



January 2018

This factsheet does not bind the Court and is not exhaustive

# Detention conditions and treatment of prisoners

See also the factsheets on [“Detention and mental health”](#), [“Hunger strikes in detention”](#), [“Life imprisonment”](#), [“Prisoners’ health rights”](#) and [“Secret detention sites”](#).

## (Hygienic) condition of cells

### Peers v. Greece

19 April 2001

In August 1994 the applicant, who had been treated for heroin addiction in the United Kingdom, was arrested at Athens Airport on drug-related charges. He was taken to Koridallos prison in Greece as a remand prisoner and was subsequently convicted. He was first detained in the prison’s psychiatric hospital before being moved to the segregation unit of Delta wing and then, Alpha wing. He complained in particular about the conditions of his detention, notably claiming that in Delta wing he had shared a small cell with one other prisoner, with an open toilet, which often failed to work, in hot, cramped conditions with little natural light and no ventilation.

The European Court of Human Rights held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the [European Convention on Human Rights](#), finding that the conditions of the applicant’s detention in the segregation unit of the Delta wing of the Koridallos prison had amounted to degrading treatment. It took particularly into account that, for at least two months, the applicant had to spend a considerable part of each 24-hour period practically confined to his bed in a cell, with no ventilation and no window, which would at times become unbearably hot. He also had to use the toilet in the presence of another inmate and be present while the toilet was being used by his cellmate. The Court was of the opinion that the prison conditions complained of had diminished the applicant’s human dignity and given rise in him to feelings of anguish and inferiority capable of humiliating and debasing him and possibly breaking his physical or moral resistance.

### Kalashnikov v. Russia

15 July 2002

The applicant spent almost five years in pre-trial detention, charged with embezzlement, before he was acquitted in 2000. He complained about the conditions in the detention centre where he was held, in particular that his cell was overcrowded – on 17 square meters 24 inmates were held –, that being surrounded by heavy smokers, he was forced to become a passive smoker, that it was impossible to sleep properly as the TV and cell light were never turned off, that the cell was overrun with cockroaches and ants, and that he contracted a variety of skin diseases and fungal infections, losing his toenails and some of his fingernails as a consequence.

Although the Court accepted that there had been no indication of a positive intention to humiliate the applicant, it considered that the conditions of detention had amounted to degrading treatment in **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention. In particular the severely overcrowded and insanitary environment and its detrimental effect on the applicant’s health and well-being,

combined with the length of the period during which the applicant was detained in such conditions, contributed to this finding. As regards the overcrowding, the Court emphasised that the [European Committee for the Prevention of Torture \(CPT\)](#) had set 7 m<sup>2</sup> per prisoner as an approximate, desirable guideline for a detention cell.

### **Modârcă v. Moldova**

10 May 2007

In 2005, the applicant, who suffers from osteoporosis, spent nine months of his pre-trial detention in a 10m<sup>2</sup> cell with three other detainees. The cell had very limited access to daylight; it was not properly heated or ventilated; electricity and water supplies were periodically discontinued. The applicant was not provided with bed linen or prison clothes; the dining table was close to the toilet, and the daily expenses for food were limited to 0.28 euros (EUR) for each detainee. The applicant alleged, among others, that he had been held in inhuman and degrading conditions.

The Court concluded that the cumulative effect of the conditions of the applicant detention and the time he had been forced to endure them had amounted to a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention. It noted in particular that the Moldovan Government had not disputed the presence of three layers of metal netting on the cell window, that electricity and water supplies had been discontinued for certain periods, that the applicant had not been provided with bed linen or clothes and had to invest in the repair and furnishing of the cell, that the dining table was close to the toilet, and that the daily expenses for food had been limited to EUR 0.28 per day for each detainee. The Court further observed that the [European Committee for the Prevention of Torture \(CPT\)](#) had reported that the food was "repulsive and virtually inedible", following a visit to the prison in September 2004.

### **Florea v. Romania**

14 September 2010

Suffering from chronic hepatitis and arterial hypertension, the applicant was detained in prison, from 2002 to 2005. For about nine months he had to share a cell with only 35 beds with between 110 and 120 other prisoners. Throughout his detention he was kept in cells with other prisoners who were smokers. He complained in particular of overcrowding and poor hygiene conditions, including having been detained together with smokers in his prison cell and in the prison hospital and being provided with a diet which was unsuited to his various medical conditions.

The Court found that the conditions of detention to which the applicant had been subjected had exceeded the threshold of severity required by **Article 3** (prohibition of inhuman or degrading treatment) of the Convention, in **violation** of that provision. It observed in particular that, far from depriving persons of their rights under the Convention, imprisonment in some cases called for enhanced protection of vulnerable individuals. The State had to ensure that all prisoners were detained in conditions which respected their human dignity, that they were not subjected to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that their health was not compromised.

### **Ananyev and Others v. Russia**

10 January 2012 (pilot judgment<sup>1</sup>)

This case concerned the applicants' complaints that they had been detained in inhuman and degrading conditions in remand centres awaiting criminal trials against them. The applicants complained in particular that they had been held in overcrowded cells and that

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<sup>1</sup>. The pilot judgment procedure was developed as a technique of identifying the structural problems underlying repetitive cases against many countries and imposing an obligation on States to address those problems. Where the European Court of Human Rights receives several applications that share a root cause, it can select one or more for priority treatment under the pilot procedure. In a pilot judgment, the Court's task is not only to decide whether a violation of the European Convention on Human Rights occurred in the specific case but also to identify the systemic problem and to give the Government clear indications of the type of remedial measures needed to resolve it. For more information, see the factsheet on "[Pilot judgments](#)".

they could not effectively obtain an improvement in the conditions of their detention or some form of compensation.

The Court held that the applicants had been subjected to inhuman and degrading treatment, in **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention. It observed in particular that, in their respective cells, the applicants had been given less than 1.25 square metres and 2 square metres of personal space and the number of detainees had significantly exceeded the number of sleeping places available. In addition, they had remained inside their cells all the time, except for a one-hour period of outdoors exercise. They had also eaten their meals and used the toilet in those cramped conditions, in which the second applicant in particular had spent more than three years. The Court also held that there had been a violation of **Article 13** (right to an effective remedy) of the Convention, finding that for the time being the Russian legal system did not provide an effective remedy which could be used to put an end to inhuman and degrading conditions of detention or to provide adequate and sufficient redress in connection with a related complaint.

