



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

FIFTH SECTION

CASE OF HELHAL v. FRANCE

(Application no. 10401/12)

JUDGMENT

STRASBOURG

19 February 2015

FINAL

19/05/2015

*This judgment has become final under Article 44 § 2 of the Convention final but it
may be subject to editorial revision.*

In the case of Helhal v. France,

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

Mark Villiger, *President*,

Angelika Nußberger,

Ganna Yudkivska,

Vincent A. De Gaetano,

André Potocki,

Helena Jäderblom,

Aleš Pejchal, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 27 January 2015,

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

PROCEDURE

1. The case originated in an application (no. 10401/12) against the French Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by an Algerian national, Mr Mohammed Helhal (“the applicant”), on 23 November 2011.

2. The applicant was represented by Mr P. Spinosi, a lawyer practising in Paris. The French Government (“the Government”) were represented by their Agent, Ms E. Belliard, Director of Legal Affairs, Ministry of Foreign Affairs.

3. The applicant, who is disabled, complained that his continued detention and the care he was receiving in prison were incompatible with Article 3 of the Convention.

4. On 17 December 2012 notice of the application was given to the Government.

THE FACTS**I. THE CIRCUMSTANCES OF THE CASE****A. Facts submitted at the time of the application**

5. The applicant, who was born in 1972, is serving a thirty-year prison sentence imposed on 31 May 2007 by the Meurthe-et-Moselle Assize Court for murder, attempted murder and assault involving the use or threatened

use of a weapon. He has been imprisoned since 17 May 2002 and will become eligible for release on 18 July 2027.

6. On 18 March 2006, while he was in prison in Nancy, the applicant fell several metres during an attempted escape and suffered a fractured spine. He spent several months at the Fresnes rehabilitation clinic before being transferred to Mulhouse Prison, where he encountered substantial difficulties (particularly on account of the staircases, which made it impossible for him to move about unaided), and Metz Prison, where his cell was not equipped for wheelchair use. He was subsequently transferred back to Fresnes from 5 November 2008 until 28 May 2009. From that date until 17 September 2014 he was held in Uzerche Prison, before being transferred to Poitiers-Vivonne Prison, where he is currently detained.

7. On 12 August 2010 the applicant applied to the Tulle judge responsible for the execution of sentences to have his sentence suspended on medical grounds, under Article 720-1-1 of the Code of Criminal Procedure (see paragraph 27 below). He explained that as a wheelchair user with paraplegia, he was not being detained in appropriate conditions since the premises were not designed for wheelchair use, and he was unable to receive the care he required. He noted that access to the toilet in his cell was undignified, that he could not reach all parts of the prison premises unaided, and that the provision of medical and paramedical care was inadequate, particularly as regards physiotherapy. He pointed out that he was unable to go to the showers autonomously and that the prison had assigned a prisoner to assist him for a payment of fifty euros per month. This prison orderly was responsible for cleaning the applicant's cell and accompanying him to the showers and washroom.

8. In an order of 27 September 2010 the judge appointed two doctors as experts. They submitted their reports on 2 and 14 November 2010.

9. The report by Dr G., drawn up on 21 October 2010, concluded:

“... Mr Mohammed Helhal has incomplete paraplegia with total effective urinary incontinence requiring self-catheterisation and round-the-clock use of a nappy. He also has major haemorrhoidal irregularities, for which he has refused any treatment.

Mr Mohammed Helhal currently has active muscle relaxation in the two lower limbs, for which physiotherapy is required several times a week on a regular, long-term basis.

That being so, Mr Mohammed Helhal's state of health is not incompatible with imprisonment, subject to the express condition of being detained in a facility catering for his disability, where he can undergo regular physiotherapy and have appropriate access to a gym.”

10. The report by Dr R. was drawn up on 28 October 2010 and read as follows:

“... On 17 November 2009 ... Dr Dubois stated: ... ‘his condition requires treatment by a physiotherapist in a specialist environment and daily pressure-sore relief’. ...

The most recent assessment at Bordeaux University Hospital, where the patient stayed from 5 to 12 March 2010, confirms that there has been a good sensorimotor recovery in the lower limbs and that mobility is possible with two walking sticks and a frame, whereas at present the patient mainly moves about in a wheelchair.

Appropriate physiotherapy focusing on both the joints and the muscles would clearly enable the prisoner to perform his own transfers with technical support, which would also have the benefit of easing the complications at the pressure points. At the same time, alongside the favourable progress in this post-traumatic condition, the patient has an anal disorder as a result of haemorrhoid surgery, and this essentially causes discomfort on a functional level.

Conclusion

...

- The prisoner displays sensorimotor damage resulting from a thoracolumbar spine fracture;
- The damage is stable with clear evidence of motor recovery in the lower limbs;
- Daily physiotherapy would be justified to improve motor skills in the lower limbs and the quality of transfers, but this is not possible at Uzerche Prison as there is no on-site physiotherapist;
- There is permanent sensory damage in the L5-S1 region requiring self-catheterisation, which is being adequately managed on a day-to-day basis by the prisoner;
- All of these spinal conditions are currently stable and unlikely to worsen, but could improve with proper treatment;
- The various disorders observed, in terms of both traumatic spinal cord injuries and anal damage, are not life-endangering for the prisoner;
- The prisoner's state of health is in my opinion not incompatible in the long term with continued detention;
- The disorders currently observed are stable and will continue to develop on a chronic basis, justifying palliative care."

11. In a judgment of 3 February 2011 the Limoges Post-Sentencing Court dismissed the application for suspension of the applicant's sentence. It took into account the two concurring medical opinions in finding that the applicant's state of health was compatible in the long term with his imprisonment. However, the court observed that "Uzerche Prison manifestly fails to satisfy the criteria for ensuring a suitable detention regime for the applicant, in terms of both the premises and the availability of paramedical care, despite the undisputed efforts by the prison's management and staff to ease the prisoner's living conditions as far as possible". It then noted that there were custodial facilities that were equipped to cater for the applicant's condition, such as Fresnes Prison or Roanne Prison, "which is designed and organised in a manner compatible with accommodating disabled prisoners, and where [he] will be able to have the regular physiotherapy sessions that he rightly demands, since a masseur/physiotherapist comes to the prison almost every day". The court concluded as follows:

“It therefore appears from all of the above considerations, both from a medical perspective and in terms of the prospect of arranging suitable conditions of detention, that the prisoner does not satisfy the requirements for having his sentence suspended on medical grounds.”

