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

GRAND CHAMBER

CASE OF RAMIREZ SANCHEZ v. FRANCE

(Application no. 59450/00)

JUDGMENT

STRASBOURG

4 July 2006

In the case of Ramirez Sanchez v. France,

The European Court of Human Rights, sitting as a Grand Chamber composed of:

Luzius Wildhaber, *President*,
Christos Rozakis,
Jean-Paul Costa,
Nicolas Bratza,
Boštjan M. Zupančič,
Volodymyr Butkevych,
Josep Casadevall,
John Hedigan,
Margarita Tsatsa-Nikolovska,
Kristaq Traja,
Lech Garlicki,
Javier Borrego Borrego,
Elisabet Fura-Sandström,
Alvina Gyulumyan,
Renate Jaeger,
Danutė Jočienė,
Dragoljub Popović, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 25 January and 31 May 2006,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 59450/00) 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 a Venezuelan national, Mr Ilich Ramirez Sanchez ("the applicant"), on 20 July 2000.

2. The applicant alleged, in particular, that he had been held in solitary confinement in breach of Article 3 of the Convention, and that no remedy had been available to him to challenge the measure.

3. The application was allocated to the First Section of the Court (Rule 52 § 1 of the Rules of Court). On 19 February 2004 it was declared admissible by a Chamber of that Section, composed of Christos Rozakis, Peer Lorenzen, Jean-Paul Costa, Françoise Tulkens, Nina Vajić, Egils Levits, Snejana Botoucharova, judges, and Søren Nielsen, Section Registrar.

4. On 27 January 2005 a Chamber from the same Section, composed of Christos Rozakis, President, Loukis Loucaides, Jean-Paul Costa, Françoise

Tulkens, Peer Lorenzen, Nina Vajić, Snejana Botoucharova, judges, and Santiago Quesada, Section Registrar, delivered a judgment. It held by four votes to three that there had been no violation of Article 3 of the Convention on account of the applicant's solitary confinement and unanimously that there had been a violation of Article 13 on account of the lack of a remedy enabling the applicant to challenge that measure. A dissenting opinion by Judges Rozakis, Loucaides and Tulkens was annexed to the judgment.

5. On 21 April 2005 the applicant requested, pursuant to Article 43 of the Convention and Rule 73, that the case be referred to the Grand Chamber.

On 6 June 2005 a panel of the Grand Chamber decided to refer the case to the Grand Chamber.

6. The composition of the Grand Chamber was determined according to the provisions of Article 27 §§ 2 and 3 of the Convention and Rule 24.

7. The applicant, but not the Government, filed observations on the merits (Rule 59 § 1).

8. A hearing took place in public in the Human Rights Building, Strasbourg, on 25 January 2006 (Rule 59 § 3).

There appeared before the Court:

(a) *for the Government*

Ms E. BELLIARD, Director of Legal Affairs,
Ministry of Foreign Affairs, *Agent*,
Ms A.-F. TISSIER, Head of the Human Rights Section,
Department of Legal Affairs, Ministry of Foreign Affairs,
Ms K. KEUFLET, member, Legal Action and Prison Law Office,
Mr P. OBLIGIS, Assistant Director, Head of Prison Security,
Ministry of Justice, *Counsel*;

(b) *for the applicant*

Ms I. COUTANT PEYRE, member of the Paris Bar,
Mr F. VUILLEMIN, member of the Paris Bar, *Counsel*.

The Court heard addresses by Ms Coutant Peyre, Mr Vuillemin and Ms Belliard.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

9. The applicant was born in 1949 and is currently in Clairvaux Prison.

A. The applicant's solitary confinement

10. The applicant, who claims to be a revolutionary by profession, was taken into custody on 15 August 1994. He was placed under judicial investigation in connection with a series of terrorist attacks in France and was given a life sentence on 25 December 1997 for the murder of two police officers and an acquaintance on 27 June 1975.

11. He was held in solitary confinement from the moment he was first taken into custody in mid-August 1994 until 17 October 2002, notably in La Santé Prison (Paris).

12. According to his lawyer, this entailed his being held in a 6.84 square metre cell that was run-down and poorly insulated, with an open toilet area. The applicant was prohibited all contact with other prisoners and even prison warders and was only allowed to leave his cell once his fellow inmates had returned to theirs. His sole permitted activity outside his cell was a two-hour daily walk in a triangular area that was 15 metres long and 7.5 metres wide at the base, receding to 1 metre at the vertex. This area was walled in and covered with wire mesh. His only recreational activity was reading the newspapers or watching television on a rented set. The only visits he received were from his lawyers and, once a month, a priest. The prison authorities ignored his requests to be allowed visits from anyone else. Mail intended for the applicant had gone missing, although it had not been officially confiscated, and he had not received a winter jacket that had been brought to the prison for him in October 1999 until 16 February 2000.

13. The Government did not dispute these facts. They said that the cell was lit by natural light, a ceiling light and a reading lamp. None of the members of the applicant's family had ever applied for permission to visit. Only two requests to visit had been turned down, both from journalists.

14. The documents in the case file show that the applicant has received visits from 58 different lawyers during his time in prison.

His current representative, who is also his wife under Islamic law, visited him more than 640 times between 27 June 1997 and 29 April 2002.

15. The parties have produced a series of decisions requiring the applicant to be held in solitary confinement for successive three-month periods.

16. The first was taken when the applicant was first detained (15 August 1994). It consists of a form on which the following boxes were ticked:

"Need to prevent communication with one or more other prisoners" and "Undermining of order and discipline in the prison". There were no observations by the applicant. The same day, a doctor issued a medical certificate stating:

> "[The applicant's] health is compatible with solitary confinement. However, he must, if possible, have complete rest for eight days."

17. A decision dated 3 November 1994 to prolong the applicant's solitary confinement from 15 November 1994 to 15 February 1995 was approved by the Regional Director's Office of the Prison Service. The reasons stated were the same, but the applicant made the following observations:

> "I consider that these solitary-confinement measures, especially the disturbances at night, indicate a desire to harass a political prisoner."

In a medical certificate issued the same day, a doctor

> "certif[ied] that [the applicant's] health [was] compatible with his continued solitary confinement".

18. A decision of 20 January 1995, which was applicable from 15 February to 15 May 1995, cited the same reasons and was approved by the Regional Director's Office. The applicant refused to sign the notice informing him of the decision. In a medical certificate issued the same day, a doctor

> "certif[ied] that [the applicant's] health [was] compatible with his continued solitary confinement for administrative reasons".

19. A decision dated 25 April 1995, which was approved by the Regional Director's Office and was applicable from 15 May to 15 August 1995, spoke of the "need to prevent communication with one or more other prisoners" and a "security measure". The applicant was transferred that day to Fresnes Prison.

20. A proposal to prolong the measure dated 26 July 1995 cited the "need to prevent communication with one or more other prisoners".

On 27 July 1995 a doctor from Fresnes Prison issued a certificate stating:

> "Health currently compatible with continued solitary confinement."

21. On 11 August 1995 the measure was prolonged for a period of three months starting on 15 August 1995.

22. On 10 November 1995 a doctor from Fresnes Prison issued a medical certificate stating that the applicant's health was satisfactory and compatible with solitary confinement.

A further proposal to prolong the measure dated the same day referred to "the undermining of order or discipline in the prison".

23. On 20 November 1995 the measure was prolonged for a period of three months starting on 15 November 1995.

24. A proposal of 24 January 1996 for a further extension referred to "the need to prevent communication with one or more other prisoners".

On 25 January 1996 a doctor from Fresnes Prison issued a certificate stating that the applicant's health was satisfactory.

25. On 4 March 1996 the measure was prolonged for a period of three months starting on 15 February 1996.

26. On 19 April 1996 a doctor from Fresnes Prison issued a certificate stating that the applicant's health was compatible with his detention in the segregation unit.

On 7 May 1996 the measure was extended for a period of three months commencing on 15 May 1996. A proposal dated 17 April 1996 mentioned a "precautionary or security measure required for one or more of the following reasons: need to prevent communication with one or more other prisoners".

27. It was not until 31 October 1996 that the applicant was notified of the measure applicable for the period from 15 May to 15 August 1996. He made the following observation:

> "I do not think it right that I should be asked to sign more than five months late."

28. On 15 July 1996 the applicant was notified of a measure which referred to the "need to prevent communication with one or more other prisoners" and to "international terrorism".

29. On 22 October 1996 a doctor from Fresnes Prison issued a certificate stating that the applicant's health was compatible with his detention in solitary confinement.

30. A decision dated 31 October 1996, which was applicable from 15 November 1996 to 15 February 1997, referred only to the "need to prevent communication with one or more other prisoners". The applicant made the following observations on the notification slip:

> "I note that Mr ..., the director, has already replied to these observations, even before I have made them, it is stated below: 07.11.1996 before the Sentence Enforcement Board in the prison. Consequently, the remarks I am required to make have become superfluous. Even so, my solitary confinement is a form of torture."

This measure was authorised by the head of the Prison Service at the Ministry of Justice on 14 November 1996, as were those that followed.

31. On 17 January 1997 a doctor from the Paris Regional Health Authority certified that he had examined the applicant and found his health to be compatible with solitary confinement.

32. A proposal made on 20 January 1997 referred to the "need to protect [the applicant] from the rest of the prison population" and the "need to prevent communication with one or more other prisoners". The applicant made the following remarks:

> "I note that I am increasingly subject to this base harassment and am being singled out as a political prisoner. I reject the reasons given for keeping me in solitary confinement."

33. On 23 April 1997 a doctor from the Paris Regional Health Authority certified that solitary confinement was not contraindicated for the applicant.

34. The following reasons were given for a proposal for a further extension dated 25 April 1997:

> "Precautionary or security measure for one or more of the following reasons:
>
> (i) need to protect you from the rest of the prison population;
>
> (ii) need to prevent communication with one or more other prisoners."

The applicant made the following comments:

> "I have not had a check-up, been weighed or had my blood pressure taken, etc. ... I note that the lower section of the questionnaire has already been filled in, thus making a mockery of the observations which I have been asked to make. Please give me a further complete medical check-up."

35. A decision of 21 July 1997 referred in addition to "the undermining of order and discipline in the prison" and "potential dangerousness linked to acts of terrorism". The applicant made the following comments:

> "I have not had a medical certificate following a medical examination and you are using forged documents which you do not even dare to show me. I request an immediate interview with the governor."

36. A decision of 13 August 1997 again cited the "need to prevent communication with one or more other prisoners".

37. On 14 October 1997 a doctor at Fresnes Prison issued a certificate certifying that the applicant's health was satisfactory.

Proposals of 21 October 1997 and 23 January 1998 were in the same terms as the decision of 13 August 1997. On signing the proposal of 21 October, the applicant stated:

> "I sign under protest against an unjust repressive measure (decision) against a political prisoner held hostage by the French State."

38. On 23 January 1998 a Fresnes Prison doctor issued a certificate certifying that the applicant's health was satisfactory.

39. It was followed by a further certificate on 22 April 1998 stating that the applicant was fit enough to remain in solitary confinement and a certificate of 23 July 1998 stating that solitary confinement was not contraindicated. A further certificate drawn up on 21 October 1998 stated that the applicant was in satisfactory health and fit enough to remain in solitary confinement.

40. Proposals made on 22 April, 23 July and 19 October 1998 cited the need for "precautionary and security measures in view of the prisoner's character and record".

The applicant commented as follows on the proposal of 22 April 1998:

> "I acknowledge receipt of notice but protest against the renewal of this unjustified measure of vile political repression that has been imposed on me. Please provide me with a copy."

On the proposal of 19 October 1998, he noted:

> "The signature on this notice by the disloyal deputy director Mr V. further attests to the unfairness of repressive measures imposed by a prison service that acts unlawfully against political inmates such as me."

41. The measure dated 19 October 1998 referred to "precautionary and security measures in view of the prisoner's character and record".

42. On 15 January 1999 a doctor from La Santé Prison issued a medical certificate in which he stated:

> "The applicant's health is currently compatible with his continued detention in solitary confinement subject to his receiving psychiatric treatment."

Proposals made on 14 January and 8 April 1999 stated:

> "The prisoner must remain in administrative solitary confinement on order and security grounds, in view of his character and record and the nature of his court cases."

43. The Ministry of Justice stated in decisions of 20 January and 20 April 1999:

> "The character of this prisoner, who is an HSP [high-security prisoner] and objectively dangerous, in particular because of the nature and length of the sentence he faces, justifies his continued solitary confinement on order and security grounds."

44. On 9 April 1999 the senior doctor at La Santé Prison issued a certificate which read:

> "The circular of December 1998 on solitary confinement states that the opinion of a doctor will only be sought after a year's confinement. Last certificate issued on (illegible). I do not, therefore, need to append a certificate regarding prolongation to this note."

45. On 23 April 1999 another prison doctor certified that the applicant's health was compatible with his detention or continued detention in solitary confinement.

46. A further certificate dated 20 July 1999 confirmed that the applicant's health was compatible with his continued detention in solitary confinement.

47. A decision of 22 July 1999 cited the following reasons:

> "You must remain in solitary confinement for a further period of three months on order and security grounds, in view of your character, your classification as an HSP, and the nature of your convictions and of the cases currently pending."

48. A decision of 25 October 1999, which took effect on 15 November 1999, read as follows:

> "It is necessary to prolong your solitary confinement for a further period of three months in order to preserve order and security in the prison in view of your dangerousness, your ability to influence fellow inmates and the risk of your escaping given the substantial aid potentially at your disposal."

The applicant made the following observations:

> "I note that the infamous masquerade by the Zionist militant Elisabeth Guigou, who runs the French Ministry of Justice on behalf of the imperialist forces that are seeking to reduce France to the level of a suzerain of the United States, continues. To heck with Human Rights and with Law itself. ALLOUHA AKBAR."

49. On 1 February 2000 the authorities relied on

> "order and security grounds, in view of your character, your classification as an HSP and the offences for which you have been imprisoned".

50. The decisions of 27 April, 20 July and 20 October 2000 were couched in identical terms to the decision of 25 October 1999, save that the end of the sentence read "given your access to outside help".

51. On 13 July 2000 the senior doctor at La Santé Prison issued a medical certificate which read:

> "I, the undersigned, ... declare that [the applicant] is in quite astounding physical and mental condition after six years in solitary confinement.
>
> However, it is not proper for a patient's doctor to be required to issue a certificate that ought to be a matter for expert opinion. It is very difficult for a doctor to sanction solitary confinement on administrative, rather than medical, grounds."

52. On 3 October 2000 another doctor issued a certificate in the following terms:

> "I, the undersigned, ... certify that I have today examined [the applicant].
>
> No clinical examination was carried out. However, in view of his current mental condition, I am unable to give a medical opinion on whether he is fit to remain in solitary confinement."

