THIRD SECTION

CASE OF DANILCZUK v. CYPRUS

(Application no. 21318/12)

JUDGMENT

STRASBOURG

3 April 2018

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Danilczuk v. Cyprus,

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

Helena Jäderblom, *President,*
Branko Lubarda,
Luis López Guerra,
Helen Keller,
Pere Pastor Vilanova,
Alena Poláčková,
Georgios A. Serghides, *judges,*
and Stephen Phillips, *Section Registrar,*
Having deliberated in private on 26 September 2017 and 6 March 2018,

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

PROCEDURE

1. The case originated in an application (no. 21318/12) against the Republic of Cyprus lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Polish national, Mr Robert Tadeusz Danilczuk ("the applicant"), on 8 April 2012.

2. On 18 November 2013 the applicant's complaint about his conditions of detention at Nicosia Central Prisons was communicated to the Government under Article 3 of the Convention and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

3. Following the communication of the application, the applicant appointed Mr D. Stremecki, a lawyer practising in Szprotawa in Poland, to represent him before the Court. By a letter dated 18 January 2017 he informed the Court that he no longer wished to be represented by him. The Cypriot Government ("the Government") were represented by their Agent, the Attorney General, Mr C. Clerides.

4. The Polish Government were informed of their right to intervene in the proceedings, in accordance with Article 36 § 1 of the Convention and Rule 44 § 1 of the Rules of Court. They chose not to avail themselves of that right.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1965 and is currently detained in Czarne Prison in Poland.

A. Background

6. The applicant was placed in detention on remand at Nicosia Central Prisons on 14 September 2010 pending criminal proceedings against him before the Limassol District Court (case no. 25536/10).

7. On 11 January 2011 the applicant was convicted of a number of offences (including burglary, theft, various road traffic offences and unlawful residence). On 24 January 2011 the court imposed four sentences ranging from six months' to two years' imprisonment, to run concurrently from 5 September 2010.

8. The applicant was released on 18 May 2012 following the suspension of his sentence by virtue of a decree issued by the President of the Republic concerning a number of prisoners.

B. Conditions of the applicant's detention

1. The applicant's description of the conditions of his detention

9. In his application form the applicant, without specifying the exact period of his detention, submitted that he had been held in overcrowded cells at Nicosia Central Prisons, where there was only 0.5 to 1.7 sq. m of personal space for each detainee. He stated that the cells were cold and lacked adequate light. Furthermore, there were no toilets in the cells. He sometimes had to wait two to three hours to use the toilet, and, when the cells were locked, he had to urinate into a bottle and defecate into a waste bag.

2. The Government's description of the conditions of detention

10. The Government submitted that the applicant had been detained from 14 September 2010 until his release on 18 May 2012 in three different parts of Nicosia Central Prisons. Between 14 September 2010 and 24 January 2011 he had been detained in Block 5, which accommodated remand prisoners. Following his conviction and sentence he had been transferred to Block 2B, where he had been detained between 24 January 2011 and 5 October 2011. On the latter date he had been placed in Block 2A, where he had been detained until his release on 18 May 2012. Both Block 2B and 2A accommodated sentenced prisoners. The Government provided copies of Nicosia Central Prisons' daily occupancy records (*ημερήσιες χωρητικότητες των κεντρικών φυλακών*) indicating the number of prisoners in each block per day. However, they submitted that no records were kept in relation to occupancy of particular cells in the blocks.

(a) Block 5: 14 September 2010-24 January 2011

11. Block 5 could accommodate up to sixty-eight remand prisoners; it had thirty-four double occupancy cells measuring 6.21 sq. m, eight toilets and eight showers. Block 5 included Block 5A, which had twenty-three double occupancy cells of the same size as Block 5, accommodating forty-three remand prisoners. It was almost certain that during his detention in Block 5 the applicant had shared a cell with another inmate and that therefore he had had 3.10 sq. m of personal space.

(b) Block 2B: 24 January 2011-5 October 2011

12. At the time the applicant had been detained there Block 2B had not yet been renovated. It had twenty-six double occupancy cells measuring 9.98 sq. m; two large cells measuring 19.55 sq. m, which accommodated five to seven detainees, and a common room which had been made into a dormitory for between twenty and fifty inmates. The dormitory measured 90 sq. m and had nineteen windows. Prisoners with short-term sentences had been kept in the dormitory. Block 2B had six toilets and six showers.

13. Based on the daily occupancy records for the relevant period, the number of inmates in the block varied from 80 to 124 per day. The Government stated that it was possible that the applicant had spent time in all the different types of cells in this block during his detention. In the double occupancy cell the applicant would have had 4.99 sq. m of personal space; in the larger cell he would have had from approximately 2.8 to 3.9 sq. m, depending on whether he had shared the cell with five, six or seven inmates; and, lastly, in the dormitory he would have had from 1.8 sq. m to 4.5 sq. m of personal space, depending on the number of inmates detained there with him. If the applicant had been held in the dormitory in early spring or during the winter (see paragraph 49 below), he would have disposed of between 2.04 and 3.2 sq. m of personal space as the daily occupancy records indicated that the block had accommodated between 94 and 110 inmates per day during those periods.

(c) Block 2A: 5 October 2011-18 May 2012

14. On 5 October 2011 the applicant was transferred to Block 2A, which had been renovated. The block had forty-one double occupancy cells, accommodating eighty-two prisoners. The cells measured 9.80 sq. m and thus the applicant had had 4.9 sq. m of personal space at his disposal. There were six toilets, six showers and three urinals.

(d) Additional information regarding the general conditions in the blocks

15. The various parts of the prison were equipped with a central heating system which covered all the blocks and cells. The central air conditioning system which functioned in the summer months was in the corridors and there were individual electrical fans in the cells. All the cells had properly insulated windows, which provided natural light and ventilation. The dimensions of the windows varied. Detainees were free to move outside their cells in the closed prison, including the yard, workshops, kitchen and school from 6 a.m. to 5 p.m. (winter time) or to 6 p.m. (summer time). After that, the detainees could move freely within their blocks until 9 p.m. on weekdays and 10 p.m. on weekends and public holidays.

16. Following the 2012 report of the European Committee for the Prevention of Torture ("CPT") on its visit to Cyprus from 12 to 19 May 2008, the prison administration discontinued the practice of switching off cell bells during the night, hence detainees had access to the toilets during those hours (see paragraphs 26-27 and 30 below). The administration of the prison had issued order no. 32/2008 concerning prisoners having access to the toilet facilities whenever necessary. The order had also directed prison staff to check and ensure that the call panel in the warden's room was active at all times, especially during the evening, so that prisoners could be assisted and emergencies prevented. A violation of the order constituted a disciplinary offence. According to a letter by the prison director dated 27 February 2014, records were not kept of when cells were opened for toilet visits during the night, that is between 9 p.m. and 6 a.m. However, a detainee could leave his cell for up to three toilet visits during that period.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The Constitution

17. Article 8 of the Constitution safeguards the right not to be subjected to torture or to inhuman or degrading punishment or treatment.

