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

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Applicant's detention in conditions unsuited to his health, despite therapeutic measures prescribed by authorities, breached Convention

In today's **Chamber** judgment[1] in the case of I.L. v. Switzerland (no. 2) (application no. 36609/16) 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,

a violation of Article 5 § 1 (right to liberty and security), and

a violation of Article 5 § 4 (right to a speedy decision on the lawfulness of detention).

The case concerned the lawfulness of the applicant's detention as part of an institutional therapeutic measure imposed on him, together with his detention conditions and the time taken to examine his application for release.

The Court found that the applicant's detention in solitary confinement in Thorberg, Lenzburg and Bostadel Prisons from 27 July 2012 to 25 February 2016, particularly in the absence of adequate therapeutic care, amounted to inhuman and degrading treatment within the meaning of Article 3 of the Convention. It followed that there had been a violation of that Article.

The Court found that the deprivation of the applicant's liberty from 27 July 2012 to 25 February 2016 had not been "lawful", as he had not been held in an appropriate facility. There had thus been a violation of Article 5 § 1 of Convention.

Lastly, the Court found that the application for release lodged by the applicant on 17 September 2014 had not been examined "speedily", because of the complexity of the domestic proceedings. Accordingly, there had been a violation of Article 5 § 4 of the Convention.

Principal facts

The applicant, I.L., is a Swiss national who was born in 1988 and lives in Ostermundigen (Switzerland).

On 7 June 2010 the applicant was sentenced to seven-and-a-half months' imprisonment and a fine for various violent offences. The District Court also ordered him to receive outpatient treatment.

The applicant served his sentence in Thun Prison.

On 8 July 2010 the Sentence and Measure Enforcement Division (*Section de l'Application des Peines et Mesures* – "the SAPEM") released the applicant on licence subject to a one-year probationary period and a requirement to receive outpatient treatment.

After the applicant committed further acts of violence, the court ordered him to return to prison in a decision of 10 September 2010.

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.

A psychiatric assessment was conducted on 13 December 2010. It found that the applicant suffered from mixed personality disorder with traits indicating an emotionally unstable and paranoid personality. It also concluded that he consumed harmful amounts of alcohol and cannabis. The expert thus recommended an institutional therapeutic measure on a transitional basis.

The applicant was released on 27 January 2011.

On 9 February 2011 the Bernese Jura-Seeland Regional Court sentenced the applicant to 11 months' imprisonment, which it suspended pending completion of an institutional therapeutic measure within the meaning of Article 59 of the Criminal Code. It also ordered that the applicant be detained for safety reasons. On 24 June 2011 the Canton of Berne Supreme Court ("the Cantonal Supreme Court") increased the prison term to 14 months and, save some minor adjustments, upheld the first-instance judgment. It also ordered that the applicant remain in detention for safety reasons.

Between August and September 2011 the SAPEM contacted several facilities in an attempt to place the applicant for the institutional therapeutic measure. To that end, it ordered him to be admitted to Thorberg Prison in a decision of 17 November 2011.

On 18 November 2011 the applicant was thus transferred to Thorberg Prison, where he stayed until 16 March 2015. Disciplinary action was taken against him several times during that period.

In a letter of 31 July 2012 the SAPEM asked the Zurich Cantonal Hospital's Rheinau Forensic Inpatient Care Centre to admit the applicant.

The Thorberg Prison Service issued a supervisory report on 28 September 2012, informing the SAPEM that it was clearly not a suitable place for the court-ordered measure to be executed. It recommended that the possibility of psychiatric medication be assessed and that the applicant be transferred as quickly as possible to a mental health institution such as the Basle Forensic Psychiatry Service or the Étoine Forensic Psychiatry Facility.

On 31 January 2013 the SAPEM, acting on the recommendation of the University of Berne's integrated forensic psychiatry service, requested a new psychiatric assessment of the applicant. The two psychiatric experts appointed to that end noted in their report of 24 September 2013 that the applicant suffered not only from mixed personality disorder with traits indicating an emotionally unstable, dissocial, paranoid and narcissistic personality but also from schizotypal personality disorder. They recommended that the institutional therapeutic measure be reapplied in a specialised institution such as the Étoine facility or the Rheinau clinic.

On 7 November 2013 the SAPEM once again asked the Rheinau clinic to admit the applicant. The clinic's board replied on 20 May 2014 that it was willing to take the applicant but that at the relevant time there were no available places and there was a waiting time of several months.