12. The applicant appealed against the judgment of 3 February 2011. He reiterated that besides the structural inadequacy of Uzerche Prison, he had not been offered any special arrangements in terms of medical and paramedical care (physiotherapy and access to the gym). He also submitted that Roanne Prison was no more suitable than Uzerche Prison as it did not have a rehabilitation facility.

13. In a judgment of 3 May 2011 the Post-Sentencing Division of the Limoges Court of Appeal upheld the judgment of 3 February, holding:

“The two experts concurred in concluding that [the applicant’s] condition was not incompatible in the long term with detention provided that he was given physiotherapy and access to a gym. While it is indeed not possible for these requirements to be fulfilled at Uzerche Prison, where [the applicant] has been transferred at his own request to be closer to his family, it has not been shown that he cannot be accommodated in conditions catering for his disorders at Roanne Prison, and therefore the criteria for suspending the execution of his sentence have not been satisfied, particularly since [the applicant] continues to deny – as stated in his letter of 23 March 2011 – the serious criminal acts that led to his conviction.”

14. The applicant appealed on points of law. In a judgment of 31 August 2011 the Court of Cassation declared the appeal inadmissible.

15. In a letter of 28 February 2012 to the Registry of the Court, the applicant contended that he was not undergoing any physical rehabilitation, there being no physiotherapist at Uzerche Prison, and that he had no access to the gym. He wrote that his health was deteriorating on a daily basis and that he was being mistreated through the lack of provision of care.

B. Facts brought to the Court’s attention in the parties’ observations of 10 April and 14 June 2013 and the Government’s additional observations of 24 July 2013

1. Provision of care

16. According to the Government, the applicant has received the following medical assistance:

(a) twelve occasions of escorted leave between 3 May 2011 and 26 June 2012 for specialist consultations and medical imaging tests at Tulle Hospital and Limoges University Hospital;

(b) thirty-three medical appointments with a doctor from the prison medical unit, consisting of a medical examination on 28 May 2009 followed by consultations spread across his time at the prison (ten in 2009, three in 2010, ten in 2011, six in 2012, one in 2013);

(c) three stays in hospital for several days in 2010, 2011 and 2012;

(d) technical assistance from nurses on fifty-five occasions between 2009 and 2013, plus weekly meetings with the prison nurse;

(e) eight psychiatric consultations and sixteen meetings with a psychiatric nurse;

(f) provision of medical equipment to alleviate or offset disabilities, including a walking frame (June 2009), an anti-pressure-sore cushion (August 2009), spectacles (January 2010), a new wheelchair (September 2012), and an electrostimulation device (February 2013).

17. In addition to the treatment described above, the Government informed the Court that from September 2012 the applicant had attended physiotherapy sessions at Uzerche Prison. The physiotherapist's services had been engaged following three letters dated 18 November 2011, 28 December 2011 and 19 March 2012 in which the interregional director of the Prison Service had alerted the Director General of the Limousin Regional Health Agency to the detrimental effects of the lack of physiotherapy on the care provided to prisoners.

18. The Government added that the applicant had been offered the opportunity to attend yoga classes but had been removed from the list of those enrolled for the classes because of his non-attendance.

19. The applicant confirmed the occasions of escorted leave mentioned by the Government but pointed out that on each occasion he had been transferred by ambulance – with his wrists and ankles handcuffed – and had had to undergo a full body search beforehand and a rub-down search afterwards. He added that the full body searches carried out whenever he received visits and when he was escorted outside the prison were deeply humiliating; he was obliged to have his nappy inspected, and in order to proceed more quickly, several warders carried out this task together. During one inspection, a senior warder had said in front of everyone that “the boss had given instructions to inspect his nappy”. The applicant maintained that as a result of these practices, he had asked his sister to visit him less frequently.

20. With regard to the applicant's complaints about the instances of escorted leave and the body searches, the Government pointed out that the physical damage he had suffered could not be regarded as having eradicated any security risk, since his health had no bearing on his potential connections on the outside and the risk of his escaping. To that end, they produced copies of two decisions dated 2011 (month illegible) and June 2012 ordering individual (full body) searches in connection with escorted leave for medical reasons. They noted that in May 2013 the applicant had been sent to a punishment cell for ten days following an assault on a fellow prisoner and the discovery of a mobile telephone in his cell. They stated that searches in the prison were not carried out systematically but on the basis of incidents noted during visits or in the cells. They produced three decisions ordering individual searches, dated 14 May and 26 December 2011 and

10 May 2013 (involving searches of the applicant's cell), and seven decisions ordering a one-off search of a specific sector of the prison after the visits received on 10 June 2011, 10 November 2011, 26 June 2012, 1 October 2012, 14 December 2012, 22 March 2013 and 31 May 2013.

21. With regard to physiotherapy, the applicant pointed out that he had only started receiving it in September 2012 and that it was limited to a weekly fifteen-minute session. He produced a medical certificate issued on 10 May 2013 by a doctor from the Outpatient Consultation and Treatment Unit (*unité de consultation et de soins ambulatoires* – “the UCSA”) stating that his “condition requires daily rehabilitation, which Uzerche Prison is unable to provide, both on account of the lack of qualified staff and because the premises are not suitably equipped. As a result, the patient cannot remain in this facility without his health suffering. He must be given the possibility of admission to a specialised facility.” The applicant submitted that the doctor was repeating what his colleagues had already noted on 17 November 2009 (see paragraph 10 above) and 11 March 2011; he produced a medical certificate signed on the latter date by a doctor from the UCSA who stated that the applicant could not remain in the facility without his health suffering and added that “his paraplegia must be treated in a rehabilitation centre”.

22. With regard to the electrostimulation device, the applicant submitted that his doctor had obtained the funds needed to purchase it but that the prison authorities had not allowed him to do so. As to the possibility of attending yoga classes, the applicant pointed out that he had been urged to go no more than once a week in order to avoid “monopolising” the lift leading to where the classes were held.

