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

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# Acknowledging that remedies in respect of solitary confinement in France are effective, the Court has clarified its approach to circumscribing the scope of such cases

In today's **Chamber** judgment[1] in the case of Sekour v. France (application no. 52496/19) the European Court of Human Rights held, unanimously, that there had been:

**no violation of Article 3 (prohibition of inhuman or degrading treatment)** of the European Convention on Human Rights;

**no violation of Article 13 (right to an effective remedy)** of the Convention.

The case concerned solitary-confinement measures applied to a prisoner and the successive decisions to prolong them. The Court found, first, that an application to set aside an administrative decision together with an urgent application for a stay of execution (*référé-suspension*) under Article L. 521-1 of the Administrative Courts Code, and an urgent application for protection of a fundamental freedom (*référé-liberté*) under Article L. 521-2 of the same Code, were in principle effective domestic remedies that had to be exhausted in the case of complaints under Article 3 of the Convention concerning the placement of prisoners in solitary confinement.

It therefore decided to limit its examination to the decisions disputed before it in respect of which the requirement of exhaustion of domestic remedies had been met. Nevertheless, in order to assess the actual effect of the cumulative duration of the periods of solitary confinement, those which had not strictly fallen within the scope of the case were taken into account in order to determine whether the threshold of severity required to establish the existence of treatment in breach of Article 3 had been reached.

In the present case, taking into account, in particular, the existing procedural safeguards and the judicial review conducted by the domestic courts, the Court found that it did not appear that the treatment to which the applicant had been subjected in the context of his placement in solitary confinement had been so serious as to amount to treatment in breach of Article 3.

## Principal facts

The applicant, Sassim Sekour, is an Algerian national who was born in 1995 and was detained in Beauvais Prison when he lodged his application.

On 7 November 2015 the applicant, who had twice attempted to travel to Syria to join Islamic State, was charged with participation in a criminal conspiracy to commit an act of terrorism and placed in pre-trial detention in Fleury-Mérogis Prison. On 19 September 2016 he was placed in "temporary solitary confinement" for 5 days as an "emergency measure" under former Article R. 57-7-65 of the Code of Criminal Procedure. This measure was prolonged twice.

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 8 February 2017 the applicant was transferred to Laon Prison and placed in solitary confinement on arrival.

The solitary-confinement measure was extended several times.

On 8 February 2018 the Laon Criminal Court sentenced the applicant to 12 months' imprisonment for violence, not entailing incapacity to work, against a person exercising public authority and handling stolen goods. This conviction was upheld by the Amiens Court of Appeal.

On 7 March 2018 the applicant was transferred to Beauvais Prison. He was placed in solitary confinement from the day of his arrival to 23 December 2019, when he was transferred to Paris-La Santé Prison for his trial, which was to take place from 6 to 17 January 2020.

On 17 January 2020 the applicant was sentenced to 8 years' imprisonment, with a minimum term of 5 years and 4 months, for participation in a criminal conspiracy to commit an act of terrorism. He did not appeal.

On his return to the Beauvais Prison on 23 January 2020, the applicant was placed in solitary confinement on the basis of a decision previously taken on 18 December 2019.

The applicant's solitary confinement ended on 23 June 2020 when he was transferred to the radicalisation assessment unit in Vendin-le-Vieil Prison. He was subsequently transferred to Lille-Annœullin Prison.

On 28 July 2022 the applicant was transferred to Longuenesse Prison "on order and security grounds", where he was also placed in solitary confinement.

On 15 March 2023 the prefect ordered that the applicant be expelled from the territory. He was released on 17 March 2023 and deported to Algeria the same day.

## Complaints, procedure and composition of the Court

Relying on Article 3 (prohibition of inhuman or degrading treatment), the applicant submitted that his prolonged solitary confinement had amounted to inhuman and degrading treatment. He further complained of a violation of Article 8 (right to respect for private and family life), arguing that his isolation and its desocialising effect had caused him suffering, and that his prolonged and unjustified solitary confinement had deprived him of the possibility of leading a decent private life. Relying on Article 13 (right to an effective remedy), he complained that he had had no effective remedy by which to challenge the decisions concerning his solitary confinement.

The application was lodged with the European Court of Human Rights on 1 October 2019.