Under **Article 46** (binding force and execution of judgments) of the Convention, the Court noted, in particular, that certain measures to improve the material conditions of detention could be implemented in the short term and at little extra cost – such as shielding the toilets located inside the cell with curtains or partitions, removal of thick netting on cell windows blocking access to natural light and a reasonable increase in the frequency of showers. They required immediate planning and further action. It also encouraged the Russian authorities' attempts to find an integrated approach to solving the problem of overcrowding in remand prisons, including in particular by changing the legal framework, practices and attitudes. The Court further noted that the primary cause of overcrowding was the excessive use of pre-trial detention without proper justification and the excessive duration of such detention.

### **Canali v. France**

25 April 2013

This case concerned the conditions of detention in the Charles III Prison in Nancy, which was built in 1857 and shut down in 2009 on account of its extremely dilapidated state.

The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention. It found that the cumulative effect of the cramped conditions and the failings in respect of hygiene regulations had aroused in the applicant feelings of despair and inferiority capable of debasing and humiliating him. These conditions of detention amounted to degrading treatment.

### **Vasilescu v. Belgium**

18 March 2014

This case mainly concerned the applicant's condition of detention in Antwerp and Merksplas Prisons. The applicant complained in particular that his physical conditions of detention had been inhuman and degrading.

The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention regarding the physical conditions of the applicant's detention. It noted in particular that in addition to the problem of prison overcrowding, the applicant's allegations regarding the sanitary conditions, particularly access to running water and the toilets, were most plausible and reflected the realities described by the [European Committee for the Prevention of Torture \(CPT\)](#) in the various reports drawn up following its visits to Belgian prisons. While there was nothing to indicate that there had been a real intention to humiliate or debase the applicant during his detention, the Court found that his physical conditions of detention in Antwerp and Merksplas Prisons had subjected him to hardship exceeding the unavoidable level of suffering inherent in detention and amounted to inhuman and degrading treatment.

Under **Article 46** (binding force and execution of judgment) of the Convention, the Court further observed that the problems arising from prison overcrowding in Belgium, and the problems of unhygienic and dilapidated prison institutions, were structural in nature and did not concern the applicant's personal situation alone. It recommended that

Belgium envisage adopting general measures guaranteeing prisoners conditions of detention compatible with Article 3 of the Convention and affording them an effective remedy by which to put a stop to an alleged violation or allow them to obtain an improvement in their conditions of detention.

### **Yengo v. France**

21 May 2015

This case concerned the conditions of detention of a prisoner in Nouméa prison, New Caledonia. The applicant complained about those conditions and also about the lack of an effective remedy by which to complain about them to the domestic authorities.

The Court first held that **the applicant could no longer claim to be a victim of Article 3** (prohibition of inhuman or degrading conditions) of the Convention, since the domestic court had awarded him some compensation for the harm sustained as a result of the detention conditions. However, it found that at the relevant time French law had not provided the applicant with any preventive remedy by which he could have promptly obtained the termination of his inhuman and degrading conditions of detention. There had therefore been a **violation of Article 13** (right to an effective remedy) of the Convention.

### **Szafrański v. Poland**

15 December 2015

The applicant complained that his condition of detention in Wronki Prison were inadequate. In particular, he complained that in seven of the ten cells where he was detained the sanitary facilities were separated from the rest of the cell only by a 1.20 metre-high fibreboard partition and had no doors.

The Court held that there had been **no violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention. It noted in particular that, in the present case, the only hardship the applicant had had to bear was the insufficient separation of the sanitary facilities from the rest of the cell. Apart from that, the cells were properly lit, heated and ventilated and he had access to various activities outside the cells. Therefore, the overall circumstances of his detention could not be found to have caused distress and hardship which exceeded the unavoidable level of suffering inherent in detention or went beyond the threshold of severity under Article 3. However, the Court held that there had been a **violation of Article 8** (right to respect for private life) of the Convention. In this respect, it notably recalled that under the Court's case-law the domestic authorities had a positive obligation to provide access to sanitary facilities separated from the rest of the prison cell in such a way as to ensure a minimum of privacy. The Court also noted that, according to the European Committee for the Prevention of Torture (CPT), a sanitary annex which was only partially separated off was not acceptable in a cell occupied by more than one detainee. In addition, the CPT had recommended that a full partition in all the in-cell sanitary annexes be installed. Despite this, the applicant had been placed in cells in which the sanitary facilities were not fully separated off, and had had to use the toilet in the presence of other inmates. The Polish authorities had thus failed to discharge their positive obligation of ensuring a minimum level of privacy for the applicant.

### **Rezmives and Others v. Romania**

25 April 2017 (pilot judgment<sup>2</sup>)

This case concerned the conditions of detention in Romanian prisons and in detention facilities attached to police stations. The applicants complained, among other things, of overcrowding in their cells, inadequate sanitary facilities, lack of hygiene, poor-quality food, dilapidated equipment and the presence of rats and insects in the cells.

The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention, finding that the conditions of the applicants'

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<sup>2</sup>. See footnote 1 above.

detention, also taking into account the length of their incarceration, had subjected them to hardship going beyond the unavoidable level of suffering inherent in detention.

Under **Article 46** (binding force and execution of judgment) of the Convention, the Court further noted that the applicants' situation was part of a general problem originating in a structural dysfunction specific to the Romanian prison system; this state of affairs had persisted despite having been identified by the Court in 2012 (in its judgment in **Iacov Stanciu v. Romania** of 24 July 2012). To remedy the situation, the Court held that Romania had to implement two types of general measures: (1) measures to reduce overcrowding and improve the material conditions of detention; and (2) remedies (a preventive remedy and a specific compensatory remedy).

