



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

FOURTH SECTION

CASE OF NIEUWOLT v. PORTUGAL

(Application no. 15767/21)

JUDGMENT

STRASBOURG

30 November 2023

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

In the case of Nieuwolt v. Portugal,

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

Faris Vehabović, *President*,

Anja Seibert-Fohr,

Anne Louise Bormann, *judges*,

and Viktoriya Maradudina, *Acting Deputy Section Registrar*,

Having deliberated in private on 9 November 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 5 March 2021.

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 inadequate conditions of his detention. He also raised a complaint under Article 13 of the Convention.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION BETWEEN 29 OCTOBER 2020 AND 2 FEBRUARY 2021

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

7. 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).

8. 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.

9. 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 between 29 October 2020 and 2 February 2021 were inadequate.

10. These complaints about the period of detention between 29 October 2020 and 2 February 2021 are therefore admissible and disclose a breach of Article 3 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

11. 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 it is 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.

III. REMAINING COMPLAINTS

12. Concerning the remaining periods of detention complained of before 29 October 2020 and after 2 February 2021, having regard to all of the available material and the parties' arguments, the Court finds that it cannot establish that the applicant suffered in the concerned prison facilities from severe overcrowding of the kind that could entail, on its own, a violation of Article 3 (see *Muršić*, cited above) nor can it be found that the cumulative effect of the other aspects of the detention which the applicant complained about reached the threshold of severity required to characterise the treatment as inhuman or degrading within the meaning of Article 3 (see *Bokor v. Portugal*, no. 5227/18, § 34, 10 December 2020).

13. In view of the foregoing, the Court finds that the complaints related to the remaining periods of detention are manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

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. *Declares* the complaint concerning the conditions of detention during the period between 29 October 2020 and 2 February 2021, as well as the complaint under Article 13 of the Convention about the lack of an effective domestic remedy to complain about inadequate detention conditions, admissible, and the remainder of the application inadmissible;
2. *Holds* that this application discloses a breach of Article 3 of the Convention concerning the inadequate conditions of detention between 29 October 2020 and 2 February 2021;
3. *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;
4. *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 30 November 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Viktoriya Maradudina
Acting Deputy Registrar

Faris Vehabović
President

NIEUWOLT v. PORTUGAL JUDGMENT

APPENDIX

Application raising complaints under Article 3 of the Convention
(inadequate conditions of detention)

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 non- pecuniary damage (in euros) ¹	Amount awarded for costs and expenses (in euros) ²
15767/21 05/03/2021	Willem NIEUWOLT 1947	Carreto Vítor Torres Vedras	Caxias Prison 29/10/2020 to 02/02/2021 3 months and 5 days	4 inmates 2.36 m ² 1 toilet	inadequate temperature, lack of fresh air, lack of or insufficient natural light, overcrowding, passive smoking, lack of privacy for toilet, lack of or insufficient physical exercise in fresh air, lack of or insufficient quantity of food, poor quality of food, lack of requisite medical assistance, lack of or inadequate hygienic facilities, frequent outbreaks of violence, mouldy or dirty cell, lack of toiletries, sharing cells with inmates infected with contagious disease, no separation between smoking and non-smoking inmates, lack of privacy in the showers, lack of or insufficient prevention and control measures of COVID-19 pandemic	2,300	250

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

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