53. On 5 January and 23 January 2001 the Ministry of Justice ratified decisions by the governors of Fleury-Mérogis and La Santé Prisons, dated 30 December 2000 and 22 January 2001 respectively, to place the applicant in solitary confinement after previous orders had automatically lapsed following his transfer.

54. The following reasons were stated in the decision of 22 January 2001:

> "Regard has been had to your personality, your classification as an HSP, the length of your sentence (LI [life imprisonment]), the nature of the offences and your involvement in an international terrorist network. All these objective indicators of dangerousness make your continued solitary confinement necessary on security grounds."

55. On 20 March 2001 a doctor from La Santé Prison certified that she had seen the applicant but had not been able to carry out a physical examination. She added:

> "However, in view of his current mental state, I am unable to give a medical opinion on whether he is fit to remain in solitary confinement."

On 28 March 2001 the applicant commented as follows:

> "I have once again filled in this form, having already done so on 19 March ... I denounce 'the white torture' of perpetual solitary confinement which, following the 'serious provocation of 28 December 2000', has been aggravated by the obstruction of the fanlight, which now only opens to an angle of 30° (7.5 cm), preventing fresh air getting in. This is on top of the ban on my receiving visits or French lessons, in breach of the undertakings. You are committing a crime of 'lese-humanity'."

56. On 28 March 2001 a doctor from the Cochin Hospital practising in La Santé Prison issued the following certificate:

> "I, the undersigned, ... state that the doctors from the medical service at Paris La Santé Prison are not qualified to judge whether the physical and mental condition of the prisoner Ilich Ramirez Sanchez, who is currently being held in La Santé, is compatible with his continued solitary confinement."

57. On 22 April 2001 it was decided to prolong the solitary confinement

> "in order to preserve order and security in the prison in view of your dangerousness, your ability to influence fellow inmates and the risk of your escaping given your access to outside help".

The same reasons were cited in a further extension of 18 June 2001, while a decision of September 2001 was worded in almost identical terms.

58. On 23 May 2001 the doctor in charge of the Outpatient Consultation and Treatment Unit ("the OCTU") wrote to the governor of La Santé Prison in these terms:

> "I have met Mr Ilich Ramirez Sanchez ... as I was asked for an opinion on whether there is any contraindication to this patient's remaining in solitary confinement.
>
> Even though Mr Ramirez Sanchez is in reasonable physical and mental condition, strict solitary confinement for more than six years and nine months is ultimately bound to cause psychological harm.
>
> It is my duty as a doctor to alert you to these potential consequences so that you may take an informed decision.
>
> ..."

59. On 20 June 2001 the doctor who issued the certificate of 20 March 2001 issued a second certificate in similar terms.

60. The following reasons were stated in a decision that was applicable from 22 July 2001:

"... in order to preserve order and security in the prison in view of your dangerousness, your ability to influence fellow inmates and the risk of your escaping given your access to outside help."

61. On 20 September 2001 the doctor in charge of the OCTU issued a medical certificate after examining the applicant "for the purposes of the medical opinion required for continued solitary confinement". He stated that the applicant presented

"a physical and mental condition that was entirely reasonable after seven years in solitary confinement",

adding, however, that

this opinion does not constitute an expert opinion, which I am not qualified to give".

62. The following reasons were given for prolonging the solitary confinement in a decision of 4 October 2001:

"It is necessary to prolong your solitary confinement in order to preserve order and security in the prison and to avoid your exerting an influence over your fellow inmates or attempting to escape."

In his observations, the applicant noted in particular:

"More than seven years of strict solitary confinement, a ban on receiving visits or French lessons and a steady reduction in the amount of fresh air in the isolation cell from which even the old wooden school desk has been removed all serve to demonstrate the unfairness of the repressive measures that have been taken against a revolutionary political leader who will not be broken."

63. On 20 December 2001 the measure was renewed for a further three months on the following grounds:

"Regard has been had to your character, your classification as an HSP, the length of your sentence (LI), the nature of the offences and your involvement in an international terrorist network. All these objective indicators of dangerousness make your continued solitary confinement necessary on security grounds."

64. Decisions of 10 January, 25 March and 8 July 2002 read as follows:

"It is necessary for you to remain in solitary confinement in order to preserve order and security in the prison and to avoid your exerting an influence over your fellow inmates or attempting to escape. The fact that you have received a life sentence, your classification as a high-security prisoner and the nature of the offences for which you have been prosecuted militate in favour of your remaining in solitary confinement."

65. On 13 June 2002 an assistant doctor from the OCTU at La Santé Prison issued a medical certificate in the following terms:

"I, the undersigned, Doctor ..., an assistant doctor from the OCTU at La Santé Prison in Paris, certify that I have examined Mr Ramirez Sanchez Ilich, who was born on 12/10/49, in connection with a request for him to remain in solitary confinement.

From the medical standpoint, the problem posed by prolonged solitary confinement over a number of years is that it may affect the prisoner's physical and mental health."

66. On 29 July 2002 the doctor in charge of the OCTU at La Santé Prison provided the Ministry of Health with the following summary of the medical care the applicant was receiving:

> "This patient, who, as you are aware, is in the segregation unit, receives two mandatory medical visits from a member of the OCTU medical team every week, as required by the French Criminal Code.
>
> He is currently in excellent somatic health. I am not qualified to express an opinion on his mental health.
>
> In addition, Mr Ramirez Sanchez may on request consult members of the OCTU team independently of the mandatory medical visits to the segregation unit.
>
> He has thus been able to consult an ophthalmologist ... and has been prescribed corrective glasses.
>
> He has consulted a general practitioner several times independently of mandatory visits to the segregation unit on ...
>
> Biological tests are performed regularly. ...
>
> The treatment Mr Ramirez Sanchez has been receiving can be equated to comfort treatment: ...
>
> It should be noted that Mr Ramirez Sanchez has refused any psychological help from the RMPS [Regional Medical and Psychological Service].
>
> ..."

67. In September 2002 a further decision to prolong the solitary confinement was taken "in order to preserve security and order, which are under serious threat owing to the applicant's implication in terrorist networks, his dangerousness and the risk of his escaping".

68. On 17 October 2002 the applicant was transferred to Saint-Maur Prison (*département* of Indre), where his solitary confinement ended. On 13 May 2003 he lodged a fresh application with the Court, in which he complained of the new conditions in which he was being held and, in particular, of the distance from Paris.

69. In June 2003 a book that had been written by the applicant with the help of a journalist was published under the title *L'islam révolutionnaire* ("Revolutionary Islam").

70. On 27 August 2003 the Indre Health Inspector wrote the following letter to the Ministry of Health:

> "Mr Ramirez Sanchez received a somatic and psychiatric medical examination on his arrival at the prison on 17 October 2002.
>
> He has at no stage been placed in solitary confinement in Saint-Maur Prison.

As regards his somatic health, Mr Ramirez Sanchez receives the statutory care and may consult the OCTU on request.

As to his mental health, he was seen by an RMPS psychiatrist as part of the standard induction procedure. No follow-up was prescribed at the time and the patient has not asked to see a psychiatrist since. He was offered an examination and this took place on 26 August 2003. The RMPS have not recommended any follow-up to that appointment."

71. On 18 March 2004 the applicant was transferred to Fresnes Prison in the Paris area where he was again placed in solitary confinement. This followed a television programme in which, in the course of a telephone interview with a journalist, the applicant refused among other things to express any remorse for his crimes to the victims on the grounds that there were "no innocent victims".

72. On 6 August 2004 a doctor at Fresnes Prison issued a medical certificate in the following terms:

"I, the undersigned, ... certify that the prolonged period of solitary confinement to which Mr Ilich Ramirez Sanchez, who was born on 12 October 1949, is subject is detrimental to his mental health.

Bringing the solitary confinement to an end would go a long way to facilitating the monitoring of a chronic somatic pathology from which the patient has recently started to suffer which requires medical supervision and regular biological tests."

73. On 20 December 2005 another doctor issued a medical certificate which read:

"I, the undersigned, ... regularly see Mr Ilich Ramirez Sanchez, a prisoner in the segregation unit.

His continued solitary confinement is damaging his health; it has now lasted for several years and it would appear desirable from the medical standpoint for it to cease."

74. On 24 January 2005 the applicant was transferred to Fleury-Mérogis Prison and on 24 November 2005 to La Santé Prison. In both institutions he was kept in solitary confinement with the measure being periodically renewed, including on 17 February 2005 (see below).

75. On 30 June and 5 October 2005 the senior doctor at the OCTU at Fleury-Mérogis Prison issued two medical certificates in exactly the same terms:

"I, the undersigned, ... certify that Mr Ramirez Sanchez Ilich, who was born on 12 October 1949, has been in my care since his arrival at the prison.

The problems which Mr Ramirez Sanchez has had with his physical health are now stable.

Mr Ramirez Sanchez continues to make the same complaints about the difficulties of being held in full solitary confinement.

Since he does not wish to be treated by the Regional Medical and Psychological Service at Fleury-Mérogis Prison and I am not qualified to determine the impact of the conditions in which he is detained on his mental state, a medical and psychological assessment would be desirable.

Certificate issued at the request of the prison authorities and delivered by hand for whatever purpose it may serve in law."

76. On 5 January 2006 the applicant was transferred to Clairvaux Prison, where he is held under the ordinary prison regime.

B. The applicant's requests for judicial review

77. On 14 September 1996 the applicant lodged an application for judicial review with the Paris Administrative Court, arguing that the decision of 11 July 1996 to place him in solitary confinement should be set aside.

78. In a judgment of 25 November 1998, which was served on the applicant on 26 January 1999, the Paris Administrative Court rejected the application, holding that the impugned decision was an internal administrative measure which the administrative courts had no power to set aside.

79. The applicant lodged an application for an order setting aside, on the grounds of formal invalidity, the decision of 17 February 2005 to keep him in solitary confinement. In a judgment of 15 December 2005, the Paris Administrative Court held as follows.

"Although the authorities argue in their defence that the judge responsible for the execution of sentences gave an oral decision on 4 February 2005 in favour of prolonging Mr Ramirez Sanchez's solitary confinement, there is no evidence in the file to show that the regional director obtained the opinion of the Sentence Enforcement Board before delivering his reasoned report to the Minister of Justice, even though, by virtue of the aforementioned provisions of Article D. 283-1 of the Code of Criminal Procedure, the Board is the only body empowered to decide whether solitary confinement should continue beyond a year. It follows that Mr Ramirez Sanchez's argument that the decision of 17 February 2005 to prolong his solitary confinement was defective and must be set aside is well-founded.

As regards the submissions on the issue of compensation.

Although the formal invalidity of a solitary-confinement measure constitutes a fault capable of engaging the State's responsibility, such a fault cannot entitle the person subjected to the measure to compensation for his or her loss if the circumstances of the case were such as to justify in law the decision to place the prisoner in solitary confinement as the alleged loss cannot be considered to have been a consequence of the defect in the decision.

The investigation shows that Mr Ramirez Sanchez has been sentenced to life imprisonment for the murder of police officers. He has been placed under investigation in connection with various terrorist cases, *inter alia*, for voluntary

homicide and using an explosive device to destroy movable property. The applicant might use communications in Fleury-Mérogis Prison or on the outside to re-establish contact with the members of his terrorist cell or seek to proselytize other prisoners and possibly prepare an escape. That being so, the circumstances of the instant case were such as to justify in law the decision taken to prolong the solitary confinement for a period of three months. The damage alleged by Mr Ramirez Sanchez, which included the loss of contact with other prisoners, cannot, therefore, be considered to have been a consequence of the procedural defect in the decision of 17 February 2005, so that his request for an order requiring the State to compensate him for the damage he claims to have sustained is unfounded. ...”

II. RELEVANT DOMESTIC LAW AND PRACTICE

80. *1. Code of Criminal Procedure*

Article D. 270

“Save in the circumstances set out in Articles D. 136 to D. 147, prison staff must at all times be able to verify a prisoner’s presence.

At night it must be possible to light cells when necessary. Cells should be entered only for good reason or in the event of imminent danger. In all cases, intervention must be by at least two staff members and an officer, if one is on night duty.”

Article D. 272

“Rounds shall be made after lights out and during the night at set times to be changed daily by the senior custody officer, under the authority of the prison governor.”

Article D. 283-1

[The words in italic were added or amended by the decrees of 1996 and 1998: Decree no. 96-287 of 2 April 1996, Article 4, Official Gazette of 5 April 1996, and Decree no. 98-1099 of 8 December 1998, Articles 65 and 190, Official Gazette of 9 December 1998.]

“Any prisoner in a communal establishment or unit may be placed in solitary confinement at his or her request or as a precautionary or security measure.

Orders for prisoners to be placed in solitary confinement shall be made by the prison governor, who shall inform the regional director and the judge responsible for the execution of sentences without delay. The prison governor shall also report to the Sentence Enforcement Board *at the first meeting following the prisoner’s confinement or objection to a request for his or her confinement*.

The prisoner may, either personally or through counsel, send any observations he or she has on the decision to the judge responsible for the execution of sentences.

The medical team shall be given a list of the prisoners in solitary confinement every day. Prisoners in solitary confinement will receive a medical examination in accordance with Article D. 381. If the doctor considers it appropriate in view of the prisoner's health, he or she shall give an opinion on whether solitary confinement should cease.

Solitary confinement may only exceed three months if a new report has been made to the Sentence Enforcement Board and the regional director so decides.

Solitary confinement may only exceed one year from the date of the initial decision if the Minister of Justice so decides on the basis of a reasoned report by the regional director after the regional director has obtained the opinions of the Sentence Enforcement Board and the prison doctor.

The prison governor shall keep a solitary-confinement register for consultation by the administrative and judicial authorities on supervisory visits and inspections."

Article D. 283-2

[Decree no. 96-287 of 2 April 1996, Article 4, Official Gazette of 5 April 1996, and Decree no. 98-1099 of 8 December 1998, Article 190, Official Gazette of 9 December 1998]

"Solitary confinement shall not constitute a disciplinary measure.

Prisoners in solitary confinement shall be subject to the ordinary prison regime."

81. *2. Circulars*

Extracts from the Circular of 8 December 1998 implementing the decree amending the Code of Criminal Procedure

"4. Solitary confinement as a precautionary or security measure

Orders for solitary confinement as a precautionary or security measure are made by the prison governor at the prisoner's request or on the governor's own initiative. Since the governor has sole power to order solitary confinement, he or she will need to take particular care in setting out the reasons.

4.1. The need to state reasons

Since the *Conseil d'Etat*'s *Marie* judgment of 17 February 1995, the administrative courts have assumed jurisdiction to review the lawfulness of disciplinary decisions 'giving cause for complaint'.

Judicial review has not yet been extended to decisions to place a prisoner in solitary confinement, which continue to be regarded in the most recent decisions as 'internal administrative measures' that are not amenable to review.

