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

SECOND SECTION

DECISION

Application no. 44512/19
Kazim AVCI
against Türkiye

The European Court of Human Rights (Second Section), sitting on 25 March 2025 as a Committee composed of:

Jovan Ilievski*, President*,
Péter Paczolay,
Davor Derenčinović*, judges*,
and Dorothee von Arnim, *Deputy Section Registrar,*

Having regard to:

the application (no. 44512/19) against the Republic of Türkiye lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 20 August 2019 by a Turkish national, Mr Kazim Avcı ("the applicant"), who was born in 1955, is detained in Ankara and was represented by Ms F.N. Avcı, a lawyer practising in Ankara;

the decision to give notice of the complaint concerning Article 3 of the Convention to the Turkish Government ("the Government"), represented by their Agent at the time, Mr Hacı Ali Açıkgül, former Head of the Department of Human Rights of the Ministry of Justice of the Republic of Türkiye, and to declare the remainder of the application inadmissible;

the parties' observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The application concerns the execution of a disciplinary sanction of a five-day solitary confinement on the applicant who is severely disabled.

2. The applicant, whose left leg had been amputated from the proximal femur, was determined by medical reports to be 68% disabled. He uses a prosthesis which, according to his submissions, weighs five kilograms and substantially restricts his movements such as bending, kneeling down,

showering and cleaning. He also suffers from a number of chronic diseases such as hypertension, hernia and depression.

3. On 14 December 2015 the applicant was placed in pre-trial detention in Sincan F-Type Prison on suspicion of membership of a terrorist organisation (Fetullahist Terror Organisation/Parallel State Structure) and attempting to overthrow the Republic and the constitutional order.

4. On 26 April 2016 he went through a medical examination at the Ankara Numune Training and Research Hospital ("the Numune Hospital") where a medical board of nine doctors noted his conditions and concluded that the execution of his sentence did not need to be postponed.

5. On 25 December 2017 he was classified as a dangerous prisoner and placed in a three-person unit kept for disabled prisoners. According to the information provided by the Government, the cell where the applicant was detained measured 50 square metres (sq. m) with 25 sq. m on each floor and had an exercise yard of 50 sq. m. The cell had been designed in view of the disabled prisoners' needs and the applicant's bed had been brought to the lower floor where the bathroom and kitchen were situated, in order to enable him to meet his basic needs. The bathroom, toilet and sink were adapted for use by wheelchair-bound people. The cell was also equipped with an emergency button, which, when pressed, alerted the medical officers in the prison.

6. Following the applicant's request to that effect, on 26 January 2018 the prison administration decided to place his son-in-law, who was detained in the same prison, in the applicant's cell. They stated that in view of his disability and accompanying chronic diseases, the applicant could face difficulties in meeting his daily needs and personal care and that his son-in-law had declared that he would help him. On an unspecified date, a third prisoner was placed in the same cell.

7. In the meantime, on 18 January 2018, a disciplinary sanction of five days' solitary confinement was imposed on the applicant for threatening the prison personnel, on account of certain remarks he had made to them during the administration of his medicine. The applicant objected to that decision before the enforcement judge, arguing that the execution of the disciplinary sanction of solitary confinement conflicted with the prison administration's decision finding that he could face difficulties if detained alone, and would constitute a violation of his right to health and life.

8. On 21 March 2018 the Ankara Batı enforcement judge rejected the applicant's objection, finding that the imposition of the disciplinary sanction was in accordance with law in view of the threatening remarks he had made. On 16 May 2018 the Assize Court rejected an objection lodged by the applicant against that decision, in which he had reiterated his submissions and added that he could not clean his surroundings and take a shower alone.

9. On 28 June 2018 the applicant was examined by a medical board at the Numune Hospital. The medical report issued by the board noted that there

were no psychiatric reasons which could prevent the execution of the applicant's five-day solitary confinement.

10. The applicant's disciplinary sanction was executed between 2 and 7 July 2018. According to the Government, during the course of those five days, the applicant remained in his usual cell and the other two prisoners were temporarily transferred to another cell.

11. In the meantime, on 29 May 2018 the applicant had lodged an individual application with the Constitutional Court, complaining of a violation of his right to life and health on account of the execution of his disciplinary sanction, despite the prison administration's decision acknowledging that his disability did not allow him to stay alone. By a decision of 18 February 2019, the Constitutional Court examined his application from the standpoint of the prohibition of ill-treatment and rejected it for being manifestly ill-founded. That decision was served on him on 21 February 2019.

12. The applicant argued that the execution of the disciplinary sanction constituted ill-treatment in violation of Article 3 of the Convention. By placing him in solitary confinement for five days, the domestic authorities had not conformed with their own decision, which had established that he would face difficulties in meeting his basic needs alone. He had gone through substantial difficulty during the time he had been obliged to stay alone, as, due to his disability, he could not take a shower, reach anything below hip level, or clean his surroundings without the help of another person.

THE COURT'S ASSESSMENT

13. The Government invited the Court to declare the application inadmissible for being manifestly ill-founded. In that regard, they stated that between 2 and 7 July 2018 the applicant had not been placed in an isolated cell usually used for the execution of the disciplinary sanction of solitary confinement but had remained in his own three-person cell, which had previously been arranged according to his needs, and that the other prisoners staying with him had been transferred to other cells for that five-day period. During the disputed period he had not had any health issues, had received visits from his wife, daughter and lawyer, and had been allowed access to the exercise yard. Accordingly, the material conditions in the present case had been incomparably better than the conditions assessed in the Court's previous judgments regarding the detention conditions of disabled prisoners. Moreover, the applicant's solitary confinement had been compatible with his health condition as the reports issued by medical boards had found that the execution of his sentence and disciplinary sanction need not be postponed. Lastly, giving detailed information about the conditions of the applicant's cell and the medical treatment provided to him during the entire course of his

detention, the Government stated that appropriate conditions for the applicant's detention had been ensured by the domestic authorities.