23. The applicant again stressed that he was dependent on the prison orderly responsible for assisting him in his everyday activities. The prisoner currently “assigned” to that duty was the third since his admission to the prison, and the applicant was dependent on him for supplying incontinence products, accompanying him to the showers (there was a step preventing unassisted wheelchair access) and cleaning his cell. This level of dependency and the problems associated with his incontinence complicated his relationship with the orderly. Going to the shower was a stressful time because the structure did not shield him from the view of others and his incontinence exposed him to extremely humiliating situations, causing irritation or even hostility on the part of his fellow inmates, who were unwilling to put up with such inconvenience in the course of their personal hygiene activities.

24. Lastly, the applicant informed the Court that he had been temporarily transferred to a cell in the secure unit, further to a decision by the classification board, after a mobile phone had been found in his cell. Under the resulting regime, he had access to one hour's exercise in the morning and one hour in the afternoon, despite the fact that a doctor had

issued a certificate on 7 June 2013 stating that his condition required access to at least five hours' exercise a day. The Government stated that the applicant had been transferred back to his cell on 26 June 2013.

2. *Prospect of a transfer to Roanne Prison*

25. The applicant submitted that although the prison management had indeed encouraged him to request a transfer to Roanne Prison, their approach had been guided by purely administrative considerations unconnected to his care-related needs. The management had refused to give the slightest undertaking about the conditions in which he would be accommodated in Roanne and the care he could be given there. They had been unable to provide any guarantees as to care arrangements as there were six cells for disabled prisoners at that facility and they were all occupied, and a single physiotherapist came to the prison for four half-days a week to provide services for five hundred prisoners. The applicant contended that he had not applied for a transfer on the grounds that the prison in question did not offer appropriate care facilities and would simply have represented a further upheaval and ordeal for him following his repeated moves from one prison to another (twelve transfers between 2002 and 2009). He referred to information obtained from International Prison Watch (*Observatoire international des prisons* – OIP) by his sister and his lawyer and produced a copy of an email sent by OIP to his lawyer on 3 January 2011, reading as follows:

“I do not think that Meaux and Roanne are particularly well equipped although, like all recent establishments, they do have disabled cells. I attach a decision in which the Douai Court of Appeal found, in relation to another wheelchair user, that ‘no custodial facility is equipped to cater for the applicant’s condition’ and accordingly suspended the execution of his sentence. ... Nevertheless, I consider it important to stress the consequences of a change of prison, not only in terms of family ties but also as regards the procedure for requesting a suspension of the sentence, since that procedure would then have to be started over again. ...”

The applicant emphasised in any event that the medical unit at Uzerche Prison had not recommended his transfer to Roanne but rather the provision of treatment in a specialist facility.

26. The Government submitted that the applicant’s transfer to Roanne Prison had been envisaged by the health-care professionals at Uzerche Prison but observed that he had never actually requested such a transfer; after mentioning a transfer request, he had indicated the following day (9 August 2011) that he did not intend to pursue it, for reasons that were unclear. The Government also produced a note drawn up on 12 June 2012, which in their submission suggested that “the applicant’s main motivation related to the previous decisions of the judicial authorities on requests for suspension of sentences, rather than to the treatment he might receive”. They rejected the applicant’s arguments about the inability of Roanne

Prison to accommodate him and submitted, in their additional observations, that only three of the six cells reserved for people with reduced mobility were occupied. They produced a copy of an email sent by the Prison Service in July 2013 indicating the availability of such cells. They also pointed out that an agreement had been signed in June 2013 between Roanne Prison, the UCSA and a non-governmental organisation with a view to providing appropriate care for dependent prisoners with specialist professional assistance.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Suspension of the execution of a sentence on medical grounds

27. Article 720-1-1 of the Code of Criminal Procedure was worded as follows at the material time:

“Unless there is a serious risk of reoffending, suspension may also be ordered, regardless of the nature of the sentence or the portion remaining to be served, and for a duration that does not need to be determined, where it has been established that the prisoner has a life-threatening illness or that his or her state of health is incompatible in the long term with continued detention, save in cases where persons detained in a psychiatric institution are admitted to hospital.

The suspension may only be ordered if two separate medical opinions concur in finding that the prisoner is in one of the situations set out in the previous paragraph. However, in an emergency where the prisoner’s life is at risk, the suspension may be ordered on the basis of a medical certificate issued by the doctor in charge of the medical unit treating the prisoner, or a doctor standing in for him or her ...”

Law no. 2014-896 of 15 August 2014 on adapting sentences to the individual and increasing the effectiveness of criminal penalties, which came into force on 1 October 2014, has amended the system for suspending the execution of sentences. In the case of convicted prisoners, it has, among other things, abolished the requirement for a second medical opinion. Paragraph 2 of Article 720-1-1 of the Code of Criminal Procedure now provides that “[t]he suspension may only be ordered if a medical opinion establishes that the prisoner is in one of the situations set out in the previous paragraph”. In the same paragraph, “where the prisoner’s life is at risk” has been removed as a requirement in the event of an emergency.

28. Examining the provision in question, the Court of Cassation specified in a judgment of 28 September 2005 (Criminal Division, 05-81.010) that the convicted prisoner’s condition necessarily required a poor short-term prognosis. In a judgment of 7 January 2009 (Criminal Division, 08-83364) the Court of Cassation held that in rejecting an application by a disabled prisoner for the suspension of his sentence, the Post-Sentencing Division of the Amiens Court of Appeal had not justified its decision on the basis of Article 720-1-1 of the Code of Criminal Procedure since it had not

determined, as the applicant's submissions had invited it to do, whether the two expert opinions indicated that the actual conditions of his detention were incompatible in the long term with his state of health. Lastly, in a decision of 26 June 2013 (Criminal Division, 12-88284) the Court of Cassation refused to refer a question relating to Article 720-1-1 of the Code of Criminal Procedure to the Constitutional Council for a preliminary ruling on constitutionality. The question concerned the alleged interference with the ordinary courts' duty to protect personal liberty in so far as they were bound by the medical experts' two concurring opinions; the fact that the measure could be granted only if there was no serious risk of reoffending; and the lack of clarity of the provision in terms of respect for human dignity. The Criminal Division found that the question raised had no serious merit, for the following reasons:

“... firstly, ... the person concerned has been deprived of his liberty for the purpose of serving a sentence deemed necessary by the judicial authority, a suspension of the sentence on medical grounds being an exceptional measure, and secondly, ... even where two expert opinions concur in finding that the prisoner is not in one of the situations provided for in Article 720-1-1 [of the Code of Criminal Procedure], it is reasonable to envisage that the court dealing with an application for suspension of a sentence would be competent either to order a further opinion or to determine whether the continued detention of the person concerned would amount to inhuman or degrading treatment, for example because it would be incompatible with the guarantees to which he is entitled for the protection of his health.”

