal Procedure Act and section 55 of the Regulation on the Execution of Remand

109. The Court notes at the outset that the applicants were placed in the remand section of Ljubljana prison in accordance with the rule contained in section 2 of the Regulation on Execution of Remand, which required all remand prisoners whose detention was ordered by Ljubljana or Kranj District Court to be placed in that prison. At the time when they ordered the applicants' detention the courts had no possibility of placing a remand prisoner in another prison with available space (see paragraph 27 above). Once they had been placed in a certain prison, a remand prisoner could be transferred under section 212 of the Criminal Procedure Act read together with section 55 of the Regulation on the Execution of Remand, which refers to different grounds for transfer, including overcrowding (see paragraphs 32 and 33 above).

110. The Court notes that it is clear from the above provisions as well as from the court orders submitted by the Government (see paragraph 97 above) that the request for the transfer of a prisoner could only have been made by the prison governor. This remedy was therefore not directly accessible to the applicants and could not be considered effective. Moreover, the Court observes that the prison authorities were aware of the overcrowding in the remand section of the prison (see paragraphs 44-48 above). In 2010 they put in place a system whereby a request for transfer would be made when the number of prisoners exceeded 245 (see paragraph 46 above). It was therefore up to the prison authorities, and not the applicants, to make use of this remedy had they considered it effective.

(b) Remedies under the Administrative Disputes Act and the Civil Code

111. The Court would first emphasise that at the time the present applications were lodged with the Court the applicants were still detained in allegedly inadequate conditions. To be considered effective, the remedy should therefore have been able to lead to the improvement of the situation

and not only to compensation for the damage sustained (*Orchowski*, cited above, § 108).

112. In this connection, the Government referred to a claim an individual can lodge under sections 4 (paragraph 1) and 33 of the Administrative Disputes Act. These provisions refer to the termination of an "act" or "action" infringing human rights when no other judicial protection is available (see paragraph 34 above). In support of their argument, the Government referred to past decisions of the Administrative Court. However, those decisions arose from situations which do not even remotely relate to that of the applicants (see paragraph 99 above). The Court moreover notes that the claim under the first paragraph of section 4 is conditional on a number of elements, one of them being that the result of the action is unlawful hindrance, limitation or prevention of the enjoyment of a human right and another being the absence of any other judicial protection (see paragraph 35 above). It is not for the Court to speculate on the possible interpretation of the provisions concerned in the context of prison conditions. The Court would limit itself to observing that it is unaware of any decision that would demonstrate that a claim concerning conditions of detention in remand prisons could be brought directly to the Administrative Court with any prospect of putting a timely end to an alleged violation (see, *mutatis mutandis*, *Ciorap v. Moldova*, no. 12066/02, § 57, 19 June 2007, and *Belinger v. Slovenia* (dec.), no. 42320/98, 2 October 2001).

113. The Government further alleged that the applicants could have lodged a claim under section 134 of the Civil Code seeking termination of an infringement of their personal rights. However, they have not submitted any decision which would demonstrate how this provision works in practice, let alone in the context of conditions of detention, which require a timely reaction.

114. Therefore, the Court finds that, even assuming that any of the above-mentioned remedies could in theory offer adequate redress in respect of the inadequate prison conditions, the Government failed to produce any case in which the courts had ruled on such a complaint. While it is not for the Court to give a ruling on an issue of domestic law that is as yet unsettled the absence of any case-law does indicate the uncertainty of these remedies in practice (see, *mutatis mutandis*, *Horvat v. Croatia*, no. 51585/99, § 44, ECHR 2001-VIII; *Marini v. Albania*, no. 3738/02, § 156, ECHR 2007-XIV (extracts), and *De Jong, Baljet and Van den Brink v. the Netherlands*, 22 May 1984, § 39, Series A no. 77).

115. Lastly, the Court notes that the requests for compensation the applicants made to the State Attorney's Office were refused. They did not subsequently institute any civil proceedings for compensation under section 179 of the Civil Code. The Government argued that had they done so they could have been successful. In this connection, the Government submitted a number of court decisions which do not relate to inadequate

conditions of detention. Subsequently, they submitted to the court a recent judgment of 9 May 2011 in which a local court found that the claimant's personal rights as well as the prohibition of torture and inhuman or degradation treatment was violated on account of inadequate conditions in Ljubljana prison. It awarded the claimant compensation for non-pecuniary damage.