The applicant was transferred to Lenzburg Prison on 12 March 2015, where he stayed until 6 January 2016. During that time he was held in a high-security wing under the same system and conditions of detention as in Thorberg Prison's high-security "A" wing.

In a decision of 6 January 2016 the SAPEM ordered the applicant to be transferred to Bostadel Prison and held there in solitary confinement in a high-security wing. The applicant remained in that facility until 25 February 2016.

On 25 February 2016 the SAPEM ordered the applicant to be transferred to the Étoine facility for six weeks. It considered that additional psychiatric treatment and another psychiatric assessment were needed in the light of recent observations from Bostadel Prison, according to which the applicant was displaying psychotic symptoms. That same day, upon the applicant's arrival in the Étoine facility, the doctors there ordered compulsory medication.

In the meantime, on 17 September 2014 the applicant, represented by his lawyer, had requested that the therapeutic measure be lifted and that he be released. He had also complained on 23 October 2014 of a violation of the principle of speedy proceedings.

In a decision of 4 November 2014 the SAPEM had rejected the applicant's request for release. The applicant had then appealed against that decision to the Canton of Berne Department of Police and Military Affairs (*Direction de la Police et des Affaires Militaires* – "the DPAM"). The DPAM had dismissed that appeal on 19 March 2015. The applicant had then challenged the dismissal before the Cantonal Supreme Court. He had also lodged an appeal with the Federal Supreme Court for denial of justice and undue delay.

On 6 October 2015 the Cantonal Supreme Court had ordered the therapeutic measure to be lifted and the applicant to be released if no place had become available at the Rheinau clinic or another suitable facility by 29 February 2016 at the latest. The applicant had appealed against that decision to the Federal Supreme Court.

After having joined that appeal to the above-mentioned appeal for undue delay and denial of justice, the Federal Supreme Court had found against the applicant in a judgment of 29 December 2015.

The applicant was transferred to the Rheinau clinic on 19 May 2016.

On 20 June 2019 the applicant was granted release on licence, with regard to the institutional therapeutic measure, subject to a two-year probationary period.

Complaints, procedure and composition of the Court

Relying on Article 3 (prohibition of torture and inhuman or degrading treatment), the applicant complained that he had been kept in solitary confinement for almost five years in a high-security wing and had been repeatedly transferred during that time to a high-security cell, where he had allegedly been chained to the wall with no medical supervision of any kind. Relying on Article 3 together with Article 13 (right to an effective remedy), he complained that he had been subjected to inhuman and degrading treatment on account of the compulsory medication he had been forced to take and that no effective remedy had been available to him in respect of that complaint. Relying on Article 5 § 1 (right to liberty and security), he complained that he had had to wait at least from 24 June 2011 to 25 February 2016 before he had been transferred to a suitable institution for the necessary medical treatment; that he had not received adequate medical care during that time; and that he had not been given the opportunity to receive therapy. He argued that his deprivation of liberty was therefore unlawful. Lastly, relying on Article 5 § 4 (right to a speedy decision on the lawfulness of detention), he complained that his application for release on licence had not been examined "speedily".

The application was lodged with the European Court of Human Rights on 23 June 2016.

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

Pere **Pastor Vilanova** (Andorra), *President*,
Jolien **Schukking** (the Netherlands),
Yonko **Grozev** (Bulgaria),
Darian **Pavli** (Albania),
Ioannis **Ktistakis** (Greece),
Andreas **Zünd** (Switzerland),
Oddný Mjöll **Arnardóttir** (Iceland),

and also Milan **Blaško**, *Section Registrar*.

Decision of the Court

Article 3

The Court noted that the applicant had been held successively in Thorberg, Lenzburg and Bostadel Prisons for the entire period from 18 November 2011 to 25 February 2016, that is, for four years, three months and nine days. During that period, he had mainly been kept in those facilities' high-security wings in solitary confinement. In total, the applicant had been detained in solitary confinement for three years, one month and 28 days. Based on the evidence available to the Court, no consideration had been given to the applicant's mental illness when disciplinary action had been taken against him.

The applicant's therapeutic treatment had begun on 17 January 2012 in the form of individual therapy sessions. These had been discontinued in September 2012. The absence of appropriate treatment had become flagrant following the expert report of 24 September 2013 which, in the light of an amended diagnosis, had recommended that the institutional therapeutic measure be reapplied in a specialised institution such as the Étoine facility or the Rheinau clinic.