29. In his annual activity report for 2012 the Inspector General of Detention Facilities (*contrôleur général des lieux de privation de liberté* – CGLPL) included a chapter on “old age, invalidity and disability in prison”, in which he noted that people in these categories were excluded by the very nature of prison architecture and the organisation of everyday prison life. He explained that cells for prisoners with reduced mobility were often located on the ground floor, which was normally set aside for prisoners under the “closed doors” regime; this was not conducive to any communication. The daily routine was a further source of anxiety: “fear of being confronted with violence, fear of a primarily young population, fear of going to the exercise yard. Boredom too, since an occupational activity is no longer accessible to them and the activities available are unsuited to their physical condition. And finally, the humiliation of being dependent. Although many facilities have signed agreements with associations providing personal assistance, there are still too many prisons where the duties of ‘attendant’ or domestic help are performed by other prisoners employed by the prison management – the ‘prison orderlies’; this situation is unacceptable on account of the risks of blackmail and the lack of appropriate training and remuneration.”

The CGLPL advocated a rethink of the architecture and living arrangements at detention facilities, but emphasised that consideration should be given to allowing these types of prisoners to serve their sentences in a non-custodial environment. He also recommended that “the suspension

of sentences on medical grounds be better adapted to the reality of the situations it may cover”. Among the targets of his criticism in that respect were the restrictive conditions laid down in Article 720-1-1 of the Code of Criminal Procedure, by which the execution of a sentence could be suspended only in extremely serious cases and as a short-term measure. He added: “It must be noted that the experts assigned to assess whether the prisoner’s health is compatible with continued detention do not take sufficient account of the physical conditions of incarceration, quite simply because they are entirely unaware of the constraints it entails”. He recommended that Parliament amend Article 720-1-1 “to introduce a third possible criterion besides the risk to life and the long-term incompatibility of the prisoner’s health with detention, namely granting a request for suspension of a sentence where the treatment required by the prisoner cannot be provided either in detention or even during periods of ordinary or escorted prison leave, because of its repetitive and regular nature”.

30. On 20 November 2013 the Justice/Health Interministerial Working Group submitted a report to the Ministers of Justice and Health on “Adjustments of sentence and suspensions of sentence on medical grounds”, which recommended, among other things, extending the scope of the suspension of sentences on medical grounds by giving greater consideration to disabilities in the examination of such applications: “The working group agrees on the need to specify in the practical guide that the suspension of a sentence on medical grounds is applicable to individuals whose disability is incompatible in the long term with detention and that due regard should be had in this assessment to the actual conditions of ordinary detention (reference is made to the case-law of the European Court of Human Rights and the Court of Cassation). It is recommended that the experts be provided with all possible means in order to determine whether the prisoner’s health is compatible with the conditions of ordinary detention. While some members of the group wanted to include a specific reference to disability in the text of Article 720-1-1 of the Code of Criminal Procedure, others are of the view that disability can already be taken into account under the existing provisions.”

B. Relevant provisions on health care

31. Reference is made to the judgments in *Mouisel v. France* (no. 67263/01, § 26, ECHR 2002-IX) and *Rivière v. France* (no. 33834/03, § 29, 11 July 2006) for the provisions governing health care in prison. It should be noted that health care for prisoners has been the responsibility of the public hospital service since the Law of 18 January 1994 came into force. Outside appointments and emergency and short-term hospital admissions take place at the hospital to which the UCSA – an internal unit of the hospital based in the detention facility – is attached. Any treatment

that is unavailable at the UCSA is provided either at the local hospital or in one of the eight secure interregional hospital units (*unités hospitalières sécurisées interrégionales* – UHSI) or the National Public Health Institution in Fresnes (EPSNF). The UHSIs are responsible for providing medical and surgical treatment for detainees referred by UCSA medical personnel for stays of more than forty-eight hours. The EPSNF has medical, aftercare and rehabilitation departments and admits prisoners whose health requires an extended hospital stay or major therapy (see *Guide du prisonnier* (Prisoner’s handbook), OIP, 2012, section on “La médecine générale”). In its 2014 annual report the Court of Audit included a chapter entitled “Detainees’ health: further progress still essential”, in which it outlined the arrangements for admitting detainees to hospital and noted, among other things, the “poor take-up of somatic hospital capacity”, and especially the under-occupation of the UHSIs. The report also mentions “an approach to health care that is all too often dependent on the operation of the prison system”, and concludes that “in addition to the rigidity and constraints of the prison environment, the available treatment is still inadequate, the need for more modern premises and equipment is not satisfied and the forms of cooperation between the parties concerned are fragile and incomplete”. Furthermore, it calls for “the development of a stronger and clearer public-health policy” through the assistance of regional health agencies, which “assess and identify detainees’ health-care needs. They define and regulate the provision of health care in a prison environment.”

32. Article D. 82 of the Code of Criminal Procedure provides that prisoners can be transferred either at the request of the governor of the prison where they are serving their sentence or at their own request. A Prison Service circular of 21 February 2012 on the assignment of detainees to custodial facilities specifies the procedure for applying for a transfer. Article D. 360 of the same Code deals with transfers of prisoners to a facility better equipped to cater for their condition. Article R. 57-8-6 of the Code concerns the rights of prisoners with disabilities. The two last-mentioned provisions are worded as follows:

Article D. 360

“A transfer to a more appropriate custodial facility may be requested, in accordance with the fourth paragraph of Article D. 382, for detainees whose physical conditions of detention in the facility where they are being held are not suited to their medical condition, and for prisoners requiring special medical care.

The regional director shall order any transfer within his or her region, subject to the conditions laid down in Article D. 301, with the aim of enabling a sick prisoner to receive treatment in more favourable conditions.

In the case of remand prisoners, the judge dealing with the investigation must have given his or her prior consent to the transfer, after being informed of the likely duration of the treatment envisaged.”

