November 2023
This factsheet does not bind the Court and is not exhaustive

Detention conditions and treatment of prisoners

See also the factsheets on "Detention and mental health", "Hunger strikes in detention", "Life imprisonment", "Prisoners' health rights" and "Secret detention sites".

Conditions of detention and domestic remedies

Peers v. Greece

19 April 2001

In August 1994 the applicant, who had been treated for heroin addiction in the United Kingdom, was arrested at Athens Airport on drug-related charges. He was taken to Koridallos prison in Greece as a remand prisoner and was subsequently convicted. He was first detained in the prison's psychiatric hospital before being moved to the segregation unit of Delta wing and then, Alpha wing. He complained in particular about the conditions of his detention, notably claiming that in Delta wing he had shared a small cell with one other prisoner, with an open toilet, which often failed to work, in hot, cramped conditions with little natural light and no ventilation.

The European Court of Human Rights held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights, finding that the conditions of the applicant's detention in the segregation unit of the Delta wing of the Koridallos prison had amounted to degrading treatment. It took particularly into account that, for at least two months, the applicant had to spend a considerable part of each 24-hour period practically confined to his bed in a cell, with no ventilation and no window, which would at times become unbearably hot. He also had to use the toilet in the presence of another inmate and be present while the toilet was being used by his cellmate. The Court was of the opinion that the prison conditions complained of had diminished the applicant's human dignity and given rise in him to feelings of anguish and inferiority capable of humiliating and debasing him and possibly breaking his physical or moral resistance.

Kalashnikov v. Russia[1]

15 July 2002

The applicant 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 the applicant, it considered that the conditions of detention had amounted to degrading treatment in **violation of Article 3** (prohibition of inhuman or degrading

[1]. On 16 September 2022 the Russian Federation ceased to be a Party to the European Convention on Human Rights ("the Convention").

treatment) of the Convention. 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 European Committee for the Prevention of Torture (CPT) had set 7 m² per prisoner as an approximate, desirable guideline for a detention cell.

Modârcă v. Moldova

10 May 2007

In 2005, the applicant, 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. The applicant 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 0.28 euros (EUR) for each detainee. The applicant alleged, among others, that he had been held in inhuman and degrading conditions.

The Court concluded that the cumulative effect of the conditions of the applicant detention and the time he had been forced to endure them had amounted to a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention. It noted in particular that the Moldovan Government had not disputed the presence of three layers of metal netting on the cell window, that electricity and water supplies had been discontinued for certain periods, that the applicant had not been provided with bed linen or clothes and had to invest in the repair and furnishing of the cell, that the dining table was close to the toilet, and that the daily expenses for food had been limited to EUR 0.28 per day for each detainee. The Court further observed that the European Committee for the Prevention of Torture (CPT) had reported that the food was "repulsive and virtually inedible", following a visit to the prison in September 2004.

Florea v. Romania

14 September 2010

Suffering from chronic hepatitis and arterial hypertension, the applicant was detained in prison, 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. He complained in particular of overcrowding and poor hygiene conditions, including having been detained together with smokers in his prison cell and in the prison hospital and being provided with a diet which was unsuited to his various medical conditions.

The Court found that the conditions of detention to which the applicant had been subjected had exceeded the threshold of severity required by **Article 3** (prohibition of inhuman or degrading treatment) of the Convention, in **violation** of that provision. It observed in particular that, far from depriving persons of their rights under the Convention, imprisonment in some cases called for enhanced protection of vulnerable individuals. The State had to ensure that all prisoners were detained in conditions which respected their human dignity, that they 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.

Ananyev and Others v. Russia[2]

10 January 2012 (pilot judgment[3])

This case concerned the applicants' complaints that they had been detained in inhuman

[2]. On 16 September 2022 the Russian Federation ceased to be a Party to the Convention.

[3]. The pilot judgment procedure was developed as a technique of identifying the structural problems underlying repetitive cases against many countries and imposing an obligation on States to address those problems. Where the European Court of Human Rights receives several applications that share a root cause, it can select one or more for priority treatment under the pilot procedure. In a pilot judgment, the Court's task is not only to decide whether a violation of the European Convention on Human Rights occurred in the specific case but also to identify the systemic problem and to give the Government clear indications of the type of remedial measures needed to resolve it. For more information, see the factsheet on "Pilot judgments".

and degrading conditions in remand centres awaiting criminal trials against them. The applicants complained in particular that they had been held in overcrowded cells and that they could not effectively obtain an improvement in the conditions of their detention or some form of compensation.
The Court held that the applicants had been subjected to inhuman and degrading treatment, in **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention. It observed in particular that, in their respective cells, the applicants had been given less than 1.25 square metres and 2 square metres of personal space and the number of detainees had significantly exceeded the number of sleeping places available. In addition, they had remained inside their cells all the time, except for a one-hour period of outdoors exercise. They had also eaten their meals and used the toilet in those cramped conditions, in which the second applicant in particular had spent more than three years. The Court also held that there had been a violation of **Article 13** (right to an effective remedy) of the Convention, finding that for the time being the Russian legal system did not provide an effective remedy which could be used to put an end to inhuman and degrading conditions of detention or to provide adequate and sufficient redress in connection with a related complaint.
Under **Article 46** (binding force and execution of judgments) of the Convention, the Court noted, in particular, that certain measures to improve the material conditions of detention could be implemented in the short term and at little extra cost – such as shielding the toilets located inside the cell with curtains or partitions, removal of thick netting on cell windows blocking access to natural light and a reasonable increase in the frequency of showers. They required immediate planning and further action. It also encouraged the Russian authorities' attempts to find an integrated approach to solving the problem of overcrowding in remand prisons, including in particular by changing the legal framework, practices and attitudes. The Court further noted that the primary cause of overcrowding was the excessive use of pre-trial detention without proper justification and the excessive duration of such detention.

Canali v. France

25 April 2013

This case concerned the conditions of detention in the Charles III Prison in Nancy, which was built in 1857 and shut down in 2009 on account of its extremely dilapidated state.
The Court held that there had been a **violation of Article 3** (prohibition of inhuman of degrading treatment) of the Convention. It found that the cumulative effect of the cramped conditions and the failings in respect of hygiene regulations had aroused in the applicant feelings of despair and inferiority capable of debasing and humiliating him. These conditions of detention amounted to degrading treatment.

Vasilescu v. Belgium

18 March 2014

This case mainly concerned the applicant's condition of detention in Antwerp and Merksplas Prisons. The applicant complained in particular that his physical conditions of detention had been inhuman and degrading.
The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention regarding the physical conditions of the applicant's detention. It noted in particular that in addition to the problem of prison overcrowding, the applicant's allegations regarding the sanitary conditions, particularly access to running water and the toilets, were most plausible and reflected the realities described by the European Committee for the Prevention of Torture (CPT) in the various reports drawn up following its visits to Belgian prisons. While there was nothing to indicate that there had been a real intention to humiliate or debase the applicant during his detention, the Court found that his physical conditions of detention in Antwerp and Merksplas Prisons had subjected him to hardship exceeding the unavoidable level of suffering inherent in detention and amounted to inhuman and degrading treatment.
Under **Article 46** (binding force and execution of judgment) of the Convention, the Court further observed that the problems arising from prison overcrowding in Belgium,

and the problems of unhygienic and dilapidated prison institutions, were structural in nature and did not concern the applicant's personal situation alone. It recommended that Belgium envisage adopting general measures guaranteeing prisoners conditions of detention compatible with Article 3 of the Convention and affording them an effective remedy by which to put a stop to an alleged violation or allow them to obtain an improvement in their conditions of detention.