The courts consider on the basis of Article D. 283-2 that 'solitary confinement does not make conditions of detention worse and is not liable to affect the legal position of

the person so held' (*Conseil d'Etat*, 28 February 1996, *Fauqueux*, and *Conseil d'Etat*, 22 September 1997, *Trébutien*).

4.2. Nature of the reasons

It is not sufficient simply to repeat the succinct 'as a precautionary or security measure' formula used in Article D. 283-1.

... Orders for solitary confinement as a precautionary or security measure must be based on genuine grounds and objective concordant evidence of a risk of the prisoner causing or being exposed to serious harm.

The reasons must state whether the measure has been taken to avoid the risk of an escape, violence or coercion, concerted action liable to disrupt the prison community, connivance or conspiracy, or to protect the life or physical integrity of individual prisoners or of the person in solitary confinement.

4.3. Invalid reasons

An order for solitary confinement cannot be made solely for the following reasons.

4.3.1. Nature of the offence

The seriousness of the offence for which the person concerned is being held and the nature of the offence of which he or she is accused cannot by themselves justify solitary confinement.

...

II. PROCEDURE IN SOLITARY CONFINEMENT CASES

...

1.4. Content of the decision

The decision shall be in the form set out on the printed sheet annexed hereto and shall be notified after the hearing. The sheet contains two sections, one for the reasons and the other for the prisoner's observations. Additional observations on an ordinary sheet of paper and any documents that may assist in explaining the reasons may be attached to the decision.

...

2.2. Copies of documents for the authorities

Article D. 283-1, sub-paragraph 2, of the Code of Criminal Procedure requires the prison governor to inform the regional director and the judge responsible for the execution of sentences of his decision without delay.

A copy of a decision to place a remand prisoner in solitary confinement must also be sent to the judge in charge of the investigation.

3. Lifting of the measure

Solitary confinement is not intended to continue indefinitely, as it must be justified by factual and legal considerations, which may change or cease to apply.

In view of the harmful effects of prolonged solitary confinement, the prison governor and regional director must closely monitor the length of the measure.

The measure will automatically lapse in the circumstances set out in Chapter 3. Consideration should also be given on the ordinary renewal dates to lifting the measure.

The prisoner must be notified of a decision to lift the measure. If the prisoner has asked to be placed in solitary confinement, his or her observations (if any) must be obtained.

4. Prolongation of the measure

Unless a decision to prolong the measure is made at the end of three months, it will automatically lapse. ...

4.1. Proposals to prolong the measure

The prolongation procedure must be set in motion three weeks before the three-month period expires.

Prisoners in solitary confinement must be informed if it is intended to propose prolongation of the measure and, if they so wish, be given an hour in which to prepare their observations, which they may submit at a hearing held for that purpose. They are then notified of the proposal.

No prolongation may be proposed without a prior assessment of the prisoner's situation made with the aid, *inter alia*, of the record of observation of the prisoner in solitary confinement.

If the prison governor considers it necessary to prolong the measure, he or she must compile a file containing:

(i) The printed proposal form containing a statement of reasons, which must be up to date when the request is made. The form will contain confirmation that the prisoner has been notified of the proposal, the date of the verbal report to the Sentence Enforcement Board and the date of transmission to the regional director.

(ii) The liaison form.

(iii) The report on the prisoner's behaviour in solitary confinement based, in particular, on the record of observation.

Any report by the medical team or opinion by the doctor will be appended to the proposal file.

4.2. The regional director's investigation

The file should be sent to the Regional Director's Office at least fifteen days before the three-month period expires. The Regional Director's Office will examine the file and, if necessary, request additional documents or information. It should make sure it has a fully up-to-date statement of reasons for the proposal to prolong the measure.

The regional director must decide whether or not to prolong the solitary confinement and send the decision to the prison for notification to the prisoner before the expiry of the three-month period in all cases. The decision shall be reasoned.

If it is decided not to prolong the measure, it will immediately lapse and the prisoner will be returned to the ordinary regime.

The prisoner will be given a copy of the decision to prolong the measure on being notified of it.

The same rules shall apply to the preservation of evidence and the forwarding of copies to the authorities as for the initial decision.

The same procedure shall be followed if prolongation appears necessary at the end of a further three-month period. Regional directors shall consider the reasons for a further extension with particular care. In particular, they must examine whether other types of measure have been considered and satisfy themselves that no such measure would be feasible.

When a decision to prolong solitary confinement has already been taken by a regional director, the measure may be lifted during the statutory periods only by a decision of the same authority, unless it automatically lapses under Chapter 3. In such cases, the prison governor will forward to the regional director a reasoned proposal to lift the measure accompanied, if applicable, by a supporting report. The prison governor will also send the regional director without delay any medical certificates the doctor may have issued together with his opinion on whether any action is called for.

5. Prolongation after a year

Solitary confinement should be prolonged after a year only in exceptional cases. The Minister of Justice has sole decision-making power, in accordance with Article D. 283-1, sub-paragraph 6.

5.1. Proposals to prolong solitary confinement

The prison governor must send the proposal to prolong solitary confinement to the regional director before the end of the tenth month to allow the Regional Director's Office and the central authority time to examine it thoroughly.

A doctor's opinion must be sought if it is proposed to prolong solitary confinement beyond a year. If the doctor gives an opinion, it must be set out in writing and forwarded with the proposal. If the doctor does not give an opinion, he or she should initial at least the form containing the proposal.

The prison governor will submit the proposal to the Sentence Enforcement Board for an opinion, which the latter will indicate on the proposal form.

The prison governor should advise the prisoner of his or her intention to propose prolonging the solitary confinement beyond a year. If the prisoner so wishes, he or she may be given at least an hour in which to prepare observations to be made at a hearing at the end of the allotted time. The prisoner is then notified of the proposal.

The prison governor must append to the proposal a summary report on the prisoner's behaviour since the initial decision was made.

Lastly, the liaison record (III.3) shall be forwarded with the proposal so that the authority that will take the decision has full details of the chronology of the measure.

5.2. The regional director's report

The regional director should draw up a report on the basis of the prison governor's proposal and give a reasoned opinion on whether the measure should be prolonged beyond a year.

Before doing so, the regional director may lift the measure if he or she considers that it is no longer warranted or substitute another measure within his or her powers.

He or she may also recommend other measures, such as a transfer.

The file containing the proposal to prolong solitary confinement must be sent to the head office of the Prison Service at least one month before the preceding measure expires. The central authority must be given time to examine the file and to seek alternatives.

5.3. The decision of the Minister of Justice

The central authority will send the Minister of Justice's decision (which will normally be taken by the director of the Prison Service under delegated authority) to the Regional Director's Office at least one week before the preceding period of solitary confinement expires so that the prison can be informed in time.

The prisoner should be provided with a copy of the decision and an original should be placed in the file.

A verbal report on the final decision should be made to the Sentence Enforcement Board.

The head office of the Prison Service will retain the power to decide on further quarterly extensions beyond a year. The matter will be referred back to the central authority in accordance with the procedure described in this paragraph at least one month before the new period of solitary confinement is due to end.

Apart from the cases of automatic lapse set out in Chapter 3, power to lift the measure after a year is also vested in the central authority.

...

IV. THE SOLITARY CONFINEMENT REGIME

1. European and national recommendations

Following its visit to France of 6 to 18 October 1996, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment recommended that 'a balance [be struck] between the requirements of the case and the application of a solitary confinement type regime', in view of the harmful consequences that that regime could have on the prisoner. It proposed organising the segregation unit in a way that would give prisoners continued access to better exercise areas and to activities, including outdoor activities.

These recommendations tie in with the findings of the working groups that have been set up by or at the request of the Prison Service.

2. Implementation of the ordinary prison regime

In accordance with Article D. 283-2 of the Code of Criminal Procedure, prisoners in solitary confinement are subject to the ordinary prison regime.

1° Prisoners must be permitted to make full use of their rights of defence, which are protected by instruments of constitutional or international rank, in accordance with the procedure set out in the Code of Criminal Procedure and the distinction it makes between convicted and remand prisoners. The prohibition on communication referred to in Article 145-4 cannot apply to communication with lawyers.

2° The right to relations with members of one's family and others are exercised through prison visits. Subject to the arrangements for individual access to the visiting room, there shall be no restrictions on prison visits unless a court has ordered solitary confinement.

There must be no restrictions on the right of prisoners in solitary confinement to send or receive correspondence. However, stricter monitoring of correspondence may be justified by court-imposed imperatives, the prisoner's classification as a high-security risk in accordance with Article D. 276-1 of the Code of Criminal Procedure, or a recommendation for the prisoner to be placed on suicide watch.

Similarly, prisoners' rights to make telephone calls in penal establishments in accordance with Article D. 417 of the Code of Criminal Procedure are not suspended by solitary confinement.

3° There is no general restriction on the right of prisoners in solitary confinement to access to news, subject to the normal supervision prisoners receive throughout their term in prison. Prisoners in solitary confinement retain the right to buy newspapers of their choice, or to use a radio or television subject to the usual conditions.

If the library operates a direct-access system, it must arrange special opening hours for prisoners in solitary confinement or keep a separate stock for the segregation unit.

4° Religious observance.

Religious observance in the segregation unit shall take place in accordance with the rules set out in Articles D. 437 to D. 439 of the Code of Criminal Procedure. Since prisoners in solitary confinement are unable to attend the services habitually open to all prisoners, they may be authorised to attend special services arranged in agreement with the chaplain.

5° Health.

The health of prisoners in solitary confinement is dependent on their being detained in conditions that allow them a healthy lifestyle:

(i) Cells must receive natural light through a window which also affords adequate ventilation, as required by Article D. 350 of the Code of Criminal Procedure.

(ii) The exercise yard must provide access to the open air. Consideration must be given to allocating specific times for prisoners in solitary confinement to exercise in an open yard. Exercise periods should be for the same length as for ordinary-regime prisoners.

(iii) Sporting activities should be made available in the segregation unit, for example by the provision of an exercise bike, gym mat or table-tennis table.

2.6. Activities in the segregation unit

Although access to communal activities provided for ordinary-regime prisoners is suspended during solitary confinement, prisoners in solitary confinement remain under the ordinary regime and special arrangements should be made within the segregation unit for most activities to continue, allowing prisoners to assemble in small groups at times.

Thus, whenever possible, the prison governor must permit prisoners in solitary confinement to assemble in groups of two or three for exercise or activities. A room, which may be multipurpose (sport, reading) should be set aside for this purpose. It is for the prison governor to assess how and when such groups may be organised and to tailor the measure to individuals in the light of the reason for the prisoner's placement in solitary confinement, the aim pursued and the character and conduct of the prisoner or prisoners concerned.

Individual educational programmes or distance teaching offered by teachers or instructors should not be discouraged, as they ensure that activities are also directed towards training.

...

4. Monitoring of and dialogue with prisoners in solitary confinement

4.1. Monitoring

A record of observation must be compiled for all prisoners in solitary confinement; it will be supplemented by any relevant comments by duty staff or the persons in charge of the unit on the prisoner's behaviour in solitary confinement.

The record of observation acts as an early warning system if it appears that solitary confinement is having harmful effects on the prisoner.

Staff should consult it regularly and in any event if it is intended to propose prolonging the measure.

A summary of the record of observation will be sent to the regional director and the central authority with the proposal to prolong the measure or in the event of an internal appeal by the prisoner against the original decision or a decision to prolong the measure.

All prisons shall be responsible for creating a record of observation meeting the stated objective or, if one already exists, improving it.

4.2. Dialogue

In order to avoid excessive social isolation, it is essential to maintain contact and encourage exchanges between staff and prisoners in solitary confinement. Not only does this reduce the degree of isolation, especially for prisoners who do not receive visits, it also assists in monitoring the prisoner's character.

For the same reasons, senior prison officers and socio-educational staff should seek to meet prisoners in solitary confinement at least as regularly as they do ordinary prisoners."

82. ***3. Case-law of the* Conseil d'Etat**

In a judgment of 30 July 2003, the *Conseil d'Etat* departed from its previous case-law when it held:

"The aforementioned provisions and the evidence before the tribunal of fact show that it is in the very nature of solitary confinement to deprive persons subjected to it of access to the sporting, cultural, teaching and training activities and paid work that are available to other prisoners collectively. Such a measure may be imposed for a period of up to three months and may be prolonged. In these circumstances, even though Article D. 283-2 of the Code of Criminal Procedure states that solitary confinement is not a disciplinary measure, as the prisoners concerned are subject to the ordinary prison regime, a decision to place a prisoner in solitary confinement against his or her wishes will, in view of the effects it has on the conditions of detention, be amenable to judicial review. Accordingly, the Minister of Justice's submission that the Administrative Court of Appeal erred in law in declaring admissible an application by Mr X for judicial review of a decision by the governor of Bois d'Arcy Prison to place him in solitary confinement is unfounded.

The Administrative Court of Appeal did not err in law when it held that a decision to place a prisoner in solitary confinement was one of the decisions for which the first section of the Act of 11 July 1979 requires reasons to be stated. In finding that insufficient reasons had been stated in the impugned decision, the Paris Administrative Court of Appeal reached a decision in its unfettered discretion which, in the absence of any distortion of the facts, cannot be challenged in this Court.

It follows from the foregoing that the Minister of Justice is not entitled to make an order setting aside the impugned judgment.

It is appropriate in the circumstances of this case to make an order requiring the State to pay Mr X the sum of 2,300 euros he claimed under Article L. 761-1 of the Administrative Courts Code."

III. INTERNATIONAL MATERIALS

83. *Extracts from the reports of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) and the responses of the government of the French Republic (unofficial translation)*

REPORT ON THE VISIT OF 6 TO 18 OCTOBER 1996

"158. The CPT pays particular attention to prisoners held under conditions akin to solitary confinement. It reiterates that the principle of proportionality requires a balance be struck between the requirements of the case and the application of a solitary-confinement regime, which is a step that can have very harmful consequences for the person concerned. Solitary confinement can, in certain circumstances, amount to inhuman and degrading treatment. In any event, it should be as short as possible.

159. The delegation visited the segregation units in ... and in the remand prisons of Paris-La Santé ... It met a number of prisoners who had been held in solitary confinement for long, and in some instances very long, periods.

... Furthermore, the solitary-confinement cells in Paris-La Santé Prison could be described as reasonable (cf. paragraphs 100 and 101).

As regards the prison regime, which according to the Code of Criminal Procedure is an ordinary regime, the delegation found that the activities remained limited (reading, television, and in some instances in-cell educational or training activities). ... There continued to be little human contact and this took the form of any visits from close relatives or other authorised persons (such as religious representatives) and some daily contact with warders.

As regards outdoor exercise, the prison authorities said that a one to three hour walk was authorised every day, although conditions were less than satisfactory.

