



## The applicant's confinement in the security wing of a prison by way of "placement for assistance purposes" had no legal basis

In today's Chamber judgment<sup>1</sup> in the case of [T.B. v. Switzerland](#) (application no. 1760/15) the European Court of Human Rights held, unanimously, that there had been:

**a violation of Article 5 § 1 (right to liberty and security) of the European Convention on Human Rights.**

The case concerns the applicant's "placement for assistance purposes" in the period from April 2014 to April 2015.

The Court observed that the applicant had been placed in the security wing of the prison solely on the ground that he represented a danger for others.

It noted that the Federal Council had explained that the protection of third parties could constitute an additional factor for an assessment of the situation but that it was not decisive by itself. The Federal Court had, moreover, expressly emphasised in its leading decision that any deprivation of liberty "for assistance purposes" on the sole ground of endangering others was not prescribed by law and did not constitute a valid ground for such placement. The Court concluded that the applicant had thus been imprisoned without a legal basis and purely by way of preventive detention in the prison.

### Principal facts

The applicant, Mr T.B., is a Swiss national who was born in 1990. He was held in Lenzburg prison (Switzerland), an institution for the execution of sentences and other penal measures.

In November 2011 T.B. was sentenced to four years' imprisonment for premeditated murder, aggravated rape and aggravated sexual constraint, for killing a prostitute in a particularly heinous manner, after raping her twice. The Juvenile Court supplemented his sentence with a protection measure, in the form of placement in a specialised closed centre with treatment for mental disorders. In May 2012 the public prosecutor for minors sought his placement with medical treatment, when he reached 22, in a closed and secure institution.

On 20 June 2012 the district office ordered T.B.'s placement in accordance with the first paragraph of Article 397a of the Civil Code in security wing II of Lenzburg prison. On 5 September 2012 the Federal Court dismissed at last instance the applicant's civil-law appeal against that decision and on 22 November 2013 the Federal Court confirmed that new Article 426 of the Civil Code constituted a sufficient legal basis for his placement "for assistance purposes". T.B. again applied for his release.

In a judgment of 8 July 2014, the Federal Court pointed out that it had ruled in its leading decision that the conditions of former Article 397a of the Civil Code were met in the present case and took the view that T.B. represented a high risk for others. Moreover, the Federal Court decided that it

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).

could not depart from its judgment of 22 November 2013 in which it had ruled that new Article 426 of the Civil Code provided a sufficient legal basis for placement “for assistance purposes”.

On 18 August 2015, and after spending three years in security wing II, the applicant was transferred to the prison’s general unit for the execution of sentences. The placement was extended several times and, on 11 June 2018, the Family Court, in extending the placement until the end of September 2018, decided that after that date T.B. would be placed in external accommodation, which was the case as of 28 September 2018.

## Complaints, procedure and composition of the Court

Relying on Article 5 § 1 (e) (right to liberty and security), the applicant alleged that his placement “for assistance purposes” from April 2014 to April 2015 had no legal basis. He also complained that he had not been held in a suitable institution.

The application was lodged with the European Court of Human Rights on 19 December 2014.

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

Vincent A. **De Gaetano** (Malta), *President*,  
Branko **Lubarda** (Serbia),  
Helen **Keller** (Switzerland),  
Pere **Pastor Vilanova** (Andorra),  
Alena **Poláčková** (Slovakia),  
Georgios A. **Serghides** (Cyprus),  
Jolien **Schukking** (the Netherlands),

and also Stephen **Phillips**, *Section Registrar*.

## Decision of the Court

### [Article 5 § 1](#)

The Court observed that T.B. had been placed “for assistance purposes”, namely psychiatric treatment, in the security wing of the prison for the sole reason that he represented a danger for others.

It noted that, according to the case-law of the Federal Court, the conditions of placement “for assistance purposes” were governed by the Civil Code. Under Article 426 of that Code – as under former Article 397a – such placement was pronounced when the person suffered from mental disorders that required personal assistance or treatment that could only be provided in a specialised institution.

The Court observed that the concerns about personal assistance and security considerations were somehow intertwined in the second paragraph of Article 426 of the Civil Code, which required the authority to take into account the burden that the person concerned represented for his or her relatives or for third parties, while ensuring the protection of others. In this connection, the Court noted that the Federal Council had clarified the scope of the relevant provision in that the protection of third parties could now constitute an additional element in the assessment of the situation but that it was “not decisive on its own”. The mere need to protect society from the person concerned could not justify placement “for assistance purposes”. The Court also noted that the Federal Court had expressly emphasised in its leading decision that deprivation of liberty “for assistance purposes” solely on the grounds of endangering others was not prescribed by law and did not constitute a valid reason for such placement. It followed that the second paragraph of Article 426 of the Civil Code could not justify the applicant’s detention by way of legal basis.

These elements sufficed for the Court to find that the applicant had been held in the prison without a legal basis and purely by way of preventive detention.

In conclusion, the Court took the view that the applicant's placement "for assistance purposes" during the period from April 2014 to April 2015 in the prison's security wing had not been implemented lawfully. It followed that there was no need to address the question whether the institution where he had been held was suitable.

There had thus been a violation of Article 5 § 1.

#### **Just satisfaction (Article 41)**

The Court held that Switzerland was to pay the applicant 25,000 euros (EUR) in respect of non-pecuniary damage and EUR 7,000 in respect of costs and expenses.

*The judgment is available only in French.*

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