### **Valentin Baştovoi v. the Republic of Moldova**

28 November 2017<sup>3</sup>

The applicant complained of the conditions of his detention in Chişinău Prison no. 13 and the lack of an effective domestic remedy by which to assert his rights.

The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention, finding that during his time in Chişinău Prison no. 13, the applicant had been subjected to conditions of detention entailing hardship that went beyond the unavoidable level of suffering inherent in detention. It noted in particular that reports drawn up by the Moldovan Ombudsman and the European Committee for the Prevention of Torture (CPT) during the period when the applicant was held in the prison indicated that poor conditions of detention were prevalent in the facility. It also observed that the Moldovan Government had not produced any evidence in support of their assertion that considerable improvements had been made to the prison in the past few years. The Court further held that there had been a **violation of Article 13** (right to an effective remedy) of the Convention **in conjunction with Article 3**, finding that there was no remedy in domestic law by which conditions of detention incompatible with Article 3 could be eliminated.

### **Koureas and Others v. Greece**

18 January 2018<sup>4</sup>

The 28 applicants, detained in Grevena Prison, complained in particular about their overall conditions of detention and of the lack of an effective remedy in that regard.

The Court stated that it was unable to find that the applicants' overall conditions of detention in Grevena Prison had exceeded the unavoidable level of suffering inherent in detention and had amounted to degrading treatment. In the present case it rejected the complaints raised by three of the applicants for failure to exhaust domestic remedies and held that there had been **no violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention in respect of the 25 other applicants. The Court noted in particular that these applicants had not described their individual situations and that it was unable to ascertain which of them had been affected by overcrowding in the cells. The Court also noted that the lack of personal space in the present case had not been coupled with inadequate physical conditions of detention. The Court held, however, that there had been a **violation of Article 13** (right to an effective remedy) of the Convention **taken in conjunction with Article 3** in respect of the same 25 applicants, finding that, in so far as an applicant claimed to be personally affected by the overall conditions of detention in prison, the remedies provided for in Greek law would serve no useful purpose in complaining of them.

### **Pending applications**

**J.M.B. v. France (no. 9671/15) and nine other applications**

**F.R. v. France (no. 12792/15) and three other applications**

Applications communicated to the French Government on 11 February 2016

<sup>3</sup>. This judgment will become final in the circumstances set out in Article 44 § 2 (final judgments) of the European Convention on Human Rights.

<sup>4</sup>. This judgment will become final in the circumstances set out in Article 44 § 2 the Convention.

The applicants in these cases complain in particular about the physical conditions of their detention in the Ducos Prison in Martinique (case of *J.M.B. and nine others*) and in the Nîmes Prison in the *département* of Gard (case of *F.R. and three others*) respectively.

The Court gave notice of the applications to the French Government and put questions to the parties under Articles 3 (prohibition of inhuman or degrading treatment), 8 (right to respect for private and family life), 13 (right to an effective remedy) and 35 (admissibility criteria) of the Convention.

### **Clasens v. Belgium (no. 26564/16) and six other applications**

Applications communicated to the Belgian Government on 15 June 2017

These applications concern the conditions of detention in a number of prisons during the prison staff strike which affected Belgium in 2016.

The Court gave notice of the applications to the Belgian Government and put questions to the parties under Articles 3 (prohibition of inhuman or degrading treatment), 6 § 1 (right to a fair trial), 8 (right to respect for private and family life) and 13 (right to an effective remedy) of the Convention.

## Ill-treatment by cellmates

### **Premininy v. Russia**

10 February 2011

This case concerned the alleged ill-treatment of a detainee, suspected of having broken into the online security system of a bank, by his cellmates and by prison warders, and his complaint that his application for release had not been speedily examined.

The Court found, in particular, **three violations of Article 3** (prohibition of inhuman or degrading treatment) of the Convention: on account of the authorities' failure to fulfil their positive obligation to adequately secure the physical and psychological integrity and well-being of the applicant; on account of the ineffective investigation into the applicant's allegations of systematic ill-treatment by other inmates; and on account of the authorities' failure to investigate effectively the applicant's complaint of ill-treatment by warders). It further held that there had been **no violation of Article 3** of the Convention as regards the applicant's allegations of ill-treatment by warders.

See also: **Boris Ivanov v. Russia**, judgment of 6 October 2015.

### **Stasi v. France**

20 October 2011

The applicant alleged that he had been the victim of ill-treatment by other inmates during his two periods of imprisonment, in particular because of his homosexuality, and he alleged that the authorities had not taken the necessary measures to ensure his protection.

The Court held that there had been **no violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention. It found that, in the circumstances of the case, and taking into account the facts that had been brought to their attention, the authorities had taken all the measures that could reasonably be expected of them to protect the applicant from physical harm.

### **Yuri Illarionovich Shchokin v. Ukraine**

3 October 2013

This case concerned the death of a prisoner, the applicant's son, following acts of torture inflicted on him by inmates, with the possible involvement of a prison officer, during his imprisonment in a penal colony.

The Court held that there had been a **violation of Article 2** (right to life) of the Convention, under its substantive limb, on account of the death of the applicant's son during his imprisonment. It also found a **violation of Article 2**, under its procedural limb, as regards the investigation into the circumstances leading to the death of the applicant's son, as it had been conducted by the authorities without the requisite

diligence. The Court further found a **violation of Article 3** (prohibition of torture) of the Convention, under its substantive limb, on account of the torture to which the applicant's son had been subjected, and a **violation of Article 3**, under its procedural limb, on account of the insufficiency of the State's investigation into those acts of torture.

#### **D.F. v. Latvia (application n° 11160/07)**

29 October 2013

The applicant complained in particular that, as a former paid police informant and a sex offender, he had been at constant risk of violence from his co-prisoners when held in prison between 2005 and 2006, and that the Latvian authorities had failed to transfer him to a safer place of detention.

The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention. It found in particular that, owing to the authorities' failure to coordinate effectively, the applicant had been exposed to the fear of imminent risk of ill-treatment for over a year, despite the authorities being aware that such a risk existed.