160. The CPT pointed out in its report on its first visit that particular attention had to be paid to the mental and physical condition of prisoners in solitary confinement. In paragraph 380 of their interim report, the French authorities indicated that prisoners in solitary confinement were examined twice a week by doctors and that a doctor was

called out whenever the condition of a prisoner in solitary confinement demanded. Doctors were required to inform the prison governor in writing if they considered the prisoner's physical or mental health to be at risk.

In that connection, the French authorities informed the delegation that a draft decree (which is due to come into force on 1 December 1996) would establish new rules for gaining access to a doctor and assessing a prisoner's condition.

161. As to the other safeguards, it seemed to the delegation from an examination of the relevant files that the procedure for prolonging solitary confinement was rather summary. The manner of its implementation also appears to vary from one region to another. ... At Paris-La Santé Prison, the delegation heard allegations by prisoners in solitary confinement that this was no longer the case. These were credible allegations, since, unlike in Marseille, the delegation found no trace of annotations or headings indicating that prisoners had been informed of the proposal to prolong their solitary confinement. The delegation found virtually no evidence in the files it examined of reports being sent to the commission responsible for the execution of sentences or of the commission issuing opinions as required by the relevant provisions of the Code of Criminal Procedure. Furthermore, the only medical certificates relating to the renewal procedure seen by the delegation were stereotyped and extremely brief.

162. In the light of the foregoing, the CPT recommends that the French authorities:

(i) review the arrangements for solitary confinement with a view to providing prisoners with a wider range of activities and ensuring appropriate human contact;

(ii) ensure that solitary confinement is as short as possible; in that connection, the quarterly review of the need for solitary confinement should entail a full assessment based, if appropriate, on a medical and social report;

(iii) ensure that all prisoners whose solitary confinement is prolonged are informed in writing of the reasons for the measure (it being understood that there is no obligation to communicate data which it would be reasonable to exclude on security grounds).

The CPT would also like to know whether the decree announced by the French authorities has come into force and to receive a copy if it has."

RESPONSES OF THE GOVERNMENT OF THE FRENCH REPUBLIC TO THE 1996 REPORT

OBSERVATIONS (INTERIM REPORT)

"(i) review the arrangements for solitary confinement with a view to providing prisoners with a wider range of activities and ensuring appropriate human contact (paragraph 162)

The rules governing solitary confinement are being revised. Articles D. 283-1 and D. 283-2 of the Code of Criminal Procedure and the circular of 12 July 1981, which are currently in force, need supplementing in order to improve the procedure and to limit the duration of the measure.

Draft Article D. 283-1 accordingly places particular emphasis on the need for the medical supervision of prisoners in the segregation unit. It also makes the director of the Prison Service responsible for deciding whether to prolong solitary confinement that has exceeded a year.

The entry into force of this Article, which will be included in a vast decree amending more than 300 Articles of the Code of Criminal Procedure, has been delayed, as the decree is part of a governmental programme of State reform.

It is intended that a draft circular will be issued when the decree comes into force. It will emphasise that prisoners in solitary confinement are subject to the ordinary prison regime and will give instructions for continued dialogue between staff and prisoners in solitary confinement, in particular through the organisation of regular meetings. The provision of individual teaching or training programmes will also be recommended.

(ii) ensure that solitary confinement is as short as possible; in that connection, the quarterly review of the need for solitary confinement should entail a full assessment based, if appropriate, on a medical and social report (paragraph 162)

A draft circular is being prepared.

(iii) ensure that all prisoners whose solitary confinement is renewed are informed in writing of the reasons for the measure (it being understood that there is no obligation to communicate data which it would be reasonable to exclude on security grounds) (paragraph 162)

A draft circular is being prepared."

FOLLOW-UP REPORT

"(i) review the arrangements for solitary confinement with a view to providing prisoners with a wider range of activities and ensuring appropriate human contact (paragraph 162)

The draft decree referred to in the interim report, which brings the regulatory section of the Code of Criminal Procedure into line with a number of statutes that are already in force, is in the process of promulgation.

It will amend, *inter alia*, Article D. 283-1 of the Code of Criminal Procedure by making the director of the Prison Service responsible for deciding whether to prolong solitary confinement that has exceeded a year. It will redirect the focus of medical supervision to its exclusive role of providing prisoner health care.

Pursuant to this provision, a draft circular has been drawn up confirming that prisoners in solitary confinement are subject to the ordinary prison regime, which entails, *inter alia*:

(a) full compliance with prisoners' ordinary rights to relations with their family, representatives and others;

(b) continued dialogue between staff and the prisoner in solitary confinement through regular meetings;

(c) the organisation, to the extent possible, of special activities in the segregation unit and of individual teaching and training programmes.

This draft was prepared after wide consultation of decentralised services. An information and exchange procedure on the issue has thus already been set in motion and will continue with the distribution of the circular, which could be available immediately after publication of the aforementioned decree.

(ii) ensure that solitary confinement is as short as possible; in that connection, the quarterly review of the need for solitary confinement should entail a full assessment based, if appropriate, on a medical and social report (paragraph 162)

The draft circular establishes a mechanism for controlling the length of solitary-confinement measures: before a decision to prolong the measure beyond three months can be taken, the regional director must examine an observation report from the prison governor based, in particular, on his knowledge of the prisoner concerned and the information provided by the various prison departments on the basis of the personal record of observation.

Any event with suspensive effect that either entails release or is for a period exceeding fifteen days will result in the lapse of the solitary-confinement measure and the prisoner's return to ordinary detention.

(iii) ensure that all prisoners whose solitary confinement is renewed are informed in writing of the reasons for the measure (it being understood that there is no obligation to communicate data which it would be reasonable to exclude on security grounds) (paragraph 162)

The draft circular introduces an improved system for the provision of reasons and written notification of decisions to place a prisoner in solitary confinement. The prison governor will not, however, be required to disclose information to a prisoner that may put people or the prison at risk; this has been accepted by the CPT."

REPORT ON THE VISIT FROM 14 TO 26 MAY 2000

"111. In its reports of both 1991 and 1996 the CPT stressed that the principle of proportionality required that a balance be struck between the requirements of the case and the application of a solitary confinement type regime, which is a step that can have very harmful consequences for the person concerned. Solitary confinement can, in certain circumstances, amount to inhuman and degrading treatment. In any event, it should be as short as possible. Following its visits, the CPT advised of its concerns regarding various aspects of solitary confinement in France (cf. paragraphs 140 et seq., and 158-63 of the reports). Subsequently, in a circular dated 14 December 1998, the Minister of Justice issued instructions concerning, *inter alia*, the grounds on which prisoners could be placed in solitary confinement, the procedure to be followed and the regime for prisoners in solitary confinement. These instructions address some of the concerns expressed by the CPT in its reports on previous visits.

Nevertheless, during its visits the CPT delegation found serious shortcomings in the manner in which the earlier recommendations of the CPT and the ministerial instructions had been implemented in practice.

The CPT has serious reservations about the situation of a number of prisoners in solitary confinement for administrative reasons that the delegation met during its visit. Its reservations concern both the length of the confinement (which in some instances had been for years on end) and the highly restrictive regime to which such prisoners are subject (total lack of structured or communal activities).

112. The physical conditions of detention of prisoners placed in solitary confinement for administrative reasons were globally acceptable. However, the cells accommodating such prisoners at the Paris-La Santé Prison had only limited access to natural light. In addition, in the four institutions visited, the exercise yards – which were often also used by prisoners in solitary confinement for disciplinary reasons – were uninviting.

113. The ministerial instructions state: 'The essential features of the ordinary prison regime must, so far as possible and subject to practical constraints, be retained in the segregation unit' (point 4.1). They further state, *inter alia*: 'there shall be no restrictions on prison visits' (point 4.2.2) and 'prisoners in solitary confinement remain under the ordinary regime and special arrangements should be made within the segregation unit for most activities to continue, allowing prisoners to assemble in small groups at times', that 'it is for the prison governor to assess how and when such groups may be organised' and 'individual educational programmes or distance teaching offered by teachers or instructors should not be discouraged' (point 4.2.6). The instructions further require increased surveillance of prisoners and specify: 'in order to avoid excessive social isolation, it is essential to maintain contact and encourage exchanges between staff and prisoners in solitary confinement' (point 4.4.2).

From the information obtained by the delegation, it would seem that, with the odd exception (for instance as regards contact with the outside world), the vast majority of the aforementioned requirements have not been complied with. For example, the only establishment which allowed prisoners in solitary confinement for administrative reasons to associate was Lyon-Saint Paul Prison and even there association was restricted (to exercise outdoors and in the fitness room).

The CPT recommends that the authorities take measures without delay to give full effect to the Minister of Justice's instructions of 14 December 1998 concerning solitary confinement for administrative reasons – under paragraphs 4.2.6, 4.2.7 and 4.4.2 in particular.

114. The CPT also has reservations about the effectiveness of the procedural safeguards on solitary confinement for administrative reasons. The files that have been examined show that it is sometimes used as an alternative to solitary confinement as a disciplinary measure (for instance, in one case, the measure was imposed for: 'serious damage to property belonging to the prison that put prison security at risk') or to prolong such a measure and that the reasons stated for putting a prisoner in solitary confinement were often stereotyped ('to maintain order in the prison' or 'risk of escape'). In one case the prisoner had been held in solitary confinement since 1997 'because of the nature of the offences of which he had been convicted'.

In summary, it would appear that the ministerial instructions, namely 'Orders for solitary confinement as a precautionary or security measure must be based on genuine grounds and objective concordant evidence of a risk of the prisoner causing or being exposed to serious harm', are not always fully complied with (cf. point 1.4.2).

The CPT recommends that the French authorities carry out a case-by-case review of compliance with the instructions issued in 1998 with regard to solitary confinement for administrative reasons.

115. Lastly, the CPT understands that the issue of the nature and extent of available remedies has not yet been resolved (cf. paragraph 146 of the report on the 1991 visit). In practice this means that prisoners in solitary confinement currently have no real means of challenging decisions to place them in solitary confinement or to renew such a measure before an independent authority.

The CPT recommends the reinforcement of the safeguards provided for prisoners in solitary confinement in order to ensure they have an effective remedy before an independent authority, preferably a judge. Indeed, that is the spirit of the various proposals that are currently pending before the French authorities (for instance, the Canivet report and the report of the Senate investigation)."

RESPONSE OF THE GOVERNMENT OF THE FRENCH REPUBLIC

"(i) take measures without delay to give full effect to the Minister of Justice's instructions of 14 December 1998 concerning solitary confinement for administrative reasons – under paragraphs 4.2.6, 4.2.7 and 4.4.2 in particular (paragraph 113)

(ii) carry out a case-by-case review of compliance with the instructions issued in 1998 with regard to solitary confinement for administrative reasons (paragraph 114)

Power to take decisions on solitary confinement is vested in the Minister of Justice if the confinement has exceeded one year.

There are currently 77 prisoners who have been in solitary confinement for more than a year. Of these, 23 are in prisons for convicted prisoners and 54 in prisons for remand prisoners.

The majority of these prisoners were placed in solitary confinement at their own request, either on account of the offence for which they were imprisoned, or of their occupation before they were imprisoned.

Improvements are being made to the segregation units to make them compliant with the circular of 14 December 1998. The prisons to be built as part of the '4000 programme' will be equipped with segregation units that allow prisoners to enjoy all the advantages set out in the aforementioned circular.

Furthermore, in accordance with the circular of 14 December 1998 on solitary confinement, it is the regional director of the Prison Service or the central authority who is responsible for reviewing the reasons given by the prison governor for placing a prisoner in solitary confinement. In addition, the prison inspectorate verifies compliance with these obligations when carrying out prison visits.

(iii) reinforce the safeguards provided for prisoners in solitary confinement to ensure they have an effective remedy before an independent authority, preferably a judge (paragraph 115)

Solitary confinement is one of the issues being considered in connection with the proposed legislation on prisons."

84. *Extracts from the Guidelines on human rights and the fight against terrorism, adopted by the Committee of Ministers of the Council of Europe on 11 July 2002*

"III. Lawfulness of anti-terrorist measures

1. All measures taken by States to combat terrorism must be lawful.

2. When a measure restricts human rights, restrictions must be defined as precisely as possible and be necessary and proportionate to the aim pursued.

IV. Absolute prohibition of torture

The use of torture or of inhuman or degrading treatment or punishment is absolutely prohibited, in all circumstances, and in particular during the arrest, questioning and detention of a person suspected of or convicted of terrorist activities, irrespective of the nature of the acts that the person is suspected of or for which he/she was convicted.

...

XI. Detention

1. A person deprived of his/her liberty for terrorist activities must in all circumstances be treated with due respect for human dignity.

2. The imperatives of the fight against terrorism may nevertheless require that a person deprived of his/her liberty for terrorist activities be submitted to more severe restrictions than those applied to other prisoners, in particular with regard to:

(i) the regulations concerning communications and surveillance of correspondence, including that between counsel and his/her client;

(ii) placing persons deprived of their liberty for terrorist activities in specially secured quarters;

(iii) the separation of such persons within a prison or among different prisons,

on condition that the measure taken is proportionate to the aim to be achieved."

85. *1. Extracts from Recommendation Rec(2006)2 of the Committee of Ministers to member States on the European Prison Rules adopted on 11 January 2006*

"The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Having regard to the European Convention on Human Rights and the case-law of the European Court of Human Rights;

Having regard also to the work carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and in particular the standards it has developed in its general reports;

Reiterating that no one shall be deprived of liberty save as a measure of last resort and in accordance with a procedure prescribed by law;

Stressing that the enforcement of custodial sentences and the treatment of prisoners necessitate taking account of the requirements of safety, security and discipline while also ensuring prison conditions which do not infringe human dignity and which offer meaningful occupational activities and treatment programmes to inmates, thus preparing them for their reintegration into society;

...

Recommends that governments of member States:

– be guided in their legislation, policies and practice by the rules contained in the appendix to this recommendation, which replaces Recommendation No. R (87) 3 of the Committee of Ministers on the European Prison Rules:

...

Appendix to Recommendation Rec(2006)2

...

Basic principles

1. All persons deprived of their liberty shall be treated with respect for their human rights.

2. Persons deprived of their liberty retain all rights that are not lawfully taken away by the decision sentencing them or remanding them in custody.

3. Restrictions placed on persons deprived of their liberty shall be the minimum necessary and proportionate to the legitimate objective for which they are imposed.

...

18.2 In all buildings where prisoners are required to live, work or congregate:

a. the windows shall be large enough to enable the prisoners to read or work by natural light in normal conditions and shall allow the entrance of fresh air except where there is an adequate air conditioning system;

b. artificial light shall satisfy recognised technical standards; ...

...

23.2 Prisoners may consult on any legal matter with a legal adviser of their own choice and at their own expense.

...

23.4 Consultations and other communications including correspondence about legal matters between prisoners and their legal advisers shall be confidential.

...

24.1 Prisoners shall be allowed to communicate as often as possible by letter, telephone or other forms of communication with their families, other persons and representatives of outside organisations and to receive visits from these persons.