B. The Rights of Persons Arrested and Detained Law of 2005 (Law no. 163(I)/2005, as amended)

18. The law applies to detainees whose detention has been permitted by Article 11 § 2 (b), (c) and (f) of the Constitution (which are equivalent to Article 5 § 1 (b), (c) and (d) of the Convention), as well as detainees who are being detained for the purposes of the imposition of a sentence (section 2).

19. Section 19 provides as follows:

> "(1) Every detainee has the right:
>
> (a) to respect for his right not to be subjected to torture or inhuman or degrading treatment or punishment or any other physical or psychological or mental violence,
>
> (b) to decent treatment, behaviour and living conditions (*αξιοπρεπούς μεταχείρισης, συμπεριφοράς και διαβίωσης*),
>
> (c) to be in (*διαβιεί*) a cell of a reasonable size, in which basic facilities and conditions of hygiene, sufficient light and ventilation, and suitable furniture for rest (*εξοπλισμός ξεκούρασης*) are provided.
>
> (2) It is the State's responsibility to safeguard the rights mentioned in paragraph (1).
>
> (3) All the persons responsible for a detention facility shall provide for the adequate and appropriate nutrition, physical and mental health, safety and physical integrity of detainees."

20. Section 36(1) provides that a person who has suffered a violation of his or her rights granted to him or her by the law in question has a cause of action for damages against the State and the member of the police, member of staff of the prison or the person in charge of the detention centre who is responsible for the violation, whether or not the person suffered any actual injury, damage or pecuniary or other loss as a result. Under section 36(2) a person who has a cause of action under section 36(1) is not prevented from claiming damages or another remedy on the basis of an actionable right/cause of action provided or recognised by any other law. Such claims can be made simultaneously.

C. Law no. 2(III)/2009: the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (Optional Protocol) (Ratification) Law of 2009

21. Law 2(III)/2009 ratified the Optional Protocol to the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment of 18 December 2002. Under section 4(1) the Office of the Commissioner of Administration ("the Ombudsman") is designated as the national preventive mechanism.

22. Under section 5 of the law the Ombudsman is empowered to freely conduct visits to places of detention, following notification to the competent authorities, and has free access to all areas, premises and facilities; to examine the treatment of detainees and the general conditions of detention; and to carry out interviews with detainees and any other person. By virtue of section 6, the competent detention authorities are also required to provide the Ombudsman with all information, data, documents and material and access to records and registers upon request. Section 7 states that following a visit the Ombudsman can make recommendations in a report to the competent detention authority concerning the place of detention with a view to strengthening the protection for and improving the treatment and conditions of detainees, a particular detainee or persons deprived of their liberty in the said place or places of detention, and to prevent the torture and other cruel, inhuman or degrading treatment or punishment of such persons. The competent authority must then consider the recommendations, conduct a dialogue and hold consultations with the Ombudsman and any other authority of the Republic which may be involved in their implementation in order to adopt the appropriate measures. In addition, the Ombudsman, with the express authorisation of the detainee or person concerned, has to bring to the attention of the Attorney General any allegations of human

rights violations made during interviews, regardless of whether or not they concern punishable criminal acts, so that that official can take the matter up (sections 9(1), (2) and 10).

D. Relevant case-law on compensation for violations of human rights as submitted by the Government

23. In *Takis Yiallouros v. Evgenios Nicolaou* ([2001] 1 C.L.R. 558), which concerned an alleged violation by another individual of the claimant's right to a private life and correspondence, the Supreme Court, sitting as a full bench, held that claims for human rights violations were actionable rights that could be pursued in the civil courts against those responsible, with a view to recovering from them, *inter alia,* just and reasonable compensation for any damage suffered as a result. The Supreme Court thus confirmed the existence of an obligation to award general damages for breaches of the fundamental human rights and freedoms guaranteed by the Constitution, even when the violation did not constitute a tort in civil law. It pointed out that the provisions of Article 13 of the Convention formed part of the domestic law and safeguarded the right to an effective remedy for a violation of rights guaranteed by the Convention.

24. In the joined cases of *Evripidis Evripidou v. the Attorney General* and *Petros Patsalidis v. the Attorney General* (action nos. 7252/06 and 141/07, decision of 16 October 2008, unreported), the Nicosia District Court held that the State had breached Article 10(2) of the International Covenant on Civil and Political Rights and the domestic law that had ratified it (Law no. 16/69) by not segregating the plaintiffs, who were being held on remand, from convicted persons and by not affording them different treatment appropriate to their status. Relying on *Takis Yiallouros*, the court found that the applicants had a right to compensation for the breach of their rights under the law and awarded them damages of 4,000 euros each. The plaintiffs had been detained on remand for just under eight months at Nicosia Central Prisons and had brought the actions following their release.

III. RELEVANT INTERNATIONAL AND DOMESTIC REPORTS

A. The CPT's 2012 report

25. On 6 December 2012 the CPT released its report on its visit to Cyprus from 12 to 19 May 2008.

26. In its report the CPT pointed out, *inter alia,* that high levels of overcrowding prevailed in nearly all the detention blocks at Nicosia Central Prisons. It also observed the following:

> "B**. Nicosia Central Prisons**
>
> **1. Preliminary remarks**
>
> 62. Since the CPT's previous visit to Nicosia Central Prisons in 2004, the establishment's official capacity of 340 has not changed, whereas the number of inmates has risen from 480 to 520. 80 inmates were on remand and 440 sentenced (296 to long sentences, 18 of which were life sentences); 27 inmates were women and 11 were juveniles under 21 years old. About 54% of the prisoners were foreign nationals.
>
> 63. In its report on the visit in 2004, the CPT outlined its concerns as regards the rampant overcrowding at Nicosia Central Prisons. Since then the situation has further deteriorated, and the Committee understands that the establishment had to cope with even greater overcrowding in 2007 (with 662 inmates reported on 30 July); the population reduction since 2007 was largely due to a general amnesty, rather than to a strategic approach. An occupancy rate of over 152%, as observed during the visit in 2008, represents severe overcrowding, posing challenges to the general infrastructure of the prison, including issues of order and security and classification of prisoners. ...

...

2. Ill-treatment

...

71. Further, the vast majority of inmates had no access to the toilet during the night, when, as the delegation learned, call bells were switched off. As a result, inmates were frequently obliged to urinate and defecate in makeshift receptacles in their cells. The CPT considers that to oblige an inmate to discharge human waste, and more particularly defecate, in a bucket or other receptacle in a confined space used as a shared living area, is degrading, both for the inmate concerned and for all other persons occupying the cell.

