

## Conditions of detention in Champ-Dollon Prison: no violation of the Convention

In today's **Chamber judgment**<sup>1</sup> in the case of [Bardali v. Switzerland](#) (application no. 31623/17) 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.**

The case concerned the applicant's conditions of detention in Champ-Dollon Prison in the Canton of Geneva.

The Court found, in particular, that the lack of personal space for the applicant in Champ-Dollon Prison could not on its own constitute a breach of Article 3 of the Convention. Indeed, the individual space available to the applicant, less than the 4 m<sup>2</sup> standard established by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment (CPT), had to be considered together with the applicant's other material conditions of detention in order to determine whether or not there had been a violation of Article 3.

In the light of the applicant's overall material conditions of detention in Champ-Dollon Prison as assessed by the Court, it concluded that the applicant had not been subjected to distress or to an ordeal of an intensity exceeding the unavoidable level of suffering inherent in detention.

### Principal facts

The applicant, Akram Bardali, is an Iraqi national who was born in 1984.

On 15 April 2015 Mr Bardali was sentenced to 36 months' imprisonment by the Criminal Court of the Canton of Geneva for attempted grievous bodily harm and unlawful entry into Switzerland. In prison he went on hunger and thirst strike in protest against his conviction, which he considered unfair. On 8 May 2015 he tried to commit suicide. He was taken to Geneva Hospital for emergency treatment and then transferred to the prison psychiatric unit near Champ-Dollon Prison, where he was returned on 11 May 2015.

Mr Bardali subsequently applied to the Canton of Geneva Criminal Appeal and Review Division complaining, among other things, of the overcrowding in the Champ-Dollon Prison. He stated that since he was sharing a cell measuring about 10 m<sup>2</sup> with two other detainees, he was unable to move around in the cell, given that the 3.39 m<sup>2</sup> of individual space available to him also contained furniture. The Court of Justice acknowledged those conditions of detention, but ruled that they were not incompatible with human dignity.

The Federal Court dismissed Mr Bardali's appeal. It noted that the applicant had indeed been detained for 98 consecutive days, from 18 April 2015 to 28 July 2015, in an individual cell occupied by three detainees, leaving him with 3.39 m<sup>2</sup> of personal space.

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](http://www.coe.int/t/dghl/monitoring/execution).

Nevertheless, the Court held that the three-month deadline set out in domestic case-law – after which such conditions of detention were no longer tolerable and became incompatible with human dignity – was indicative, to be taken into account in the overall assessment of the actual conditions of detention, including the state of hygiene and ventilation, water and food supplies, heating and lighting. The Court considered that in the present case those conditions had been acceptable. In the light of all the circumstances and having regard to the fact that the period of detention at issue had only very slightly exceeded the three-month deadline, the Federal Court concluded that Mr Bardali had not been detained in conditions incompatible with human dignity.

Mr Bardali was transferred to La Brenaz Prison in Puplinge, where he finished serving his sentence on 5 March 2018.

## Complaints, procedure and composition of the Court

Relying on Article 3 (prohibition of torture) of the European Convention on Human Rights, the applicant complained, in particular, that he had had only 3.39 m<sup>2</sup> of individual space – 1.59 m<sup>2</sup> discounting the area occupied by furniture – for 98 consecutive days' detention in Champ-Dollon Prison.

The application was lodged with the European Court of Human Rights on 20 April 2017.

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

Paul Lemmens (Belgium), *President*,  
Georgios A. Serghides (Cyprus),  
Helen Keller (Switzerland),  
Georges Ravarani (Luxembourg),  
María Elósegui (Spain),  
Darian Pavli (Albania),  
Peeter Roosma (Estonia),

and also Milan Blaško, *Section Registrar*.

## Decision of the Court

### Article 3

The Court noted that between 18 April 2015 and 28 July 2015, apart from his three days in hospital, the applicant had been detained, with two other persons, in an individual cell measuring 10.18 m<sup>2</sup>, excluding the sanitary facilities. His available personal space had therefore totalled 3.39 m<sup>2</sup>. The applicant's conditions of detention had been the same from 17 November 2014 to 12 January 2015, in the same cell as well as in another one.

The Court therefore observed that during those two non-consecutive periods, the applicant had had personal space of over 3 m<sup>2</sup> but under the standard 4 m<sup>2</sup> established by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment (CPT) in its recommendations. The Court noted, however, that outside the periods in issue, that is to say for most of the duration of his detention in Champ-Dollon Prison, the applicant had benefited from more than 4 m<sup>2</sup> of personal space.

The Court accordingly had to consider the other material aspects of the applicant's conditions of detention in order to determine whether that lack of space had been compounded by other shortcomings, including lack of access to an exercise yard or to the open air and daylight, poor ventilation, excessively low or high temperatures in the cells, a lack of privacy in the toilets or poor conditions of sanitation and hygiene.

First of all, the Court observed that it was undisputed between the parties that the sanitary facilities in the cell had been housed in a separate cubicle and that the applicant had had free and private access to those facilities. Nor was it disputed that the cell had had a large window and ample daylight and that there had been a sufficient supply of fresh air via the ventilation system and mechanical air extraction, as well as a fan in order to reduce heat in summer. The applicant therefore had unhampered access to air and daylight, as well as drinking water.

The Court accepted in this context, in line with the Federal Court's opinion, that the applicant's material conditions of detention, and in particular the conditions in terms of sanitation and ventilation, water and food supplies, heating and light, had all been suitable.

Secondly, the Court noted that the applicant had not presented any detailed and coherent list of his grievances; he had not mentioned the dates or exact circumstances of the restrictions of which he was complaining, and there was nothing in the case file to suggest that there had been any deterioration in his physical state or any risk to his health. Moreover, it transpired from the documents on file that the applicant had benefited from one hour's daily exercise in the open air, and, between 17 November 2014 and 19 August 2015, one hour's sport per week in a gym. In their observations, the Government had added that the applicant had worked in the kitchen workshop between 15 February 2016 and 27 October 2016, which had kept him busy for between 3 hours and 5 hours 45 minutes every day; he was allowed out of his cell for visits and for Friday prayers every two weeks.

Thirdly, as regards the other aspects mentioned by the applicant in his observations – that is, the absence of social or leisure activities, the high temperature and patches of mould in the cell, as well as poor ventilation, the fact that he had been unable to have a shower every day and the restrictions on visits and phone calls – the Court noted that those complaints had not been validly submitted to the domestic courts and therefore could not be taken into consideration by the Court.

Finally, in connection with the hunger strike which he had begun in May 2015, there was nothing to suggest that the applicant had not been given appropriate medical care, or to refute the Government's submission that the applicant had been provided with psychiatric treatment on his discharge from hospital.

The Court therefore concluded that the conditions of detention in Champ-Dollon Prison had not subjected the applicant to distress or to an ordeal of an intensity exceeding the unavoidable level of suffering inherent in detention.

There had been no violation of Article 3 of the Convention.

*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.