### Ill-treatment by prison officers

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#### **Tali v. Estonia**

13 February 2014

This case concerned a detainee's complaint about having been ill-treated by prison officers when he refused to comply with their orders. In particular, pepper spray was used against him and he was strapped to a restraint bed.

The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention. As regards in particular the legitimacy of the use of pepper spray against the applicant, the Court referred to the concerns expressed by the [European Committee for the Prevention of Torture \(CPT\)](#) concerning the use of such agents in law enforcement. According to the CPT, pepper spray was a potentially dangerous substance which was not to be used in confined spaces and never to be used against a prisoner who had already been brought under control. Pepper spray could have serious effects on health such as irritation of the respiratory tract and of the eyes, spasms, allergies and, if used in strong doses, pulmonary oedema or internal haemorrhaging. Having regard to these potentially serious effects of the use of pepper spray in a confined space and to the fact that the prison officers had had alternative means at their disposal to immobilise the applicant such as helmets or shields, the Court found that the circumstances had not justified the use of pepper spray. As further regards the applicant's strapping to a restraint bed, the Court underlined in particular that measures of restraint were never to be used as a means of punishment of prisoners, but rather in order to avoid self-harm or serious danger to other individuals or to prison security. In the applicant's case it had not been convincingly shown that after the end of the confrontation with the prison officers – and being locked in a single-occupancy disciplinary cell – he had posed a threat to himself or others that would have justified applying such a measure. The period of three and a half hours for which he had been strapped to the restraint bed had therefore by no means been negligible and his prolonged immobilisation had to have caused him distress and physical discomfort.

#### **Milić and Nikezić v. Montenegro**

28 April 2015

The applicants complained that they had been ill-treated by prison guards – they submitted that the latter had beaten them with rubber batons during a search of their cell – and that the ensuing investigation into their complaints had been ineffective. According to the Montenegrin Government, the guards had had to use force against the applicants to overcome their resistance on entering their cell.

The Court held that there had been **two violations of Article 3** (prohibition of inhuman or degrading treatment) of the Convention, on account of the ill-treatment to which both

applicants had been subjected during a search of their cell as well as the ineffectiveness of the ensuing investigation into their complaints of ill-treatment. The Court found in particular that, even though it had been established in the compensation and disciplinary proceedings concerning the applicants' complaint of ill-treatment that the guards had used excessive force, the damages awarded to the applicants had not been sufficient. Nor had the domestic courts or the Montenegrin Government actually acknowledged that such behaviour had amounted to ill-treatment. The Court on the other hand found that hitting the applicants with batons – as established by the domestic bodies – had amounted to ill-treatment within the meaning of Article 3.

### **Cirino and Renne v. Italy**

26 October 2017<sup>5</sup>

This case concerned the complaint by two detainees that in December 2004 they were ill-treated by prison officers of the Asti Correctional Facility. The applicants maintained in particular that the acts of violence and ill-treatment which they had suffered in the correctional facility amounted to torture and that the penalty for those responsible for the acts of ill-treatment had been inadequate. They emphasised that by failing to incorporate the offence of torture into national law, the State had failed to take the necessary steps to prevent the ill-treatment which they had suffered.

The Court held that there had been **violations of Article 3** (prohibition of torture and of inhuman or degrading treatment) of the Convention, both as regards the treatment sustained by the applicants (substantive aspect) and as regards the response by the domestic authorities (procedural aspect). It found in particular that the ill-treatment inflicted on the applicants – which had been deliberate and carried out in a premeditated and organised manner while they were in the custody of prison officers – had amounted to torture. Furthermore, in the Court's view, the domestic courts had made a genuine effort to establish the facts and to identify the individuals responsible for the treatment inflicted on the applicants. However, those courts had concluded that, under Italian law in force at the time, there was no legal provision allowing them to classify the treatment in question as torture. They had had to turn to other provisions of the Criminal Code, which were subject to statutory limitation periods. As a result of this lacuna in the legal system, the domestic courts had been ill-equipped to ensure that treatment contrary to Article 3 perpetrated by State officials did not go unpunished.

## Juveniles in detention

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### **Güvec v. Turkey**

20 January 2009

The applicant, aged 15 at the relevant time, had been tried before an adult court and ultimately found guilty of membership of an illegal organisation. He was held in pre-trial detention for more than four-and-a-half years in an adult prison, where he did not receive medical care for his psychological problems and made repeated suicide attempts. The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention: given his age, the length of his detention with adults and the authorities' failure to provide adequate medical care or to take steps to prevent his repeated suicide attempts, the applicant had been subjected to inhuman and degrading treatment.

### **Coselav v. Turkey**

9 October 2012

This case concerned a 16-year-old juvenile's suicide in an adult prison. His parents alleged that the Turkish authorities had been responsible for the suicide of their son and that the ensuing investigation into his death had been inadequate.

The Court held that there had been a **violation of Article 2** (right to life) of the

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<sup>5</sup>. This judgment will become final in the circumstances set out in Article 44 § 2 of the [Convention](#).



Convention under both its substantive and procedural limbs. It found on the one hand that the Turkish authorities had not only been indifferent to the applicants' son's grave psychological problems, even threatening him with disciplinary sanctions for previous suicide attempts, but had been responsible for a deterioration of his state of mind by detaining him in a prison with adults without providing any medical or specialist care, thus leading to his suicide. On the other hand, the Turkish authorities had failed to carry out an effective investigation to establish who had been responsible for the applicants' son's death and how.

## Personal space in multi-occupancy cell and prison overcrowding

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### Orchowski v. Poland

22 October 2009

Serving a prison sentence since 2003, the applicant had been transferred twenty-seven times between eight different prisons and remand centres. For most of the time he had less than 3 square metres of personal space inside his cells, which was the minimum prescribed under Polish law. At times he even had less than 2 square metres. The applicant lodged numerous complaints concerning the conditions of his detention with the domestic authorities, including a civil action for damages, but to no avail. In a letter of March 2005 the prison administration acknowledged the problem of overcrowding, but dismissed the applicant's complaint as ill-founded.