Yengo v. France

21 May 2015

This case concerned the conditions of detention of a prisoner in Nouméa prison, New Caledonia. The applicant complained about those conditions and also about the lack of an effective remedy by which to complain about them to the domestic authorities.

The Court first held that **the applicant could no longer claim to be a victim of Article 3** (prohibition of inhuman or degrading conditions) of the Convention, since the domestic court had awarded him some compensation for the harm sustained as a result of the detention conditions. However, it found that at the relevant time French law had not provided the applicant with any preventive remedy by which he could have promptly obtained the termination of his inhuman and degrading conditions of detention. There had therefore been a **violation of Article 13** (right to an effective remedy) of the Convention.

Szafrański v. Poland

15 December 2015

The applicant complained that his condition of detention in Wronki Prison were inadequate. In particular, he complained that in seven of the ten cells where he was detained the sanitary facilities were separated from the rest of the cell only by a 1.20 metre-high fibreboard partition and had no doors.

The Court held that there had been **no violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention. It noted in particular that, in the present case, the only hardship the applicant had had to bear was the insufficient separation of the sanitary facilities from the rest of the cell. Apart from that, the cells were properly lit, heated and ventilated and he had access to various activities outside the cells. Therefore, the overall circumstances of his detention could not be found to have caused distress and hardship which exceeded the unavoidable level of suffering inherent in detention or went beyond the threshold of severity under Article 3. However, the Court held that there had been a **violation of Article 8** (right to respect for private life) of the Convention. In this respect, it notably recalled that under the Court's case-law the domestic authorities had a positive obligation to provide access to sanitary facilities separated from the rest of the prison cell in such a way as to ensure a minimum of privacy. The Court also noted that, according to the European Committee for the Prevention of Torture (CPT), a sanitary annex which was only partially separated off was not acceptable in a cell occupied by more than one detainee. In addition, the CPT had recommended that a full partition in all the in-cell sanitary annexes be installed. Despite this, the applicant had been placed in cells in which the sanitary facilities were not fully separated off, and had had to use the toilet in the presence of other inmates. The Polish authorities had thus failed to discharge their positive obligation of ensuring a minimum level of privacy for the applicant.

Rezmiveș and Others v. Romania

25 April 2017 (pilot judgment[4])

This case concerned the conditions of detention in Romanian prisons and in detention facilities attached to police stations. The applicants complained, among other things, of overcrowding in their cells, inadequate sanitary facilities, lack of hygiene, poor-quality food, dilapidated equipment and the presence of rats and insects in the cells.

4. See footnote 3 above.

The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention, finding that the conditions of the applicants' detention, also taking into account the length of their incarceration, had subjected them to hardship going beyond the unavoidable level of suffering inherent in detention.
Under **Article 46** (binding force and execution of judgment) of the Convention, the Court further noted that the applicants' situation was part of a general problem originating in a structural dysfunction specific to the Romanian prison system; this state of affairs had persisted despite having been identified by the Court in 2012 (in its judgment in **Iacov Stanciu v. Romania** of 24 July 2012). To remedy the situation, the Court held that Romania had to implement two types of general measures: (1) measures to reduce overcrowding and improve the material conditions of detention; and (2) remedies (a preventive remedy and a specific compensatory remedy).

Valentin Baştovoi v. the Republic of Moldova

28 November 2017

The applicant complained of the conditions of his detention in Chișinău Prison no. 13 and the lack of an effective domestic remedy by which to assert his rights.
The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention, finding that during his time in Chișinău Prison no. 13, the applicant had been subjected to conditions of detention entailing hardship that went beyond the unavoidable level of suffering inherent in detention. It noted in particular that reports drawn up by the Moldovan Ombudsman and the European Committee for the Prevention of Torture (CPT) during the period when the applicant was held in the prison indicated that poor conditions of detention were prevalent in the facility. It also observed that the Moldovan Government had not produced any evidence in support of their assertion that considerable improvements had been made to the prison in the past few years. The Court further held that there had been a **violation of Article 13** (right to an effective remedy) of the Convention **in conjunction with Article 3**, finding that there was no remedy in domestic law by which conditions of detention incompatible with Article 3 could be eliminated.

Koureas and Others v. Greece

18 January 2018

The 28 applicants, detained in Grevena Prison, complained in particular about their overall conditions of detention and of the lack of an effective remedy in that regard.
The Court stated that it was unable to find that the applicants' overall conditions of detention in Grevena Prison had exceeded the unavoidable level of suffering inherent in detention and had amounted to degrading treatment. In the present case it rejected the complaints raised by three of the applicants for failure to exhaust domestic remedies and held that there had been **no violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention in respect of the 25 other applicants. The Court noted in particular that these applicants had not described their individual situations and that it was unable to ascertain which of them had been affected by overcrowding in the cells. The Court also noted that the lack of personal space in the present case had not been coupled with inadequate physical conditions of detention. The Court held, however, that there had been a **violation of Article 13** (right to an effective remedy) of the Convention **taken in conjunction with Article 3** in respect of the same 25 applicants, finding that, in so far as an applicant claimed to be personally affected by the overall conditions of detention in prison, the remedies provided for in Greek law would serve no useful purpose in complaining of them.

Pocasovschi and Mihaila v. the Republic of Moldova and Russia[5]

29 May 2018

This case concerned the applicants' complaint about being held in poor conditions in a Moldovan prison whose electricity and water had been cut off by the separatist "Moldavian Republic of Transdniestria" (the "MRT").

The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention by the Republic of Moldova in respect of both applicants. It found in particular that although the municipal authority which ordered the utilities to be cut had been controlled by the "MRT", the prison itself had been under full Moldovan Government control. The Court also agreed with the domestic findings that the men had been held in inhuman conditions between September 2002 and April 2004 owing to a lack of water, electricity, food and warmth. Lastly, the Court noted that the domestic courts had awarded compensation, but that the amount was below that normally given by the Court. The applicants had therefore suffered a violation of their rights under the Convention and the Court ordered each to be paid further amounts in respect of non-pecuniary damage. The Court further held in this case that there had been a **violation of Article 13** (right to an effective remedy) of the Convention by the Republic of Moldova in respect of the first applicant as domestic court action was not an effective remedy in improving conditions of detention, only providing compensation.

Clasens v. Belgium

28 May 2019

This case concerned the deterioration in the applicant's conditions of detention in Ittre Prison (Belgium) during a strike by prison wardens between April and June 2016. The applicant complained about the material conditions of his detention and that he had had no access to an effective remedy.

The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention, finding that the applicant's conditions of detention during the prison wardens' strike amounted to degrading treatment, resulting from the cumulative effect of ongoing lack of physical exercise, repeated breaches of the hygiene regulations, a lack of contact with the outside world and the uncertainty about whether his basic needs would be met. It considered that the applicant had been subjected to distress of an intensity exceeding the unavoidable level of suffering inherent in detention. The Court also held that in this case there had been a **violation of Article 13** (right to an effective remedy) of the Convention taken together with Article 3, finding that the Belgian system, as it functioned at the relevant time, had not provided an effective remedy in practice – in other words, a remedy capable of affording redress for the situation of which the applicant was a victim and preventing the continuation of the alleged violations.

Petrescu v. Portugal

3 December 2019

Arrested and detained in the Lisbon police prison in order to serve a seven year prison term imposed for theft and criminal conspiracy, the applicant was held there between March 2012 and October 2014, the date of his transfer to Pinheiro da Cruz Prison, which he left in December 2016. The applicant complained in particular about his conditions of detention, especially prison overcrowding, a lack of hygiene and heating, and unsanitary conditions.