24.2 Communication and visits may be subject to restrictions and monitoring necessary for the requirements of continuing criminal investigations, maintenance of good order, safety and security, prevention of criminal offences and protection of victims of crime, but such restrictions, including specific restrictions ordered by a judicial authority, shall nevertheless allow an acceptable minimum level of contact.

...

24.4 The arrangements for visits shall be such as to allow prisoners to maintain and develop family relationships in as normal a manner as possible.

...

24.10 Prisoners shall be allowed to keep themselves informed regularly of public affairs by subscribing to and reading newspapers, periodicals and other publications and by listening to radio or television transmissions unless there is a specific prohibition for a specified period by a judicial authority in an individual case.

...

25.1 The regime provided for all prisoners shall offer a balanced programme of activities.

25.2 This regime shall allow all prisoners to spend as many hours a day outside their cells as are necessary for an adequate level of human and social interaction.

25.3 This regime shall also provide for the welfare needs of prisoners.

...

27.1 Every prisoner shall be provided with the opportunity of at least one hour of exercise every day in the open air, if the weather permits.

27.2 When the weather is inclement alternative arrangements shall be made to allow prisoners to exercise.

27.3 Properly organised activities to promote physical fitness and provide for adequate exercise and recreational opportunities shall form an integral part of prison regimes.

27.4 Prison authorities shall facilitate such activities by providing appropriate installations and equipment.

27.5 Prison authorities shall make arrangements to organise special activities for those prisoners who need them.

27.6 Recreational opportunities, which include sport, games, cultural activities, hobbies and other leisure pursuits, shall be provided and, as far as possible, prisoners shall be allowed to organise them.

27.7 Prisoners shall be allowed to associate with each other during exercise and in order to take part in recreational activities.

...

29.2 The prison regime shall be organised so far as is practicable to allow prisoners to practise their religion and follow their beliefs, to attend services or meetings led by approved representatives of such religion or beliefs, to receive visits in private from such representatives of their religion or beliefs and to have in their possession books or literature relating to their religion or beliefs.

...

37.1 Prisoners who are foreign nationals shall be informed, without delay, of their right to request contact and be allowed reasonable facilities to communicate with the diplomatic or consular representative of their State.

...

39. Prison authorities shall safeguard the health of all prisoners in their care.

...

40.1 Medical services in prison shall be organised in close relation with the general health administration of the community or nation.

...

40.4 Medical services in prison shall seek to detect and treat physical or mental illnesses or defects from which prisoners may suffer.

40.5 All necessary medical, surgical and psychiatric services including those available in the community shall be provided to the prisoner for that purpose.

...

43.2 The medical practitioner or a qualified nurse reporting to such a medical practitioner shall pay particular attention to the health of prisoners held under conditions of solitary confinement, shall visit such prisoners daily, and shall provide them with prompt medical assistance and treatment at the request of such prisoners or the prison staff.

43.3 The medical practitioner shall report to the director whenever it is considered that a prisoner's physical or mental health is being put seriously at risk by continued imprisonment or by any condition of imprisonment, including conditions of solitary confinement.

...

51.1 The security measures applied to individual prisoners shall be the minimum necessary to achieve their secure custody.

51.2 The security which is provided by physical barriers and other technical means shall be complemented by the dynamic security provided by an alert staff who know the prisoners who are under their control.

51.3 As soon as possible after admission, prisoners shall be assessed to determine:

a. the risk that they would present to the community if they were to escape;

b. the risk that they will try to escape either on their own or with external assistance.

51.4 Each prisoner shall then be held in security conditions appropriate to these levels of risk.

51.5 The level of security necessary shall be reviewed at regular intervals throughout a person's imprisonment.

Safety

52.1 As soon as possible after admission, prisoners shall be assessed to determine whether they pose a safety risk to other prisoners, prison staff or other persons working in or visiting prison or whether they are likely to harm themselves.

52.2 Procedures shall be in place to ensure the safety of prisoners, prison staff and all visitors and to reduce to a minimum the risk of violence and other events that might threaten safety.

...

53.1 Special high security or safety measures shall only be applied in exceptional circumstances.

53.2 There shall be clear procedures to be followed when such measures are to be applied to any prisoner.

53.3 The nature of any such measures, their duration and the grounds on which they may be applied shall be determined by national law.

53.4 The application of the measures in each case shall be approved by the competent authority for a specified period of time.

53.5 Any decision to extend the approved period of time shall be subject to a new approval by the competent authority.

53.6 Such measures shall be applied to individuals and not to groups of prisoners.

53.7 Any prisoner subjected to such measures shall have a right of complaint in the terms set out in Rule 70.

...

70.1 Prisoners, individually or as a group, shall have ample opportunity to make requests or complaints to the director of the prison or to any other competent authority.

...

70.3 If a request is denied or a complaint is rejected, reasons shall be provided to the prisoner and the prisoner shall have the right to appeal to an independent authority.

..."

2. Extracts from the report by Mr Alvaro Gil-Robles, Commissioner for Human Rights of the Council of Europe, on the effective respect for human rights in France following his visit from 5 to 21 September 2005 (published on 15 February 2006)

"123. ... At the same time, another administrative procedure, which comes fully under the responsibility of the prison administration, is totally lacking in transparency and calls for rapid action on the part of the legislature. This is the procedure for placing prisoners in solitary confinement.

124. When one visits prisons, and more specifically the disciplinary blocks, one can usually see the solitary confinement blocks close by. Every prison has them. Under the law, any prisoner may be placed in solitary confinement either at his/her own request or as a precautionary or security measure[1]. In some cases, this regime is used to remove prisoners who are troublesome, under suspicion or ringleaders from the other inmates without their having committed a disciplinary offence.

1. See Article D. 283-1 of the Code of Criminal Procedure.

125. According to the legislation currently in force, solitary confinement is not a disciplinary measure[1]. Prisoners in solitary confinement must be subject to the ordinary prison regime. However, they must not have contact with other prisoners, except by express decision of the prison director, to take part in one-off activities with other solitary confinement prisoners. The movements of solitary confinement prisoners within the prison are organised in such a way that they do not meet anyone on their way. In a few establishments, solitary confinement prisoners may engage in a gainful occupation by doing work in their cells. Usually, however, they do not have access to any gainful activity and are entirely dependent on any funds which may be sent to them from outside. All solitary confinement prisoners may, however, receive visits and exchange correspondence in the normal way.

126. There is also a stricter solitary confinement regime for prisoners regarded as particularly dangerous 'because of [their] involvement in organised crime or in a terrorist movement or [their] legal and criminal background'. It is for the prison director to determine which solitary confinement prisoners fall within this category. They are subject to particular security measures. Some are regularly transferred from one prison to another, roughly every six months. They remain constantly in solitary confinement and never mix with other prisoners.

127. Solitary confinement is usually ordered by the prison director. It may also be ordered by an investigating judge in the course of an investigation. Here I should like to dwell on the administrative procedure for which the prison director is responsible, because I feel that it raises a number of issues likely to undermine respect for the fundamental rights of persons placed in solitary confinement.

128. It emerged from most of my discussions with prisoners, lawyers, representatives of the prison administration and voluntary organisations that the procedure for placing prisoners in solitary confinement depends entirely on an administrative decision by the prison director. There are no legislative provisions or regulations governing this procedure which guarantee the rights of those subject to it, particularly by ensuring that they are given a hearing and the assistance of a lawyer.

129. In principle, there is general legislation which should govern this situation. This is Article 24 of the Law of 12 April 2000 on the rights of citizens in their dealings with the public administration. Under this provision, representatives of government bodies who intend to take an administrative decision against an individual citizen must in principle notify the person concerned in writing with sufficient advance notice, specifying the reasons for the procedure. The person in question must have the opportunity to submit written observations or, if he/she so wishes, oral observations and has the right to be assisted by a lawyer or a representative (approved or not). He/she may also have access to his/her file.

130. Clearly, the decision to place a prisoner in solitary confinement would normally be covered by this. However, we were told that this legislation has remained inoperative where solitary confinement is concerned. At present, therefore, the prison director retains sole discretion where solitary confinement is concerned.

131. According to what we heard in the course of our discussions, at present the prisoners concerned are usually informed immediately before the hearing of the

1. Ibid., Article D. 283-2.

intention to place them in solitary confinement. They usually only have an hour in which to prepare their observations before being given a hearing, without any legal assistance, by the prison director. I believe that, as things stand, this procedure must be described as being contrary to the recommendations of the Committee for the Prevention of Torture (CPT). Furthermore, the purely administrative and non-adversarial nature of this procedure greatly increase the risk of abuses of prisoners' rights. I therefore feel that there is currently a real need to introduce legislation or regulations bringing this procedure into line with European standards.

132. Furthermore, it is particularly disturbing to see that solitary confinement may be ordered for an indefinite period, despite its frequently harmful effects on the mental state of the persons subjected to it. The initial period of solitary confinement ordered by the prison director may not exceed three months. It may be extended beyond that period only after a report to the Sentence Enforcement Board and following a decision by the regional director of prisons. In exceptional cases, solitary confinement may be extended beyond one year following an initial decision by the Minister for Justice. In such cases, the prison director compiles a file including, among other things, the opinion of the prison doctor and of the Sentence Enforcement Board. The minister is responsible for subsequent extensions, for three months at a time, in accordance with the same procedure.

133. As may be seen, this procedure is entirely administrative. At present, there is no judicial involvement whatsoever. Yet it is a particularly serious measure, because, although it is not recognised as punishment, the solitary confinement regime imposes significant material restrictions on prisoners' rights, not to mention its psychological impact. During the visit, I had the opportunity to talk with persons placed in solitary confinement. Some complained about the harshness of their living conditions. According to them, being unable to communicate with anyone for long periods, sometimes well in excess of a year, is hard to bear. Prisoners placed in solitary confinement have no effective administrative remedy at their disposal, and most of those I spoke to regard solitary confinement as a disguised disciplinary punishment. In the course of the visit I met people who had been in total solitary confinement for several years.

134. It is difficult not to agree with them when you see some of the restrictions placed on solitary confinement prisoners. In view of the fact that one of the requirements of the solitary confinement regime is that the prisoners concerned should have no contact with other prisoners, it is very difficult to allow them to exercise the rights vested in all prisoners not subject to a disciplinary punishment, which should clearly be the case for those in solitary confinement. For example, to allow them to use the library or a sports hall, care must be taken to ensure that no one else enters these premises at the same time. As we know, owing to prison overcrowding, it is already quite difficult to ensure access for ordinary prisoners to these services. Most of those I spoke to therefore complained that it was impossible for them to exercise the rights to which they should normally be entitled. The same applies to the possibility of engaging in a gainful occupation. In theory, prisoners in solitary confinement are entitled to that, but in practice they may only do so inside their own cell, which is highly problematical in view of the scarcity of work opportunities in general.

135. Lastly, the exercise areas available to this category of prisoners are usually the same as those used by the prisoners in the disciplinary block. We visited one such area at Fleury-Mérogis short-stay prison. It is located on the roof of one of the prison

buildings, closed in by concrete walls on all sides and covered by wire netting. It is so small that it is more a room in the open air than anything else.

136. I should like to stress that we are talking here about people who are not subject to a disciplinary measure. Furthermore, the fact that a person is left deprived of the rights secured to every prisoner is purely the result of an administrative decision against which it is difficult to appeal. I therefore call on the French authorities to take rapid action to bring solitary confinement into line with European standards, in particular those upheld by the CPT. I think there is a need for legislative provisions or regulations to govern the solitary-confinement procedure. The adversarial system already introduced for disciplinary punishments should apply to the solitary-confinement procedure. Lastly, I think it would be in keeping with the spirit of the principle of legal certainty if a judicial body were henceforth able to participate in the procedure, for example the judge responsible for sentence enforcement.

137. Furthermore, without waiting for legislative reform, the authorities should act to ensure that prisoners in solitary confinement are able to participate in organised activities, particularly as regards work, culture and sports. Their walks and outdoor sports activities should be organised as soon as possible in appropriate places intended for the prison population as a whole, and not for prisoners being held in disciplinary cells. Excluding prisoners from these activities amounts to a disguised punishment. Such changes are bound to lighten the already quite heavy atmosphere which I found in the places of detention visited.

..."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

86. The applicant complained, firstly, that his prolonged solitary confinement from 15 August 1994 to 17 October 2002 and from 18 March 2004 to 6 January 2006 constituted inhuman and degrading treatment and had therefore violated Article 3 of the Convention.

Article 3 provides:

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

A. The Chamber judgment

87. The Chamber held that there had been no violation of Article 3 of the Convention. It found that the applicant had not been kept in complete sensory isolation or total social isolation. Having regard in particular to the applicant's character and the exceptional danger he posed, it further found

that the conditions in which he was being held and the length of time he had spent in solitary confinement had not reached the minimum level of severity necessary to constitute inhuman treatment within the meaning of Article 3 of the Convention.

B. The parties' submissions

1. The applicant

88. The applicant contested the conclusion that had been reached by the Chamber.

He submitted that the Chamber had been wrong to accept, without any prima facie evidence, the Government's claim that there was a danger he would engage in proselytism or plan an escape. In his submission, it could not be maintained that solitary confinement had made such conduct impossible, just as it was impossible to draw any conclusion from the period in which he had ceased to be in solitary confinement.

89. He also considered that the Chamber should not have referred to his "character" or "exceptional dangerousness" in the absence of any concrete evidence from the Government to back up the "abstract" profile that had systematically been relied on in all the decisions to keep him in solitary confinement. Likewise, the reference to a possible ascendancy over the other prisoners showed that the reasons that had been given for keeping him in solitary confinement were fictitious.

90. In his submission, the systematic renewal of his solitary confinement had resulted in its continuation for a period that did not conform with the CPT's recommendations or the undertakings that had been given by the Government after the CPT's visit in 1996.

Furthermore, he had never been convicted of a terrorist offence and was entitled to the presumption of innocence on that point, in accordance with Article 6 § 2 of the Convention.

91. As regards the conditions in which he was detained, he said that the strict ban on his communicating with other people, including prison warders, had resulted in his total social isolation. He had been refused permission to have French lessons, even on an individual basis, and none of his family had been officially informed of his imprisonment or his whereabouts. He alleged that the investigating file showed that it was the French authorities' intention to arrest any member of his family who travelled to France.

As to the visits from the clergyman, the applicant said that initially they had been allowed only occasionally; subsequently, however, he had been permitted visits approximately once a month. He pointed out that visits by diplomatic representatives were a legal entitlement and that the Venezuelan authorities had not been informed of his situation until a late stage.

With regard to sanitary conditions, the applicant said that he took showers at the same intervals as other prisoners and had not requested a special regime. He had been forced to stop going to the cardio-training room after being provoked and assaulted, although he did not identify those responsible.