...

3. Conditions of detention

a. material conditions

72. High levels of overcrowding prevailed in nearly all of the detention blocks, with older Blocks (1 and 2) being the most severely affected. For example, Block 2B had an official capacity for 36 persons, yet accommodated 73 prisoners. In Blocks 1B, 2A and 2B many persons were obliged to sleep four to a room measuring 10m², or in bunk beds in the blocks' TV-rooms. Further, several cells in Blocks 1B, 2A and 2B had no window at all, resulting in poor ventilation and reduced access to natural light. Sanitary facilities in those Blocks were also severely dilapidated; however, the delegation noted that work was in progress to construct new sanitary facilities for Blocks 1 and 2."

27. The Government's response to the CPT's report, also published on 6 December 2012, included the following observations.

"**Paragraph 71, page 31**

The Administration of the Prison Department has issued an order No. 32/2008, concerning the access of prisoners to toilet facilities whenever necessary. By this order the personnel of the Prison is directed to check and ensure that the call panel in the warden's room is active at all times and especially during the evening hours, so that the prisoners can be assisted and emergency cases can be prevented. It also informs the personnel that the violation of the order consists a disciplinary offence.

...

Page 32, paragraph 74

...

(i) In order to expand the Prison areas, renovations are being made in Blocks 1A, 1B, 2A, 2B, so that 40 new cells as well as additional hygienic places will be built. Renovations are expected to be completed within the year 2011."

B. The CPT's 2014 report

28. On 9 December 2014, the CPT released a report on its visit to Cyprus from 23 September to 1 October 2013.

29. As regards Nicosia Central Prisons, the CPT welcomed the steps that had been taken by the authorities to improve the material conditions within the prison, notably as concerned Block 2, which had undergone a complete renovation. It observed that overcrowding continued. It also stated the following:

"**C. Nicosia Central Prisons**

1. Preliminary remarks

55. At the time of the visit, Nicosia Central Prisons was accommodating 609 inmates for an official capacity of 455. The establishment held 101 male remand prisoners and 451 male sentenced prisoners (308 sentenced to long sentences, of which 23 were life sentences); 46 prisoners were women, 27 sentenced (of whom two were sentenced to life imprisonment) and 19 on remand; and there were 14 male young offenders (18 to 21 year-olds) and four juvenile prisoners (16 and 17year-olds). About 52% of the prison population were foreign nationals.

56. Since the previous visit in 2008, the prison capacity had been increased by 105 places through inter alia the creation of 23 double-occupancy cells on the upper floor of Block 5, the transformation of Block 9 into a young offenders' unit with 30 places, and the provision of additional places in the open prison. Further, Block 2 (A and B) for sentenced prisoners had been completely renovated. However, despite these improvements, the overcrowding in the closed prison remained significant with 523 inmates for 324 places.

...".

3. Conditions of detention

a. material conditions

62. The CPT welcomes the steps taken by the authorities to improve the material conditions within the prison, notably as concerns Block 2 which underwent a complete renovation, including the installation of air conditioning units in the cells. It is intended that Block 1 will also be renovated to the same standard. Despite some wear and tear, Blocks 5 and 8 continued to offer essentially satisfactory material conditions. However, apart from Block 5A, serious overcrowding was evident throughout the prison. It was particularly evident in Blocks 1 and 2, where all the cells designed for single occupancy (some 6m²) were accommodating two persons. Cells of this size are hardly suitable for accommodating one person, never mind two. Further, in Block 1, the two association/television rooms had been converted into multi-occupancy dormitories with prisoners sleeping on bunk-beds. As a result, Block 1B which had an official capacity for 35 persons was accommodating 90 prisoners. The communal sanitary facilities were in an acceptable state of repair although greater efforts should be made to repair promptly the non-functioning urinals and toilets. Many complaints were also received of difficulties in accessing the toilet at night, including in Block 2 where an electronic recording system was in place which could note the time taken for a cell to be unlocked following a request to access the toilet. ...

...

64. The CPT recommends that:

...

- measures be taken to reduce the occupancy levels in Blocks 1, 2, 3, 5 and 8 throughout the prison. To this end, it should be ensured that those cells measuring under 7m² is only used to accommodate one prisoner and that the living space in multi-occupancy cells is at least 4m² per prisoner;

- steps be taken to ensure that a system is in place to ensure that prisoners who need to access the sanitary facilities during periods of lock-up are able to do so in a timely manner.

...

b. regime

65. Prisoners continue to benefit from an open-door regime, which allows them to be out of their cells from 6 a.m. until 9 p.m. during weekdays and to spend some three hours a day in the outdoor exercise yards.

However, from discussions with inmates and prison staff, the lack of activities remains the most problematic aspect of the prison. ..."

30. In their response, also published on 9 December 2014, the Government repeated the comments they had made in their reply to the 2012 report concerning access to toilet facilities at night (see paragraph 27 above).

C. The Ombudsman's report of 6 September 2011

31. On 6 September 2011, the Ombudsman released a report on the conditions of detention and the treatment of detainees at Nicosia Central Prisons. The Ombudsman reiterated the CPT's findings after its 2008 visit and, on the issues of overcrowding and unhygienic conditions, observed:

> "[I]t is evident that detainees are kept in crowded and unsuitable areas for detention. There appears to be an insufficient number of hygiene facilities and showers in comparison to the number of detainees.
>
> ...
>
> Furthermore, it appears that prison staff are unable to cope with the demands created by the high number of detainees. For instance, my office received a complaint that during the night cell bells are deactivated and detainees cannot notify on-duty staff to have access to the toilet or alert them in the case of an emergency. As a result, detainees are obliged to relieve themselves in their cells using bottles and waste-bags.
>
> ...
>
> I am of the opinion that the above treatment is extremely degrading ... and it creates unhygienic conditions for everyone in the prison."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

32. The applicant alleged that his conditions of detention at Nicosia Central Prisons had been inadequate. In this connection he complained of overcrowding, the hygiene conditions and that the cells were cold and lacked adequate light (see paragraph 9 above). The complaint falls to be considered under Article 3 of the Convention, which reads as follows:

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

33. The Government contested that argument.

A. Admissibility

1. The Government's objection as regards non-exhaustion of domestic remedies

(a) The parties' submissions

34. The Government submitted at the outset that the applicant had failed to exhaust domestic remedies. The Cypriot legal system provided a variety of remedies for allegations of violations of Article 3 of the Convention by detainees which, in line with the Court's case-law, were both preventive and compensatory in nature. The Government relied, in particular, on the Court's judgments in *Ananyev and Others v. Russia* (nos. 42525/07 and 60800/08, § 98, 10 January 2012); *Mandić and Jović v. Slovenia* (nos. 5774/10 and 5985/10, § 111, 20 October 2011) and *Norbert Sikorski v. Poland* (no. 17599/05, § 116, 22 October 2009).

