



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

Information Note on the Court's case-law 177

August-September 2014

Stella and Others v. Italy (dec.) - 49169/09, 54908/09, 55156/09 et al.

Decision 16.9.2014 [Section II]

Article 35

Article 35-1

Exhaustion of domestic remedies

Effective domestic remedy

New preventive and compensatory remedies for prison overcrowding: *effective remedy*

Article 46

Pilot judgment

General measures

Provision of effective remedies in respect of prison overcrowding following pilot judgment

Facts – The applicants all claimed that they had been kept in overpopulated cells, having had at their disposal approximately 3 sq. m of living space.

Following the communication of the applications to the Government, the Court had applied the pilot-judgment procedure in the case of *Torreggiani and Others v. Italy**, in which it had noted that prison overcrowding in Italy represented an endemic and structural problem. Under Article 46 of the Convention, the Court had considered that the respondent State was to put in place an effective domestic preventive and compensatory remedy or a combination of such remedies capable of securing genuinely effective redress for the violations of the Convention resulting from cases of overcrowding in Italian prisons.

Following that judgment, the Italian State had enacted a number of legislative measures aimed at resolving the structural problem of overcrowding in prisons and, in parallel, had reformed the law to allow detained persons to complain to a judicial authority about the material conditions of detention and had also introduced a compensatory remedy providing for damages to be paid to persons who had been subjected to detention contrary to the Convention.

Law – Article 35 § 1: The introduction of the new domestic remedies was a direct consequence of the application of the pilot-judgment procedure; they were intended to deal with cases brought against Italy concerning prison overcrowding, with a view to meeting the growing threat to the Convention system resulting from the large number of similar cases. The respondent State's domestic authorities had thus complied with the

principles established in the Court's case-law in this area, and with the findings set out in the pilot judgment under Article 46 of the Convention.

(a) *The Court's assessment of the preventive remedy*

Through the introduction of this new remedy, the respondent State had sought to respond to the reservations expressed by the Court in the *Torreggiani and Others* judgment concerning the effectiveness of the previously existing remedy, namely, on the one hand, the lack of certainty with regard to the binding force of decisions taken by the judge responsible for the execution of sentences and, on the other, the structural nature of the phenomenon of prison overcrowding in Italy, which in practice prevented the prison authorities from guaranteeing to prisoners conditions of detention that were compatible with the Convention.

The new remedy now specified that the decisions taken by the judge responsible for the execution of sentences on prisoners' complaints concerning the prison administration were binding on the relevant administrative authorities. The latter were obliged to comply within a deadline set by the judge, which, in principle, satisfied the criterion that judicial proceedings be expeditious, failing which enforcement proceedings could be initiated. Furthermore, and this was a crucial aspect, the respondent State had put in place a series of substantive measures intended to resolve the structural problem of overcrowding in prisons. Several legislative provisions had been enacted in the area of criminal policy with a view, among other things, to promoting greater use of alternatives to detention and to reducing the sentences laid down for minor offences. The application of those provisions had already resulted in a significant reduction in the prison population and, in so far as they concerned structural reforms to criminal policy, their application was likely to continue to have a favourable impact on prison overcrowding in Italy. Moreover, major organisational changes had been made in order to enable prisoners to spend at least eight hours per day outside their cell. Lastly, the renovation of existing prison buildings and the construction of new premises had increased the number of places available and permitted a better distribution of prisoners, so that all those detained in Italian prisons currently had a minimum personal space of 3 sq. m. Under domestic law, the standard minimum surface area for shared cells was 5 sq. m per person, which was more than that recommended by the Court's case-law and by the CPT.

The Court welcomed the significant results obtained through the considerable efforts made by the Italian authorities at several levels, and noted that the problem of prison overcrowding in Italy, while persistent, was now at less alarming proportions. It could only encourage the respondent State to continue this positive trend.

In view of the nature of the preventive remedy afforded by the domestic legislation and of the context in which the relevant domestic authorities were presently acting, the new domestic remedy constituted, *a priori*, an accessible remedy, capable of offering litigants reasonable prospects of success.

(b) *The Court's assessment of the compensatory remedy*

The new remedy was accessible to anyone, including the applicants, who alleged they had been imprisoned in Italy in physical conditions that were contrary to the Convention. A transitional provision referred explicitly to applications already lodged with the Court and was therefore designed to bring within the jurisdiction of the national courts all applications currently pending before the Court that had not yet been declared admissible.

As to the characteristics of the redress, the remedy in question provided for two types of compensation. Individuals who were detained and had still to complete their sentence

could receive a reduction in sentence equal to one day for each period of ten days of detention that were incompatible with the Convention. Individuals who had served their sentences or in respect of whom the part of the sentence which remained to be served did not allow for full application of the reduction could obtain compensation of EUR 8 for each day spent in conditions considered contrary to the Convention. Decision-making competence lay with the courts for the execution of sentences with regard to complaints from detainees, and with the ordinary courts for individuals who had been released.

A reduction in sentence constituted an adequate remedy in the event of poor material conditions of detention in so far as, on the one hand, it was specifically granted to repair the violation of Article 3 of the Convention and, on the other, its impact on the length of the sentence of the person concerned was measurable. In addition, this form of redress had the undeniable advantage of helping to resolve the problem of overcrowding by speeding up detainees' release from prison. With regard to the financial compensation, the amount of compensation provided for under domestic law could not be considered unreasonable – even if it was lower than that set by the Court – or such as to deprive the remedy introduced by the respondent State of its effectiveness.

In consequence, in so far as they alleged that they had been imprisoned in conditions contrary to Article 3 of the Convention, the applicants were required to use the new remedy introduced into Italian legislation, in order to obtain acknowledgment of the violation and, where appropriate, adequate compensation. With regard to those applicants who might still be detained in poor conditions, they were also to submit a complaint to the judge responsible for the execution of sentences, with a view to obtaining an immediate improvement of their living conditions in prison.

Conclusion: inadmissible (unanimously).

**Torreggiani and Others v. Italy*, 43517/09 et al., 8 January 2013, [Information Note 159](#).