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Detention conditions and treatment of prisoners

(See also Prisoners' health rights)

Solitary confinement

Ilascu and Others v. Moldova and Russia (application no. 48787/99)

8.7.2004 (Grand Chamber)

Ilie Ilăscu, a Moldovan opposition politician at the time, was detained for eight years in very strict isolation in the Transnistrian region of Moldova, before his conviction and sentence to death for a number of terrorist-related offences was de facto quashed and he was released in 2001. While on death row, he had no contact with other prisoners, no news from the outside - since he was not permitted to send or receive mail - and no right to contact his lawyer or receive regular visits from his family. His cell was unheated, he was deprived of food as a punishment and he was able to take showers only very rarely. These conditions and a lack of medical care caused his health to deteriorate.

The Court held that as a whole these conditions amounted to torture, in violation of Article 3 of the European Convention on Human Rights (prohibition of torture and inhuman or degrading treatment) by Russia. (The Court found that the Transnistrian region of Moldova had been under the effective authority or at least under the decisive influence of the Russian Government at the time.)

Ramirez Sanchez v. France (59450/00)

04.07.2006 (Grand Chamber)

Ilich Ramirez Sanchez, an international terrorist – known as “Carlos the Jackal” – was detained in solitary confinement in France for eight years following his conviction for terrorist-related offences. He was segregated from other prisoners, but had access to TV and newspapers, and was allowed to receive visits from family and lawyers.

The Court held that there had been no violation of Article 3. It found that, having regard in particular to Mr Ramirez Sanchez' character and the danger he posed, the conditions in which he had been held had not reached the minimum level of severity necessary to constitute inhuman or degrading treatment. The Court took note of the fact that, several months before its judgment, France had ended the solitary confinement.

At the same time, the Court shared concerns by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) about the possible long-term effects of Mr Ramirez Sanchez' isolation and underlined that solitary confinement, even in cases entailing only relative isolation, could not be imposed on a prisoner indefinitely. A State had to periodically review a prisoner's solitary confinement, give reasons for any decision to continue segregation and monitor the prisoner's physical and mental condition.

Forced feeding and compulsory medical intervention

Nevmerzhitsky v. Ukraine (54825/00)

05.04.2005 (Chamber)

Yevgen Nevmerzhitsky spent two years and ten months in pre-trial detention between 1997 and 2000. He contracted various skin diseases in prison and his health significantly deteriorated. His detention was extended five times and his request for release was rejected even though the maximum statutory period of permitted detention had expired. In the course of his detention, Mr Nevmerzhitsky went on hunger strike on a number of occasions and was subjected to forced feeding.

The Court found a violation of Article 3. A measure such as forced feeding could not be considered degrading if it was necessary to save a person's life. However, the Government had not demonstrated that force-feeding had been medically necessary in Mr Nevmerzhitsky's case. The Court therefore concluded that this measure had been arbitrary; procedural safeguards had not been respected in the face of his conscious refusal to take food. Moreover, the manner of forced feeding, involving handcuffs, a mouth-widener and a special rubber tube inserted into the food channel, had amounted to torture.

Jalloh v. Germany (54810/00)

11.07.2006 (Grand Chamber)

Suspected of drug dealing, Abu Jalloh was administered an emetic in hospital against his will to make him regurgitate bags containing drugs he was believed to have swallowed when arrested. The drugs were subsequently used as evidence in the criminal proceedings against him.

The Court held that there had been a violation of Article 3. While recognising the public interest in controlling drug trafficking, the Court noted that Mr Jalloh had not been a major drug dealer and that the prosecuting authorities could have waited for the drugs to pass out of his system naturally, that being the method used by many other Convention States to investigate drug offences. The forced administration of an emetic posed a health risk, seeing that the method had caused two deaths in Germany. Moreover, the administration in Mr Jalloh's case, forcibly by a tube, must have caused him pain and anxiety.

(Hygienic) condition of cells

Kalashnikov v. Russia (47095/99)

15.7.2002 (Chamber)

Valeriy Kalashnikov spent almost five years in pre-trial detention, charged with embezzlement, before he was acquitted in 2000. He complained about the conditions in the detention centre where he was held, in particular that his cell was overcrowded – on 17 square meters 24 inmates were held –, that being surrounded by heavy smokers, he was forced to become a passive smoker, that it was impossible to sleep properly as the TV and cell light were never turned off, that the cell was overrun with cockroaches and ants, and that he contracted a variety of skin diseases and fungal infections, losing his toenails and some of his fingernails as a consequence.

Although the Court accepted that there had been no indication of a positive intention to humiliate Mr Kalashnikov, it considered that the conditions of detention had amounted to degrading treatment in violation of Article 3. In particular the severely overcrowded and insanitary environment and its detrimental effect on the applicant's health and well-being, combined with the length of the period during which the applicant was detained in such conditions, contributed to this finding. As regards the overcrowding, the Court emphasised that the CPT had set 7 m² per prisoner as an approximate, desirable guideline for a detention cell.