35. As far as preventive remedies were concerned, the applicant could have raised his complaints regarding the allegedly inadequate conditions of his detention with the Ombudsman, who was the designated national preventive mechanism under Law no. 2(III)/2009, by which Cyprus had ratified the Optional Protocol to the United Nations Convention against Torture (see paragraph 21 above). The Ombudsman had unrestricted access to all detention facilities and was able to inspect them and conduct interviews with detainees in private. He or she had the power to make recommendations to the authorities for the improvement of the conditions of detention of detainees in general or in respect of a specific detainee. The Ombudsman prepared a report with recommendations and consultations then followed, which aimed at the adoption of measures for the implementation of the

recommendations. Furthermore, any allegations of human rights' violations made by detainees during visits were brought to the attention of the Attorney General, regardless of whether they constituted punishable criminal acts, so that that official could take action (see paragraph 22 above).

36. As to remedies of a compensatory nature, the Government submitted that the applicant could have brought civil proceedings for compensation against the Government. He had had two remedies at his disposal. First, for the time he had spent in detention on remand, he could have brought such proceedings claiming a violation of his rights under Law no. 163(I)/2005. Section 19 of that law set out the rights detainees enjoyed, including the right not to be subjected to ill-treatment and the right to decent conditions of detention and a proper cell. Under section 36(1) there was an actionable right to compensation for those whose rights had been violated under that law. Second, for the time he had spent in detention following his conviction and sentencing, he could have brought an action on the basis of the Supreme Court's judgment in the case of *Takis Yiallouros* (see paragraph 23 above).

37. According to that judgment, alleged human rights violations were actionable and could be pursued in the civil courts with a view to obtaining compensation for damage suffered as a result and any other appropriate remedies the courts were empowered to grant in their civil jurisdiction. The Government noted that in the course of such proceedings the applicant could have sought an interim order. As an example of a successful civil claim by prisoners concerning conditions of detention on the basis of the judgment in *Takis Yiallouros*, and one in which damages had been awarded, the Government relied on the Nicosia District Court's judgment in *Evripidis Evripidou v. the Attorney General* and *Petros Patsalidis v. the Attorney General* (see paragraph 24 above). The Government pointed out that the applicant could have sought an interim order in the course of such proceedings. In the exercise of their civil jurisdiction, the domestic courts had the power under section 32(1) of the Courts of Justice Law (Law no.14/1960 as amended) to grant an injunction (interim, perpetual or mandatory).

38. The applicant made no submissions on the Government's objection.

(b) The Court's assessment

(i) General principles

39. In the context of complaints of inhuman or degrading conditions of detention, the Court has already observed that two types of relief are possible: an improvement in the material conditions of detention, and compensation for the damage or loss sustained on account of such conditions (see *Ananyev and Others*, cited above, § 97). If an applicant has been held in conditions in breach of Article 3, a domestic remedy capable of putting an end to the ongoing violation of his or her right not to be subjected to inhuman or degrading treatment is of the greatest value. However, once the applicant has left the facility in which he or she has endured the inadequate conditions, what remains relevant is that he or she should have an enforceable right to compensation for the violation that has already occurred (ibid.).

40. Where the fundamental right to protection against torture, inhuman and degrading treatment is concerned, the preventive and compensatory remedies have to be complementary in order to be considered effective. The existence of a preventive remedy is indispensable for the effective protection of individuals against the kind of treatment prohibited by Article 3. Indeed, the special importance attached by the Convention to this provision requires, in the Court's view, the States parties to establish, over and above a compensatory remedy, an effective mechanism in order to put an end to such treatment rapidly (see *Story and Others v. Malta*, nos. 56854/13 and 2 others, § 73, 29 October 2015 with further references). The need, however, to have both of those remedies does not imply that they should be available in the same judicial proceedings (ibid.).

41. It is incumbent on the Government claiming non-exhaustion of domestic remedies to satisfy the Court that a remedy was effective and available, both in theory and in practice, at the relevant time

(ibid., § 75).

42. Lastly, the Court reiterates that in order to satisfy the requirements of Article 13, which has a close affinity with the rule of exhaustion of domestic remedies, a decision must be binding and enforceable and must come from an authority that has a sufficiently independent standpoint (ibid., § 76).

(ii) Application to the present case

43. The Court would first emphasise that at the time the present application was lodged with the Court the applicant was 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, not only to compensation for the damage sustained (see *Mandić and Jović*, cited above, § 111).

44. In so far as the Government argue that the applicant should have complained to the Ombudsman, the Court reiterates that, as a general rule, an application to an ombudsman cannot be regarded as an effective remedy for the purposes of Article 35 of the Convention (see *Ananyev and Others*, cited above, §§ 105-106, and *Aleksandr Makarov v. Russia*, no. 15217/07, § 83, 12 March 2009). For a remedy to be considered effective it should be capable of providing redress for the complainant. Despite the powers granted to the Ombudsman under Law no. 2(III)/2009 (see paragraphs 21-22 above), that official can only make recommendations to the authorities and lacks the power to issue a legally binding decision that would be capable of bringing about an improvement in a complainant's situation or serve as a basis for obtaining compensation. While the Ombudsman's activities may usefully contribute to a general improvement in conditions of detention, he or she remains unable, in view of the specific remit, to provide redress in individual cases as required by the Convention (see *Ananyev and Others*, cited above, § 106). It follows that recourse to the Ombudsman does not constitute an effective remedy.

45. To the extent that the Government referred to a civil action - be it under Law no. 163(I)/2005 (see paragraphs 18-20 above) or on the basis of the *Takis Yiallouros* judgment (see paragraphs 23 and 36 above) - that constitutes a purely compensatory remedy. It does not provide a way to improve the conditions of detention of the person concerned and thus lacks the preventive element required (ibid., § 98). The Court notes in this respect that the plaintiffs in the cases of *Evripidis Evripidou and Petros Patsalidis* (see paragraph 24 above) had brought proceedings following their release and had only sought compensation. Furthermore, although the Government mentioned the power of the domestic courts to grant injunctions in their civil jurisdiction and indicated that the applicant could have applied for an interim order in the context of civil proceedings, they did not provide any further explanation; their submission in that respect therefore remained vague. Nor is there any indication that an application for interim measures in such a case had any chances of success (see, *mutatis mutandis*, *Story and Others*, cited above, § 84).

46. In view of the foregoing, the Court finds that the Government have not established the existence of effective remedies in respect of the applicant's complaint. Accordingly, the application cannot be rejected for failure to exhaust domestic remedies.

47. It remains, however, to be seen whether the application complies with the other admissibility criteria under Article 35 of the Convention.