The Court held that there had been several **violations of Article 3** (prohibition of inhuman or degrading treatment) of the Convention. In the light of the conditions in which the applicant had been held in the Lisbon police prison and in Pinheiro da Cruz Prison, it found that he had been subjected to degrading treatment for 376 non-consecutive days and to inhuman and degrading treatment for several periods, lasting 385, 36 and 18 days. In its judgment, the Court also recommended that the Portuguese State envisage the adoption of general measures: firstly, measures ought to be taken to

[5]. On 16 September 2022 the Russian Federation ceased to be a Party to the Convention.

ensure that prisoners were provided with conditions of detention which were compatible with Article 3 of the Convention; secondly, a remedy ought to be made available to prevent the continuation of an alleged violation or to enable prisoners to secure an improvement in their conditions of detention.

J.M.B. (no. 9671/15) and Others v. France

30 January 2020

The 32 cases concerned the poor conditions of detention in the following prisons: Ducos (Martinique), Faa'a Nuutania (French Polynesia), Baie-Mahault (Guadeloupe), Nîmes, Nice and Fresnes, as well as the issue of overcrowding in prisons and the effectiveness of the preventive remedies available to the prisoners concerned.

The Court held that there had been a **violation of Article 13** (right to an effective remedy) of the Convention in respect of the 32 applicants and a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention in respect of 27 of the applicants. It considered in particular that the personal space allocated to most of the applicants had fallen below the required minimum standard of 3 sq. m throughout their period of detention; that situation had been aggravated by the lack of privacy in using the toilets. With regard to the applicants who had more than 3 sq. m of personal space, the Court held that the prisons in which they had been or continued to be held did not, generally speaking, provide decent conditions of detention or sufficient freedom of movement and activities outside the cell. The Court further held that the preventive remedies in place – an urgent application to protect a fundamental freedom and an urgent application for appropriate measures – were ineffective in practice, and found that the powers of the administrative judges to make orders were limited in scope. Furthermore, despite a positive change in the case-law, overcrowding in prisons and the dilapidated state of some prisons acted as a bar to the full and immediate cessation of serious breaches of fundamental rights by means of the remedies available to persons in detention. Lastly, under **Article 46** (binding force and execution of judgments) of the Convention, the Court noted that the occupancy rates of the prisons in question disclosed the existence of a structural problem. The Court therefore recommended to the respondent State that it considered the adoption of general measures aimed at eliminating overcrowding and improving the material conditions of detention, while putting in place an effective preventive remedy.

See also: **B.M. and Others v. France (no. 84187/17 and five other applications)**, judgment of 6 July 2023.

Barbotin v. France

19 November 2020

This case concerned the compensation awarded to the applicant by the domestic courts in respect of his conditions of detention in Caen (France) remand prison. The applicant complained of the ineffectiveness of the compensatory remedy of which he had availed himself, in view of the low amount awarded and the fact that he had had to pay the expert's fees incurred to inspect the cells in which he had been held.

The Court held that there had been a **violation of Article 13** (right to an effective remedy) **in conjunction with Article 3** (prohibition of inhuman or degrading treatment) of the Convention. It noted, in particular, that the applicant had benefited from an appropriate remedy affording him compensation for the damage which he had sustained. In the present case, however, the domestic court had decided to order the applicant to pay the expert's fees on the grounds that the expert assessment ordered at first instance had been cancelled on appeal. On account of the modest amount which had been awarded to the applicant in compensation for the non-pecuniary damage caused by his conditions of detention, which had been incompatible with human dignity, he had thus found himself, after receipt of his compensatory remedy, owing the State 273.57 euros. The Court found that the outcome of the proceedings brought by the applicant had deprived the remedy of its effectiveness.

Contact with fellow inmates

Ivan Karpenko v. Ukraine

16 December 2021

This case concerned the regime – a ban on talking to prisoners from other cells – in which the applicant had been held while serving his life sentence. The applicant complained of the permanent prohibition on his having contact with inmates from other cells, and that there was no effective remedy for his complaint.

The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention, finding, overall, that the ban on the applicant's communication with prisoners from other cells, alongside the other circumstances of the case, had amounted to inhuman and degrading treatment. The Court noted, in particular, that preventing inmates from talking to each other amounted to a breach of the European Prison Rules. It also found the following, inter alia, to be exacerbating factors: the applicant's almost permanent confinement to his cell; the ban's being automatic solely on the basis of his sentence, without any possibility of review; the deterioration of the applicant's health. The Court also held that there had been a **violation of Article 13** (right to an effective remedy) of the Convention **in conjunction with Article 3**, observing that the domestic courts had declined jurisdiction in respect of the applicant's complaints concerning the ban, and that the applicant thus had had no remedy available to him in that respect.

Ill-treatment by cellmates

Preminiy v. Russia[6]

10 February 2011

This case concerned the alleged ill-treatment of a detainee, suspected of having broken into the online security system of a bank, by his cellmates and by prison warders, and his complaint that his application for release had not been speedily examined.

The Court found, in particular, **three violations of Article 3** (prohibition of inhuman or degrading treatment) of the Convention: on account of the authorities' failure to fulfil their positive obligation to adequately secure the physical and psychological integrity and well-being of the applicant; on account of the ineffective investigation into the applicant's allegations of systematic ill-treatment by other inmates; and on account of the authorities' failure to investigate effectively the applicant's complaint of ill-treatment by warders). It further held that there had been **no violation of Article 3** of the Convention as regards the applicant's allegations of ill-treatment by warders.

See also: **Boris Ivanov v. Russia**[7], judgment of 6 October 2015.

Stasi v. France

20 October 2011

The applicant alleged that he had been the victim of ill-treatment by other inmates during his two periods of imprisonment, in particular because of his homosexuality, and he alleged that the authorities had not taken the necessary measures to ensure his protection.

The Court held that there had been **no violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention. It found that, in the circumstances of the case, and taking into account the facts that had been brought to their attention, the authorities had taken all the measures that could reasonably be expected of them to protect the applicant from physical harm.

6. On 16 September 2022 the Russian Federation ceased to be a Party to the Convention.
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Yuriy Illarionovich Shchokin v. Ukraine

3 October 2013

This case concerned the death of a prisoner, the applicant's son, following acts of torture inflicted on him by inmates, with the possible involvement of a prison officer, during his imprisonment in a penal colony.

The Court held that there had been a **violation of Article 2** (right to life) of the Convention, under its substantive limb, on account of the death of the applicant's son during his imprisonment. It also found a **violation of Article 2**, under its procedural limb, as regards the investigation into the circumstances leading to the death of the applicant's son, as it had been conducted by the authorities without the requisite diligence. The Court further found a **violation of Article 3** (prohibition of torture) of the Convention, under its substantive limb, on account of the torture to which the applicant's son had been subjected, and a **violation of Article 3**, under its procedural limb, on account of the insufficiency of the State's investigation into those acts of torture.

D.F. v. Latvia (no. 11160/07)

29 October 2013

The applicant complained in particular that, as a former paid police informant and a sex offender, he had been at constant risk of violence from his co-prisoners when held in prison between 2005 and 2006, and that the Latvian authorities had failed to transfer him to a safer place of detention.

The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention. It found in particular that, owing to the authorities' failure to coordinate effectively, the applicant had been exposed to the fear of imminent risk of ill-treatment for over a year, despite the authorities being aware that such a risk existed.

Gjini v. Serbia

15 January 2019

This case concerned inter-prisoner violence, in particular, the applicant's complaint that he had been assaulted, raped and humiliated by his cell mates in prison, that the prison had failed to protect him and that the prison authorities had failed to investigate his complaints properly.