92. The visits he had received from his lawyers were not social visits, but an indefeasible means of exercising his defence rights. He said that the Chamber had been wrong to accept that the visits had reduced his isolation and added that there had been numerous instances of delay in his lawyers' being granted permission to visit him. Arguing that the Government's production of the list of visits of just one of his lawyers was misrepresentative, he furnished a list of all 58 lawyers and of the more than 860 visits they had made between 16 August 1994 and 29 April 2002.

The visits from his lawyers had only been made with any frequency during his stay in La Santé Prison in Paris. On his transfer to the other prisons, such visits had become far less frequent because of the distance involved. Since October 2002, he had been receiving visits on a weekly basis.

93. The applicant further pointed out that, although the circular of 8 December 1998 to which the Chamber had referred in its judgment provided that a doctor's opinion should be obtained prior to each extension, the Government had not produced evidence to show that the necessary medical examination had taken place.

94. He added that, in saying that the conditions in which he was detained were dictated by the layout of La Santé, the Government had sought to suggest that it would have been more appropriate to hold him in a maximum security prison, although these were all at some distance from Paris.

95. The applicant added that his excellent mental and physical health was due to his strength of character and the efforts he had made to keep his mind active and to retain mental balance. The adverse physical effects had, however, taken the form of broken sleep cycles as a result of his being noisily awoken by warders at hourly intervals from midnight to 6 a.m. throughout his stay in solitary confinement. He had also suffered from recurring respiratory and skin allergies as a result of the prison conditions.

96. His lawyer pointed out that it had been discovered in January 2004 that he was suffering from diabetes, a condition he had not previously had. She also said that he had lost 20 kilograms between March and December 2004.

2. The Government

97. The Government invited the Grand Chamber to endorse the Chamber's finding that keeping the applicant in solitary confinement did not contravene Article 3.

98. Firstly, the applicant's prison regime was wholly exceptional and dictated by the fact that, as a unique figure known internationally for acts of terrorism, there was a danger he would cause serious disruption within the prison population by engaging in proselytism, or even planning an escape.

99. In any event, the regime for prisoners in solitary confinement at La Santé Prison was strictly aligned to the rules applicable to ordinary prisoners, the only restrictions being those entailed by the fact that prisoners in the segregation unit had no possibility of meeting one another or of being in the same room together.

100. Referring to the facts as established (see paragraphs 11 and 12 above), the Government submitted that the physical conditions of the applicant's detention complied with Article 3 of the Convention.

101. With regard to visits, the Government explained that the applicant had been a remand prisoner until 30 January 2000 and that by virtue of Article D. 64 of the Code of Criminal Procedure visits could only be authorised by the judge in charge of the investigation. Once the applicant's conviction became final on 30 January 2000 the power to authorise visits had been transferred to the prison governor.

102. The applicant's family, who did not reside in France, had never made contact.

Furthermore, the applicant was allowed to see a priest – subject to one being available – whenever he wished, and received regular visits from consular authorities, in particular the Venezuelan Ambassador's representative.

103. The Government added that the applicant had had very frequent meetings with his lawyer, who had become his fiancée and later his wife under Islamic law, as she had visited him more than 640 times in four years and ten months (see paragraph 14 above). They added that visits from lawyers took place in special conference rooms without any barrier between the prisoner and his or her lawyer.

Lastly, although the applicant had been refused access to a communal class to learn French, he had been offered individual lessons, which he had declined.

104. The Government pointed out that by virtue of the Law of 18 January 1994 responsibility for the organisation and provision of health care for prisoners had been transferred to the public health service and social welfare protection had been made available to all prisoners.

105. In addition to any consultations requested by the prisoner or prison staff, medical care included mandatory check-ups (for new arrivals in a prison or for prisoners in the disciplinary unit). Prisoners in solitary confinement were systematically seen by a doctor twice a week.

Relations between prisoners and doctors were covered by medical confidentiality. Accordingly, the medical information the Government had supplied was non-confidential information which the medical team

responsible for the applicant's health had communicated to the French authorities.

106. From the strictly somatic standpoint, the applicant had attended the Outpatient Consultation and Treatment Unit ("the OCTU") for specialist dental and ophthalmologic care. He had never complained of impaired eyesight as a result of his solitary confinement.

From the psychiatric standpoint, the medical team had at no stage during the eight years the applicant had been held in solitary confinement mentioned any disorder, while the applicant had said that he was perfectly sane.

107. It was clear from the medical certificates that were issued regularly on each renewal of the solitary confinement that the doctors had at no stage found any contraindication to the measure.

108. The vast majority of the certificates drawn up between August 1994 and July 2000 had expressly stated that the applicant's health was compatible with his continued confinement. In many instances, the certificates had been signed by different doctors who would necessarily have examined the applicant with a fresh pair of eyes. Lastly, the certificate of 13 July 2000 had even added that the applicant "is in quite astounding physical and mental condition after six years in solitary confinement".

109. With regard to the period from July 2000 to September 2002, the Government did not deny that some of the certificates had referred to the problem of the possible physical and mental consequences of prolonged solitary confinement. However, the certificates did not state that the applicant had suffered any definite, actual harm as a result of his solitary confinement. The certificate of 20 September 2001 said that the applicant's physical and mental condition was entirely reasonable after seven years in solitary confinement and in a later certificate dated 29 July 2002 the same practitioner stated that the applicant was in excellent somatic health. He also said that the applicant had refused any psychological counselling from the Regional Medical and Psychological Service ("the RMPS"), which in the Government's submission showed that he had not felt the need for any counselling.

110. The Government further denied that the applicant had been woken at hourly intervals throughout the night, as he alleged. They referred to Articles D. 270 and D. 272 of the Code of Criminal Procedure, which governed prison rounds at night, and said that the applicant had been subjected to the same surveillance and checks as other prisoners in solitary confinement, as no special instructions had been issued in his case. In particular, when performing their night rounds, warders were not authorised to open cells unless there was good reason or imminent danger. The applicant could not, therefore, assert that he had been noisily woken at hourly intervals throughout the night on a regular basis. At most, it was possible that warders had shone a light into his cell briefly to check that he

was there and what he was doing. Further, the applicant had never complained to a domestic authority about night-time surveillance, whereas he had complained on a number of occasions during his spell in solitary confinement about the conditions in which he was being held.

111. The Government concluded from all these factors that the applicant's health did not appear to have been affected by solitary confinement and that the conditions in which the applicant was being held had not attained the minimum level of severity required to fall foul of Article 3 of the Convention, despite the CPT's finding that the general conditions in which prisoners in solitary confinement were held in France were not entirely satisfactory.

C. The Court's assessment

112. The Court must first determine the period of detention to be taken into consideration when examining the complaint under Article 3. It points out that the "case" referred to the Grand Chamber embraces in principle all aspects of the application previously examined by the Chamber in its judgment, the scope of its jurisdiction in the "case" being limited only by the Chamber's decision on admissibility (see, *mutatis mutandis*, *K. and T. v. Finland* [GC], no. 25702/94, §§ 139-41, ECHR 2001-VII; *Kingsley v. the United Kingdom* [GC], no. 35605/97, § 34, ECHR 2002-IV; *Göç v. Turkey* [GC], no. 36590/97, §§ 35-37, ECHR 2002-V; *Refah Partisi (the Welfare Party) and Others v. Turkey* [GC], nos. 41340/98, 41342/98, 41343/98 and 41344/98, ECHR 2003-II; and *Öcalan v. Turkey* [GC], no. 46221/99, ECHR 2005-IV). More specifically, within the compass thus delimited by the decision on the admissibility of the decision, the Court may deal with any issue of fact or law that arises during the proceedings before it (see, among many other authorities, *Guerra and Others v. Italy*, 19 February 1998, § 44, *Reports of Judgments and Decisions* 1998-I; *Chahal v. the United Kingdom*, 15 November 1996, § 86, *Reports* 1996-V; and *Ahmed v. Austria*, 17 December 1996, § 43, *Reports* 1996-VI).

113. In the present case, the applicant's solitary confinement was interrupted between 17 October 2002 and 18 March 2004 when he was detained in Saint-Maur Prison, near Châteauroux, under normal prison conditions. He was then held in solitary confinement successively in Fresnes, Fleury-Mérogis and La Santé. Since 6 January 2006 he has been in Clairvaux Prison, where normal conditions have been restored.

The parties have not provided any information on the conditions in which the applicant was kept in solitary confinement in the various prisons to which he was transferred during the period from March 2004 to January 2006. Nor has the applicant ever challenged his solitary confinement on the merits since that became possible on 30 July 2003 (see paragraph 82 above). In particular, he did not make use of any remedy on the merits during this

latter period (March 2004 to January 2006) although he could have done so from the moment he returned to solitary confinement. The Court will return to this point when it examines the complaint under Article 13.

114. In these specific circumstances, the Grand Chamber, like the Chamber, considers it appropriate to restrict its examination to the conditions in which the applicant was held from 15 August 1994 to 17 October 2002 (contrast *Öcalan*, cited above, § 190).

1. General principles

115. Article 3 of the Convention enshrines one of the most fundamental values of democratic societies. Even in the most difficult of circumstances, such as the fight against terrorism or crime, the Convention prohibits in absolute terms torture or inhuman or degrading treatment or punishment.

116. In the modern world, States face very real difficulties in protecting their populations from terrorist violence. However, unlike most of the substantive clauses of the Convention and of Protocols Nos. 1 and 4, Article 3 makes no provision for exceptions and no derogation from it is permissible under Article 15 § 2 even in the event of a public emergency threatening the life of the nation (see *Labita v. Italy* [GC], no. 26772/95, § 119, ECHR 2000-IV; *Selmouni v. France* [GC], no. 25803/94, § 95, ECHR 1999-V; and *Assenov and Others v. Bulgaria*, 28 October 1998, § 93, *Reports* 1998-VIII). The Convention prohibits in absolute terms torture and inhuman or degrading treatment or punishment, irrespective of the conduct of the person concerned (see *Chahal*, cited above, § 79). The nature of the offence allegedly committed by the applicant is therefore irrelevant for the purposes of Article 3 (see *Indelicato v. Italy*, no. 31143/96, § 30, 18 October 2001).

117. Ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum depends on all the circumstances of the case, such as the duration of the treatment, its physical or mental effects and, in some cases, the sex, age and state of health of the victim (see, for instance, *Ireland v. the United Kingdom*, 18 January 1978, § 162, Series A no. 25). In assessing the evidence on which to base the decision whether there has been a violation of Article 3, the Court adopts the standard of proof "beyond reasonable doubt". However, such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact.

118. The Court has considered treatment to be "inhuman" because, *inter alia*, it was premeditated, was applied for hours at a stretch and caused either actual bodily injury or intense physical or mental suffering. It has deemed treatment to be "degrading" because it was such as to arouse in the victims feelings of fear, anguish and inferiority capable of humiliating and debasing them (see, among other authorities, *Kudła v. Poland* [GC],

no. 30210/96, § 92, ECHR 2000-XI). In considering whether a punishment or treatment is "degrading" within the meaning of Article 3, the Court will have regard to whether its object is to humiliate and debase the person concerned and whether, as far as the consequences are concerned, it adversely affected his or her personality in a manner incompatible with Article 3 (see, among other authorities, *Raninen v. Finland*, 16 December 1997, § 55, *Reports* 1997-VIII). However, the absence of any such purpose cannot conclusively rule out a finding of a violation of Article 3 (see, among other authorities, *Peers v. Greece*, no. 28524/95, § 74, ECHR 2001-III).

119. In order for a punishment or treatment associated with it to be "inhuman" or "degrading", the suffering or humiliation involved must in any event go beyond that inevitable element of suffering or humiliation connected with a given form of legitimate treatment or punishment (see, among other authorities, *V. v. the United Kingdom* [GC], no. 24888/94, § 71, ECHR 1999-IX; *Indelicato*, cited above, § 32; *Ilaşcu and Others v. Moldova and Russia* [GC], no. 48787/99, § 428, ECHR 2004-VII; and *Lorsé and Others v. the Netherlands*, no. 52750/99, § 62, 4 February 2003).

In that connection, the Court notes that measures depriving a person of his liberty may often involve such an element. Nevertheless, Article 3 requires the State to ensure that prisoners are detained in conditions that are compatible with respect for their human dignity, that the manner and method of the execution of the measure do not subject them to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, their health and well-being are adequately secured (see *Kudła*, cited above, §§ 92-94, and *Kalashnikov v. Russia*, no. 47095/99, § 95, ECHR 2002-VI). The Court would add that the measures taken must also be necessary to attain the legitimate aim pursued.

Further, when assessing conditions of detention, account has to be taken of the cumulative effects of those conditions, as well as the specific allegations made by the applicant (see *Dougoz v. Greece*, no. 40907/98, § 46, ECHR 2001-II).

120. The applicant's allegations in the present case specifically concern the length of time spent in solitary confinement.

The European Commission of Human Rights expressed the following opinion on this particular aspect of detention in *Ensslin, Baader and Raspe v. Germany* (nos. 7572/76, 7586/76 and 7587/76, Commission decision of 8 July 1978, Decisions and Reports (DR) 14, p. 64):

> "The Commission has already been confronted with a number of such cases of isolation (cf. Decisions on Applications No. 1392/62 v. FRG, Coll. 17, p. 1; No. 5006/71 v. UK, Coll. 39, p. 91; No. 2749/66 v. UK, Yearbook X, p. 382; No. 6038/73 v. FRG, Coll. 44, p. 155; No. 4448/70 "Second Greek Case" Coll. 34, p. 70). It has stated that prolonged solitary confinement is undesirable, especially where the person is detained on remand (cf. Decision on Application No. 6038/73 v.

FRG, Coll. 44, p. 151). However, in assessing whether such a measure may fall within the ambit of Article 3 of the Convention in a given case, regard must be had to the particular conditions, the stringency of the measure, its duration, the objective pursued and its effects on the person concerned. Complete sensory isolation coupled with complete social isolation can no doubt ultimately destroy the personality; thus it constitutes a form of inhuman treatment which cannot be justified by the requirements of security, the prohibition on torture and inhuman treatment contained in Article 3 being absolute in character (cf. the Report of the Commission on Application No. 5310/71, *Ireland v. the United Kingdom*; Opinion, p. 379)."

121. In *Kröcher and Möller v. Switzerland* (no. 8463/78, Commission's report of 16 December 1982, DR 34, p. 24), the Commission also considered the length of the solitary confinement, which lasted for approximately ten and a half months. It observed:

"With regard to the *duration* of their detention on remand and detention under security conditions, the Commission finds that each of these periods was fairly brief considering the circumstances of the case. As to the special isolation measures to which the applicants were subjected, neither the duration nor the severity of these exceeded the legitimate requirements of security. In any case, the applicants' exclusion from the prison community was not prolonged excessively."

122. The Commission reiterated in a later case that prolonged solitary confinement was undesirable (see *Natoli v. Italy*, no. 26161/95, Commission decision of 18 May 1998, unreported).