2. Other grounds of admissibility

(a) The parties' submissions

48. The Government submitted that the applicant's description of the conditions of his detention, both with regard to the size of his cells and the hygiene conditions, was unfounded (see paragraph 9 above).

49. With reference to his specific allegation about overcrowded cells in which detainees only had 0.5 sq. m to 1.7 sq. m of personal space, the Government submitted that the applicant had probably been referring to Block 2B, and in particular to his placement in one of the two larger cells. There, he would have had approximately 2.8 to 3.9 sq. m of personal space, depending on whether he had shared the cell with five, six or seven inmates. In the dormitory, he would have had from 1.8 sq. m to 4.5 sq. m of personal space, subject to the number of other inmates there at the time. The applicant's reference to "cold cells" suggested that he had been held in one of the larger cells or the dormitory in early spring or winter. If so, he would have disposed of between 2.04 and 3.2 sq. m of personal space in the dormitory as the daily occupancy records showed that the block concerned had accommodated between 94 and 110 inmates per day during those periods (see paragraph 13 above). The Government pointed out, however, that the applicant would have been held in those conditions for only a short period of time, about a month and a half, and that his detention had been accompanied by sufficient freedom of movement inside the prison, including the prison yard (see paragraph 15 above). Furthermore, proper regard should be had to the fact that the dormitory in Block 2B, where the applicant had probably been held, had nineteen windows allowing natural light and ventilation (see paragraph 12 above). Lastly, the fact that the applicant had been moved from Block 2B and placed in Block 2A as soon as renovation work on the latter had been completed indicated that the applicant had not been detained in Block 2B with the aim of humiliating or debasing him.

50. As regards the other blocks, the Government, relying on the daily occupancy records, submitted that the number of inmates in both Block 5 and Block 2A during the period the applicant had been detained there had not exceeded capacity. There had thus been a maximum of two detainees in each cell. That meant that if the applicant had shared a cell with another inmate, he would have disposed of 3.1 sq. m of personal space in Block 5 and of 4.99 sq. m. in Block 2A.

51. With regard to the CPT's 2014 report (see paragraphs 28-29 above) recommendations and had made serious efforts to tackle overcrowding in Nicosia Central Prisons, the CPT's purpose was distinct from that of the Court. The CPT had a preventive role, whereas the Court had to adjudicate on the particular circumstances of cases before it. They also emphasised that the practice of switching off cell bells during the night, which had resulted in inmates not having access to toilets during that hours, had been discontinued following the CPT's 2012 report. By virtue of order no. 32/2008, prison staff had to check and ensure that the call panel in the warden's room was active at all times, especially during the evening, so that prisoners could be assisted and emergencies prevented. A violation of the order constituted a disciplinary offence (see paragraph 16 above).

52. The Government concluded by saying that the authorities had not failed in their obligation to ensure that the applicant had not been subjected to distress or hardship exceeding the unavoidable level of suffering inherent in detention. In any event, they argued that the conditions of the applicant's detention had not met the threshold required for a violation of Article 3. They therefore argued that the complaint was manifestly-ill founded.

53. The applicant did not make any submissions in reply to the Government but subsequently sent a copy of the CPT's 2014 report to the Court as the document he wished to rely on.

(b) The Court's assessment

54. The Court notes that the application 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.

B. Merits

1. General principles

55. The Court refers to the principles summarised in its case-law regarding inadequate conditions of detention (for a summary of the relevant general principles see the recent Grand Chamber judgment in the case of *Muršić v. Croatia* [GC], no. 7334/13, §§ §§ 96-141, ECHR 2016).

2. Application to the present case

56. The Court observes at the outset that the applicant spent the entire period of his detention, that is, from 14 September 2010 until 18 May 2012, at Nicosia Central Prisons. This period falls between the CPT's visits in 2008 and 2013. The findings of the CPT therefore in its 2012 and 2014 reports (see paragraphs 25-26 and 28-29 above), provide a reliable basis for the assessment of the conditions in which he was imprisoned (see, for example, *Kehayov v. Bulgaria*, no. 41035/98, § 66, 18 January 2005). The Ombudsman's report of September 2011 is also pertinent (see paragraph 31 above).

57. The Court points out that both the CPT and the Ombudsman raised concerns in their respective reports about, *inter alia,* the general problem of overcrowding and access to the toilets at night in these prisons (see paragraphs 25-26, 28-29 and 31 above).

58. As to overcrowding, in their submissions the Government have admitted that when the applicant was held in Block 2B, depending on the number of the inmates detained with him in the larger cell or the dormitory, he would have had under 3 sq. m. of personal space during part of his detention there. For example, when the applicant was held in the dormitory his personal space could have been as low as 1.8 sq. m. This is clearly below the acceptable minimum standard. Taking into account the relevant principles enunciated in its case-law (see paragraph 55 above), the Court finds that a strong presumption of a violation of Article 3 arises in the case at issue. Turning to whether there are factors capable of rebutting that presumption, the Court notes that although the authorities did not keep records in relation to the occupancy of cells and the dormitory, they submitted that the applicant would have been held in those conditions for about one month and a half, a period which cannot be considered as a short, occasional and minor reduction in the required personal space (see *Muršić*, cited above, §§ 151□153). The presumption of a violation of Article 3 therefore applies in this respect.

59. In so far as hygiene conditions are concerned, the Court notes that throughout the applicant's detention in the three different blocks, he was deprived of access to toilets when the cells were locked, forcing him to relieve his sanitary needs in a bottle and waste bag. Although the Government disputed this, the CPT's and the Ombudsman's reports that cover the relevant period lend credence to the applicant's allegations.

60. In view of the above, the Court finds that the conditions of the applicant's detention subjected him to hardship going beyond the unavoidable level of suffering inherent in detention and thus amounted to degrading treatment prohibited by Article 3 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

61. 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."

62. The applicant did not submit a claim for just satisfaction.

63. The Court therefore makes no award in this regard and finds no exceptional circumstances which would warrant a different conclusion (see *Nagmetov v. Russia* [GC], no. 35589/08, §§ 76-78, 30 March 2017).

FOR THESE REASONS, THE COURT

1. *Declares*, by a majority, the application admissible;

2. *Holds*, by four votes to three, that there has been a violation of Article 3 of the Convention on account of the conditions of the applicant's detention at Nicosia Central Prisons.

Done in English, and notified in writing on 3 April 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips	Helena Jäderblom
Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following separate opinions are annexed to this judgment:
(a) Dissenting opinion of Judge Jäderblom;

(b) Joint dissenting opinion of Judges Pastor Vilanova and Serghides.

H.J.
J.S.P.

DISSENTING OPINION OF JUDGE JÄDERBLOM

1. I respectfully disagree with the majority's decision to declare the application in this case admissible. In my opinion the application should be declared inadmissible for the following reasons.