The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention owing to the authorities' failure to protect the applicant from being ill treated by his prison cell mates. It found in particular that the applicant had made credible claims of being a victim of violence from his cellmates in prison. It should have been obvious to prison staff at the time of the events that he was being ill-treated, but they had done nothing to protect him. The Court also held that there had been a **violation of Article 3** of the Convention because of the lack of an investigation into the applicant's complaints. It noted in particular that the Serbian State had failed to carry out an investigation or launch a prosecution over his complaints, even though the authorities must have been aware of them because he won compensation in civil proceedings and complained to various bodies about what had happened to him.

S.P. and Others v. Russia (no. 36463/11)[8]

2 May 2023

The applicants were all serving prisoners in Russian correctional facilities who complained of being subjected to inhuman and degrading treatment on account of their subordinate status as "outcast" prisoners in an unofficial prisoner hierarchy. They had lodged complaints with the domestic authorities about the treatment, all of which had been summarily rejected.

The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention in respect of all the applicants. It noted, in particular, that the applicants, who belonged to a particularly vulnerable category

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of "outcast" prisoners, had been subjected to segregation, humiliating practices and abuse in their daily life while in detention, and had been at a heightened risk of inter-prisoner violence. The Court considered that being subjected to such treatment, for years, had amounted to inhuman and degrading treatment. The Court further noted that State authorities were aware, or ought to have been aware, of the applicants' vulnerable situation which moreover was a part of a systemic and wide-spread pattern. However, the domestic authorities had done nothing to acknowledge, let alone address, that problem and had taken no general or individual measures to ensure the applicants' safety and well-being. In view of the extent of the problem, the Court found that the Russian authorities' failure to take action could be seen, in the present case, as a form of complicity in the abuses inflicted upon the prisoners under their protection. In this case, the Court also found a **violation of Article 13** (right to an effective remedy) of the Convention, taken in conjunction with Article 3, in respect of the applicants who had raised that complaint.

Ill-treatment by prison officers

Tali v. Estonia

13 February 2014

This case concerned a detainee's complaint about having been ill-treated by prison officers when he refused to comply with their orders. In particular, pepper spray was used against him and he was strapped to a restraint bed.

The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention. As regards in particular the legitimacy of the use of pepper spray against the applicant, the Court referred to the concerns expressed by the European Committee for the Prevention of Torture (CPT) concerning the use of such agents in law enforcement. According to the CPT, pepper spray was a potentially dangerous substance which was not to be used in confined spaces and never to be used against a prisoner who had already been brought under control. Pepper spray could have serious effects on health such as irritation of the respiratory tract and of the eyes, spasms, allergies and, if used in strong doses, pulmonary oedema or internal haemorrhaging. Having regard to these potentially serious effects of the use of pepper spray in a confined space and to the fact that the prison officers had had alternative means at their disposal to immobilise the applicant such as helmets or shields, the Court found that the circumstances had not justified the use of pepper spray. As further regards the applicant's strapping to a restraint bed, the Court underlined in particular that measures of restraint were never to be used as a means of punishment of prisoners, but rather in order to avoid self-harm or serious danger to other individuals or to prison security. In the applicant's case it had not been convincingly shown that after the end of the confrontation with the prison officers – and being locked in a single-occupancy disciplinary cell – he had posed a threat to himself or others that would have justified applying such a measure. The period of three and a half hours for which he had been strapped to the restraint bed had therefore by no means been negligible and his prolonged immobilisation had to have caused him distress and physical discomfort.

See also, concerning the use of pepper spray against a prisoner on remand, while he was held in an observation cell: **El-Asmar v. Denmark**, judgment of 3 October 2023[9].

Milić and Nikezić v. Montenegro

28 April 2015

The applicants complained that they had been ill-treated by prison guards – they submitted that the latter had beaten them with rubber batons during a search of their cell – and that the ensuing investigation into their complaints had been ineffective.

[9]. This judgment will become final in the circumstances set out in Article 44 § 2 (final judgments) of the European Convention on Human Rights.

According to the Montenegrin Government, the guards had had to use force against the applicants to overcome their resistance on entering their cell.
The Court held that there had been **two violations of Article 3** (prohibition of inhuman or degrading treatment) of the Convention, on account of the ill-treatment to which both applicants had been subjected during a search of their cell as well as the ineffectiveness of the ensuing investigation into their complaints of ill-treatment. The Court found in particular that, even though it had been established in the compensation and disciplinary proceedings concerning the applicants' complaint of ill-treatment that the guards had used excessive force, the damages awarded to the applicants had not been sufficient. Nor had the domestic courts or the Montenegrin Government actually acknowledged that such behaviour had amounted to ill-treatment. The Court on the other hand found that hitting the applicants with batons – as established by the domestic bodies – had amounted to ill-treatment within the meaning of Article 3.

Cirino and Renne v. Italy

26 October 2017
This case concerned the complaint by two detainees that in December 2004 they were ill-treated by prison officers of the Asti Correctional Facility. The applicants maintained in particular that the acts of violence and ill-treatment which they had suffered in the correctional facility amounted to torture and that the penalty for those responsible for the acts of ill-treatment had been inadequate. They emphasised that by failing to incorporate the offence of torture into national law, the State had failed to take the necessary steps to prevent the ill-treatment which they had suffered.
The Court held that there had been **violations of Article 3** (prohibition of torture and of inhuman or degrading treatment) of the Convention, both as regards the treatment sustained by the applicants (substantive aspect) and as regards the response by the domestic authorities (procedural aspect). It found in particular that the ill-treatment inflicted on the applicants – which had been deliberate and carried out in a premeditated and organised manner while they were in the custody of prison officers – had amounted to torture. Furthermore, in the Court's view, the domestic courts had made a genuine effort to establish the facts and to identify the individuals responsible for the treatment inflicted on the applicants. However, those courts had concluded that, under Italian law in force at the time, there was no legal provision allowing them to classify the treatment in question as torture. They had had to turn to other provisions of the Criminal Code, which were subject to statutory limitation periods. As a result of this lacuna in the legal system, the domestic courts had been ill-equipped to ensure that treatment contrary to Article 3 perpetrated by State officials did not go unpunished.

Öcalan v. Turkey

4 September 2018 (decision on the admissibility)
This case mainly concerned allegations by Abdullah Öcalan[10] that he had been subjected to ill-treatment in 2008 during a search of his cell. The applicant complained in particular that he had been subjected to ill-treatment, both physical and verbal, during the search of his cell and that the investigation into his complaints had been ineffective.
The Court declared the application **inadmissible** as being manifestly ill-founded. As regards the allegations of ill-treatment, it found that there was no arguable claim that the applicant had been subjected to treatment in breach of Article 3 (inhuman or degrading treatment) of the Convention by prison warders on 7 October 2008. The Court observed in particular that, on the day of the alleged incidents and on the following days, the applicant had been examined by a number of doctors, who had not found any signs of physical injury or mental distress. Nor had the applicant himself mentioned anything of the sort. In addition, he had not personally filed a complaint with the prison administration or the public prosecutor responsible for the prison. As to the

[10]. Before being arrested in 1998, he was the leader of the PKK (Kurdistan Workers' Party, an illegal organisation).

investigation, the Court explained that in the absence of any arguable claims, the national authorities did not have any obligation to conduct an effective investigation.

Ochigava v. Georgia

16 February 2023

This case concerned allegations of repeated ill-treatment by prison officers whilst the applicant was detained in Tbilisi Prison no. 8 ("Gldani Prison") after being convicted of robbery. The applicant complained that he had been subjected to systematic acts of ill-treatment and that the competent domestic authorities had failed to conduct an effective investigation.