Article R. 57-8-6 (introduced by Decree no. 2010-1634 of 23 December 2010)

“Any detainees who are prevented on a long-term basis, as a result of functional limitations of the upper limbs in connection with a physical disability, from independently performing actions linked to treatment prescribed by a doctor may designate another person, including a fellow detainee, to help him or her carry out these actions during periods when professional care staff are absent. The person thus designated must give express consent. ...

The head of the facility may oppose the designation of a particular helper for reasons relating, for example, to personal safety or the preservation of order within the facility.” [See also the methodological guide to health care for persons detained by the judicial authorities, Ministry of Justice and Ministry of Social Affairs and Health, 2012, p. 90]

C. Report on the CGLPL’s visit to Uzerche Prison (October 2010)

33. The CGLPL published a detailed report following his visit to Uzerche Prison, an institution opened in 1990; only some parts of the report are relevant to the present case. It does not specifically mention problems linked to the situation for people with disabilities. With regard to the more general question of personal hygiene, the CGLPL observed that “no particular difficulties for prisoners have been noted. The showers are permanently accessible for prisoners under the ‘open doors’ regime, and once a day for prisoners under the ‘closed doors’ regime in B building.” He noted that the exercise yards were similar in all the wings of the prison, comprising a yard, two or three concrete benches, a concrete table-tennis table and an area for playing boules. They had “Turkish” (squat) toilets, which were inaccessible for prisoners with certain types of disability. In buildings C and D, there had for a long time been unrestricted access to the exercise yard, and prisoners had been able to come and go as they pleased. This was no longer the case. Set opening times had been introduced, and prisoners were required to enter the yard at the start of the time slot and leave at the end, with no other option: from 9 to 11 a.m., 2 to 4 p.m. and 4 to 5.30 p.m. The report also noted that “no physiotherapists have visited the prison since the retirement in 2009 of the person who previously performed this service. Several prisoners have complained about this.”

THE LAW**I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION**

34. The applicant complained that he had been subjected to treatment in breach of Article 3 of the Convention on account of the inaccessibility of

health care while in detention. The provision relied on by the applicant reads:

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

A. Admissibility

35. The Government requested that the application be rejected as manifestly ill-founded.

36. The Court considers that the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

37. The applicant submitted firstly that the conditions of his imprisonment undermined his dignity, and drew attention in that connection to the position taken by the judge responsible for the execution of sentences and the Post-Sentencing Division and challenged by the Government, to the effect that his continued detention was conditional on the availability of premises catering for his disability and the accessibility of appropriate treatment. The Government's position was all the more unacceptable as the courts in question had merely examined the most immediately visible aspects of his situation, namely the configuration of the premises and the treatment available to detainees. Referring to the reports by the CGLPL and the Justice/Health Interministerial Working Group mentioned in paragraphs 29 and 30 above, he submitted that the competent authorities' assessment of dignity was limited to the question of the provision of care rather than covering practical living conditions. However, his state of complete dependence on the prison orderly, the conditions in which he took a shower, the security measures imposed on him whenever he was escorted outside the prison and the full body searches all amounted to repeated humiliation undermining his personality. All these measures had been found to be inhuman and degrading by the Court (the applicant cited *Vincent v. France*, no. 6253/03, 24 October 2006; *Khider v. France*, no. 39364/05, 9 July 2009; and *Duval v. France*, no. 19868/08, 26 May 2011), and the same conclusion had to be reached in his case, in view of the cumulative effect of the ill-treatment and his disability, as well as the complete lack of justification for the security measures imposed on him.

38. Regarding the quality of care provided, the applicant observed that the Government had acknowledged that no physiotherapy sessions had been

available until 2012 and had provided no details as to their frequency after that time. He asserted that the treatment provided was derisory (see paragraph 21 above), even though the experts and doctors had repeatedly stressed the consequences of failure to provide suitable treatment for his condition. A transfer to Roanne Prison would not guarantee him any better treatment. The cells set aside there for prisoners with reduced mobility were all taken by severely disabled prisoners. The applicant also noted that one prisoner in a wheelchair had committed suicide in that prison in November 2012, and that in any event the doctors had recommended that he be admitted to a specialist facility for his rehabilitation.

39. As to whether his continued detention was appropriate, the applicant complained that Article 720-1-1 of the Code of Criminal Procedure had been read in a restrictive manner that conflated dignified conditions of detention with sufficiency of treatment. Furthermore, the Court of Appeal had based its findings on a ground not provided for by the Article in question for refusing a request for suspension of execution of a sentence, namely failure to acknowledge the offence. Relying on *Gülay Çetin v. Turkey* (no. 44084/10, 5 March 2013), he emphasised that there were no clear provisions of domestic law that required consideration to be given to personal capacity to cope with detention regardless of the quality of treatment needed, or that allowed situations infringing human dignity to carry on indefinitely. The intensity of the ordeal inflicted on a person with disabilities amounted to disregarding the purposes of the sentence, instead turning it into pure retribution and an indiscriminate punishment. The UCSAs' task was in no way to remove their patients from the reality of their existence but rather to provide diagnosis and treatment.

40. The Government justified the applicant's continued detention in the light of judgments such as *Matencio v. France* (no. 58749/00, 15 January 2004) and *Vincent* (cited above), given that it had not been established that he was suffering from a lack of autonomy. They drew attention to the two expert medical opinions finding that his state of health was compatible with detention, provided that he was detained in appropriate conditions.

41. As far as those conditions were concerned, the Government observed that the applicant was held in a cell equipped for people with reduced mobility, where it was possible to move about in a wheelchair. The cell was on the ground floor, thus facilitating access to the exercise yard and the socio-educational area. Stair-free access to the UCSA, the canteens, the visiting rooms and the registry was also possible.

42. The Government stated that the applicant was assisted in his daily activities by a prison orderly. In their additional observations they noted that the prison did not have individual showers, but that there was unrestricted access to the showers. Without indicating the location of the showers or the frequency with which the applicant was able to use them, they submitted

that he could choose a time, subject to a maximum of thirteen prisoners per day; furthermore, each shower had a partition so as to ensure privacy.

43. The Government also emphasised the consideration given to the applicant's well-being through access to a physical activity, namely yoga classes. They acknowledged that the sports area was not wheelchair accessible but pointed out that it was possible for the applicant to reach the area using crutches or his walking frame and that in any event he had never gone there.