2. The applicant complained about overcrowding and other conditions of his detention in Nicosia Central Prisons, where he was detained from 14 September 2010 to 18 May 2012. During this period he was successively held in three different blocks, the last being in Block 2A from 5 October 2011 until his release.

3. According to the Court's case-law, in order to fall under Article 3 of the Convention, ill-treatment must attain a minimum level of severity. 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 gender, age and state of health of the victim. Cases concerning allegations of inadequate conditions of detention do not lend themselves to a rigorous application of the principle that he who alleges something must prove that allegation because in such instances the respondent Government alone have access to information capable of corroborating or refuting these allegations. Accordingly, the Court is mindful of the fact that applicants might experience certain difficulties in procuring evidence to substantiate a complaint in that connection. Nevertheless, applicants in such cases 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, amongst many authorities, *Artur Parkhomenko v. Ukraine*, no. 40464/05, § 60, 16 February 2017, and *Danilov v. Ukraine*, no. 2585/06, § 78, 13 March 2014).

I. Conditions in Block 2A

4. As regards the alleged overcrowding of the cell in Block 2A the applicant claimed that during the entire period of detention he had been held in overcrowded cells where he had only had between 0.5 and 1.7 sq. m of personal space. The applicant has, however, neither specified the personal space afforded to him in Block 2A nor commented on the Government's submission that he was afforded 4.9 sq. m of personal space there. I therefore accept that the space afforded to the applicant in Block 2A did not fall under the minimum requirements under Article 3 (see *Muršić v. Croatia* [GC], no. 7334/13, ECHR 2016).

5. The applicant has failed to provide any details or any evidence in relation to his allegations about cold cells and lack of proper light, or that "sometimes" he had to wait two to three hours to use the toilet. With regard to the applicant's submission that there was no access to the toilets after the cells were locked, it should be noted that the findings of the CPT in its 2012 report concerned its visit in May 2008, more than two years before the applicant was detained. The Government submitted that the practice of switching off the bells at night, which had resulted in a lack of access to toilets during those hours, had been discontinued in accordance with an order issued in 2008. That information was also provided to the CPT in the Government's response to the report. The CPT observed in general in its 2014 report on its visit in 2013 that it had received complaints of difficulties in accessing the toilets at night. It did not, however, go further, nor did it repeat its findings in its previous report that there was no access to the toilets by the vast majority of inmates and that they were still forced to defecate and urinate in makeshift receptacles in their cells. Therefore it cannot be concluded that the situation was the same in 2013 as in 2008 and that this problem persisted throughout these years with no improvement. Furthermore, in view of the lack of specific information and evidence from the applicant, that observation does not provide a sufficient basis for drawing a factual inference that during his detention the applicant had no access to the toilet in Block 2A after the cells were locked. Similarly, the Ombudsman's comments on the matter in her report of September 2011 concern a complaint filed with her office and are very general, with no reference to dates.

6. In view of the foregoing, I consider that this part of the application has not been properly substantiated by the applicant (see, *inter alia*, *Ustyugov v. Ukraine* (dec.), no. 251/04, 1 September 2015; *Ildani v. Georgia*, no. 65391/09, § 27, 23 April 2013; and *Shkurenko v. Russia* (dec.), no. 15010/04, 10 September 2009). It should therefore be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

II. The complaint about conditions in the other two blocks

7. The next point to assess is whether the remaining complaints regarding the conditions of detention during the periods preceding that spent in Block 2A should be dealt with on the merits. To that end it must first be determined whether the application was made in compliance with the six-month time-limit set out in Article 35 § 1 of the Convention.

8. As a rule, the six-month period runs from the date of the final decision in the process of exhaustion of domestic remedies. Where no effective remedy is available to the applicant, the period runs from the date of the acts or measures complained of, or from the date of the knowledge of that act or its effect on or prejudice to the applicant (see *Ananyev and Others, v. Russia*, nos. 42525/07 and 60800/08, § 98, 10 January 2012, § 72). In cases featuring a continuing situation, the six-month period runs from the cessation of that situation (ibid.).

9. As far as complaints about conditions of detention are concerned, a period of detention for the purposes of the six-month rule should be regarded as a "continuing situation" as long as the detention

has been effected in the same type of facility and in substantially similar conditions; in such a situation, it does not matter, for example, that a detainee was transferred between cells or wings within the same remand prison (ibid., § 77). However, a significant change in the detention regime, even when it occurs within the same facility, would put an end to the "continuous situation" (ibid., § 77). A complaint about conditions of detention must be filed within six months of the end of the situation complained of or, if there was an effective domestic remedy to be exhausted, of the final decision in the process of exhaustion (ibid., § 78).

10. In the present case the applicant spent the entire period of his detention in Nicosia Central Prisons. In his application form, the applicant, without specifying the exact period, submitted that he had been held in overcrowded cells where he had only had between 0.5 sq. m and 1.7 sq. m of personal space.

11. The measurements the applicant has provided as to the personal space afforded to him during his detention appear to correspond to Block 2B and, in particular, to the dormitory, as he had more personal space in the other cells in that block. If the number of inmates held in the dormitory reached the maximum capacity during the period of his detention, then the applicant would have had 1.8 sq. m of personal space at his disposal. On 5 October 2011, however, he was transferred from Block 2B to Block 2A, where he was kept until his release on 18 May 2012. That block had been renovated and the applicant was held in a double occupancy cell in which he had 4.9 sq. m of personal space at his disposal.

12. In the absence of any evidence or argument to the contrary by the applicant, I consider that his transfer to a renovated block, with an improvement in his general conditions of detention, and his placement in a renovated cell in which he was afforded considerably more personal space, namely 4.9 sq. m, constituted a significant change in his conditions of detention (see *Bouros and Others v. Greece*, nos. 51653/12 and 4 others, §§ 69 and 73, 12 March 2015; see also *Dolgov and Silayev v. Russia* (dec.) [Committee], nos.11215/10 and 55068/12, § 21, 4 October 2016).

13. Given that the applicant lodged his application with the Court on 8 April 2012, that is more than six months after he was moved to Block 2A, his complaints relating to his detention in the other blocks were lodged out of time and should be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

JOINT DISSENTING OPINION OF JUDGES PASTOR VILANOVA AND SERGHIDES

1. This case concerns a complaint by a Polish national against Cyprus, alleging a violation of Article 3 of the Convention in that the conditions of his detention at Nicosia Central Prisons were inadequate.

2. On 14 September 2010 the applicant was detained at Nicosia Central Prisons, and on 11 January 2011 was convicted of a number of offences (including burglary, theft, various road traffic offences and unlawful residence). On 24 January 2011 the national court imposed four sentences ranging from six months' to two years' imprisonment, to run concurrently from 5 September 2010. He was released on 18 May 2012 following the suspension of his sentence by virtue of a decree issued by the President of the Republic concerning a number of prisoners.