Given that effective deterrence against serious acts such as intentional attacks on the physical integrity of a person required efficient criminal-law response, and its findings pointing to significant deficiencies in the respondent State's response in the present case, the Court held that there had been a **violation of** the procedural limb of **Article 3** (prohibition of inhuman or degrading treatment) of the Convention in respect of the applicant. It noted in particular that, despite the conviction of some of the prison officers with respect to some of the incidents of ill-treatment, the outcome of the procedurally flawed criminal proceedings could not be considered to have had constituted sufficient redress for the applicant. The Court also held that there had been a **violation** of the substantive aspect **of Article 3** of the Convention in the present case. It noted in particular that the domestic criminal courts had found that seven prison officers who had been acting in an official capacity were guilty of the systematic ill-treatment of inmates at Gldani Prison, including the applicant. They had also identified five separate instances when the applicant personally had been ill-treated by being severely beaten. Their findings had made it clear that his ill-treatment, certain acts of which qualified as torture, had been directly attributable to the respondent State and committed by representatives of the prison authority as part of both systematic and systemic abuse of inmates of the prison at the material time. Furthermore, no damages had been awarded to the applicant for the injuries he had sustained as a result of the ill-treatment.

See also, among others:

J.M. v. France (no. 71670/14)

5 December 2019

Juveniles in detention

Güveç v. Turkey

20 January 2009

The applicant, aged 15 at the relevant time, had been tried before an adult court and ultimately found guilty of membership of an illegal organisation. He was held in pre-trial detention for more than four-and-a-half years in an adult prison, where he did not receive medical care for his psychological problems and made repeated suicide attempts.

The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention: given his age, the length of his detention with adults and the authorities' failure to provide adequate medical care or to take steps to prevent his repeated suicide attempts, the applicant had been subjected to inhuman and degrading treatment.

Coşelav v. Turkey

9 October 2012

This case concerned a 16-year-old juvenile's suicide in an adult prison. His parents alleged that the Turkish authorities had been responsible for the suicide of their son and that the ensuing investigation into his death had been inadequate.

The Court held that there had been a **violation of Article 2** (right to life) of the Convention under both its substantive and procedural limbs. It found on the one hand

that the Turkish authorities had not only been indifferent to the applicants' son's grave psychological problems, even threatening him with disciplinary sanctions for previous suicide attempts, but had been responsible for a deterioration of his state of mind by detaining him in a prison with adults without providing any medical or specialist care, thus leading to his suicide. On the other hand, the Turkish authorities had failed to carry out an effective investigation to establish who had been responsible for the applicants' son's death and how.

See also, recently:

I.E. v. the Republic of Moldova (no. 45422/13)
26 May 2020

Personal space in cell and prison overcrowding

Orchowski v. Poland
22 October 2009
Serving a prison sentence since 2003, the applicant had been transferred twenty-seven times between eight different prisons and remand centres. For most of the time he had less than 3 square metres of personal space inside his cells, which was the minimum prescribed under Polish law. At times he even had less than 2 square metres. The applicant lodged numerous complaints concerning the conditions of his detention with the domestic authorities, including a civil action for damages, but to no avail. In a letter of March 2005 the prison administration acknowledged the problem of overcrowding, but dismissed the applicant's complaint as ill-founded.
The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention finding that, having regard to the cumulative effects of the conditions in which the applicant was detained, the distress and hardship he had endured had exceeded the unavoidable level of suffering inherent in deprivation of liberty. It noted in particular that in 2008 the Polish Constitutional Court had found that detention facilities in Poland suffered from a systemic problem of overcrowding which was of such a serious nature as to constitute inhuman and degrading treatment. As for the applicant's personal situation, the European Court found it established that the majority of cells he had been held in had been occupied beyond their designated capacity, leaving him with less than the statutory 3 square metres of personal space, and at times even with less than 2 square metres. In addition, this lack of space had been made worse by aggravating factors, such as lack of exercise, particularly outdoor exercise, lack of privacy, insalubrious conditions and frequent transfers.
Lastly, under **Article 46** (binding force and execution of judgments) of the Convention, the Court invited Poland to develop an efficient system of complaints to the authorities responsible for supervising detention facilities to enable them to react more speedily than the courts could and to order, if necessary, a detainee's long-term transfer to Convention-compatible conditions.

See also: **Norbert Sikorski v. Poland**, judgment of 22 October 2009; **Łomiński v. Poland and Łatak v. Poland**, decisions on the admissibility of 12 October 2010; **Siedlecki v. Poland and 14 other applications**, decisions on the admissibility of 14 December 2010.

Mandic and Jovic v. Slovenia and Štrucl and Others v. Slovenia
20 October 2011
These cases concerned the conditions in Ljubljana Prison. During their detention there, the applicants had been held for several months in cells in which the personal space available to them was 2.7 square metres and in which the average afternoon temperature in August was approximately 28° C.
The Court found that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention, holding that the distress and hardship endured

by the applicants had exceeded the unavoidable level of suffering inherent in detention and had therefore amounted to degrading treatment.

Torreggiani and Others v. Italy

8 January 2013 (pilot judgment[11])

This case concerned the issue of overcrowding in Italian prisons. The applicants alleged that their conditions of detention in Busto Arsizio and Piacenza prisons amounted to inhuman and degrading treatment.

The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention. It found that the applicants' living space had not conformed to the standards deemed to be acceptable under its case-law. It pointed out that the standard recommended by the European Committee for the Prevention of Torture (CPT) in terms of living space in cells was 4 square metres per person. The shortage of space to which the applicants had been subjected had been exacerbated by other conditions such as the lack of hot water over long periods, and inadequate lighting and ventilation in Piacenza prison. All these shortcomings, although not in themselves inhuman and degrading, amounted to additional suffering. While there was no indication of any intention to humiliate or debase the applicants, the Court considered that their conditions of detention had subjected them – in view of the length of their imprisonment – to hardship of an intensity exceeding the unavoidable level of suffering inherent in detention.

Under **Article 46** (binding force and execution of judgments) of the Convention, the Court further called on the Italian authorities to put in place, within one year, a remedy or combination of remedies providing redress in respect of violations of the Convention resulting from overcrowding in prison.

Vasilescu v. Belgium

25 November 2014

See above, under "(Hygienic) condition of cells".

Varga and Others v. Hungary

10 March 2015 (pilot judgment[12])

This case concerned widespread overcrowding in Hungarian detention facilities. The applicants complained that their respective conditions of detention were/had been inhuman and degrading and that there was no effective remedy in Hungarian law with which they could complain about their detention conditions.

The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention finding, in particular, that the limited personal space available to all six detainees in this case, aggravated by a lack of privacy when using the lavatory, inadequate sleeping arrangements, insect infestation, poor ventilation and restrictions on showers or time spent away from their cells, had amounted to degrading treatment. Further finding that the domestic remedies in Hungarian law suggested by the Government to complain about detention conditions, although accessible, were ineffective in practice, the Court held that there had been a **violation of Article 13** (right to an effective remedy) **read in conjunction with Article 3** of the Convention.

Under **Article 46** (binding force and execution of judgments) of the Convention, the Court held in particular that the Hungarian authorities should promptly put in place an effective remedy or combination of remedies, both preventive and compensatory, to guarantee genuinely effective redress for violations of the Convention originating in prison overcrowding.

11. See footnote 1 above.
12. See footnote 1 above.

Muršić v. Croatia

20 October 2016 (Grand Chamber)

The applicant complained that he had been held in poor conditions at Bjelovar Prison. He alleged that he had disposed of less than 3 sq. m of personal space in his cell for a number of non-consecutive periods of a total duration of 50 days and personal space of between 3 and 4 sq. m in other periods. He also complained that the sanitary facilities, conditions of hygiene, food, the possibility of engaging in prison work and access to recreational or educational activities in the prison had been insufficient.