Modârcă v. Moldova (14437/05)

10.5.2007 (Chamber)

In 2005, Vladimir Modârcă, who suffers from osteoporosis, spent nine months of his pre-trial detention in a 10m² cell with three other detainees. The cell had very limited access to daylight; it was not properly heated or ventilated; electricity and water supplies were periodically discontinued. Mr Modârcă was not provided with bed linen or prison clothes; the dining table was close to the toilet, and the daily expenses for food were limited to EUR 0.28 for each detainee. The CPT had reported that the food was "repulsive and virtually inedible", following a visit to the prison in September 2004.

The Court concluded that the cumulative effect of the conditions of Mr Modârcă's detention and the time he was forced to endure them amounted to a violation of Article 3.

Florea v. Romania (application no. 37186/03)

14.09.2010 (Chamber), not final

Suffering from chronic hepatitis and arterial hypertension, Gheorghe Florea was detained in prison in Botasani, Romania, from 2002 to 2005. For about nine months he had to share a cell with only 35 beds with between 110 and 120 other prisoners. Throughout his detention he was kept in cells with other prisoners who were smokers.

The Court found Mr Florea's detention conditions to have been in breach of Article 3. The State had to ensure that prisoners were not subjected to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that their health was not compromised.

Strip searches of prisoners

Iwańczuk v. Poland (25196/94)

15.11.2001 (Chamber)

During his detention on remand, Krzysztof Iwańczuk asked for permission to vote in the parliamentary elections in 1993. He was told by a group of prison guards that to be allowed to vote he would have to undress and undergo a body search. He took off his clothes except his underwear, at which point the prison guards ridiculed him, exchanged humiliating remarks about his body and abused him verbally. He was ordered to strip naked, but refused to do so and was then taken back to his cell without being allowed to vote.

The Court found that this behaviour amounted to degrading treatment, in violation of Article 3. There had been no compelling reasons to find that the order to strip naked before the prison guards was necessary and justified for security reasons, given Mr Iwańczuk's peaceful behaviour during his detention, the fact that he was not charged with a violent crime, that he had no previous criminal record and that it had not been shown that there were reasons to fear that he would behave violently.

While strip searches might be necessary in certain cases to ensure prison security or prevent disorder in prisons, they had to be conducted in an appropriate manner. Behaviour intended to provoke feelings of humiliation and inferiority, as in this case, showed a lack of respect for a prisoner's human dignity.

Valašinas v. Lithuania (44558/98)

24.7.2001 (Chamber)

While serving a prison sentence for the theft, possession and sale of firearms, Juozas Valašinas was ordered, following the visit of a relative, to strip naked in the presence of a woman prison officer, which he claimed had been done in order to humiliate him. He

was then ordered to squat, and his sexual organs and the food he had received from the visitor were examined by guards who wore no gloves.

The Court found that the way in which this particular search had been conducted showed a clear lack of respect for Mr Valašinas, and in effect diminished his human dignity. The Court concluded that it had constituted degrading treatment in breach of Article 3 of the Convention.

Frérot v. France (70204/01)

12.6.2007 (Chamber)

Serving a sentence of life imprisonment for a number of offences including murder and armed robbery, Maxime Frérot, former member of an armed movement of the extreme left, was subjected to strip searches on a regular basis each time he left the visiting room in Fresnes prison, where he was kept between 1994 and 1996. When he refused, he was taken to a disciplinary cell.

The Court held that there had been a violation of Article 3. While it acknowledged that strip searches had been imposed on Mr Frérot in order to maintain security or prevent criminal offences, the Court was struck by the fact that, from one prison in which he was held to another, the search procedure varied. He had been expected to submit to anal inspections only in Fresnes, where there was a presumption that any prisoner returning from the visiting room was hiding objects or substances in the most intimate parts of his person. The Court could therefore understand that the prisoners concerned might feel that they were the victims of arbitrary measures, especially as the search procedure was laid down in a circular and allowed each prison governor a large measure of discretion.

El Shennawy v. France (51246/08)

20.01.2011 (Chamber)

Serving a prison sentence for a number of offences, Mr El Shennawy complained in particular of the strip searches to which he was subjected during the criminal proceedings against him.

The Court held that there had been a violation of Article 3. The searches in question had not been duly based on pressing security needs. Although they had taken place over a short period of time they had been liable to arouse in Mr El Shennawy feelings of arbitrariness, inferiority and anxiety characteristic of a degree of humiliation going beyond the level which the strip-searching of prisoners inevitably entailed.

Multiple transfers

Khider v. France (39364/05)

09.07.2009 (Chamber)

Detained in the context of proceedings against him for a number of offences, including armed robbery carried out as part of a gang, Cyril Khider complained of his detention conditions and the security measures imposed on him as a "prisoner requiring special supervision", in particular repeated transfers from one prison to another, prolonged periods in solitary confinement and systematic body searches.

The Court held that there had been a violation of Article 3.

Payet v. France (19606/08)

20.01.2011 (Chamber)

Serving a prison sentence for murder, Mr Payet complained about the conditions of his detention and his frequent moving between cells and prison buildings for security reasons and the disciplinary penalty to which he was subjected, which entailed placement in cells lacking natural light and proper hygienic conditions.

The Court found a violation of Article 3 with regard to the poor conditions of detention in the punishment wing where Mr Payet was placed (dirty and dilapidated premises, flooding, lack of sufficient light for reading and writing). It found no violation of Article 3 with regard to the security rotations.

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