3. During his detention, the applicant was placed in three different blocks:

(a) Block 5 (from 14 September 2010 until 24 January 2011),

(b) Block 2B (from 24 January 2011 until 5 October 2011), and

(c) Block 2A (from 5 October 2011 until 18 May 2012).

4. The applicant's complaints are the following:

(a) He was held in overcrowded cells where there was only 0.5 to 1.7 sq. m of personal space for each detainee.

(b) The cells were cold and lacked adequate light.

(c) There were no toilets in the cells. He alleges that he had sometimes to wait two to three hours to use the toilet, and, when the cells were locked, he had to urinate into a bottle and defecate into a waste bag.

5. All the relevant facts and details of the case, including all the relevant domestic and international-law materials and practice are set out in the judgment (see paragraphs 5-31) and for this reason, it is unnecessary to repeat them here. Thus, we will concentrate only on what we consider necessary for our dissenting opinion.

6. We agree with the majority's finding that the Government's objection regarding non-exhaustion of domestic remedies should be dismissed. The respondent Government have not established the existence of effective remedies in respect of the applicant's complaint.

7. With all due respect, however, we are unable to agree with the majority's finding that the application is admissible and that there has been a violation of Article 3 of the Convention. In our view, the application should have been declared inadmissible for the reasons we will set out below.

I. Compliance with the six-month time-limit: the applicant's detention in Blocks 5 and 2B

8. We respectfully disagree with the majority view that the entire period of the applicant's detention should be considered as a continuing situation and that therefore the six-month period should run from the date of his release, namely 18 May 2012. On this basis, the majority concluded that the application should be considered as having been lodged in time and thus admissible. We will now explain the reasons for our disagreement.

9. It is a general Convention principle that, in contrast to an objection of non-exhaustion of domestic remedies, which must be raised by the respondent Government, the Court cannot set aside the application of the six-month rule solely because a government have not made a preliminary objection to that effect (see *Ananyev and Others v. Russia,* nos. 42525/07 and 60800/08, § 71, 10 January 2012).

10. As a rule, the six-month period runs from the date of the final decision in the process of exhaustion of domestic remedies. Where no effective remedy is available to the applicant, the period runs from the date of the acts or measures complained of, or from the date of the knowledge of that act or its effect on or prejudice to the applicant (ibid., § 72). In cases concerning a continuing situation, the six-month period runs from the end of that situation (ibid.).

11. We will now explain how our approach differs from that of the majority: in respect of the complaints about conditions of detention, a period of detention for the purposes of the six-month rule should be regarded as a "continuing situation" as long as the detention has taken place in the same type of facility and in substantially similar conditions. In such a situation, it is irrelevant, if, for example, a detainee was transferred between cells or wings within the same remand prison (ibid, § 77). Furthermore, short periods of absence from a facility for interviews or other procedural acts would not break the chain of continuity (ibid. § 78). However, even when it occurs within the same facility, a significant change in the detention regime would break this chain (ibid. § 77). A complaint about conditions of detention must be filed within six months from the end of the situation complained of or, if

there was an effective domestic remedy to be exhausted, of the final decision in the process of exhaustion (ibid., § 78).

12. In the present case, it should be observed that the applicant spent the entire period of his detention, amounting to about twenty months, at Nicosia Central Prisons. In his application form, the applicant, without specifying the exact period, submitted that he had been held in overcrowded cells where he had had only between 0.5 sq. m and 1.7 sq. m of personal space (see paragraph 9 of the judgment). From the documents submitted by the Government, it can be observed that the applicant was detained in three different blocks of the prison and that the size of the cells and the number of persons detained with him varied significantly from block to block. The applicant did not submit observations in response to those of the Government and did not, therefore, challenge their submissions on his conditions of detention.

13. It should be noted that the measurements the applicant has given with regard to the personal space available to him during his detention appear to correspond to Block 2B and, in particular, to the dormitory, as he had more personal space in the other arrangements in that block (see paragraphs 11 and 14 of the judgment). If the number of inmates held in the dormitory reached its maximum capacity during the period of his detention, then the applicant would have had 1.8 sq. m of personal space. On 5 October 2011, however, he was transferred from Block 2B to Block 2A, where he was held until his release on 18 May 2012. That block had been renovated and the applicant was held in a double occupancy cell in which he had 4.9 sq. m of personal space.

14. We respectfully disagree with the majority that "the CPT's and the Ombudsman's reports that cover the relevant period lend credence to the applicant's allegations" (see paragraph 59 of the judgment). The two CPT reports are based on visits which were made, respectively, more than 2 years before the applicant's detention and about eighteen months after his release. Hence, the "before and after" argument should not be applied in the present case: this argument could only be valid or give rise to strong presumption if the same thing happened immediately or at least within a reasonable time before, as well as immediately or within a reasonable time after, an event and not when a significant period of time has elapsed since the relevant event. Furthermore, the Ombudsman merely reiterated what was stated in the first CPT report, and her report was published before the applicant was transferred to the renovated cell. In any event, the applicant's case should be judged in the light of the facts of his case and not on the basis of the assumptions contained in the CPT's reports, which are not even chronologically relevant to the applicant's situation. In addition, as is rightly emphasised in paragraph 51 of the judgment, the CPT has a preventive role, whereas the Court has to adjudicate on the basis of the particular facts before it. It is important to underline that the applicant did not make any submissions in reply to the Government. Instead, he decided to send a copy of the CPT's 2014 report to the Court on the assumption that the report would substantiate his case (see paragraph 53 of the judgment). However, this report (see paragraph 29 of the judgment) supports the Government's allegation that Block 2A, which was earmarked for convicted prisoners, had been completely renovated. In this connection, it is important to note that the safeguarding and effective protection of a right under the Convention, in the present case of the applicant's right under Article 3, does not depend only on the practical and effective interpretation and application of the relevant Convention provision by the Court, but also on the proper handling of the case by an applicant. In other words, the Convention mechanism for the effective protection of a right in line with the principle of effectiveness, which is inherent in the Convention, cannot be triggered unless a case is properly handled by the applicant. In the present case, however, we are unable to conclude that the applicant presented and proved his case sufficiently.

15. If a case were to be decided only on the basis of CPT reports and not on its facts, this would amount to finding a violation of Article 3 in the case of every detainee, without distinction, who was held in the Nicosia Central Prisons during the period of 12 May 2008 to 1 October 2013, when the CPT's first and second visits took place, without any further examination of the specific facts of his or her case. But such a result would surely not be factually and legally acceptable.

