



## Turkish authorities should not have placed a prisoner in solitary confinement because of his sexual orientation in conditions that did not respect human dignity

In today's Chamber judgment in the case of **X v. Turkey** (application no. 24626/09), which is not final<sup>1</sup>, the European Court of Human Rights held:

unanimously, that there had been a **violation of Article 3 (prohibition of torture and inhuman or degrading treatment)** of the European Convention on Human Rights, and by six votes to one, that there had been a **violation of Article 14 (prohibition of discrimination)** of the Convention taken together with Article 3.

The 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. The Court 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.

### Principal facts

The applicant is a Turkish national who was born in 1989 and lives in Izmir (Turkey).

He was given two sentences, one being a 10-year prison sentence for various offences such as forgery, deception, credit-card fraud and misrepresentation in official documents.

In 2008 he was remanded in pre-trial detention in the Buca remand prison (Izmir). The applicant, a homosexual, was initially placed in a shared cell with heterosexual prisoners. Following intimidation and bullying by his fellow prisoners, he asked the prison administration to transfer him, for safety reasons, to a shared cell with homosexual prisoners. He was immediately placed in an individual cell.

According to the applicant, his 7 sq. m. cell was fitted with a bed and toilets but had no washbasin, was very dirty and poorly lit. He claimed that this type of cell was normally used for solitary confinement as a disciplinary measure or for inmates accused of paedophilia or rape. The applicant was deprived of any contact with other inmates and

<sup>1</sup> Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: [www.coe.int/t/dghl/monitoring/execution](http://www.coe.int/t/dghl/monitoring/execution)

social activity. He had no access to outdoor exercise and was allowed out only to see his lawyer or to attend hearings.

After a number of requests made unsuccessfully to the public prosecutor's office and the post-sentencing judge, in which he complained about these conditions, the applicant was ultimately transferred to the psychiatric hospital for his mental state to be assessed. He was diagnosed as being depressive and remained for about a month in hospital before returning to prison.

Another homosexual inmate was placed in the same cell as the applicant for about three months. During that period they filed a complaint against a warder for homophobic conduct, insults and blows. The applicant was subsequently deprived again of any contact with other inmates and he withdrew his complaint.

This situation ended on 26 February 2010 when the applicant was transferred to the remand prison of Eskişehir and placed with three other inmates in a standard cell where he enjoyed the rights usually granted to convicted prisoners.

## Complaints, procedure and composition of the Court

Relying in particular on Article 3 (prohibition of torture and inhuman or degrading treatment), the applicant complained, in particular, about the harsh conditions of his solitary confinement and the damaging effects on his physical and mental health. He further alleged that this treatment had been inflicted on him on account of his sexual orientation, in breach of Article 14 (prohibition of discrimination) taken together with Article 3.

The application was lodged with the European Court of Human Rights on 12 May 2009.

Judgment was given by a Chamber of seven judges, composed as follows:

Françoise **Tulkens** (Belgium), *President*,  
Danutė **Jočienė** (Lithuania),  
Dragoljub **Popović** (Serbia),  
Işıl **Karakaş** (Turkey),  
Guido **Raimondi** (Italy),  
Paulo **Pinto de Albuquerque** (Portugal),  
Helen **Keller** (Switzerland),

and also Stanley **Naismith**, *Section Registrar*.

## Decision of the Court

### Article 3

The Court observed that the applicant had remained in solitary confinement for a total of more than eight months in a cell of 7 sq. m. with living space not exceeding half of that surface area. The cell was fitted with a bed and toilets, but no washbasin. The Government had not disputed the fact that it was very poorly lit, very dirty and visited by rats. It was a cell intended for inmates who were placed in solitary confinement as a disciplinary measure or those accused of paedophilia or rape. While in that cell the applicant had been deprived of any contact with other inmates and social activity. He had had no access to outdoor exercise and had been allowed out only to see his lawyer or to attend hearings, which took place periodically, about once a month. The Court further found that certain aspects of those conditions were stricter than the regime applied in Turkey for prisoners serving life sentences.

The Court acknowledged that the prison administration had been concerned about the risk of Mr X being harmed. However, even if such safety measures had been necessary, they were not sufficient in themselves to justify a total exclusion from the shared areas of the prison.

Noting that his complaints had been unsuccessful, the Court found that the applicant had been deprived of any effective domestic remedy in respect of his complaint concerning the conditions of his detention and that he had not been held in conditions that were appropriate or respectful of his dignity. The Court found that in the present case the conditions of the applicant's detention in solitary confinement had been such as to cause him both mental and physical suffering and a strong feeling of being stripped of his dignity. Those conditions, aggravated by the lack of an effective remedy, thus constituted "inhuman or degrading treatment", in breach of Article 3.

### Article 14 taken together with Article 3

The Court observed that Mr X had constantly challenged the measures taken against him, emphasising among other things that they had been imposed "on the basis solely of his sexual orientation, supposedly to protect him from bodily harm". He had requested to be treated on an equal footing with the other inmates and to be granted measures that would have the specific effect of protecting him from harm.

Those requests had not been taken into account. The Court considered that the authorities had had an obligation to take all possible measures to ascertain whether or not a discriminatory attitude had played a role in the applicant's total exclusion from prison life.

It took the view that the prison authorities had not, in any event, performed a sufficient assessment of the risk for the applicant's safety. Because of his sexual orientation they had simply believed that he risked serious bodily harm.

The Court concluded that the main reason for the applicant's total exclusion from prison life was his homosexuality. As a result he had sustained discrimination on grounds of sexual orientation and there had therefore been a violation of Article 14 taken together with Article 3.

### Just satisfaction (Article 41)

The Court held that Turkey was to pay the applicant 18,000 euros (EUR) in respect of non-pecuniary damage and EUR 4,000 in respect of costs and expenses.

### Separate opinion

Judge Danute Jočienė expressed a separate opinion, which is annexed to the judgment.

*The judgment is available only in French.*

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