



Prison conditions constituted degrading treatment of detainee with fragile mental health

In today's **Chamber judgment**¹ in the case of **Bamouhammad v. Belgium** (application no. 47687/13) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 3 (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights, and

a violation of Article 13 (right to an effective remedy) taken together with Article 3 of the Convention.

The case concerned the conditions of detention of Farid Bamouhammad and the resulting decline in his mental health. This former prisoner suffers from Ganser syndrome (or "prison psychosis").

The Court found in particular that the manner of execution of Farid Bamouhammad's detention, involving continuous transfers between prisons and repeated special measures, together with the prison authority's delay in providing him with therapy and refusal to consider any alternative to custody despite the decline in his state of health, had subjected him to distress of an intensity exceeding the inevitable level of suffering inherent in detention. The level of seriousness required for treatment to be regarded as degrading, within the meaning of Article 3, had thus been exceeded.

Furthermore, the Court recommended **under Article 46 (binding force and execution of judgments)** that Belgium should introduce a remedy under Belgian law for prisoners to complain about transfers and special measures such as those imposed on Mr Bamouhammad.

Principal facts

The applicant, Farid Bamouhammad, is a French national who was born in 1967 and lives in Wanfercée-Baulet (Belgium).

Between 1984 and 2008, in a number of judgments, he was convicted in Belgium of, among other offences, premeditated murder, robbery and hostage-taking. In 2007 a psychiatrist noted that Farid Bamouhammad was suffering from Ganser syndrome (also known as "prison psychosis") and that his mental state was deteriorating, on account of his special prison regime and frequent transfers.

From January 2006 to November 2014 Farid Bamouhammad was transferred about 40 times from one prison to another. Owing to problems of discipline and violence, he was restrained by his wrists and ankles throughout his time in Ittre prison, from 6 to 16 December 2007. On 16 December 2007 he was transferred to Lantin prison, where he was subjected to a "strict cell regime", involving periods in solitary confinement, the systematic wearing of handcuffs whenever he left his cell and full-body searches. After he left Lantin prison in June 2008 and until his release in 2014, Farid Bamouhammad was placed, in each prison, under a "special individual security regime" on account of his violent behaviour. This regime included solitary confinement and/or systematic searches.

1. 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.

On a number of occasions between December 2007 and January 2009, Farid Bamouhammad brought proceedings against the State. He complained about the conditions of his detention and requested a visit from a psychotherapist. The domestic courts dismissed his requests, finding that the measures in question could not be described as inhuman and degrading treatment, but were security measures justified by his violent conduct. Although he had been eligible for day release since 2007, prison leave since 2008 and to release on licence with electronic tagging since 2009, all requests for such alternative arrangements were denied by the domestic courts. On 26 November 2014, when he was starting the seventh week of a hunger strike, Farid Bamouhammad lodged his application with the European Court of Human Rights, which, under Rule 39 of its Rules of Court, decided to indicate to the Belgian Government that all necessary measures should be taken to ensure that he receive treatment that met the requirements of the Convention. On 29 November 2014 he was transferred to a secure room at the Citadelle Hospital in Liège.

On 30 November 2014, on a unilateral application from Farid Bamouhammad, the President of the Liège Court of First Instance ordered his release on licence. The Belgian Government applied as a third party to have that order set aside. On 30 March 2015 the Court of Appeal took the view that Farid Bamouhammad had not satisfied the conditions governing the use of the urgent application procedure as the matter lacked the requisite degree of urgency. He was returned to the prison of St Gilles (Brussels) on 1 April 2015. Farid Bamouhammad's release on licence was finally ordered by the sentence execution judge on 10 April 2015.

Complaints, procedure and composition of the Court

Relying on Article 3 (prohibition of inhuman or degrading treatment), Farid Bamouhammad alleged that he was subjected while in prison to inhuman and degrading treatment which had affected his mental health. He also complained about a lack of effective remedies under Article 13 (right to an effective remedy).

The application was lodged with the European Court of Human Rights on 19 July 2013.

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

Işıl **Karakaş** (Turkey), *President*,
Paul **Lemmens** (Belgium),
Nebojša **Vučinić** (Montenegro),
Helen **Keller** (Switzerland),
Ksenija **Turković** (Croatia),
Robert **Spano** (Iceland),
Jon Fridrik **Kjølbro** (Denmark),

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

Decision of the Court

Article 3 (prohibition of inhuman or degrading treatment)

In the Court's view, it did not appear from the case file that the vast majority of the 43 transfers to which Farid Bamouhammad had been subjected over a six-year period had been justified by security imperatives in the various prisons or by any need to avoid a risk of escape. Also bearing in mind that most of the psychological reports agreed that the repeated changes of prison had had negative effects on his mental well-being, the Court was not convinced that a fair balance had been struck by the prison authorities between the security imperatives and the need to ensure that he was detained in humane conditions.

The Court found that, at a time when Farid Bamouhammad was already being repeatedly transferred, his solitary confinement for a period of 7 years and the systematic prolongation of the special security measures for such a long time, combined with the decline in his mental health, were to be taken into account to assess whether the threshold of seriousness under Article 3 had been reached.

The Court noted that the need for a psychological supervision of Farid Bamouhammad had been emphasised by all the medical reports. However, his endless transfers had prevented such supervision. According to the experts, his already fragile mental health had not ceased to worsen throughout his detention. The Court concluded that the prison authorities had not sufficiently considered the applicant's vulnerability or envisaged his situation from a humanitarian perspective.

The Court then observed the reports by professionals who, having direct knowledge of the applicant's detention, had repeatedly taken the view since 2011 that his imprisonment, which had been virtually continuous since 1984, no longer satisfied its legitimate objectives, and who had advocated alternative arrangements. Despite these professionals' views and the decline in Farid Bamouhammad's state of health, the prison authorities had persisted in their refusal to improve his situation in the form of day release or prison leave.

In the light of the foregoing, the manner of execution of Farid Bamouhammad's detention had subjected him to distress of an intensity exceeding the inevitable level of suffering inherent in detention. The level of seriousness required for treatment to be regarded as degrading, within the meaning of Article 3, had thus been exceeded and there had therefore been a violation of that Article.

Article 13 (right to an effective remedy) taken together with Article 3

The Court noted that, on account of the repeated prison transfers – circumstances voluntarily created by the authorities – the protection available from the urgent applications judge had not proved effective. It was because of the repeated transfers that, on two occasions, proceedings brought by the applicant had either become without object or had not enabled him to prove the urgency of the matter such as to justify the jurisdiction of that judge. The Court concluded that Farid Bamouhammad had not had an effective remedy by which to submit his complaints under Article 3. There had thus been a violation of Article 13 taken together with Article 3.

Article 46 (binding force and execution of judgments)

The Court took note of the introduction under Belgian law of a specific right of prisoners to complain to a complaints board attached to the supervisory committees in each prison. The relevant provisions had not yet entered into force, however, in the absence of a royal implementing decree.

With that in mind, the Court recommended that Belgium adopt general measures: the introduction of a remedy adapted to the situation of prisoners who were subjected to transfers and to special measures such as those imposed on Farid Bamouhammad.

Article 41 (just satisfaction)

The Court held that Belgium was to pay Farid Bamouhammad 12,000 euros (EUR) in respect of non-pecuniary damage and EUR 30,000 in respect of 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.