



## The conditions of detention of a “high-risk prisoner” were inhuman but his repeated transfers were justified

In today’s Chamber judgment in the case [Payet v. France](#) (application no. 19606/08), which is not final<sup>1</sup>, the European Court of Human Rights held unanimously that there had been:

**A violation of Article 3 (prohibition of inhuman and degrading treatment)** of the European Convention on Human Rights with regard to the applicant’s conditions of detention in the punishment wing,

**A violation of Article 13 (right to an effective remedy)** with regard to the applicant’s inability to assert his Article 3 complaint before the end of the enforcement period of the disciplinary measure, and,

**No violation of Article 3** with regard to the applicant’s transfers.

The case concerned, in particular, the prison regime imposed on the applicant on account of his dangerousness and his repeated involvement in escape attempts. The regime consisted in numerous transfers between prisons and detention in a punishment wing following his second escape.

### Principal facts

The applicant, Pascal Payet, is a French national who was born in 1963. He is currently in Châteauroux Prison (France), where he is serving a number of criminal sentences (for murder of a cash courier, escape, organising the escape of accomplices, armed robbery and armed assault of police officers). In October 2001, after he escaped by helicopter from Aix-en-Provence Prison, he was classified as a “high-risk prisoner”. He was placed in solitary confinement and made subject to security rotations consisting of frequent changes of his place of detention in order to prevent any planned escape. In July 2005 an attempt to help the applicant escape by helicopter failed.

The applicant applied to the Paris Administrative Court in April 2007 seeking suspension of the security rotations to which he had been subject for three years. In an order of 25 May 2007 the urgent-applications judge ruled that Mr Payet’s transfers had been necessary because he had been due to appear before the Assize Court and because of his proven dangerousness and the particularly high risk of his escaping.

In July 2007 the applicant again escaped by helicopter. He was arrested in Spain and imprisoned in Fleury-Mérogis Prison in France, where he was placed in the punishment wing for 45 days. Mr Payet alleged that the premises were unfit for human habitation, in

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

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

particular because he had only 4.15 square metres of space in his cell, there was a lack of ventilation and light, the building was prone to flooding and the scope for outdoor exercise was limited. He further alleged that the only water in the cell came from a tap which ran directly into the toilet bowl and was also used to flush the toilet, and that the toilets were not sectioned off although they were situated close to the eating area. The Senator for the *département* of Essonne, Claire-Lise Campion, who visited Fleury-Mérogis Prison on 19 November 2007, wrote in her report that she had been deeply shocked by her visit to the punishment wing and that major renovations were long overdue in order to provide decent accommodation and living conditions for prisoners.

An internal appeal lodged by Mr Payet in October 2007 against the disciplinary measure was declared inadmissible for failure to lodge an application for judicial review. On 14 December 2007 the *Conseil d'Etat* delivered its judgment on the appeal lodged by the applicant, before his escape in July 2007, against the order of 25 May 2007 by the urgent-applications judge. The *Conseil d'Etat* set aside the order, taking the view that the decision subjecting the applicant to security rotations had not been an internal measure but an administrative decision which was open to judicial review. On the merits, it considered that the prison regime to which Mr Payet had been subject was commensurate with the need to ensure public safety, in view of his repeated escape attempts, his dangerousness and the category of prisoner to which he belonged. The *Conseil d'Etat* therefore rejected the application to have the measure suspended.

## Complaints, procedure and composition of the Court

Relying on Article 3 (prohibition of inhuman or degrading treatment), the applicant complained of the security rotations and of his conditions of detention in the punishment cell, both of which in his view were also in breach of Article 8 (right to respect for private and family life). Relying on Article 6 §§ 1 and 3 (right to a fair trial), he complained of the disciplinary proceedings instituted following his second escape. Lastly, he relied on Article 13 (right to an effective remedy) regarding his inability to appeal against the security rotations and enforcement of the disciplinary measure.

The application was lodged with the European Court of Human Rights on 10 April 2008.

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

Peer **Lorenzen** (Denmark), *President*,  
 Jean-Paul **Costa** (France),  
 Karel **Jungwiert** (the Czech Republic),  
 Mark **Villiger** (Liechtenstein),  
 Isabelle **Berro-Lefèvre** (Monaco),  
 Mirjana **Lazarova Trajkovska** (the Former Yugoslav Republic of Macedonia),  
 Ganna **Yudkivska** (Ukraine), *Judges*,

and also Claudia **Westerdiek**, *Section Registrar*.