14. The applicant stated that during the five-day period when he had been obliged to stay alone in the cell, he had spilled his food on the floor, which had caused foul odour and attracted insects as he had not been able to clean his surroundings. Moreover, he needed the help of another person when taking a shower as he needed to remove his prosthesis. The emergency button had been located high up on the cell's wall and he would not be able to reach it had he fallen down. Lastly, he could use the exercise yard for only one hour per day.

15. The Court will restrict its assessment of the case to the conditions of the applicant's detention between 2 and 7 July 2018, as his complaint under Article 3 of the Convention merely pertains to the alleged incompatibility of his solitary confinement during that period with his disability.

16. The Court reiterates that 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 in question, 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 *Muršić v. Croatia* [GC], no. 7334/13, § 97, ECHR 2016).

17. Article 3 of the Convention requires the State to ensure that prisoners are detained in conditions which are compatible with respect for 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. Where the authorities decide to place and keep a disabled person in continued detention, they should demonstrate special care in guaranteeing such conditions as correspond to the special needs resulting from his disability (see *Grimailovs v. Latvia*, no. 6087/03, §§ 150-51, 25 June 2013, and *Asalya v. Turkey*, no. 43875/09, § 50, 15 April 2014, with further references).

18. A measure of disciplinary confinement may not in itself be in breach of the requirements of Article 3 of the Convention. It is rather the proportionality of its imposition and the conditions of the confinement which may be questionable under the above provision (see *Ramishvili and Kokhreidze v. Georgia*, no. 1704/06, § 82, 27 January 2009).

19. In the present case, it was not disputed by the parties that the applicant's five-day solitary confinement had been executed in the cell where he had been held at the time. According to the Government's submissions, the lower floor of the cell measured 25 sq. m. and gave access to an exercise yard. The applicant's bed was placed close to the kitchen and the bathroom, the latter having been adapted for use by wheelchair-bound prisoners. The cell was also equipped with an emergency button. In the absence of any particular complaints by the applicant about the physical conditions of the

cell – except for the alleged inaccessibility of the emergency button in case of a fall – the Court considers those conditions established.

20. The Court does not overlook that a few days after the imposition of the disciplinary sanction on the applicant, the prison administration acknowledged that his detention alone could cause him certain difficulties on account of his disability and placed his son-in-law in the same cell on the applicant's request. It is true that, in their decisions rejecting the applicant's objections to the disciplinary sanction, neither the enforcement judge nor the Assize Court carried out any express assessment of the alleged discrepancy between the execution of the sanction and the administration's above-mentioned finding regarding his situation – a point raised by the applicant during the course of the proceedings before those courts. Nevertheless, notwithstanding that lack of specific reasoning provided by the domestic courts, the Court finds that the domestic authorities did not remain passive in the face of the applicant's medical needs, and made efforts to cater for his disability by providing for the execution of his sanction in his own cell, which, as noted above, had previously been adapted to his needs (contrast *Price v. the United Kingdom*, no. 33394/96, § 25, ECHR 2001-VII, and compare *Todorov v. Bulgaria* (dec.), no. 8321/11, §§ 62-70, 12 February 2013).

21. The Court accepts that during the five-day period in question, the applicant might have had difficulties in taking a shower and cleaning his surroundings. That being so, it also notes that he did not make any submissions regarding the extent of that difficulty. In that regard, the applicant did not claim that he had been completely unable to attend to his personal hygiene during that period in the bathroom situated in his cell and adapted for use by disabled persons, but maintained that he depended on other people to take his shower and that he risked falling if he took a shower alone. Although he complained about the inaccessibility of the emergency button as it was placed high up on the wall, he did not claim that he had fallen and had difficulties in reaching that button during the five-day period in question. He did not put forward any specific difficulties he had had with respect to his access to toilet facilities (contrast *Price*, cited above, § 28, and *Asalya*, cited above, § 51). Nor did he substantiate that his inability to take a shower or clean his surroundings during that period affected his mental or physical health, or argue that his staying alone in his cell during that period led to a deterioration of his health (compare *Turzynski v. Poland* (dec.), no. 61254/09, § 41, 17 April 2012, and *Todorov*, cited above, § 69). The Court also observes in that context that the applicant was able to move around in his cell and had certain mobility in the prison as he could receive visits (contrast *Grimailovs*, cited above, § 160), and that he could use the exercise yard for at least one hour per day (contrast *Ramishvili and Kokhreidze*, cited above, § 85).

22. Even assuming that the applicant could not take a shower during the course of his solitary confinement and had to accept some dirt due to his

inability to kneel down to clean the floor, the Court cannot but note that those difficulties were limited to a period of five days and that he did not raise any complaints about the accessibility of the sanitary facilities during the rest of his detention (contrast *Grimailovs*, cited above, § 158). In view of the brevity of the period in consideration, the material conditions of the cell, and the arrangements made by the domestic authorities to adapt the execution of the disciplinary sanction to his needs, the Court finds that the hardship caused to the applicant during his solitary confinement of five days could not be considered to have reached the threshold of severity required by Article 3 of the Convention.

23. It follows that the application is manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 2 May 2025.

Dorothee von Arnim Deputy Registrar	Jovan Ilievski President