123. Similarly, the Court has for its part established the circumstances in which the solitary confinement of even a dangerous prisoner will constitute inhuman or degrading treatment (or even torture in certain instances).

It has thus observed:

"... complete sensory isolation, coupled with total social isolation can destroy the personality and constitutes a form of inhuman treatment which cannot be justified by the requirements of security or any other reason. On the other hand, the prohibition of contacts with other prisoners for security, disciplinary or protective reasons does not in itself amount to inhuman treatment or punishment." (see *Messina v. Italy (no. 2)* (dec.), no. 25498/94, ECHR 1999-V; *Öcalan*, cited above, § 191; and *Ilaşcu and Others*, cited above, § 432)

124. Similarly, in *Ilaşcu and Others*, the Court stated:

"As regards the applicant's conditions of detention while on death row, the Court notes that Mr Ilaşcu was detained for eight years, from 1993 until his release in May 2001, in very strict isolation: 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, even in severe winter conditions, and had no natural light source or ventilation. The evidence shows that Mr Ilaşcu was also deprived of food as a punishment and that in any event, given the restrictions on receiving parcels, even the food he received from outside was often unfit for consumption. The applicant could take showers only very rarely, often having to wait several months between one and the next. On this subject the Court refers to the conclusions in the report produced by the CPT following its visit to Transdniestria in 2000 ..., in which it described isolation for so many years as indefensible.

> The applicant's conditions of detention had deleterious effects on his health, which deteriorated in the course of the many years he spent in prison. Thus, he did not receive proper care, having been deprived of regular medical examinations and treatment ... and dietetically appropriate meals. In addition, owing to the restrictions on receiving parcels, he could not be sent medicines and food to improve his health." (see *Ilaşcu and Others*, cited above, § 438; contrast *Rohde v. Denmark*, no. 69332/01, § 97, 21 July 2005)

2. Application of the principles to the present case

125. As to the present case, the Court accepts that the applicant's detention posed serious problems for the French authorities. The applicant, who was implicated in various terrorist attacks that took place in the 1970s, was at the time considered one of the world's most dangerous terrorists. It is to be noted on this point that on the many occasions he has since had to state his views (in his book, newspaper articles and interviews) he has never disowned or expressed remorse for his acts. Accordingly, it is understandable that the authorities should have considered it necessary to combine his detention with extraordinary security measures.

(a) Conditions in which the applicant was held

(i) Physical conditions

126. The physical conditions in which the applicant was held must be taken into account when examining the nature and duration of his solitary confinement.

127. The Court notes that the cell which the applicant occupied when in solitary confinement at La Santé Prison was large enough to accommodate a prisoner, was furnished with a bed, table and chair, and had sanitary facilities and a window giving natural light.

128. In addition, the applicant had books, newspapers, a reading light and a television set at his disposal. He had access to the exercise yard two hours a day and to a cardio-training room one hour a day.

129. These conditions of detention contrast with those that were examined by the Court in the case of *Mathew*, in which the Court found a violation of Article 3. The applicant in that case had been detained in conditions similar to solitary confinement for more than two years in a cell on the last (second) floor of the prison. For seven or eight months, a large hole in the ceiling allowed rain to enter. In addition, the fact that the cell was directly under the roof exposed the applicant to the tropical heat. Lastly, since he had difficulty going up or down stairs, he was frequently prevented from going to the exercise yard or even outside (see *Mathew v. the Netherlands*, no. 24919/03, ECHR 2005-IX).

130. In the present case, the Court finds that the physical conditions in which the applicant was detained were proper and complied with the

European Prison Rules adopted by the Committee of Ministers on 11 January 2006. These conditions were also considered to be "globally acceptable" by the CPT (see its report on the visit from 14 to 26 May 2000, cited at paragraph 83 above). Accordingly, no violation of Article 3 can be found on this account.

(ii) Nature of the applicant's solitary confinement

131. In the present case, the applicant received twice-weekly visits from a doctor, a once-monthly visit from a priest and very frequent visits from one or more of his 58 lawyers, including more than 640 visits over a period of four years and ten months from his representative in the proceedings before the Court, now his wife under Islamic law, and more than 860 visits in seven years and eight months from his other lawyers (see paragraphs 14 and 92 above).

Furthermore, the applicant's family, who are not subject to any restrictions on visiting rights, have never requested permission to visit and the only two requests which have been refused came from journalists. Nor has the applicant provided any evidence in support of his allegations that members of his family risk arrest if they set foot in France. As to the allegation that the family has never been officially informed of the applicant's imprisonment or place of detention, the Court notes that it is not certain that the French authorities had the names and addresses of his family members and it considers that the consular authorities, the applicant himself and his lawyers were in any event perfectly capable of informing them themselves.

132. The Court notes that the conditions of solitary confinement in which the applicant was held were not as harsh as those it has had occasion to examine in connection with other applications, such as in the cases of *Messina (no. 2)* and *Argenti*, in which the applicants, who had been in solitary confinement for four and a half years and twelve years respectively, were subject to a ban on communicating with third parties, a restriction on receiving visits – behind a glass screen – from members of their families (with a maximum of a one-hour visit per month), and bans on receiving or sending money over a certain amount, on receiving parcels from outside containing anything other than linen, on buying groceries that required cooking and on spending more than two hours outdoors (see *Messina (no. 2)*, cited above, and *Argenti v. Italy*, no. 56317/00, § 7, 10 November 2005).

133. Likewise, in the case of *Öcalan*, in which the isolation was stricter, the Court noted that the applicant, who had been the sole inmate of an island prison for six years when the judgment was adopted, had no access to a television and that his lawyers, who were only allowed to visit him once a week, had often been prevented from doing so by adverse weather conditions that meant that the boat was unable to make the crossing. It

found that in the circumstances of the case the conditions of detention were not incompatible with Article 3 of the Convention (see *Öcalan*, cited above, in particular §§ 190-96).

134. The Court considers that the applicant's conditions are closer to those it examined in *Rohde* in which it held that there had been no violation of Article 3 of the Convention. The applicant in that case was held in solitary confinement for eleven and a half months. He had access to television and newspapers, was excluded from activities with other prisoners, had language lessons, was able to meet the prison chaplain and received a visit once a week from his lawyer and some members of his family (*Rohde*, cited above, § 97).

135. The Court accordingly concludes that the applicant cannot be considered to have been in complete sensory isolation or total social isolation. His isolation was partial and relative.

(b) Duration of the solitary confinement

136. It is true that the applicant's situation was far removed from that of the applicants in the aforementioned case of *Ilaşcu and Others* and that he was not subjected to complete sensory isolation or to total social isolation, but to relative social isolation (see also on this point, *Messina (no. 2)*, cited above).

However, the Court cannot but note with concern that in the present case he was held in solitary confinement from 15 August 1994 to 17 October 2002, a period of eight years and two months.

In view of the length of that period, a rigorous examination is called for by the Court to determine whether it was justified, whether the measures taken were necessary and proportionate compared to the available alternatives, what safeguards were afforded the applicant and what measures were taken by the authorities to ensure that the applicant's physical and mental condition was compatible with his continued solitary confinement.

137. Reasons for keeping a prisoner in solitary confinement are required by the circular of 8 December 1998 which refers to "genuine grounds" and "objective concordant evidence of a risk of the prisoner causing ... serious harm". In the instant case, the reasons given for renewing the measure every three months were his dangerousness, the need to preserve order and security in the prison and the risk of his escaping from a prison in which general security measures were less extensive than in a high-security prison.

The circular also provides that solitary confinement should only continue for more than a year in exceptional circumstances. However, regrettably there is no upper limit on the duration of solitary confinement.

138. It is true that a prisoner's segregation from the prison community does not in itself amount to inhuman treatment. In many States Parties to the Convention more stringent security measures exist for dangerous prisoners. These arrangements, which are intended to prevent the risk of escape, attack

or disturbance of the prison community, are based on separation of the prison community together with tighter controls (see *Kröcher and Möller*, cited above).

139. However, in order to avoid any risk of arbitrariness, substantive reasons must be given when a protracted period of solitary confinement is extended. The decision should thus make it possible to establish that the authorities have carried out a reassessment that takes into account any changes in the prisoner's circumstances, situation or behaviour. The statement of reasons will need to be increasingly detailed and compelling the more time goes by.

Furthermore, such measures, which are a form of "imprisonment within the prison", should be resorted to only exceptionally and after every precaution has been taken, as specified in paragraph 53.1 of the Prison Rules adopted by the Committee of Ministers on 11 January 2006. A system of regular monitoring of the prisoner's physical and mental condition should also be set up in order to ensure its compatibility with continued solitary confinement.

140. The Court notes that the applicant has received very regular visits from doctors, in accordance with the instructions set out in the circular of 8 December 1998.

141. While it is true that, after 13 July 2000 the doctors no longer sanctioned his solitary confinement, none of the medical certificates issued on the renewals of the applicant's solitary confinement up to October 2002 expressly stated that his physical or mental health had been affected, or expressly requested a psychiatric report.

142. In addition, on 29 July 2002 the doctor in charge of the OCTU at La Santé Prison noted in his report on the treatment the applicant had been receiving that the applicant had refused "any psychological help from the RMPS".

143. Likewise, in his findings following an examination of the applicant on 17 October 2002 on his arrival at Saint-Maur Prison, the Indre Health Inspector said that, from the psychiatric standpoint, the applicant had been seen by a psychiatrist from the RMPS as part of the standard induction procedure. No follow-up treatment had been prescribed at the time and the applicant had not asked to see a psychiatrist since. The applicant had been examined on 26 August 2003, but no follow-up to that appointment had been recommended.

144. The Court notes in this connection that the applicant refused the psychological counselling he was offered (see paragraph 70 above) and has not alleged that the treatment he received for his diabetes was inappropriate. Nor has he shown that his prolonged solitary confinement has led to any deterioration in his health, whether physical or mental.

Furthermore, the applicant himself stated in his observations in reply that he was in excellent mental and physical health (see paragraph 95 above).

145. The Court nevertheless wishes to emphasise that solitary confinement, even in cases entailing only relative isolation, cannot be imposed on a prisoner indefinitely. Moreover, it is essential that the prisoner should be able to have an independent judicial authority review the merits of and reasons for a prolonged measure of solitary confinement. In the instant case, that only became possible in July 2003. The Court will return to this point when it examines the complaint made under Article 13. It also refers in this connection to the conclusions of the CPT and of the Human Rights Commissioner of the Council of Europe (see paragraphs 83 and 85 above).

146. It would also be desirable for alternative solutions to solitary confinement to be sought for persons considered dangerous and for whom detention in an ordinary prison under the ordinary regime is considered inappropriate.

147. The Court notes with interest on this point that the authorities twice transferred the applicant to prisons in which he was held in normal conditions. It emerges from what the Government have said that it was as a result of an interview which the applicant gave over the telephone to a television programme in which he refused among other things to express any remorse to the victims of his crimes (he put the number of dead at between 1,500 and 2,000), that he was returned to solitary confinement in a different prison. The authorities do not, therefore, appear to have sought to humiliate or debase him by systematically prolonging his solitary confinement, but to have been looking for a solution adapted to his character and the danger he posed.

148. The Court notes that when the applicant was being held in normal conditions in Saint-Maur Prison, his lawyer sent a letter to the Registry of the Court in which she complained of "dangerous company, particularly in the form of drug addicts, alcoholics, and sexual offenders who are unable to control their behaviour" and alleged a violation of human rights.

Furthermore, the applicant complained during that period of being too far away from Paris, which, he said, made visits from his lawyers more difficult, less frequent and more costly and inevitably caused another form of isolation.

149. Lastly, the Government's concerns that the applicant might use communications either inside the prison or on the outside to re-establish contact with members of his terrorist cell, to seek to proselytise other prisoners or to prepare an escape also have to be taken into account. These concerns cannot be said to have been without basis or unreasonable (see on this point, *Messina (no. 2)*, in which the Court noted, before declaring the complaints about the conditions of detention inadmissible, "the applicant was placed under the special regime because of the very serious offences of which he [was] convicted", a statement that is equally applicable to the

applicant in the present case; see also *Gallico v. Italy*, no. 53723/00, 28 June 2005).

150. The Court shares the CPT's concerns about the possible long-term effects of the applicant's isolation. It nevertheless considers that, having regard to the physical conditions of the applicant's detention, the fact that his isolation is "relative", the authorities' willingness to hold him under the ordinary regime, his character and the danger he poses, the conditions in which the applicant was being held during the period under consideration have not reached the minimum level of severity necessary to constitute inhuman treatment within the meaning of Article 3 of the Convention. Despite the very special circumstances obtaining in the present case, the Court is concerned by the particularly lengthy period the applicant has spent in solitary confinement and has duly noted that since 5 January 2006 he has been held under the ordinary prison regime (see paragraph 76 above), a situation which, in the Court's view, should not in principle be changed in the future. Overall, having regard to all the foregoing considerations, it finds that there has been no violation of Article 3 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

151. The applicant complained that he had not had a remedy available to challenge his continued solitary confinement. He relied on Article 13, which provides:

> "Everyone whose rights and freedoms as set forth in th[e] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

A. The Chamber judgment

152. The Chamber found a violation of Article 13 of the Convention. It noted in particular that prior to the *Conseil d'Etat*'s judgment of 30 July 2003, prisoners in solitary confinement did not have any remedy available to challenge the original measure or any renewal of it.

B. The parties' submissions

153. The applicant invited the Grand Chamber to endorse the Chamber's finding of a violation. He also alleged that the authorities had not followed the procedure laid down by Article D. 283-1 of the Code of Criminal Procedure for prolonging solitary confinement. He added that on a number of occasions he had been forced to complain because he not been given the requisite medical check-up before the decision to prolong his solitary confinement was taken. Lastly, he said that the proposals and decisions to

prolong the measure were almost systematically based on the nature of the offences for which he was in prison and that the authorities had been unable to provide the genuine grounds or evidence of objective and concordant incidents required by the applicable provisions.

154. The Government noted that in a judgment of 30 July 2003 the *Conseil d'Etat* had ruled that a decision to place a prisoner in solitary confinement could be the subject of judicial review owing to the effect such decisions had on the conditions of detention. That judgment was part of a continuing process which had seen the scope of internal administrative measures increasingly circumscribed.

155. They added that the applicant had to date challenged only one order renewing his solitary confinement, that being the decision of 17 February 2006. Even then he had only contested the formal validity of the measure, not the underlying reasons. Consequently, he had never sought to challenge the measure in the administrative courts on the merits by arguing that it violated Article 3 of the Convention.

The Paris Administrative Court, which gave its judgment on 15 December 2005, had set the decision aside on the ground that the regional director of the Prison Service had omitted to obtain the opinion of the Sentence Enforcement Board, as he was required to do by Article D. 283-1 of the Code of Criminal Procedure, before lodging his report with the Minister of Justice.