The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention finding that, having regard to the cumulative effects of the conditions in which the applicant was detained, the distress and hardship he had endured had exceeded the unavoidable level of suffering inherent in deprivation of liberty. It noted in particular that in 2008 the Polish Constitutional Court had found that detention facilities in Poland suffered from a systemic problem of overcrowding which was of such a serious nature as to constitute inhuman and degrading treatment. As for the applicant's personal situation, the European Court found it established that the majority of cells he had been held in had been occupied beyond their designated capacity, leaving him with less than the statutory 3 square metres of personal space, and at times even with less than 2 square metres. In addition, this lack of space had been made worse by aggravating factors, such as lack of exercise, particularly outdoor exercise, lack of privacy, insalubrious conditions and frequent transfers.

Lastly, under **Article 46** (binding force and execution of judgments) of the Convention, the Court invited Poland to develop an efficient system of complaints to the authorities responsible for supervising detention facilities to enable them to react more speedily than the courts could and to order, if necessary, a detainee's long-term transfer to Convention-compatible conditions.

See also: **Norbert Sikorski v. Poland**, judgment of 22 October 2009; **Łomiński v. Poland and Łatak v. Poland**, decisions on the admissibility of 12 October 2010; **Siedlecki v. Poland and 14 other applications**, decisions on the admissibility of 14 December 2010.

### Mandic and Jovic v. Slovenia and Štrucl and Others v. Slovenia

20 October 2011

These cases concerned the conditions in Ljubljana Prison. During their detention there, the applicants had been held for several months in cells in which the personal space available to them was 2.7 square metres and in which the average afternoon temperature in August was approximately 28° C.

The Court found that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention, holding that the distress and hardship endured by the applicants had exceeded the unavoidable level of suffering inherent in detention and had therefore amounted to degrading treatment.

### **Torreggiani and Others v. Italy**

8 January 2013 (pilot judgment<sup>6</sup>)

This case concerned the issue of overcrowding in Italian prisons. The applicants alleged that their conditions of detention in Busto Arsizio and Piacenza prisons amounted to inhuman and degrading treatment.

The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention. It found that the applicants' living space had not conformed to the standards deemed to be acceptable under its case-law. It pointed out that the standard recommended by the European Committee for the Prevention of Torture (CPT) in terms of living space in cells was 4 square metres per person. The shortage of space to which the applicants had been subjected had been exacerbated by other conditions such as the lack of hot water over long periods, and inadequate lighting and ventilation in Piacenza prison. All these shortcomings, although not in themselves inhuman and degrading, amounted to additional suffering. While there was no indication of any intention to humiliate or debase the applicants, the Court considered that their conditions of detention had subjected them – in view of the length of their imprisonment – to hardship of an intensity exceeding the unavoidable level of suffering inherent in detention.

Under **Article 46** (binding force and execution of judgments) of the Convention, the Court further called on the Italian authorities to put in place, within one year, a remedy or combination of remedies providing redress in respect of violations of the Convention resulting from overcrowding in prison.

### **Vasilescu v. Belgium**

25 November 2014

See above, under "(Hygienic) condition of cells".

### **Varga and Others v. Hungary**

10 March 2015 (pilot judgment<sup>7</sup>)

This case concerned widespread overcrowding in Hungarian detention facilities. The applicants complained that their respective conditions of detention were/had been inhuman and degrading and that there was no effective remedy in Hungarian law with which they could complain about their detention conditions.

The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention finding, in particular, that the limited personal space available to all six detainees in this case, aggravated by a lack of privacy when using the lavatory, inadequate sleeping arrangements, insect infestation, poor ventilation and restrictions on showers or time spent away from their cells, had amounted to degrading treatment. Further finding that the domestic remedies in Hungarian law suggested by the Government to complain about detention conditions, although accessible, were ineffective in practice, the Court held that there had been a **violation of Article 13** (right to an effective remedy) **read in conjunction with Article 3** of the Convention.

Under **Article 46** (binding force and execution of judgments) of the Convention, the Court held in particular that the Hungarian authorities should promptly put in place an effective remedy or combination of remedies, both preventive and compensatory, to guarantee genuinely effective redress for violations of the Convention originating in prison overcrowding.

### **Muršić v. Croatia**

20 October 2016 (Grand Chamber)

The applicant complained that he had been held in poor conditions at Bjelovar Prison. He alleged that he had disposed of less than 3 sq. m of personal space in his cell for a number of non-consecutive periods of a total duration of 50 days and personal space of

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<sup>6</sup>. See footnote 1 above.

<sup>7</sup>. See footnote 1 above.

between 3 and 4 sq. m in other periods. He also complained that the sanitary facilities, conditions of hygiene, food, the possibility of engaging in prison work and access to recreational or educational activities in the prison had been insufficient.

The Court confirmed that 3 sq. m of surface area per detainee in a multi-occupancy cell was the prevalent norm in its case-law, being the applicable minimum standard for the purposes of Article 3 (prohibition of inhuman or degrading treatment) of the Convention. When that area fell below 3 sq. m, the lack of personal space was regarded as so serious that it gave rise to a strong presumption of a violation of Article 3. In the present case, having regard to the documents produced by the Croatian Government and to the applicant's statements, the Court found that the conditions in which the applicant had been held in Bjelovar Prison were generally appropriate, but that there had been a **violation of Article 3** of the Convention for the consecutive period of 27 days during which he had been confined in less than 3 sq. m of personal space. On the other hand, the Court held that there had been **no violation of Article 3** in respect of the other, non-consecutive, periods of detention during which the applicant had less than 3 sq. m of personal space or in respect of the periods in which he had personal space of between 3 sq. m and 4 sq. m in Bjelovar Prison. It found in particular that the other periods during which he had disposed of less than 3 sq. m could be regarded as short and minor reductions of personal space, while at the same time the applicant had sufficient freedom of movement and activities outside the cell and was being held in a generally appropriate detention facility.

#### **Rezmives and Others v. Romania**

25 April 2017 (pilot judgment<sup>8</sup>)

See above, under "(Hygienic) condition of cells".