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

Kateřina **Šimáčková** (the Czech Republic), *President*,
María **Elósegui** (Spain),
Mattias **Guyomar** (France),
Georgios A. **Serghides** (Cyprus),
Gilberto **Felici** (San Marino),
Mykola **Gnatovskyy** (Ukraine),
Sébastien **Biancheri** (Monaco),

and also Victor **Soloveytchik**, *Section Registrar.*

## Decision of the Court

The Court decided that the case should be examined solely under Article 3 of the Convention.

## Scope of the case

First, the Court considered that an application to set aside an administrative decision together with an urgent application for a stay of execution (*référé-suspension*) under Article L. 521-1 of the Administrative Courts Code, and an urgent application for protection of a fundamental freedom (*référé-liberté*) under Article L. 521-2 of the same Code, were in principle effective domestic remedies that had to be exhausted in the case of complaints under Article 3 of the Convention concerning the placement of prisoners in solitary confinement.

In the present case, the applicant had made full use of these preventive remedies against only 2 of the around 20 decisions in his regard. The Court therefore declared the complaint admissible only in respect of those decisions (of 18 March 2019 and 5 May 2020) and inadmissible for the remainder.

Having reiterated that the machinery of protection established by the Convention was subsidiary to the national systems safeguarding human rights, the Court noted that the remedies introduced into French law from 2003 onwards had become sufficiently accessible and effective at the time of the events complained of. It decided to limit its examination to the decisions disputed before it in respect of which the requirement of exhaustion of domestic remedies had been met. In so doing, the Court's aim was to ensure full respect for the principle of subsidiarity, as set out in the Preamble to the Convention.

The Court therefore considered that the issue before it concerned a complaint under Article 3 concerning the applicant's placement in solitary confinement from 20 March 2019 to 19 June 2019, pursuant to the decision of 18 March 2019, and from 6 May 2020 to 5 August 2020, pursuant to the decision of 5 May 2020. Nevertheless, mindful of the actual effect on the applicant's personal situation of the cumulative duration of the periods of solitary confinement, it specified that those which had not strictly fallen within the scope of the case would be taken into account in its assessment of the material necessary to determine whether the threshold of severity required to establish the existence of treatment in breach of Article 3 had been reached.

## Article 3

The Court reiterated and emphasised that it was aware of the difficulties posed to the authorities by the detention of individuals convicted of or prosecuted for acts linked to terrorism.

First, the Court noted that the aim of the contested measures of 18 March 2019 and 5 May 2020 had been to extend the applicant's placement in solitary confinement. That measure had been based, from the outset and continuously thereafter, on his conduct and attitude, which had pointed to the existence of a risk making such a preventive measure necessary for the safety of the various prisons in which he had been detained. The Court therefore saw no reason to consider that those decisions had been arbitrary.

Secondly, the placement of a prisoner in solitary confinement as a protection or safety measure did not constitute a disciplinary measure. Prisoners in solitary confinement retained their rights to information, visits, written and telephone correspondence and religious worship. They were allowed at least one hour of outdoor exercise per day and met with the prison doctor for an examination at least twice a week; prison governors were required to organise, as far as was possible, communal activities for prisoners in solitary confinement. In addition, the cells on the solitary-confinement wings were similar to those on the ordinary wings. The applicant did not dispute that he had been subject to this prison regime, and had not complained of the material conditions of his solitary confinement, nor that he had been subjected to total sensory or social isolation.

Thirdly, noting that the applicant had been placed in solitary confinement for lengthy periods, the Court emphasised the importance of the procedural safeguards surrounding decisions to prolong such confinement, which had to include legal and factual reasons and which enabled an assessment of the effects of those decisions having regard to all the previous periods of solitary confinement. In the

present case, the Court noted that the decision of 18 March 2019 had been taken on a favourable opinion of the advocate-general, and that the decision of 5 May 2020 had been taken further to a medical opinion indicating that there were no medical grounds barring the extension of solitary confinement, which the applicant had not challenged.

Fourthly, the two decisions in question had been subject to judicial review in the context of the applicant's urgent application for protection of a fundamental freedom. The domestic courts had therefore had the opportunity to rule, for reasons that were both relevant and sufficient, on the effects on the applicant's personal situation of the decisions prolonging his placement in solitary confinement, and to conclude, respectively, that there had been no violation of Article 3 of the Convention and no emergency situation justifying the setting-aside of the contested decision.

The Court therefore concluded that it did not appear that the treatment to which the applicant – who had made only general, unsubstantiated allegations – had been subjected in the context of his placement in solitary confinement had been so serious as to amount to treatment in breach of Article 3.

*The judgment is available only in French.*

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