The Court confirmed that 3 sq. m of surface area per detainee in a multi-occupancy cell was the prevalent norm in its case-law, being the applicable minimum standard for the purposes of Article 3 (prohibition of inhuman or degrading treatment) of the Convention. When that area fell below 3 sq. m, the lack of personal space was regarded as so serious that it gave rise to a strong presumption of a violation of Article 3. In the present case, having regard to the documents produced by the Croatian Government and to the applicant's statements, the Court found that the conditions in which the applicant had been held in Bjelovar Prison were generally appropriate, but that there had been a **violation of Article 3** of the Convention for the consecutive period of 27 days during which he had been confined in less than 3 sq. m of personal space. On the other hand, the Court held that there had been **no violation of Article 3** in respect of the other, non-consecutive, periods of detention during which the applicant had less than 3 sq. m of personal space or in respect of the periods in which he had personal space of between 3 sq. m and 4 sq. m in Bjelovar Prison. It found in particular that the other periods during which he had disposed of less than 3 sq. m could be regarded as short and minor reductions of personal space, while at the same time the applicant had sufficient freedom of movement and activities outside the cell and was being held in a generally appropriate detention facility.

Rezmiveș and Others v. Romania

25 April 2017 (pilot judgment[13])

See above, under "Conditions of detention".

Bădulescu v. Portugal

20 October 2020

This case concerned the conditions of detention in Oporto prison, where the applicant had been held between October 2012 and March 2019. The applicant complained in particular that during this period he had been held in overcrowded cells with limited personal space, that the cells were insalubrious, too cold in winter and too hot in summer, and that the toilets were not partitioned.

The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention. It noted in particular that Oporto Prison had been overcrowded for the entire period in which the applicant had been serving his sentence (six and a half years) and that he had had less than 3 sq. m of personal space in his cells. Furthermore, the overcrowding in this prison and its consequences had been the primary concern of the Ombudsman in his report of 20 April 2017. The Court also found that the applicant had been subjected to hardship of an intensity exceeding the unavoidable level of suffering inherent in detention, thus constituting degrading treatment. It noted in particular that the lack of heating had been an aggravating factor, in view of the discomfort, or even distress, that it must have caused the applicant throughout his detention.

See also:

Sylla and Nollomont v. Belgium

16 May 2017

[13]. See footnote 1 above.

Nikitin and Others v. Estonia
31 January 2019

Repeated transfers

Khider v. France
9 July 2009
Detained in the context of proceedings against him for a number of offences, including armed robbery carried out as part of a gang, the applicant complained of his detention conditions and the security measures imposed on him as a "prisoner requiring special supervision".
The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention. The applicant's conditions of detention, his classification as a high-security prisoner, his repeated transfer from prison to prison, his lengthy solitary confinement and the frequent full body searches he was subjected to all added up to inhuman and degrading treatment within the meaning of Article 3.

Payet v. France
20 January 2011
Serving a prison sentence for murder, the applicant 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** (prohibition of inhuman or degrading treatment) of the Convention with regard to the poor conditions of detention in the punishment wing where the applicant was placed (dirty and dilapidated premises, flooding, lack of sufficient light for reading and writing). It further held that there had been **no violation of Article 3** as regards the security rotations.

Khider v. France
1 October 2013 (decision on the admissibility)
This case concerned a convicted prisoner who had made several escapes and attempted escapes and was classified by the authorities as a "high-risk prisoner". He alleged that his conditions of detention were particularly strict, including frequent changes of establishment, prolonged periods in solitary confinement, and strip-searches. He considered that the way he was treated was inhuman and degrading.
The Court declared **inadmissible** as being manifestly ill-founded the applicant's complaints under Article 3 (prohibition of inhuman or degrading treatment) of the Convention. It observed in particular that the authorities had explained that the applicant had been frequently transferred for security reasons precisely because of his repeatedly violent behaviour. He had been transferred for practical reasons and not out of any desire to belittle or humiliate him. The Court further noted that since October 2011 the applicant had been detained under the "normal" prison regime. It found that the consequences of the transfers imposed on the applicant could not be considered to have attained the minimum level of severity required to amount to inhuman or degrading treatment within the meaning of Article 3 of the Convention.

Bamouhammad v. Belgium
17 November 2015
Suffering from Ganser syndrome (or "prison psychosis"), the applicant alleged that he had been subjected while in prison to inhuman and degrading treatment which had affected his mental health. He also complained about a lack of effective remedies.
The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention and a **violation of Article 13** (right to an effective remedy) **taken together with Article 3**. It found in particular that the manner of execution of the applicant's detention, involving continuous transfers between

prisons (43 transfers over a six-year period) and repeated special measures, together with the prison authority's delay in providing him with therapy and refusal to consider any alternative to custody despite the decline in his state of health, had subjected him to distress of an intensity exceeding the inevitable level of suffering inherent in detention. The level of seriousness required for treatment to be regarded as degrading, within the meaning of Article 3, had thus been exceeded. Moreover, in the circumstances of the case, the Court concluded that the applicant had not had an effective remedy by which to submit his complaints under Article 3. Lastly, the Court recommended under **Article 46** (binding force and execution of judgments) that Belgium should introduce a remedy under Belgian law for prisoners to complain about transfers and special measures such as those imposed on the applicant.

Security of detainees during transfers

Ilgiz Khalikov v. Russia[14]

15 January 2019

This case concerned a prisoner's complaint that he had been seriously wounded by a stray bullet during a shoot-out between escorting officers and detainees attempting to escape during their transfer to another facility. The applicant also alleged that the authorities had failed to carry out an effective investigation into the incident which, he emphasised, had left him disabled for life and in considerable pain.

The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention. It found in particular that the State had been responsible for the applicant's injury because the escorting officers had disregarded the regulations put in place for the security of detainees during transfers. In particular, the officers had decided to transport more detainees than the prison van had been designed to accommodate. The fact that the van had been over its capacity had meant that detainees had been able to attempt to overpower officers and that the applicant, a former police officer and therefore a vulnerable detainee who should have been travelling in a separate cell, had been in the rear of the van with two of the escorting officers when the attack had taken place. Furthermore, the investigation into the incident had been ineffective. The pre-investigation inquiry had been marred by delays, limited in scope and had never progressed to the stage of a criminal investigation.

Solitary confinement

Ilascu and Others v. Moldova and Russia[15]

8 July 2004 (Grand Chamber)

The first applicant, 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** (prohibition of torture and inhuman or degrading treatment) of the Convention 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).

[14]. On 16 September 2022 the Russian Federation ceased to be a Party to the Convention.
[15]. On 16 September 2022 the Russian Federation ceased to be a Party to the Convention.

Ramirez Sanchez v. France

4 July 2006 (Grand Chamber)

The applicant, 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** (prohibition of inhuman or degrading treatment) of the Convention. It found that, having regard in particular to the applicant's 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 (CPT) about the possible long-term effects of the applicant's 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.

See also, recently: **Hansen v. Norway**, decision (Committee) on the admissibility of 29 May 2018.

Piechowicz v. Poland and Horych v. Poland

17 April 2012

Both cases concerned a regime in Polish prisons for detainees who are classified as dangerous. The applicants complained in particular that the "dangerous detainee" regime and the detention conditions, including the restrictions on visits, to which they are/were subjected was inhuman and degrading and breached their right to private and family life.