## Decision of the Court

### Article 3

#### Security rotations

The applicant had been transferred 26 times (11 times under a court order and 15 times following an administrative decision). While the Court accepted that constant transfers could have a very negative impact on the prisoner concerned, it considered that the French Government's fears that the applicant might escape – which had been the reason

for the security rotations – had not been unreasonable given that Mr Payet had escaped twice, an attempt had been made to help him escape and he himself had organised the escape of some of his accomplices. The Court further noted that the applicant had been detained in the same location since September 2008.

Consequently, in view of the applicant's profile, his dangerousness and his history, the prison authorities had struck a fair balance between the need to ensure security and the requirement to provide prisoners with humane conditions of detention. Those conditions had not attained the minimum threshold of severity required to constitute inhuman treatment within the meaning of Article 3 of the Convention. There had therefore been no violation of Article 3 with regard to the security rotations to which the applicant had been subject.

#### Disciplinary measure imposed in Fleury-Mérogis Prison

The applicant's allegations concerning the poor conditions of detention in the punishment wing (dirty and dilapidated premises, flooding, lack of sufficient light for reading and writing, etc.) appeared to be confirmed by several sources.

In its judgment of 9 April 2008 the *Conseil d'Etat* mentioned that the urgent-applications judge of the Versailles Administrative Court had "noted that the premises of the punishment wing of Fleury-Mérogis Prison [were] particularly run-down". Furthermore, Senator Campion said that she had been shocked by her visit to the wing. Her view that renovations were long overdue had been shared by the architectural expert appointed by the Administrative Court.

The Court considered that, even if the authorities had not had the intention to humiliate the applicant, his conditions of detention had been liable to cause him both mental and physical suffering and a feeling of gross violation of his human dignity. It held that there had been a violation of Article 3 in that regard.

#### Article 6

While the Court accepted that the characterisation of the offences of which the applicant was accused (escape and damage to prison premises) was "mixed", that is to say, that the offences entailed both criminal and disciplinary liability, it considered that the disciplinary measure imposed on Mr Payet did not fall within the criminal sphere since it had not extended his detention.

Hence, the applicant could not be said to have faced a "criminal charge" within the meaning of Article 6 and the latter was not applicable to the disciplinary proceedings in question. The applicant's complaint under Article 6 § 1 was therefore rejected.

As to Mr Payet's complaint under Article 6 § 3 (c), the Court observed that the applicant's allegations were of a general nature and did not specify in what way his defence had been hampered; it also pointed out that no interference had been alleged with his free and confidential communication with counsel. The Court further reiterated that the applicant's transfers had been justified. Accordingly, this complaint was rejected as manifestly ill-founded.

#### Article 8

Visits by the applicant's family had not been restricted by order of the prison authorities, but may have been limited in practice on account of the security rotations, which the Court had held not to have been contrary to Article 3 of the Convention in Mr Payet's case.

Noting that the applicant had formulated his complaint in general terms – without specifying how the changes of location had affected his family visits – and that he had been held for most of the time in institutions in the south of France, the Court rejected this complaint as manifestly ill-founded.

### Article 13

The Court examined whether the remedies available to the applicant under French law by which to complain of his conditions of detention in the punishment cell had been “effective”, that is to say, capable of preventing the occurrence or continuation of the alleged violation.

It observed that the remedy provided for by the Code of Criminal Procedure did not have suspensive effect, although placement in a punishment cell was usually immediate, and that an application to the administrative court had to be preceded by an appeal to the inter-regional director of the prison service. As a result of that procedure, the applicant had no longer been in the punishment cell by the time a judge was finally able to rule on his application.

Given the serious repercussions of detention in a punishment cell it was essential for the prisoners concerned to have access to an effective remedy enabling them to appeal against both the form and the substance of such measures before a judicial body. As the applicant had had no such remedy available to him, the Court held that there had been a violation of Article 13.

### Article 41

Under Article 41 (just satisfaction) of the Convention, the Court held that France was to pay the applicant 9,000 euros (EUR) in respect of non-pecuniary damage and EUR 6,000 for costs and expenses.

*The judgment is available only in French.*

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**The European Court of Human Rights** was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.