116. The Court notes that the civil remedy under section 179 of the Civil Code is merely of a compensatory nature and no domestic court has so far imposed an injunction in order to change the situation which had given rise to the infringement of a prisoner's personal rights (see *Orchowski*, cited above, § 108). Consequently, noting that the applicants were detained at the time they lodged their applications, the Court finds that the institution of civil proceedings could not have remedied their situation. However, the Court acknowledges that the judgment of 9 May 2011, if it becomes final, represents an important development in the domestic jurisprudence in particular as regards circumstances where an alleged violation no longer continues because the person is already at liberty or has been transferred to a place of detention where conditions comply with the Convention standards. Welcoming this change, the Court nevertheless observes that for the time being the judgment of 9 May 2011 appears to be an isolated example which moreover has not been subject to review by the higher courts. Therefore, as things stand, the civil claim for compensation cannot be considered to be sufficiently certain in practice as regards compensation claimed in respect of allegedly inadequate prison conditions.

(c) Other remedies referred to by the Government

117. With regard to supervision by the president of a district court, the Court observes that no formal procedure for dealing with complaints was provided in the legislation, nor does it seem that the president could issue decisions which would be legally enforceable. The Court therefore finds that this remedy cannot be regarded as capable of directly remedying the impugned state of affairs (see *Balogh v. Hungary*, no. 47940/99, § 30, 20 July 2004). Likewise, a petition to the Human Rights Ombudsman can only lead to recommendations and has not been considered by the Court to constitute an effective remedy (see, *Lehtinen v. Finland* (dec.), no. 39076/97, ECHR 1999-VII, and *Montion v. France*, no. 11192/84, Commission decision of 14 May 1987, Decisions and Reports 52, p. 232). In this connection, the Court observes that the Ombudsman, in particular in the role of the national preventive mechanism, made several recommendations in respect of the overcrowded conditions complained of by the applicants, but no significant improvements were made in this area.

(d) Constitutional appeal

118. The Court notes, as the Government acknowledged, that the applicants had no direct access to the Constitutional Court but could have lodged a constitutional appeal only after they had pursued the above-mentioned legal avenues (see paragraph 104 above).

119. In the view of the conclusion reached in respect of the above remedies invoked by the Government (see paragraphs 109 to 117 above) and the fact that the applicants could not have used the constitutional appeal directly, the Court finds that it could not be considered an effective remedy in this case.

(e) Conclusion

120. The Court finds that none of the remedies relied on by the Government could be regarded, with a sufficient degree of certainty, as constituting an effective remedy for the applicants. The Court concludes, therefore, that there has been a violation of Article 13 of the Convention on account of the lack of an effective and accessible remedy under domestic law for the applicants' complaints in respect of the conditions of their detention (see, for example, *Visloguzov*, cited above, §§76-78, and *Melnik*, cited above, § 115-6). The Court therefore rejects the Government's objection of non-exhaustion of domestic remedies.

V. APPLICATION OF ARTICLE 46 OF THE CONVENTION

121. Article 46 of the Convention provides:

> "1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.
>
> 2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution."

A. The parties' submissions

122. Referring to the official reports of the Administration for the Execution of Penal Sentences, the applicants argued that their allegations related to a structural problem of overcrowding in Slovenian prisons, which could only be resolved by building new prisons.

123. The Government affirmed that the situation in certain Slovenian prisons did not comply with the national statutory requirements, which were higher than those set by the Court's case-law relating to Article 3. The situation in those highly populated prisons was not permanent but could fluctuate significantly. The Government asked the Court to decide on a case-by-case basis whether a prisoner's particular circumstances amounted

to a violation of Article 3. A potential finding of a violation in a particular case cannot automatically lead to a conclusion that there was a practice incompatible with the Convention.

B. The Court's assessment

124. The Court observes that the violation of Article 3 of the Convention in the present case was caused by the overcrowded conditions in the Ljubljana prison, which had existed over a number of years. It further notes that the official reports and information submitted by the Government, in particular those concerning the occupancy rate of the prison and the size and number of sleeping places in the large cells, indicate that a considerable number of prisoners are and may still be affected in the future by the severe overcrowding. This includes many prisoners on remand, whose situation is particularly difficult due to, *inter alia*, very limited freedom of movement .

125. The Court notes that the Government have not submitted any information which would indicate that any steps were taken to tackle the problem of overcrowding in Ljubljana prison and that the building of the new facility is still uncertain. In this connection, it is to be reiterated that, where the Court finds a violation, the respondent State has a legal obligation under Article 46 of the Convention not just to pay those concerned the sums awarded by way of just satisfaction under Article 41, but also to select, subject to supervision by the Committee of Ministers, the general and/or, if appropriate, individual measures to be adopted in their domestic legal order to put an end to the violation found by the Court and to redress, in so far as possible, the effects. The respondent State remains free, subject to monitoring by the Committee of Ministers, to choose the means by which it will discharge its legal obligation under Article 46 of the Convention, provided that such means are compatible with the conclusions set out in the Court's judgment (see *Scozzari and Giunta v. Italy* [GC], nos. 39221/98 and 41963/98, § 249, ECHR 2000-VIII).