The Court found a **violation of Articles 3** (prohibition of inhuman or degrading treatment) **and 8** (right to respect for private and family life) of the Convention in both cases. It held in particular that keeping detainees under that regime for several years, in isolation, without sufficient mental and physical stimulation, and without examining if there were concrete reasons for the prolonged application of that regime, was not necessary in order to ensure safety in prison.

See also, among others: **Paluch v. Poland** and **Świderski v. Poland**, judgments of 16 February 2016; **Karwowski v. Poland**, judgment of 19 April 2016.

X v. Turkey (no. 24626/09)

9 October 2012

This case concerned a homosexual prisoner who, after complaining about acts of intimidation and bullying by his fellow inmates, was placed in solitary confinement for over 8 months in total.

The Court took the view that these detention conditions had caused him mental and physical suffering, together with a feeling that he had been stripped of his dignity, thus representing "inhuman or degrading treatment" in **breach of Article 3** of the Convention. It further found that the main reason for the applicant's solitary confinement had not been his protection but rather his sexual orientation. It thus concluded that there had been discriminatory treatment in **breach of Article 14** (prohibition of discrimination) of the Convention.

Öcalan v. Turkey (no. 2)

18 March 2014

The applicant, the founder of the PKK (Kurdistan Workers' Party), an illegal organisation, complained in particular about the conditions of his detention (in particular his social isolation and the restrictions on his communication with members of his family and his lawyers) in the prison on the island of İmralı, where he was held in solitary confinement until 17 November 2009, when five other inmates were transferred there.

The Court held that there had been **a violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention as to the conditions of the applicant's detention up to 17 November 2009 and that there had been **no violation of Article 3** as regards the conditions of his detention during the period subsequent to that date. On the one hand, in view of a certain number of aspects, such as the lack of communication facilities that would have overcome the applicant's social isolation, together with the persisting major difficulties for his visitors to gain access to the prison, the Court found that the conditions of detention imposed on the applicant up to 17 November 2009 had constituted inhuman treatment. On the other hand, having regard in particular to the arrival of other detainees at the İmralı prison and to the increased frequency of visits, it came to the opposite conclusion as regards his detention subsequent to that date.

Harakchiev and Tolumov v. Bulgaria

8 July 2014

This case concerned the life imprisonment without commutation of the first applicant and the strict detention regime, involving isolation, in which he and the second applicant, another life prisoner, were held. Both applicants complained *inter alia* that the strict prison regime to which they were subjected as life prisoners, together with the conditions of their detention, were inhuman and degrading. In particular, under the regime for life prisoners they were permanently locked in cells (apart from a one-hour daily walk) in isolation from the rest of the prison population, with no running water and no access to a toilet.

The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention as concerned the regime and conditions of the two applicants' detention. As concerned the strict detention regime, the Court found in particular that the cumulative effect of the conditions endured by the applicants which included isolation, inadequate ventilation, lighting, heating, hygiene, food and medical care had been inhuman and degrading. Indeed, the applicants' isolation appeared to be the result of the automatic application of the domestic legal provisions regulating the prison regime rather than any particular security concerns relating to their behavior. The Court also held that there had been a **violation of Article 13** (right to an effective remedy) of the Convention as concerned the lack of effective domestic remedies in respect of the conditions of the applicants' detention. Lastly, under **Article 46** (binding force and implementation of judgments) of the Convention, the Court held that to properly implement the judgment in this case Bulgaria should reform, preferably by means of legislation, the legal framework governing the prison regime applicable to persons sentenced to life imprisonment with or without parole by addressing, in particular, the imposition of a highly restrictive prison regime and isolation automatically on all life prisoners.

See also, among others: **Manolov v. Bulgaria**, judgment of 4 November 2014; **Halil Adem Hasan v. Bulgaria**, judgment of 10 March 2015.

Schmidt and Šmigol v. Estonia

28 November 2023[16]

This case concerned consecutive enforcement of disciplinary punishments against the two applicants when they were serving sentences in Viru Prison. This resulted in their spending protracted periods in conditions that effectively amounted to solitary confinement. Both applicants complained that the periods they spent in solitary confinement violated their rights.

The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention, in respect of the first applicant, for all the periods between 27 June 2015 and 6 December 2017 spent under either the punishment-cell regime or the locked isolation-cell regime, and, in respect of the second applicant, for the period between 1 June 2016 and 26 September 2017 spent under the

[16]. This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention.

punishment-cell regime. It found that the applicants' solitary confinement during these periods had subjected them to hardship going beyond the unavoidable level of suffering inherent in detention.

Strip searches

Valašinas v. Lithuania

24 July 2001

While serving a prison sentence for the theft, possession and sale of firearms, the applicant 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 the applicant, and in effect diminished his human dignity. It concluded that it had constituted degrading treatment **in breach of Article 3** (prohibition of inhuman or degrading treatment) of the Convention.

Iwańczuk v. Poland

15 November 2001

During his detention on remand, the applicant 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** (prohibition of inhuman or degrading treatment) of the Convention. 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 the applicant'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.

Frérot v. France

12 June 2007

Serving a sentence of life imprisonment for a number of offences including murder and armed robbery, the applicant, 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** (prohibition of inhuman or degrading treatment) of the Convention. While it acknowledged that strip searches had been imposed on the applicant 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

20 January 2011

Serving a prison sentence for a number of offences, the applicant 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** (prohibition of inhuman or degrading treatment) of the Convention. 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 the applicant feelings of arbitrariness, inferiority and anxiety characteristic of a degree of humiliation going beyond the level which the strip-searching of prisoners inevitably entailed.

S.J. (no. 2) v. Luxembourg (no. 47229/12)

31 October 2013

The applicant, who was serving a prison sentence, complained that, for the purposes of a body search, he had been made to undress in an open booth in the presence of a number of guards. He alleged that a body search in such conditions had amounted to inhuman and degrading treatment.

The Court held that there had been **no violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention under either its substantive or its procedural aspect. Noting, in particular, that the layout of the premises was not ideal, in so far as the booth in question opened onto a room where the prisoners being searched could be seen by third parties, the Court nonetheless considered that it could not be concluded from this layout alone that the body searches conducted in that area implied a degree of suffering or humiliation that went beyond what was inevitable. In addition, and with particular regard to the body search in dispute in this case, there was no evidence in the case file that there had been any wish to humiliate, and indeed the applicant had not alleged that he had been the victim of disrespectful guards or that the latter had behaved in such a way as to indicate that they were seeking to humiliate him.

Milka v. Poland

15 September 2015

This case concerned the applicant's disciplinary punishments for refusing to be strip-searched in prison. The Polish courts had dismissed his appeals – without examining the actual reasons for the disciplinary measures – on the ground that he had refused to undergo the body searches and that this constituted a disciplinary offence.

The Court declared the applicant's complaint under Article 3 (prohibition of inhuman or degrading treatment) of the Convention **inadmissible** as being manifestly ill-founded, finding that in the present case there was no element of debasement or humiliation which might give rise to a violation of Article 3. It held, however, that there had been a **violation of Article 8** (right to respect for private) of the Convention. In this respect, the Court noted in particular that, while strip searches might be necessary on occasions to ensure prison security or prevent disorder in prisons, they had to be conducted in an appropriate manner. In the applicant's case, however, the Court found that it had not been shown that the interference complained of was justified by a pressing social need and that it had been proportionate in the circumstances.

Roth v. Germany

22 October 2020

This case concerned the applicant's complaint about repeated random strip searches in prison and the domestic courts' refusal to grant him compensation for non-pecuniary damage.