See also, recently:

**Sylla and Nollomont v. Belgium**, judgment of 16 May 2017.

#### **Pending applications**

##### **Nikitin v. Estonia (no. 23226/16) and five other applications**

Applications communicated to the Estonian Government on 16 May 2017

These cases concern the applicants' complaints about the inadequate conditions of their detention in Tallinn Prison, in particular as a result of overcrowding, and the lack of an effective remedy in that respect.

The Court gave notice of the applications to the Estonian Government and put questions to the parties under Articles 3 (prohibition of inhuman or degrading treatment), 13 (right to an effective remedy) and 35 (admissibility criteria) of the Convention.

Similar applications pending: **Karp v. Estonia (no. 57738/16) and Savva v. Estonia (no. 60178/16)**, communicated to the Estonian Government on 11 July 2017.

## Repeated transfers

#### **Khider v. France**

9 July 2009

Detained in the context of proceedings against him for a number of offences, including armed robbery carried out as part of a gang, the applicant complained of his detention conditions and the security measures imposed on him as a "prisoner requiring special supervision".

The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention. The applicant's conditions of detention, his classification as a high-security prisoner, his repeated transfer from prison to prison, his lengthy solitary confinement and the frequent full body searches he was subjected to all added up to inhuman and degrading treatment within the meaning of Article 3.

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<sup>8</sup>. See footnote 1 above.

### Payet v. France

20 January 2011

Serving a prison sentence for murder, the applicant complained about the conditions of his detention and his frequent moving between cells and prison buildings for security reasons and the disciplinary penalty to which he was subjected, which entailed placement in cells lacking natural light and proper hygienic conditions.

The Court found a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention with regard to the poor conditions of detention in the punishment wing where the applicant was placed (dirty and dilapidated premises, flooding, lack of sufficient light for reading and writing). It further held that there had been **no violation of Article 3** as regards the security rotations.

### Khider v. France

1 October 2013 (decision on the admissibility)

This case concerned a convicted prisoner who had made several escapes and attempted escapes and was classified by the authorities as a "high-risk prisoner". He alleged that his conditions of detention were particularly strict, including frequent changes of establishment, prolonged periods in solitary confinement, and strip-searches. He considered that the way he was treated was inhuman and degrading.

The Court declared **inadmissible** as being manifestly ill-founded the applicant's complaints under Article 3 (prohibition of inhuman or degrading treatment) of the Convention. It observed in particular that the authorities had explained that the applicant had been frequently transferred for security reasons precisely because of his repeatedly violent behaviour. He had been transferred for practical reasons and not out of any desire to belittle or humiliate him. The Court further noted that since October 2011 the applicant had been detained under the "normal" prison regime. It found that the consequences of the transfers imposed on the applicant could not be considered to have attained the minimum level of severity required to amount to inhuman or degrading treatment within the meaning of Article 3 of the Convention.

### Bamouhammad v. Belgium

17 November 2015

Suffering from Ganser syndrome (or "prison psychosis"), the applicant alleged that he had been subjected while in prison to inhuman and degrading treatment which had affected his mental health. He also complained about a lack of effective remedies.

The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention and a **violation of Article 13** (right to an effective remedy) **taken together with Article 3**. It found in particular that the manner of execution of the applicant's detention, involving continuous transfers between prisons (43 transfers over a six-year period) and repeated special measures, together with the prison authority's delay in providing him with therapy and refusal to consider any alternative to custody despite the decline in his state of health, had subjected him to distress of an intensity exceeding the inevitable level of suffering inherent in detention. The level of seriousness required for treatment to be regarded as degrading, within the meaning of Article 3, had thus been exceeded. Moreover, in the circumstances of the case, the Court concluded that the applicant had not had an effective remedy by which to submit his complaints under Article 3. Lastly, the Court recommended under **Article 46** (binding force and execution of judgments) that Belgium should introduce a remedy under Belgian law for prisoners to complain about transfers and special measures such as those imposed on the applicant.

## Solitary confinement

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### Ilaşcu and Others v. Moldova and Russia

8 July 2004 (Grand Chamber)

The first applicant, a Moldovan opposition politician at the time, was detained for eight

years in very strict isolation in the Transnistrian region of Moldova, before his conviction and sentence to death for a number of terrorist-related offences was de facto quashed and he was released in 2001. While on death row, he had no contact with other prisoners, no news from the outside – since he was not permitted to send or receive mail – and no right to contact his lawyer or receive regular visits from his family. His cell was unheated, he was deprived of food as a punishment and he was able to take showers only very rarely. These conditions and a lack of medical care caused his health to deteriorate.

The Court held that as a whole these conditions amounted to torture, in **violation of Article 3** (prohibition of torture and inhuman or degrading treatment) of the Convention by Russia (the Court found that the Transnistrian region of Moldova had been under the effective authority or at least under the decisive influence of the Russian Government at the time).

### **Ramirez Sanchez v. France**

4 July 2006 (Grand Chamber)

The applicant, an international terrorist – known as “Carlos the Jackal” – was detained in solitary confinement in France for eight years following his conviction for terrorist-related offences. He was segregated from other prisoners, but had access to TV and newspapers, and was allowed to receive visits from family and lawyers.

The Court held that there had been **no violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention. It found that, having regard in particular to the applicant’s character and the danger he posed, the conditions in which he had been held had not reached the minimum level of severity necessary to constitute inhuman or degrading treatment. The Court took note of the fact that, several months before its judgment, France had ended the solitary confinement.

At the same time, the Court shared concerns by the European Committee for the Prevention of Torture (CPT) about the possible long-term effects of the applicant’s isolation and underlined that solitary confinement, even in cases entailing only relative isolation, could not be imposed on a prisoner indefinitely. A State had to periodically review a prisoner’s solitary confinement, give reasons for any decision to continue segregation and monitor the prisoner’s physical and mental condition.

### **Piechowicz v. Poland and Horych v. Poland**

17 April 2012

Both cases concerned a regime in Polish prisons for detainees who are classified as dangerous. The applicants complained in particular that the “dangerous detainee” regime and the detention conditions, including the restrictions on visits, to which they are/were subjected was inhuman and degrading and breached their right to private and family life. The Court found a **violation of Articles 3** (prohibition of inhuman or degrading treatment) **and 8** (right to respect for private and family life) of the Convention in both cases. It held in particular that keeping detainees under that regime for several years, in isolation, without sufficient mental and physical stimulation, and without examining if there were concrete reasons for the prolonged application of that regime, was not necessary in order to ensure safety in prison.