126. The Court is aware that the solving of the overcrowding may necessitate the mobilisation of significant finical resources, in particular as the problem is not limited to Ljubljana prison, but exists, though to a lesser extent, in most of the closed prison facilities in the country. However, it must be observed that a lack of resources cannot in principle justify prison conditions which are so poor as to reach the threshold of treatment contrary to Article 3 of the Convention (see among others *Nazarenko v. Ukraine*, no. 39483/98, § 144, 29 April 2003) and that it is incumbent on the respondent Government to organise its penitentiary system in such a way that ensures respect for the dignity of detainees, regardless of financial or logistical difficulties (see *Mamedova v. Russia*, no. 7064/05, § 63, 1 June 2006).

127. Although the Court does not consider that it can at present conclude that there exists a structural problem consisting of "a practice that is incompatible with the Convention" nationwide, it would emphasize the need to take steps to reduce the number of prisoners in Ljubljana prison and by doing so to put an end to the existing situation which appears to disregard the dignity of a considerable number of detainees held therein and to prevent future violations of Article 3 on that account. It would draw the Government's attention to the CPT's recommendation for Ljubljana prison that no more than four prisoners should be held in cells measuring 18 square metres (including the sanitary annex, see paragraphs 42 and 43 above).

128. Lastly, the Court takes note of the judgment of 9 May 2011 and observes that the civil claim for compensation under section 174 of the Civil Code may, if proved effective in future, due to its compensatory nature, be of value only to persons who are no longer detained in overcrowded cells in conditions not complying with Article 3 requirements (see paragraph 116 above). A ruling of a civil court cannot, however, have any impact on general prison conditions because it cannot address the root cause of the problem. For that reason, the Court would, in addition to the measures aimed at reducing the occupancy level in cells in Ljubljana prison, encourage the State to develop an effective instrument which would provide a speedy reaction to complaints concerning inadequate conditions of detention and ensure that, when necessary, a transfer of a detainee is ordered to Convention compatible conditions (see *Orchowski*, cited above, § 154).

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

129. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

130. The applicants each claimed EUR 15,000 in respect of non-pecuniary damage.

131. The Government contested the claim.

132. The Court awards each of the applicants EUR 8,000 in respect of non-pecuniary damage.

B. Costs and expenses

133. The applicants, both represented by the same law firm, also claimed EUR 1,520 each for the costs and expenses incurred before the Court. This sum consisted of EUR 1,500 in lawyer's fees, which they claimed were calculated on the basis of statutory domestic rates, and EUR 20 for material expenses.

134. The Government argued that this claim was excessive. They also argued that the Court should take into account the fact that the representative's submissions concerning the two applications were almost identical.

135. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. With regard to an applicant's Convention costs, the Court reiterates that it does not consider itself bound by domestic scales and practices, although it may derive some assistance from them (see, among many other authorities, *Gaspari v. Slovenia*, no. 21055/03, § 83, 21 July 2009, and *Başkaya and Okçuoğlu v. Turkey* [GC], nos. 23536/94 and 24408/94, § 98, ECHR 1999-IV). In the present case, regard being had to the information in its possession, to the fact that the applicants' submissions were largely identical, and the above criteria, the Court considers it reasonable to award them jointly the sum of EUR 2,000 for the proceedings before the Court.

C. Default interest

136. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Joins* the applications;

2. *Joins to the merits* the Government's objection concerning the exhaustion of domestic remedies in respect of physical conditions of detention under Articles 3 and 8 of the Convention, and rejects it;

3. *Declares* the complaint concerning physical conditions of detention under Articles 3 and 8 of the Convention as well as the complaint under Article 13 of the Convention relating to the complaint concerning

physical conditions of detention admissible and the remainder of the applications inadmissible;

4. *Holds* that there has been a violation of Article 3 of the Convention;

5. *Holds* that there is no need to examine the complaint concerning physical conditions of detention under Article 8 of the Convention;

6. *Holds* that there has been a violation of Article 13 of the Convention;

7. *Holds*
(a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 8,000 (eight thousand euros) each, plus any tax that may be chargeable, in respect of non-pecuniary damage and EUR 2,000 (two thousand euros) jointly, plus any tax that may be chargeable to the applicants, in respect of costs and expenses;
(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

8. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 20 October 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Dean Spielmann
President