The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention, finding that the searches had gone beyond the inevitable element of suffering or humiliation connected with a given form of legitimate treatment, and that they had therefore diminished the applicant's human dignity and had amounted to degrading treatment. It noted in particular that the manner in which

the repeated searches had been carried out had not entailed any other elements unnecessarily debasing or humiliating the applicant. However, owing to the absence of a legitimate purpose for these repeated and generalised searches, the feeling of arbitrariness and the feelings of inferiority and anxiety often associated with them, as well as the feeling of a serious affront to dignity indisputably prompted by the obligation to undress in front of another person and submit to inspection of the anus, had resulted in a degree of humiliation exceeding the, unavoidable and hence tolerable, level that strip-searches of prisoners inevitably involve. The Court also held that there had been a **violation of Article 13** (right to an effective remedy) of the Convention, finding that there had been no effective remedy before a national authority to deal with the substance of the applicant's complaint under Article 3.

B.M. and Others v. France (no. 84187/17 and five other applications)

6 July 2023

This case concerned the detention conditions at Fresnes Prison and whether an effective remedy was available for the purpose of seeking their improvement. Five out of the six applicants also complained about the full body-search routine to which they were subjected when leaving the prison visiting rooms.

In the present case, the Court declared **inadmissible**, for non-exhaustion of domestic remedies, the applicants' complaint under Article 3 (prohibition of inhuman or degrading treatment) of the Convention relating to searches. After noting, in particular), that the urgent application for protection of a fundamental freedom (*référé-liberté*) provided for by Article L. 521-2 of the Code of Administrative Justice, which allowed the urgent applications judge, in the event of a demonstrable emergency, to swiftly address serious and flagrantly unlawful infringements of a fundamental freedom, had in fact been used, in a certain number of cases, to resolve breaches of Article 3 of the Convention in connection with the practice of full body searches, the Court concluded that, under the circumstances, having regard to the remit of the administrative courts, the urgent application in question should be viewed as having constituted, at the material time, an effective and available remedy in both theory and practice. Since the applicants had failed to bring any proceedings before the domestic courts, the Court found that the complaint under Article 3 of the Convention in connection with searches had to be dismissed for failure to exhaust of domestic remedies. On the other hand, the Court held that there had been a **violation of Articles 3 and 13** (right to an effective remedy) of the Convention in the present case, in respect of three of the applicants, on account of their material conditions of detention and the absence of an effective preventive remedy at the time of their detention. In this regard, it noted in particular that the applicants had been detained at Fresnes Prison during the same periods as the applicants in the *J.M.B. and Others v. France* case (see above, under "Conditions of detention and domestic remedies"), in which it had found that those applicants had been subjected to detention conditions that were in breach of Article 3, and had further held that no effective remedy had been available to them to seek an improvement in the conditions, in violation of Article 13. The Court saw no reason to arrive at a different conclusion in the present case.

Systematic handcuffing

Shlykov and Others v. Russia[17]

19 January 2021

The four applicants, all serving sentences of life imprisonment at various prison facilities, were systematically subjected to handcuffing every time they left their cells on the grounds that they had a life sentence, had disciplinary records or had been placed under surveillance as dangerous prisoners by a prison commission.

[17]. On 16 September 2022 the Russian Federation ceased to be a Party to the Convention.

The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention, finding that the applicants' systematic handcuffing, in a secure environment, had been a measure which lacked sufficient justification and could thus be regarded as degrading treatment. In particular, although the Court was mindful of the difficulties States might encounter in maintaining order and discipline in penal institutions and that disobedience of detainees might quickly degenerate into violence, it noted that a life sentence could not justify routine and prolonged handcuffing that was not based on specific security concerns and the inmate's personal circumstances and not be subject to regular review. Furthermore, restraint measures against life-sentenced prisoners could only be taken as a proportionate response to a specific risk for the time strictly necessary to counter that risk. The Court also noted that the applicants in the present case had been handcuffed for prolonged periods every time they left their cells, without a proper evaluation of their individual situation and any regular assessment of whether the application of the measure in question was appropriate or pursued a specific aim. Lastly, under **Article 46** (binding force and execution of judgments) of the Convention, the Court invited Russia to implement measures of a general character with regard to a violation of Article 3 (the practice of prolonged handcuffing of life prisoners).

Video surveillance

Van der Graaf v. the Netherlands

1 June 2004 (decision on the admissibility)

In May 2002 the applicant was arrested and taken into custody on suspicion of having shot and killed a well-known politician. He was placed under permanent camera surveillance. His appeals against the successive orders to prolong his permanent camera surveillance were accepted as well-founded, the courts finding that there was no legal basis for imposing such a measure, given his individual detention regime. In July 2002 an amendment was introduced to the relevant prison regulations, whereby it also became possible to place detainees who were under an individual detention regime under permanent camera surveillance. On that same day, the governor of the remand centre issued a new order for the applicant's camera surveillance. The applicant's appeal was this time rejected as, *inter alia*, the measure had a sufficient legal basis in the amended rules.

The Court declared the application **inadmissible**, both under Article 3 (prohibition of inhuman or degrading treatment) and Article 8 (right to respect for private and family life) of the Convention, as being manifestly ill-founded. Firstly, the Court considered that, whilst being permanently observed by a camera for a period of about four and a half months may have caused the applicant feelings of distress for lack of any form of privacy, it had not been sufficiently established that such a measure had in fact subjected him to mental suffering of a level of severity such as to constitute inhuman or degrading treatment. Secondly, the Court noted that the placing of the applicant under permanent camera surveillance constituted a serious interference with his right to respect for his private life. However, the measure had a basis in domestic law and pursued the legitimate aim of preventing the applicant's escape or harm to his health. Therefore, given the great public unrest caused by the applicant's offence and the importance of bringing him to trial, the Court found that the interference complained of could be regarded as necessary in a democratic society in the interests of public safety and the prevention of disorder and crime.

Riina v. Italy

11 March 2014 (decision on the admissibility)

The applicant, who was sentenced to life imprisonment for having committed very serious crimes, including mafia-type conspiracy and multiple assassinations, complained of the fact that he was under constant video surveillance in his cell, including in the

toilets. He contended that the domestic remedies available in respect of these measures were ineffective.
The Court declared the application **inadmissible** under Articles 3 (prohibition of inhuman or degrading treatment) and 8 (right to respect for private and family life) of the Convention, finding that the applicant had not exhausted the domestic remedies available to him to appeal against the application of the video surveillance measure.

Gorlov and Others v. Russia[18]

2 July 2019
This case concerned the permanent video surveillance of detainees in their cells by closed-circuit television cameras. The applicants complained, in particular, that constant surveillance of their cells, at times by female guards, had violated their right to respect for their private life.
The Court held that there had been a **violation of Article 8** (right to respect for private life) of the Convention, finding that the measure in question had not been in accordance with the law. Although the Court could accept that it might be necessary to monitor certain areas of penal institutions, or certain detainees on a permanent basis, it found in particular that the existing legal framework in Russia could not be regarded as being sufficiently clear, precise and detailed to afford appropriate protection against arbitrary interference by the public authorities with the right to respect for private life. The Court also held that there had been a **violation of Article 13** (right to an effective remedy) of the Convention **in conjunction with Article 8** in respect of two of the applicants, finding that they had not had at their disposal an effective domestic remedy for their complaint of a violation of the right to respect for their private life.

See also: **Izmestyev v. Russia**[19], judgment of 27 August 2019.

Texts and documents

See in particular:

- **Guide on the case-law of the European Convention on Human Rights – Prisoners rights**, Directorate of the Court's Jurisconsult

Media Contact:
Tel.: +33 (0)3 90 21 42 08

[18]. On 16 September 2022 the Russian Federation ceased to be a Party to the Convention.
[19]. On 16 September 2022 the Russian Federation ceased to be a Party to the Convention.