See *also*, among others: Paluch v. Poland and Świdorski v. Poland, judgments of 16 February 2016; Karwowski v. Poland, judgment of 19 April 2016.

### **X v. Turkey (no. 24626/09)**

9 October 2012

This case concerned a homosexual prisoner who, after complaining about acts of intimidation and bullying by his fellow inmates, was placed in solitary confinement for over 8 months in total.

The Court took the view that these detention conditions had caused him mental and physical suffering, together with a feeling that he had been stripped of his dignity, thus representing “inhuman or degrading treatment” in **breach of Article 3** of the Convention. It further found that the main reason for the applicant’s solitary

confinement had not been his protection but rather his sexual orientation. It thus concluded that there had been discriminatory treatment in **breach of Article 14** (prohibition of discrimination) of the Convention.

### **Öcalan v. Turkey (no. 2)**

18 March 2014

The applicant, the founder of the PKK (Kurdistan Workers' Party), an illegal organisation, complained in particular about the conditions of his detention (in particular his social isolation and the restrictions on his communication with members of his family and his lawyers) in the prison on the island of İmralı, where he was held in solitary confinement until 17 November 2009, when five other inmates were transferred there.

The Court held that there had been **a violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention as to the conditions of the applicant's detention up to 17 November 2009 and that there had been **no violation of Article 3** as regards the conditions of his detention during the period subsequent to that date. On the one hand, in view of a certain number of aspects, such as the lack of communication facilities that would have overcome the applicant's social isolation, together with the persisting major difficulties for his visitors to gain access to the prison, the Court found that the conditions of detention imposed on the applicant up to 17 November 2009 had constituted inhuman treatment. On the other hand, having regard in particular to the arrival of other detainees at the İmralı prison and to the increased frequency of visits, it came to the opposite conclusion as regards his detention subsequent to that date.

### **Harakchiev and Tolumov v. Bulgaria**

8 July 2014

This case concerned the life imprisonment without commutation of the first applicant and the strict detention regime, involving isolation, in which he and the second applicant, another life prisoner, were held. Both applicants complained *inter alia* that the strict prison regime to which they were subjected as life prisoners, together with the conditions of their detention, were inhuman and degrading. In particular, under the regime for life prisoners they were permanently locked in cells (apart from a one-hour daily walk) in isolation from the rest of the prison population, with no running water and no access to a toilet.

The Court held that there had been **a violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention as concerned the regime and conditions of the two applicants' detention. As concerned the strict detention regime, the Court found in particular that the cumulative effect of the conditions endured by the applicants which included isolation, inadequate ventilation, lighting, heating, hygiene, food and medical care had been inhuman and degrading. Indeed, the applicants' isolation appeared to be the result of the automatic application of the domestic legal provisions regulating the prison regime rather than any particular security concerns relating to their behaviour. The Court also held that there had been **a violation of Article 13** (right to an effective remedy) of the Convention as concerned the lack of effective domestic remedies in respect of the conditions of the applicants' detention. Lastly, under **Article 46** (binding force and implementation of judgments) of the Convention, the Court held that to properly implement the judgment in this case Bulgaria should reform, preferably by means of legislation, the legal framework governing the prison regime applicable to persons sentenced to life imprisonment with or without parole by addressing, in particular, the imposition of a highly restrictive prison regime and isolation automatically on all life prisoners.

See *also*, among others: **Manolov v. Bulgaria**, judgment of 4 November 2014; **Halil Adem Hasan v. Bulgaria**, judgment of 10 March 2015.

## Strip searches of prisoners

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### Valašinas v. Lithuania

24 July 2001

While serving a prison sentence for the theft, possession and sale of firearms, the applicant was ordered, following the visit of a relative, to strip naked in the presence of a woman prison officer, which he claimed had been done in order to humiliate him. He was then ordered to squat, and his sexual organs and the food he had received from the visitor were examined by guards who wore no gloves.

The Court found that the way in which this particular search had been conducted showed a clear lack of respect for the applicant, and in effect diminished his human dignity. It concluded that it had constituted degrading treatment **in breach of Article 3** (prohibition of inhuman or degrading treatment) of the Convention.

### Iwańczuk v. Poland

15 November 2001

During his detention on remand, the applicant asked for permission to vote in the parliamentary elections in 1993. He was told by a group of prison guards that to be allowed to vote he would have to undress and undergo a body search. He took off his clothes except his underwear, at which point the prison guards ridiculed him, exchanged humiliating remarks about his body and abused him verbally. He was ordered to strip naked, but refused to do so and was then taken back to his cell without being allowed to vote.

The Court found that this behaviour amounted to degrading treatment, in **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention. There had been no compelling reasons to find that the order to strip naked before the prison guards was necessary and justified for security reasons, given the applicant's peaceful behaviour during his detention, the fact that he was not charged with a violent crime, that he had no previous criminal record and that it had not been shown that there were reasons to fear that he would behave violently. While strip searches might be necessary in certain cases to ensure prison security or prevent disorder in prisons, they had to be conducted in an appropriate manner. Behaviour intended to provoke feelings of humiliation and inferiority, as in this case, showed a lack of respect for a prisoner's human dignity.

### Frérot v. France

12 June 2007

Serving a sentence of life imprisonment for a number of offences including murder and armed robbery, the applicant, former member of an armed movement of the extreme left, was subjected to strip searches on a regular basis each time he left the visiting room in Fresnes prison, where he was kept between 1994 and 1996. When he refused, he was taken to a disciplinary cell.

The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention. While it acknowledged that strip searches had been imposed on the applicant in order to maintain security or prevent criminal offences, the Court was struck by the fact that, from one prison in which he was held to another, the search procedure varied. He had been expected to submit to anal inspections only in Fresnes, where there was a presumption that any prisoner returning from the visiting room was hiding objects or substances in the most intimate parts of his person. The Court could therefore understand that the prisoners concerned might feel that they were the victims of arbitrary measures, especially as the search procedure was laid down in a circular and allowed each prison governor a large measure of discretion.