The Court observed that both the Federal Supreme Court and the Government had lent particular weight to the fact that the applicant himself had refused the therapy sessions. The Court held, however, that that refusal could not be decisive in view of the circumstances, that is, given that at least from 27 July 2012 the applicant had been held in a facility unsuited to his declining mental health. In addition, the Federal Supreme Court had itself acknowledged in its judgment of 29 December 2015 that, following the amended diagnosis of 24 September 2013, Thorberg Prison could no longer be considered an appropriate place for the recommended treatment. It had further recognised that a lack of available capacity had been the reason the applicant had not yet been admitted to the Rheinau clinic.

The Court further noted that, just a few days after a doctor's assessment on 25 November 2015, the applicant's mental health had declined and required the urgent administration of compulsory medication. It could not therefore be said that holding the applicant in solitary confinement without suitable therapeutic care had had no negative impact on his mental health. That observation was corroborated by the findings of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), which had warned of the potentially detrimental effects of solitary confinement on the mental health of high-security detainees in Swiss prisons. Lastly, the Court observed that the applicant's health had begun to stabilise and then to improve in August 2016, just months after he had started receiving the necessary therapeutic care at the Étoine facility and the Rheinau clinic. That improvement had enabled his release on licence in June 2019.

The Court thus found that the applicant's detention in solitary confinement from 27 July 2012 to 25 February 2016 in prisons unable to provide him with appropriate care, combined with the disciplinary action taken against him and occasionally involving the use of handcuffs, must have exacerbated the suffering caused by his mental illness and amounted to inhuman and degrading treatment within the meaning of Article 3 of the Convention. It followed that there had been a violation of that Article.

Article 3 taken alone and in conjunction with Article 13

The Court noted that section 66(1) of the Canton of Berne's law on the enforcement of sentences and measures, as in force at the relevant time, had provided that anyone subject to compulsory medication had been able to lodge a written appeal against the measure with the DPAM within ten days of the decision. The Court therefore held that there had been a domestic remedy enabling the applicant to challenge the compulsory medication order, and that he had had access to that remedy at the relevant time.

It followed that the applicant's complaint under Article 3 of the Convention about his compulsory medication had to be rejected for non-exhaustion of domestic remedies and thus declared inadmissible. In the light of that finding, the Court also considered the complaint under Article 13 of the Convention manifestly ill-founded.

Article 5 § 1

The Court observed that the applicant had been placed in Thorberg Prison following the SAPEM's unsuccessful attempts to secure him a place in a specialised psychiatric institution. Furthermore, his therapeutic care at Thorberg Prison, where he had been transferred on 18 November 2011, had begun in January 2012 in the form of individual therapy sessions. That treatment had been discontinued on 27 July 2012 and had not resumed until February 2016.

The Court noted that the domestic authorities had not been inactive with regard to the situation. However, despite the steps taken by the SAPEM from 31 July 2012 onwards, the fact remained that the applicant had continued to be held in facilities unable to provide him with suitable treatment. Both the doctors and the prison services involved had pointed that issue out on several occasions. It had only been on 25 February 2016, following a decline in his mental health, that the applicant had been transferred to the Étoine facility, where he had received appropriate therapeutic care and medication.

It followed that from 27 July 2012 to 25 February 2016 – that is, for three years and seven months – the applicant had been held in facilities that had been unable to provide him with a suitable medical environment for his mental health or with genuine therapeutic measures to prepare him for potential release.

The Court found that the deprivation of the applicant's liberty from 27 July 2012 to 25 February 2016 had not been "lawful", as he had not been held in an appropriate facility. There had thus been a violation of Article 5 § 1 of Convention.

Article 5 § 4

The Court noted in the present case that most of the delay in the proceedings had been attributable to the requirement under the law of the Canton of Berne for the applicant to appeal first to the SAPEM and the DPAM – neither of which, moreover, afforded the guarantees of a "tribunal" within the meaning of the Convention. The Court reiterated that the complexity of domestic proceedings was no justification for procedural delay, because the Convention imposed a duty on Contracting States to organise their judicial systems in such a way that their courts could meet its requirements, particularly to hear a case within a reasonable time.

The Court found that the application for release lodged by the applicant on 17 September 2014 had not been examined "speedily". Accordingly, there had been a violation of Article 5 § 4 of the Convention.

Just satisfaction (Article 41)

The Court held that Switzerland was to pay the applicant 32,500 euros (EUR) in respect of non-pecuniary damage and EUR 8,000 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.