44. The Government submitted in conclusion that the management had taken every step to reconcile the applicant's disability as far as possible with the imperatives of detention, by enabling him to be as autonomous as possible and ensuring his well-being through cultural and physical activities.

45. The Government contended that the measures taken when the applicant was escorted outside the prison had been justified (see paragraph 20 above) in view of the offences of which he had been convicted, his sentence and his attempted escape; the security arrangements were regularly adjusted and reviewed. The body searches were also appropriate in view of the circumstances and could not be considered unjustified simply because of the applicant's condition.

46. With regard to the treatment provided to the applicant, the Government stated that the prison service had provided him with all the facilities required for his disability, including an anti-pressure-sore cushion for the visiting room, an anti-pressure-sore mattress in his cell and a plastic chair for use while taking a shower. They also detailed all the occasions when the applicant had been admitted to hospital or escorted outside the prison (see paragraph 16 above), and the steps taken to ensure that a physiotherapist came to Uzerche Prison from September 2012 (see paragraph 17 above), submitting in conclusion that the conditions of his detention in relation to his state of health could not be deemed to amount to treatment in breach of Article 3 of the Convention.

2. The Court's assessment

(a) General principles

(i) Duty of care

47. The Court refers to its settled case-law to the effect that the duty of care towards sick prisoners imposes the following specific obligations on the State: to verify that prisoners are fit to serve their sentence, to provide them with the necessary medical treatment and, where appropriate, to adapt the general conditions of detention to their particular state of health. These obligations are set out very clearly in *Xiros v. Greece* (no. 1033/07, § 73, 9 September 2010; for a more recent authority, see *Ürfi Çetinkaya*

v. Turkey, no. 19866/04, §§ 87-92, 23 July 2013) and may be summarised as follows.

48. With regard to the first obligation, in a State founded on the rule of law fitness for detention is the prerequisite for pursuing the execution of a sentence. Although this cannot be construed as a general obligation to release detainees or transfer them to a civil hospital, even if they are suffering from an illness which is particularly difficult to treat, the Court cannot rule out the possibility that in particularly serious cases situations may arise where the proper administration of criminal justice requires remedies in the form of humanitarian measures. Accordingly, in exceptional cases where the state of a detainee's health is absolutely incompatible with his or her detention, Article 3 may require the release of that person under certain conditions (see *Xiros*, cited above, § 74).

As regards the second obligation, the lack of appropriate medical care may in principle amount to treatment contrary to Article 3. The Court requires, firstly, the provision of relevant medical support for sick detainees and appropriate medical treatment for their specific ailments. The promptness and frequency with which medical care is provided to such prisoners are two factors to be taken into account in assessing whether they are being treated in a manner compatible with the requirements of Article 3. In particular, these two factors are not assessed by the Court in absolute terms, but with due regard for the prisoner's particular state of health in each case. In general, the worsening of the prisoner's health does not in itself play a decisive role as regards observance of Article 3 of the Convention. The Court examines in each case whether the deterioration of the prisoner's health was attributable to inadequacies in the medical care provided (*ibid.*, § 75).

As regards the third obligation, the Court requires the prison environment to be adapted, where necessary, to the prisoner's specific needs so that he or she can serve the sentence in conditions that do not undermine his or her psychological well-being (*ibid.*, § 76).

(ii) *Prisoners with disabilities*

49. Severe physical disability, like health and age, is a circumstance giving rise to the question of fitness for detention in the light of Article 3 of the Convention (see *Mouisel v. France*, no. 67263/01, § 38, ECHR 2002-IX, and *Matencio*, cited above, § 76).

50. Where the national authorities decide to place or maintain a person with disabilities in detention, they should demonstrate special care in guaranteeing such conditions as correspond to the special needs resulting from the detainee's disability (see *Price v. the United Kingdom*, no. 33394/96, § 25, ECHR 2001-VII; *Farbtuhs v. Latvia*, no. 4672/02, § 56, 2 December 2004; and *Zarzycki v. Poland*, no. 15351/03, § 102, 12 March 2013).

51. The detention of a disabled person for a lengthy period in a facility where he or she is unable to move about independently, and in particular leave his or her cell, amounts to degrading treatment proscribed by Article 3 of the Convention (see *Vincent*, cited above, § 103, and *Cara-Damiani v. Italy*, no. 2447/05, § 72, 7 February 2012).

52. While it is true that the Convention does not in itself guarantee the right to social assistance, the State cannot release itself from its duty to ensure that detention conditions meet the special needs of disabled prisoners by shifting responsibility for their supervision or assistance to fellow inmates (see *Kaprykowski v. Poland*, no. 23052/05, § 74, 3 February 2009; *Grimailovs v. Latvia*, no. 6087/03, § 161, 25 June 2013; and lastly, *Semikhvostov v. Russia*, no. 2689/12, § 85, 6 February 2014, in which reference is made to the risk of disabled prisoners being stigmatised by receiving assistance from fellow inmates in their everyday activities). In some cases, relying on assistance from fellow inmates in order to go to the toilet, wash or get dressed or undressed may be degrading or humiliating (see the case-law cited in *Zarzycki*, cited above, § 104, and also *D.G. v. Poland*, no. 45705/07, § 147, 12 February 2013). Access to sanitation facilities raises a particular concern under Article 3 of the Convention (see *D.G. v. Poland*, cited above, §§ 147 and 150, and *Semikhvostov*, cited above, § 81).

(b) Application of the above principles in the present case

53. The Court observes firstly that it is not disputed that the applicant has a disability which leaves him largely confined to a wheelchair, although it appears that he is sometimes able to move about with the aid of walking sticks or a walking frame (see paragraph 10 above). The applicant's complaint should therefore be examined in the light of the principles set out above governing the State's duty of care towards people with disabilities, in view of their vulnerability in dealing with the hardships of detention.

(i) Continued detention

54. The Court notes that the experts appointed following the application for suspension of the applicant's sentence found that his state of health was compatible with detention provided that he could receive daily physiotherapy. One of them pointed out in his conclusions that physiotherapy could not be provided at Uzerche Prison (see paragraph 10 above). The post-sentencing courts subsequently found that the applicant did not satisfy the conditions for having the execution of his sentence suspended, while taking care to note that the prison where he was detained was not suited to his circumstances. The Court of Cassation declared the applicant's subsequent appeal points of law inadmissible.