### [El Shennawy v. France](#)

20 January 2011

Serving a prison sentence for a number of offences, the applicant complained in particular of the strip searches to which he was subjected during the criminal proceedings against him.

The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention. The searches in question had not been duly based on pressing security needs. Although they had taken place over a short period of time they had been liable to arouse in the applicant feelings of arbitrariness, inferiority and anxiety characteristic of a degree of humiliation going beyond the level which the strip-searching of prisoners inevitably entailed.

### [S.J. \(no. 2\) v. Luxembourg \(no. 47229/12\)](#)

31 October 2013

The applicant, who was serving a prison sentence, complained that, for the purposes of a body search, he had been made to undress in an open booth in the presence of a number of guards. He alleged that a body search in such conditions had amounted to inhuman and degrading treatment.

The Court held that there had been **no violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention under either its substantive or its procedural aspect. Noting, in particular, that the layout of the premises was not ideal, in so far as the booth in question opened onto a room where the prisoners being searched could be seen by third parties, the Court nonetheless considered that it could not be concluded from this layout alone that the body searches conducted in that area implied a degree of suffering or humiliation that went beyond what was inevitable. In addition, and with particular regard to the body search in dispute in this case, there was no evidence in the case file that there had been any wish to humiliate, and indeed the applicant had not alleged that he had been the victim of disrespectful guards or that the latter had behaved in such a way as to indicate that they were seeking to humiliate him.

### [Milka v. Poland](#)

15 septembre 2015

This case concerned the applicant's disciplinary punishments for refusing to be strip-searched in prison. The Polish courts had dismissed his appeals – without examining the actual reasons for the disciplinary measures – on the ground that he had refused to undergo the body searches and that this constituted a disciplinary offence.

The Court declared the applicant's complaint under Article 3 (prohibition of inhuman or degrading treatment) of the Convention **inadmissible** as being manifestly ill-founded, finding that in the present case there was no element of debasement or humiliation which might give rise to a violation of Article 3. It held, however, that there had been a **violation of Article 8** (right to respect for private) of the Convention. In this respect, the Court noted in particular that, while strip searches might be necessary on occasions to ensure prison security or prevent disorder in prisons, they had to be conducted in an appropriate manner. In the applicant's case, however, the Court found that it had not been shown that the interference complained of was justified by a pressing social need and that it had been proportionate in the circumstances.

### **Pending applications**

#### [Syrianos v. Greece \(no. 49529/12\)](#)

Application communicated to the Greek Government on 25 February 2016

#### [Nowak v. Poland \(no. 60906/16\)](#)

Application communicated to the Polish Government on 11 July 2017



## Video surveillance of a cell

### Van der Graaf v. the Netherlands

1 June 2004 (decision on the admissibility)

In May 2002 the applicant was arrested and taken into custody on suspicion of having shot and killed a well-known politician. He was placed under permanent camera surveillance. His appeals against the successive orders to prolong his permanent camera surveillance were accepted as well-founded, the courts finding that there was no legal basis for imposing such a measure, given his individual detention regime. In July 2002 an amendment was introduced to the relevant prison regulations, whereby it also became possible to place detainees who were under an individual detention regime under permanent camera surveillance. On that same day, the governor of the remand centre issued a new order for the applicant's camera surveillance. The applicant's appeal was this time rejected as, *inter alia*, the measure had a sufficient legal basis in the amended rules.

The Court declared the application **inadmissible**, both under Article 3 (prohibition of inhuman or degrading treatment) and Article 8 (right to respect for private and family life) of the Convention, as being manifestly ill-founded. Firstly, the Court considered that, whilst being permanently observed by a camera for a period of about four and a half months may have caused the applicant feelings of distress for lack of any form of privacy, it had not been sufficiently established that such a measure had in fact subjected him to mental suffering of a level of severity such as to constitute inhuman or degrading treatment. Secondly, the Court noted that the placing of the applicant under permanent camera surveillance constituted a serious interference with his right to respect for his private life. However, the measure had a basis in domestic law and pursued the legitimate aim of preventing the applicant's escape or harm to his health. Therefore, given the great public unrest caused by the applicant's offence and the importance of bringing him to trial, the Court found that the interference complained of could be regarded as necessary in a democratic society in the interests of public safety and the prevention of disorder and crime.

### Riina v. Italy

11 March 2014 (decision on the admissibility)

The applicant, who was sentenced to life imprisonment for having committed very serious crimes, including mafia-type conspiracy and multiple assassinations, complained of the fact that he was under constant video surveillance in his cell, including in the toilets. He contended that the domestic remedies available in respect of these measures were ineffective.

The Court declared the application **inadmissible** under Articles 3 (prohibition of inhuman or degrading treatment) and 8 (right to respect for private and family life) of the Convention, finding that the applicant had not exhausted the domestic remedies available to him to appeal against the application of the video surveillance measure.

### **Pending applications**

#### Gorlov v. Russia (no. 27057/06)

Application communicated to the Russian Government on 19 January 2011

The applicant, who is serving a life sentence, complains in particular about the constant video surveillance of his cell by a female guard.

The Court gave notice of the application to the Russian Government and put questions to the parties under Article 8 (right to respect for private life) of the Convention.

Similar applications pending: Vakhmistrov v. Russia (no. 56443/09), communicated to the Russian Government on 3 May 2016.

**Chertov v. Russia (no. 28971/10) and 26 other applications**

Applications communicated to the Russian Government on 30 August 2016

The applications concern in particular conditions of the applicants' detention and constant video surveillance of the applicants by means of closed-circuit television cameras installed in their prison cells.

The Court gave notice of the application to the Russian Government and put questions to the parties under Articles 3 (prohibition of inhuman or degrading treatment), 8 (right to respect for private life) and 13 (right to an effective remedy) of the Convention.

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**Media Contact:**

Tel.: +33 (0)3 90 21 42 08