16. In the absence of any evidence or argument to the contrary by the applicant, we consider that his transfer to a renovated block, with an improvement in his general conditions of detention, and his placement in a renovated cell in which he was afforded considerably more personal space, namely 4.9 sq. m, constituted a significant change in the applicant's conditions of detention (see *Bouros and Others v. Greece*, nos. 51653/12 and 4 others, §§ 69 and 73, 12 March 2015; see also *Dolgov and Silayev v. Russia* (dec.) nos.11215/10 and 55068/12, § 21, 4 October 2016).

17. It must be clarified in this connection that the Court, in such cases, looks at the conditions of detention as a whole and their cumulative effect in order to decide whether there has been a violation (see, for example, on toilets and sanitary facilities *Szafrański v. Poland*, no. 17249/12, §§ 25-29, 15 December 2015, and *Podeschi v. San Marino*, no. 66357/14, §§ 111-118, 13 April 2017, where these factors were not enough for a finding of a violation under Article 3; see also *Story and Others v. Malta*, nos. 56854/13 and 2 others, §§ 107-129, 29 October 2015, with further references). So, for example, from the moment that the applicant, when transferred from Block 2B to Block 2A, was no longer detained in an overcrowded cell but had 4.9 sq. m at his disposal and benefited from renovated facilities, any possible difficulties in access to the toilets when the cells were locked would have to be considered in the context of the overall circumstances of his detention, and not in isolation. Further, the lack of details given by the applicant on the subject-matter does not provide a sufficient basis to lead to a finding of a violation of Article 3, in view of the fact that there were no substantiated problems in his detention once he had been moved from an overcrowded cell.

18. In conclusion, given that the applicant lodged his application with the Court on 8 April 2012, that is, more than six months after he was transferred to Block 2A, his complaints relating to his detention in Block 2B, and consequently the preceding period of detention in Block 5, were not lodged in time and must therefore be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

II. The well-foundedness of the complaint concerning the conditions of the applicant's detention in Block 2A

19. We will now turn to whether the applicant's complaint concerning the conditions of his detention in Block 2A is valid.

20. In order to fall under Article 3 of the Convention, ill-treatment must attain a minimum level of severity. 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 gender, age and state of health of the victim. Cases concerning allegations of inadequate conditions of detention do not lend themselves to a rigorous application of the principle *affirmanti incumbit probatio* (he who alleges something must prove that allegation) because in such cases only the respondent Government have access to information capable of corroborating or refuting these allegations. Accordingly, one should be mindful of the fact that applicants might experience certain difficulties in procuring evidence to substantiate a complaint in this context. Nevertheless, 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, amongst many authorities, *Artur Parkhomenko v. Ukraine*, no. 40464/05, § 60, 16 February 2017; *Danilov v. Ukraine*, no. 2585/06, § 78, 13 March 2014; and *Mandić and Jović v. Slovenia* (nos. 5774/10 and 5985/05, § 59, 20 October 2011).

21. In our humble view, this requirement has not been met in the present case, since the applicant's complaints regarding his conditions of detention were based on vague and broad statements. It should also be noted that the applicant has not challenged the Government's description of the conditions of his detention (see, for example, *Ukhan v. Ukraine*, no. 30628/02, § 65, 18 December 2008).

22. As has already been observed, the applicant was detained in three different blocks and it is unclear to which particular block and period of detention he was referring in his application. The

applicant's figures on the personal space allocated to each inmate do not correspond to the conditions in Block 2A where, according to the Government, he had 4.9 sq. m. of personal space. Furthermore, the applicant has failed to provide any details or evidence (including any evidence from his co-detainees) to substantiate his allegations about cold cells, lack of proper light and inadequate access to the toilets. With regard to the applicant's submission that there was no access to the toilets after the cells were locked, it should be observed that the CPT's findings in its 2012 report concerned its visit in May 2008 (see paragraph 25 of the judgment), thus dating back to more than two years before the applicant was detained. The CPT's findings in its 2014 report concerned its visit towards the end of September 2013 (see paragraph 28 of the judgment), that is, about eighteen months after the applicant's release. It should also be noted that, although it is stated in paragraph 71 of the CPT's 2012 report that "the vast majority of inmates had no access to the toilet during the night, when, as the delegation learned, call bells were switch off" and "[a]s a result, inmates were frequently obliged to urinate and defecate in makeshift receptacles in their cells", paragraph 62 of the CPT's 2014 report states something quite different, indicating an improvement in the situation:

> "The communal sanitary facilities *were in an acceptable state of repair* although greater efforts should be made to repair promptly the non-functioning urinal and toilets. Many complaints were also received of difficulties in accessing to toilet at night, including in Block 2, where an electronic recording system was in place which could note the time taken for a cell to be unlocked following a request to access the toilet ..." (our emphasis)

Further, the above statement is undoubtedly too general, referring only to "block 2" as whole and without specifying what these difficulties were. There is no indication that there were any issues of access in Block 2A - that is, the last block in which the applicant was detained. It is also to be noted in this connection that the CTP made no mention at all of any problem of access to toilets in the summary of their 2014 report (concerning their visit to Cyprus in September/October 2013), published on their website after receiving the Cypriot Government's response.

23. The Government has submitted that an order was issued in 2008 and that the practice of switching off the bells at night, which had resulted in a lack of access to toilets during that period, had stopped (see paragraph 27 of the judgment). That information was also included in the Government's response to the CPT's report (ibid.)**.** The Court notes that the CPT generally observed in its 2014 report, which refers to its 2013 visit, that it had received complaints of difficulties in accessing the toilets at night (see paragraph 22 above). It did not, however, go further, nor did it repeat its findings in its previous report that there was no access to the toilets by the vast majority of inmates and that they were still forced to defecate and urinate in makeshift receptacles in their cells. Therefore, it cannot be concluded that the situation in 2013 was the same as in 2008 and that this problem persisted throughout these years with no improvement. Furthermore, in view of the lack of a sufficient explanation and evidence from the applicant, that observation does not provide a sufficient basis for drawing a factual inference that during his detention the applicant had no access to the toilet in Block 2A after the cells were locked. Similarly, the Ombudsman's comments on the matter in her report of September 2011 concern a complaint filed with her office and are therefore not directly relevant to the case at hand. Moreover, they are very general, with no reference to dates (see paragraph 31 of the judgment).

24. In view of the foregoing, we would humbly conclude that this part of the application has not been properly and sufficiently substantiated by the applicant (see, *inter alia*, *Ustyugov v. Ukraine* (dec.), no. 251/04, 1 September 2015; *Ildani v. Georgia*, no. 65391/09, § 27, 23 April 2013; and *Shkurenko v. Russia* (dec.), no. 15010/04, 10 September 2009). Consequently, in our view it should have been declared inadmissible and rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

III. Conclusion

25. In conclusion, and for the reasons set out above, we have voted to declare the application inadmissible.