55. Having regard to the foregoing, the Court observes that it has not been ruled out that the applicant could receive physiotherapy in a prison

setting (contrast *Cara-Damiani*, cited above, § 74). The Court observes that the applicant's disability was taken into account in the assessment of his application for suspension of his sentence, which was rejected on the basis of concurring medical opinions concluding that his condition was not incompatible in the long term with detention provided that he was given physiotherapy and access to a gym. In addition, the courts found that Uzerche Prison manifestly failed to satisfy the requirements for the applicant's detention regime, in terms of both the premises and the availability of paramedical care (see paragraphs 11 and 13 above). The Court notes in that connection the developments in domestic law and in the positions taken by official bodies as to the need to take account of disabilities when considering applications for the suspension of sentences (see paragraphs 27, 28, 29 and 30 above). Lastly, it observes that it does not appear from the case file that the applicant's health has deteriorated during his detention or that his disability has worsened as a result of the detention conditions. In particular, the report on the visit to Uzerche Prison by the CGLPL (see paragraph 33 above), which does not deal specifically with the situation for people with disabilities, does not suggest that the conditions there are such as render the applicant's continued detention incompatible with Article 3 of the Convention. Furthermore, should the applicant's health deteriorate, French law affords him the opportunity to submit a fresh application to have his sentence suspended on medical grounds, a process that Parliament has recently relaxed with a view to making it easier to use (see paragraphs 27 and 28 above).

Accordingly, the present case does not concern the question of the applicant's fitness to serve his sentence, but rather the quality of the care provided, and in particular whether the national authorities did everything that could reasonably be expected of them to provide him with the rehabilitative treatment he needed and to offer him some prospect of an improvement in his condition.

(ii) Quality of treatment

56. The Court observes that there is no dispute between the parties as to the promptness and frequency of the medical treatment provided to the applicant since his transfer to Uzerche Prison, including access to specialist consultations (see paragraphs 16 and 19 above), and also as to the medical equipment made available to him, except for the electrostimulation device, the purchase of which, according the applicant, has been blocked by the prison authorities. On this specific point, no substantiated arguments have been submitted to the Court, in particular regarding the reason given by the appropriate authorities for refusing to allow the applicant to purchase such a device himself, which he is apparently in a position to do (see paragraphs 16 and 22 above) in the absence of any complaints on his part as to whether the device could be covered by the social-security system (contrast, for

example, *V.D. v. Romania*, no. 7078/02, §§ 94-96, 16 February 2010). In view of these circumstances, the Court is unable to adopt a position on this point.

57. With regard to the physiotherapy prescribed by all the doctors who examined the applicant, the Court observes that they unanimously recommended daily rehabilitation sessions and access to a gym. However, the applicant did not receive any paramedical care of this kind until September 2012 – that is, for a period of more than three years following his admission to Uzerche Prison – on account of the lack of qualified staff at the institution. It was also very difficult for him to go to the gym since it was not wheelchair accessible, as the Government explained. The Court would note that the application for suspension of the applicant's sentence was refused subject to his receiving appropriate physiotherapy sessions tailored to his condition, and that the domestic courts pointed out on that occasion that such treatment could not be provided at Uzerche Prison, but in other custodial facilities (see paragraphs 11 and 13 above). The UCSA doctors emphasised that the applicant's rehabilitation should take place in a specialist environment (see paragraph 21 above). The Court is not in a position to assess whether an ordinary prison without admission to hospital (see paragraph 31 above) would constitute an appropriate setting, but it must ascertain whether measures were taken by the prison authorities to offer the applicant the treatment prescribed by the doctors.

58. In that connection it notes, firstly, that no physiotherapist came to see the applicant at Uzerche Prison between 2009 and September 2012. According to the information supplied by the Government, the interregional director of the Prison Service repeatedly called upon the appropriate health-care authorities to remedy the deficiencies in the provision of physiotherapy at the prison (see paragraph 17 above), but it has to be noted that her appeal went unheeded for more than three years. The Court observes that while the responsibility for ensuring the presence of a physiotherapist at the prison lies with a separate authority from the Prison Service, this cannot justify such a lengthy period of inaction and on no account releases the State from its duties towards the applicant.

The Court further observes that the Government have not shown that any effort was made to find a solution whereby the applicant could be transferred to another prison or a specialist setting. It cannot accept the Government's argument that the failure to transfer the applicant to such a facility, in particular to Roanne Prison, was entirely his own fault. Admittedly, the applicant's assertion that it would not have possible to provide him with the necessary treatment in that prison can only be regarded as speculation; the parties' observations on this issue differ considerably since they referred to the situation at that prison at different times (see paragraphs 25 and 26 above). It is likewise true that the applicant did not formally request a transfer but decided against doing so, firstly in June 2010

because, according to the Government, his “main motivation related to the previous decisions of the judicial authorities on requests for suspension of sentences, rather than to the treatment he might receive”, and then in August 2011, for unclear reasons (see paragraph 26 above). However, the Court does not consider that this attitude amounted to a refusal of treatment: it notes that in August 2011 the applicant was awaiting the outcome of his court application to have his sentence suspended, which might explain why he did not make any requests to the prison authorities at that time. Furthermore, although Article D. 360 of the Code of Criminal Procedure states that prisoners may request a transfer to another custodial facility more suited to their medical condition, it provides above all that the responsibility for such a transfer lies with the interregional director of the Prison Service, who is to order “any transfer ... with the aim of enabling a sick prisoner to receive treatment in more favourable conditions” (see paragraph 32 above). However, it does not appear from the case file that any specific measures were taken during that entire period or that any efforts were made to allow the applicant to undergo physiotherapy sessions tailored to his condition, despite the repeated recommendations of the UCSA doctors that he be provided with care in a specialist setting (see paragraph 21 above). The attitude of the applicant, who was apparently reluctant to seek a transfer for reasons including the distance from his family (see paragraph 25 above), cannot in itself justify the inaction of the prison and health-care authorities in failing to cooperate (see paragraph 31 above) to provide him with the care deemed necessary by the doctors who had examined him. The Court further notes that the physiotherapy he has received since September 2012 is limited to one weekly fifteen-minute session (see paragraph 21 above).

