



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

FOURTH SECTION

CASE OF CUNHA CASACA v. PORTUGAL

(Application no. 17761/22)

JUDGMENT

STRASBOURG

6 July 2023

This judgment is final but it may be subject to editorial revision.

In the case of Cunha Casaca v. Portugal,

The European Court of Human Rights (Fourth Section), sitting as a Committee composed of:

Tim Eicke, *President*,

Branko Lubarda,

Ana Maria Guerra Martins, *judges*,

and Viktoriya Maradudina, *Acting Deputy Section Registrar*,

Having deliberated in private on 15 June 2023,

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

PROCEDURE

1. The case originated in an application against Portugal lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) on 1 April 2022.

2. The applicant was represented by Mr V. Carreto, a lawyer practising in Torres Vedras.

3. The Portuguese Government (“the Government”) were given notice of the application.

THE FACTS

4. The applicant’s details and information relevant to the application are set out in the appended table.

5. The applicant complained under Article 3 of the Convention of the inadequate conditions of his detention. He also raised a complaint under Article 13 of the Convention.

THE LAW

I. THE GOVERNMENT’S REQUEST TO STRIKE OUT THE APPLICATION UNDER ARTICLE 37 § 1 OF THE CONVENTION

6. The Government submitted a unilateral declaration which did not offer a sufficient basis for finding that respect for human rights as defined in the Convention does not require the Court to continue its examination of the case (Article 37 § 1 in fine). The Court rejects the Government’s request to strike the application out and will accordingly pursue its examination of the case (see *Tahsin Acar v. Turkey* (preliminary objections) [GC], no.26307/95, § 75, ECHR 2003 VI).

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

7. The applicant complained principally of the inadequate conditions of his detention. He relied on Article 3 of the Convention.

8. The Court notes that the applicant was kept in detention in poor conditions. The details of the applicant's detention are indicated in the appended table. The Court refers to the principles established in its case-law regarding inadequate conditions of detention (see, for instance, *Muršić v. Croatia* [GC], no. 7334/13, §§ 96-101, ECHR 2016). It reiterates in particular that a serious lack of space in a prison cell weighs heavily as a factor to be taken into account for the purpose of establishing whether the detention conditions described are "degrading" from the point of view of Article 3 and may disclose a violation, both alone or taken together with other shortcomings (see *Muršić*, cited above, §§ 122-41, and *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, §§ 149-59, 10 January 2012).

9. In the leading case of *Petrescu v. Portugal* (no. 23190/17, 3 December 2019), the Court already found a violation in respect of issues similar to those in the present case.

10. Having examined all the material submitted to it, the Court has not found any fact or argument capable of persuading it to reach a different conclusion on the admissibility and merits of these complaints. Having regard to its case-law on the subject, the Court considers that in the instant case the applicant's conditions of detention were inadequate.

11. These complaints are therefore admissible and disclose a breach of Article 3 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

12. The applicant further complained of a lack of an effective remedy in respect of his complaints under Article 3 of the Convention, which also raised an issue under Article 13 of the Convention, given the relevant well-established case-law of the Court. This complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention, nor is it inadmissible on any other ground. Accordingly, it must be declared admissible. Having examined all the material before it, the Court concludes that it also discloses a violation of the Convention in the light of its findings in *Petrescu* (cited above, §§ 75-84), concerning the lack of an effective remedy to complain about poor conditions of detention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

13. 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.”

14. Regard being had to the documents in its possession and to its case-law (see, in particular, *Muršić*, cited above, §§ 181 and 184), the Court considers it reasonable to award the sums indicated in the appended table.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Rejects* the Government’s request to strike the application out of its list of cases under Article 37 § 1 of the Convention on the basis of the unilateral declaration which they submitted;
2. *Declares* the application admissible;
3. *Holds* that this application discloses a breach of Article 3 of the Convention concerning the inadequate conditions of detention;
4. *Holds* that this application discloses a breach of the Article 13 of the Convention as regards the lack of an effective remedy to complain about inadequate conditions of detention;
5. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months, the amounts indicated in the appended table;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

Done in English, and notified in writing on 6 July 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Viktoriya Maradudina
Acting Deputy Registrar

Tim Eicke
President

CUNHA CASACA v. PORTUGAL JUDGMENT

APPENDIX

Application raising complaints under Articles 3 and 13 of the Convention
(inadequate conditions of detention and lack of an effective remedy in this respect)

Application no. Date of introduction	Applicant's name Year of birth	Representative's name and location	Facility Start and end date Duration	Sq. m per inmate	Specific grievances	Amount awarded for pecuniary and non- pecuniary damage per applicant (in euros) ¹	Amount awarded for costs and expenses per application (in euros) ²
17761/22 01/04/2022	Hugo Filipe CUNHA CASACA 1986	Vitor Carreto Torres Vedras	Coimbra Prison 10/01/2022 pending More than 1 year and 3 months and 15 days	2 inmates 2.55 m ² 1 toilet	overcrowding, poor quality of food, lack of or insufficient quantity of food, inadequate temperature, lack of fresh air, lack of privacy	10,800	250

¹ Plus any tax that may be chargeable to the applicant.

² Plus any tax that may be chargeable to the applicant.