156. The Government said in conclusion that it left it to the Court's discretion to decide whether or not an effective remedy had existed prior to the *Conseil d'Etat*'s decision of 30 July 2003 .

C. The Court's assessment

157. As the Court has held on many occasions, Article 13 of the Convention guarantees the availability at national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they may happen to be secured in the domestic legal order. The effect of Article 13 is thus to require the provision of a domestic remedy to deal with the substance of an "arguable complaint" under the Convention and to grant appropriate relief (see, among many other authorities, *Kudła*, cited above, § 157).

158. The scope of the Contracting States' obligations under Article 13 varies depending on the nature of the applicant's complaint. However, the remedy must be "effective" in practice as well as in law (see, among other authorities, *İlhan v. Turkey* [GC], no. 22277/93, § 97, ECHR 2000-VII).

159. The "effectiveness" of a "remedy" within the meaning of Article 13 does not depend on the certainty of a favourable outcome for the applicant. Nor does the "authority" referred to in that provision necessarily have to be a judicial authority; but if it is not, its powers and the guarantees it affords

are relevant in determining whether the remedy before it is effective. Also, even if a single remedy does not by itself entirely satisfy the requirements of Article 13, the aggregate of remedies provided for under domestic law may do so (see, among many other authorities, *Silver and Others v. the United Kingdom*, 25 March 1983, § 113, Series A no. 61, and *Chahal*, cited above, § 145).

160. The Court must now determine whether it was possible under French law for the applicant to complain about the decisions to prolong his solitary confinement and about any procedural irregularities, and whether the remedies were "effective" in the sense that they could have prevented the alleged violation occurring or continuing or could have afforded the applicant appropriate redress for any violation that had already occurred.

161. The Government accepted that, under the settled case-law of the *Conseil d'Etat* prior to 30 July 2003, decisions to place a prisoner in solitary confinement were equated to internal administrative measures in respect of which no appeal lay to the administrative courts.

162. The applicant lodged an appeal with the Administrative Court on 14 September 1996. However, this was dismissed in a judgment of 25 November 1998 on the ground that it was an internal measure that could not be referred to the administrative courts.

163. The Court notes on this point that the decision was consistent with the settled case-law of the *Conseil d'Etat* at the material time which the Government have themselves cited.

164. It was not until 30 July 2003 that the *Conseil d'Etat* changed its jurisprudence and ruled that an application for judicial review could be made in respect of decisions concerning solitary confinement and the decision quashed if appropriate.

165. The Court notes that the applicant has made only one application to the Administrative Court since the change in the case-law. Although he only challenged the lawfulness of the measure imposed on him on 17 February 2005, it is of the view that, having regard to the serious repercussions which solitary confinement has on the conditions of detention, an effective remedy before a judicial body is essential. The aforementioned change in the case-law, which would warrant being brought to the attention of a wider audience, did not in any event have retrospective effect and could not have any bearing on the applicant's position.

166. The Court accordingly considers that in this case there has been a violation of Article 13 of the Convention on account of the lack of a remedy in domestic law that would have allowed the applicant to challenge the decisions to prolong his solitary confinement taken between 15 August 1994 and 17 October 2002.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

167. 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

168. The applicant made no claim for compensation.

B. Costs and expenses

169. The applicant's lawyer submitted an invoice for the total cost of visiting the applicant between June 1997 and October 2002. This included the hourly rates for the visits, travel expenses and procedural disbursements. The invoice came to a total of 426,852.40 euros (EUR).

The second lawyer who represented the applicant at the hearing produced a statement showing the cost of visits made to the applicant between 22 May 1998 and 7 October 2002 in the amount of EUR 87,308, comprising EUR 69,846.40 for the visits themselves and EUR 17,461.60 for travel and the costs of formalities.

The first lawyer expressed regret that the Chamber should have refused that request without taking into account lawyers' fixed overheads and asked the Court to grant it.

170. The account for costs and expenses incurred in presenting the application to the Court came to EUR 41,860, to which were to be added EUR 800 for travel and accommodation for the two lawyers for the hearing in Strasbourg.

171. The Government submitted that the applicant's claims were unreasonable and referred to their previous submissions.

172. They pointed out, firstly, that he had provided no evidence to show that he had actually paid the costs and expenses.

173. They added that the amount sought in respect of the visits had been calculated for the period from 1997 to 2002, although the application had not been lodged until 20 July 2000. There was consequently no causal link between the work done on the application and the visits that had been made prior to that date.

174. The Government also pointed out that, in view of the considerable number of hours (1,830) that had been claimed for visits without any breakdown, it was impossible to distinguish between visits by Ms Coutant Peyre in her capacity as a lawyer and those she had made personally as the applicant's partner. They concluded that that claim had to be dismissed.

175. As to the claim for costs and expenses, the Government submitted that it must necessarily include the costs of visits made in a professional capacity. Noting that this claim was not based on a verifiable calculation either, they said that accordingly it could not be upheld.

In conclusion, the Government proposed a payment of EUR 6,000 to the applicant for his costs and expenses in the event of the Court finding a violation in the case.

176. The Court reiterates that if it finds that there has been a violation of the Convention, it may award the applicant not only the costs and expenses incurred before it, but also those incurred before the national courts for the prevention or redress of the violation (see, among other authorities, *Hertel v. Switzerland*, 25 August 1998, *Reports* 1998-VI, and *Yvon v. France*, no. 44962/98, ECHR 2003-V), provided they have been necessarily incurred, the requisite vouchers have been produced and they are reasonable as to quantum (see, among other authorities, *Kress v. France* [GC], no. 39594/98, ECHR 2001-VI).

177. The Court notes that no explanation or evidence has been provided in the present case in support of the claim for reimbursement of the costs of the visits. Accordingly, it cannot make any award under this head.

178. The Court notes that no details or vouchers whatsoever have been provided in support of the claim for the costs and expenses incurred in presenting the application to it.

However, having regard to the complexity of the questions raised by the application and ruling on an equitable basis, it considers it reasonable to award the applicant EUR 10,000 in respect of all his costs incurred in the proceedings before the Court.

C. Default interest

179. The Court considers it appropriate that the default interest 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

1. *Holds* by twelve votes to five that there has been no violation of Article 3 of the Convention;

2. *Holds* unanimously that there has been a violation of Article 13 of the Convention;

3. *Holds* unanimously

(a) that the respondent State is to pay the applicant, within three months, EUR 10,000 (ten thousand euros) for costs and expenses plus any tax that may be chargeable;
(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* by twelve votes to five the remainder of the claim for just satisfaction.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 4 July 2006.

Lawrence Early
Registrar

Luzius Wildhaber
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the dissenting opinion of Judge Casadevall joined by Judges Rozakis, Tsatsa-Nikolovska, Fura-Sandström and Popović is annexed to this judgment.

L.W.
T.L.E.

DISSENTING OPINION OF JUDGE CASADEVALL JOINED BY JUDGES ROZAKIS, TSATSA-NIKOLOVSKA, FURA-SANDSTRÖM AND POPOVIĆ

(Translation)

Unlike the majority, we consider that the applicant was subjected to treatment proscribed by Article 3 of the Convention in that he was held in solitary confinement for the lengthy period of eight years and two months and that such a long period of solitary confinement attained the minimum level of severity required to constitute inhuman treatment. Our reasons for so finding are as follows.

1. We wish to preface our remarks by saying that we share the concerns which national authorities in general may have in confronting the problems posed by the fight against terrorism and organised crime. However, in accordance with the case-law of the Convention institutions, the measures the States are forced to take to protect democracy against this scourge must be consistent with the essential values of democracy – of which respect for human rights is the prime example – and must avoid undermining those values in the name of protecting them. More specifically, we recognise that the danger posed by someone of the applicant's character can give rise to complicated problems for the prison authorities and that there may be no alternative but to resort to high-security prisons and special prison regimes for certain categories of remand and convicted prisoners. However, it must nevertheless be borne in mind that the guarantees provided by Article 3 are absolute and allow of no exception, and that the nature of the alleged offence is of no relevance under that provision.

2. *The solitary confinement regime*. The basis for the prison regime to which the applicant was subjected is to be found in the relevant statutory and regulatory provisions, in particular Decree no. 98-1099 and its associated circular of 8 December 1998, which regulate the solitary confinement of prisoners "as a precautionary or security measure". By virtue of these provisions (see paragraphs 80-81 of the judgment):

(i) solitary confinement may exceed three months only if a new report has been made to the Sentence Enforcement Board;

(ii) solitary confinement may exceed one year only if the minister so decides on the basis of a recent report by the regional director after the regional director has obtained the opinions of the Sentence Enforcement Board and the prison doctor;

(iii) "*solitary confinement shall not constitute a disciplinary measure*" and "*the seriousness of the offence for which the person concerned is being held and the nature of the offence of which he or she is accused cannot by themselves justify solitary confinement*".

This is the *ratio legis* underpinning the French solitary-confinement regime: it constitutes an exceptional measure that is justified on precautionary or security grounds and which, once it has been in place for a year, only the minister is empowered to take, on the basis of a recent report and a medical opinion. By its very nature, it is not a measure that is intended to last indefinitely. On the contrary, its duration must be as short as possible.

3. *Physical conditions.* It is not disputed that the physical conditions in which the applicant was held in solitary confinement left much to be desired: the cell was run-down and poorly insulated and had an open toilet area, the applicant was not allowed any contact and his sole permitted out-of-cell activity was a two-hour daily walk in a walled-in triangular area smaller than a swimming pool (see paragraph 12 of the judgment). Despite this, we are able to agree with the CPT and the majority that the conditions were "globally acceptable". Nonetheless, it is undeniable that physical conditions are closely related to the length of detention and that conditions which it may be humanly possible to bear for several months will inevitably become increasingly harsh and unbearable as the years go by and the level of suffering grows.

4. *Nature of the applicant's solitary confinement.* After comparing the present case to previous cases the Court has examined, the majority found that the situation that most closely resembled the facts of the present case was the one it had examined in the *Rohde* case, in which it held that there had been no violation. We agree with that assessment. However, it is important to compare like with like. As the judgment rightly states (see paragraph 134), in the *Rohde* case the applicant was held in solitary confinement for *eleven and a half months* (less than the one-year period for which ministerial review is required under French law), whereas Mr Ramirez Sanchez was held under the same regime for *eight years and two months*, in other words for a period eight times as long.

The majority is comforted in its view by the fact that "*the applicant cannot be considered to have been in complete sensory isolation or total social isolation*" (see paragraph 135). One might readily imagine that if he had been, the finding of a violation would not have been in doubt, as such regimes represent the gravest and most unacceptable form of regime to be found in democratic societies. In the present case, the Court described the applicant's isolation as "partial and relative", as if a scale of the seriousness of such a prison regime had been established. However, no such scale exists. The French legislation does not contain any qualifiers, but simply refers to "solitary confinement" (*mise à l'isolement*), "solitary-confinement measure" (*mesure d'isolement*) and "placement in solitary confinement" (*placement à l'isolement*). The same is true of the CPT reports, the Guidelines adopted by the Committee of Ministers of the Council of Europe, the Recommendation of the Committee of Ministers on the

European Prison Rules and the report of the Commissioner for Human Rights (see paragraphs 80-86).

As we have already mentioned, at the heart of the problem, over and above the question of physical conditions, is the issue of the length of the applicant's solitary confinement. Even if his isolation was only *partial* or *relative*, the situation became increasingly serious with the passage of time. Indeed, despite the legislature's oversight in not setting a maximum period (and it is this that is perhaps the source of the arbitrariness), it is implicit in the detailed statutory regulations on solitary confinement that extending the measure beyond a year is inherently dangerous and should only be done in exceptional circumstances.

5. *Duration of the solitary confinement*. The terms of the circular of 8 December 1998 are clear. Orders for solitary confinement as a precautionary or security measure must be based on *genuine grounds* and *objective evidence* of a risk of serious incident, and the statement of reasons must identify the risks the measure seeks to avoid (the list includes the risk of escape, violence, disruption or connivance and danger to physical integrity). In the present case, the orders successively prolonging the applicant's solitary confinement did not set out any real reasons. They are statements in general terms that are often reproduced from one document to the next and which are devoid of the genuine reasons and objective evidence required by the legislation. In addition, they are contradicted by the factual reality, as the applicant was held under the ordinary prison regime for a year and a half (between October 2002 and March 2004) and again from January 2006 onwards without any incidents being reported.

By analogy, one may consider that in similar situations the Court's case-law concerning the rules applicable under Article 5 § 3 of the Convention for keeping an accused in detention pending trial beyond a certain time should apply. A period of more than eight years cannot stand up to any objective examination. Whatever the physical conditions, such a lengthy period is bound to aggravate the prisoner's distress and suffering and the risks to his or her physical and mental health that are inherent in any deprivation of liberty.

The majority note *with concern* the length of the solitary confinement, consider that in view of its length a *rigorous examination is called for to determine whether it was justified*, regret that no upper limit has been provided for (see paragraphs 136 and 137), *share the CPT's concerns* about the possible long-term effects of the applicant's isolation and repeat their *concern* about the particularly lengthy period the applicant spent in solitary confinement. However, they fail to draw the logical conclusions from their findings, preferring instead to note that since 5 January 2006 the prisoner has been held in normal prison conditions (see paragraph 150). We cannot agree with that approach.

6. *Solitary confinement and the applicant's health.* In paragraph 141 of the judgment the majority attempt to minimise the significance of the medical opinions on the applicant's health by drawing a distinction between the period prior to October 2002 and the period thereafter. However, as far back as 23 May 2001, the doctor in charge of the Outpatient Consultation and Treatment Unit wrote to the governor of La Santé Prison to say that even though the applicant was in reasonable physical and mental condition "*strict solitary confinement for more than six years and nine months is ultimately bound to cause psychological harm*" and that it was his duty as a doctor to alert the governor "*to these potential consequences*" (see paragraph 58 of the judgment). On 13 June 2002 an assistant doctor from the Outpatient Consultation and Treatment Unit at La Santé Prison stated that, from the medical standpoint, "the problem posed by prolonged solitary confinement over a number of years is that it may affect the prisoner's physical and mental health" (see paragraph 65). On 29 July 2002 the same doctor stated: "I am not qualified to express an opinion on his mental health" (see paragraph 66).

The applicant was subsequently transferred to Saint-Maur Prison where he was held under the ordinary prison regime from October 2002 to March 2004. On 18 March 2004 he was transferred to Fresnes in the Paris area, apparently (from what the Court was told at the hearing) in order to facilitate the investigating judge's investigations, and was again placed in solitary confinement. From that date on and despite some ambiguity, all the medical certificates consistently speak of risks to the applicant's health (see paragraphs 72-75). Neither his physical robustness nor his mental stamina can make a period of solitary confinement in excess of eight years acceptable.