(iii) Conditions of detention

59. Uzerche Prison has a cell for disabled prisoners on the ground floor, near the Outpatient Consultation and Treatment Unit, the canteen, the visiting rooms, the route to the exercise yard, and the socio-educational sector. The Court observes that it has not received any complaints from the applicant about the layout of his cell, which is wheelchair accessible (contrast *Vincent* cited above, §§ 101 and 102). Nor has the applicant indicated that he has suffered any hardship in moving around the different wings of the prison, which the Court notes is equipped with a lift that he can use where necessary (contrast *Arutyunyan v. Russia*, no. 48977/09, §§ 78-79, 10 January 2012). Although it does not appear from the case file that the applicant often leaves his cell, the Court cannot infer from his observations any specific problems attaining the level of severity required for Article 3 to be applicable as far as his movements around the facility are concerned, including access to outdoor exercise.

60. It remains for the Court to examine the part of the complaint concerning: the searches performed on the applicant and the measures taken

when he was escorted outside the prison, all of which in his view constituted repeated acts of humiliation; his access to the showers; and the arrangements for assisting him.

61. Firstly, with regard to the body searches and security measures which the applicant was required to undergo whenever he was transferred to hospital, the Court points out that he did not complain about this issue in his initial application, raising it only in his observations, to which the Government responded by providing additional information about the frequency of and reasons for such transfers (see paragraph 20 above). It has already acknowledged that measures of this kind may reach the minimum level of severity required by Article 3 to constitute inhuman or degrading treatment (see *Khider*, cited above; *El Shennawy v. France*, no. 51246/08, 20 January 2011; and *Duval*, cited above), but it does not consider that this level has been attained in the present case; the Government's additional observations on this issue indicate that the applicant was not searched systematically but on specific occasions during his detention, some of which concerned all prisoners at the facility. Moreover, only two decisions ordering searches when the applicant was escorted from the prison for medical reasons have been produced to the Court. Having regard to the reasons given by the Government to justify these occasional measures (see paragraph 20 above), which were not always aimed at the applicant alone, the Court considers that, despite their arduous nature, they do not appear to have attained the requisite level of severity for Article 3 to be applicable. The Court observes in this connection that the conditions and procedures complained of in relation to the transfers and searches of the applicant are not comparable to those observed in other similar cases (see *Duval* and *El Shenawy*, cited above; *Mouisel*, cited above, §§ 46 and 47; and *Hénaf v. France*, no. 65436/01, §§ 54-58, ECHR 2003-XI).

62. Secondly, as regards access to the sanitary facilities, and more specifically the showers, the Court observes that the applicant's complaint is that since there are no such facilities in his cell, he is unable to go there unaided but is dependent on the assistance of a fellow inmate, a situation that exposes him to humiliation *vis-à-vis* the prison orderly in question and other prisoners on account of his incontinence. The Court does not have any information about the precise situation regarding the showers or the frequency with which the applicant can use them. However, it has not been disputed by the Government that he is unable to go there on his own (see paragraph 23 above) and that they are not designed to be accessible to people with reduced mobility. It can also be inferred from the applicant's condition that the prisoner responsible for assisting him on a day-to-day basis according to the Government (see paragraph 42 above) has to help him to get washed. This state of affairs, where the showers are not wheelchair accessible and the applicant has to rely on a prison orderly to get washed, has been deemed unacceptable by the CGLPL (see paragraph 29 above).

Furthermore, while legislation passed in 2009 made it possible for any prisoners with disabilities to designate a helper of their choice (see paragraph 32 above), the Court observes that a measure of this kind, assuming that the conditions governing such a choice have been satisfied in the present case, is not sufficient to meet the applicant's needs, since having a shower is an uncomfortable occasion for him in view of his incontinence, the lack of privacy and the role of the prisoner designated to assist him (see, *mutatis mutandis*, *D.G. v. Poland*, cited above, § 177). Indeed, it does not appear from the evidence before the Court that such assistance complements the care provided to the applicant by health-care professionals, or that the prisoner designated to assist him has received the necessary training to perform the actions required to accompany a disabled person. The Court observes in this connection that it has held on several occasions that assistance from a fellow inmate, even on a voluntary basis, does not mean that an applicant's special needs are satisfied and that the State has on that account discharged its obligations under Article 3 of the Convention. It has pointed out that it could not endorse a situation where prison staff evade their safety obligations and duty of care towards the most vulnerable prisoners by making their cellmates responsible for providing them with day-to-day assistance or, where appropriate, emergency care; such a situation gives rise to anxiety and places the prisoner in a position of inferiority *vis-à-vis* the other prisoners (see *Farbtuhs*, cited above, § 60, and *D.G. v. Poland*, cited above, § 147).

(iv) *Conclusion*

63. In the final analysis, the Court takes the view that the applicant's continued detention is not in itself incompatible with Article 3 of the Convention, but that the national authorities have not provided him with the care required to avoid subjecting him to treatment contrary to that provision. In view of his severe disability and the fact that he suffers from urinary and faecal incontinence, the length of time during which he was detained without receiving any rehabilitative treatment, and his inability to take a shower without the help of a fellow prisoner, are factors that have subjected the applicant to hardship exceeding the unavoidable level of suffering inherent in detention. Those circumstances amount to degrading treatment and thus to a breach of Article 3 of the Convention. The absence of any indication that the authorities acted with the intention of humiliating or debasing the applicant does not alter that finding in any way (see *Farbtuhs*, cited above, §§ 50 and 60).

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

64. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Damage

65. The applicant claimed 30,000 euros (EUR) in respect of non-pecuniary damage.

66. The Government submitted that the claim was excessive. In the event of a finding of a violation, the sum of EUR 6,000 could be awarded to the applicant.

67. In the circumstances of the case, the Court considers it appropriate to award the applicant EUR 7,000 in respect of non-pecuniary damage.

B. Costs and expenses

68. The applicant also claimed EUR 4,000 for the costs and expenses incurred before the Court.

69. The Government did not object to the payment of that amount.

70. In the present case, regard being had to the documents in its possession and its case-law, the Court considers it reasonable to award the applicant the sum of EUR 4,000 for the proceedings before it.

C. Default interest

71. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 3 of the Convention;
3. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
 - (i) EUR 7,000 (seven thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

- (ii) EUR 4,000 (four thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
- (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be due on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in French, and notified in writing on 19 February 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Mark Villiger
President