

Case Summary

X v Turkey

Application Number: 24626/09

1. Reference Details

Jurisdiction: European Court of Human Rights (ECtHR) – Court (Second Section)

Date of Decision: 9 October 2012

Case Status: will be final according to conditions of article 44 para. 2 ECHR

Link to full case (in French only):<http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-113389>

2. Facts of the Case

The case was brought by a homosexual man who was born in 1989 in Izmir (Turkey) and is currently detained in Eskişehir prison.

On 24 October 2008, the applicant turned himself in at a police station and confessed to having committed several offences including forgery, deception and credit-card fraud. He was placed in pre-trial detention in a cell which he shared with heterosexual detainees. On 5 February 2009, the applicant asked to be transferred into an individual cell, following discriminatory intimidation, threats and harassment by his co-detainees because of his homosexuality. His request was granted. However, according to the applicant, his individual cell lacked washing facilities and was very dirty and poorly lit. He claimed that this type of cell was normally used for solitary confinement as a disciplinary measure or for inmates accused of paedophilia or rape. The applicant was deprived of any contact with other inmates and denied social activity. He had no access to outdoor exercise and was allowed out only to see his lawyer or to attend hearings. These facts were not contested, although the government stated that the cell was equipped with everything required for daily life. It also argued that the applicant was only staying alone in the cell until the prison also housed another homosexual detainee.

In April 2009, the applicant complained about his treatment and argued that an end must be brought to his solitary detention as there was no legal basis for such treatment. He stated that the treatment was based solely on his sexual orientation and that it was having a negative psychological impact on him. He wanted to be treated equally with the other detainees, to be able to go outside and take part in social activities. On 25 May 2009, the judge allocated to his complaint declined to consider the case in substance on the basis that the law covering conditions of detention did not apply to people in pre-trial detention. The applicant appealed against this decision on 29 May 2009 but his appeal was rejected.

In July 2009, the applicant was transferred to the psychiatric hospital. He was diagnosed as suffering from depression and remained in hospital for a month before returning to prison. On his return he was placed in a cell with another homosexual detainee, before being returned to solitary detention from November 2009 until February 2010, when he was transferred to another prison and placed in a shared-cell under normal conditions.

On 12th May 2009, the applicant brought his case to the ECtHR.

3. Law

National laws:

- Legislation No. 5275 on the sentence execution and preventive measures (Articles 24, 25, 49 and 69)
- Code of administrative measures in prison, sentence execution and preventive measures (Articles 84-96, 99-108, 100-117 and 131)

Regional laws:

- Articles 3, 14 taken in conjunction with Article 3 and Article 41 of the European Convention of Human Rights (ECHR)

4. Legal Arguments

Applicant's Arguments

The applicant argued that it was because of his sexual orientation that he was placed in an individual cell for a period of over 13 months with a lack of social interaction and poor conditions and that this treatment was without legal basis under Turkish law. He claimed that the lack of social interaction and the harsh conditions of his detention had irreparable and irreversible effects on both his mental and physical state and constituted a breach of his Article 3 right to freedom from inhuman and degrading treatment or punishment. Given that his treatment was because of his sexual orientation, the applicant argued that it was in breach of Articles 3 and 14 ECHR.

Respondent's Arguments

The respondent argued that there was no breach of Article 3 ECHR because the minimum threshold in terms of gravity required for a breach of article 3 was not reached. It went on to argue that the applicant had been placed in an individual cell at his own request, following threats of intimidation and harassment by the other co-detainees because of the homosexuality of the applicant. The cell was well equipped with all the furniture and the necessary attributes required daily such as light, toilet, bed, wardrobe and chair. Moreover, the applicant was only detained alone until another homosexual detainee arrived at the prison.

5. Decision

Article 3

The Court calculated that the applicant had spent a total of 8 months and 18 days in isolated detention having taken into account his stay in hospital and the period of time during which he shared his cell with another detainee. It held that, when considering the conditions of detention, it was necessary to take into account both the cumulative effects and the allegations of the detainee and that the length of detention is a particularly relevant consideration.

The Court noted that, at the time of detention, the applicant was accused of non-violent offences. He surrendered himself and admitted the offences at the police station. The Court also accepted

the evidence relating to the detention facilities and noted that the government had not disputed the fact that the cell was very poorly lit, very dirty and visited by rats. The Court noted that certain aspects of the applicant's conditions of detention were stricter than the regime applied in Turkey for prisoners serving life sentences.

The Court went on to explain that, when evaluating whether a measure of solitary confinement breaches Article 3 ECHR, it is necessary to take into account the particular conditions of the case, the severity of the measure, the length of detention, the intended objective and its effects on the detainee (*Rohde v Denmark* App No. 69332/01). With regards to the length of detention, it is necessary to fully examine its justification, necessity and proportionality compared to other alternatives as well as the guarantees taken to avoid arbitrary measures and any measures taken to preserve the physical and mental well-being of the detainee during his solitary detention.

The Court held that although the prison authorities tried to take into account the safety of the applicant, the measures taken were disproportionate. The applicant's total exclusion from the life of the prison and his denial of the opportunity to exercise outdoors or to have, at least, limited contact with the other inmates, was not justified. Moreover, the fact that all his requests and appeals had been rejected without any substantive analysis was unsatisfactory, especially given the gravity of the measure.

Accordingly, the Court held that the conditions of the applicant's solitary detention had been such as to cause him both mental and physical suffering and a strong feeling of being stripped of his dignity. Those conditions, aggravated by the lack of an effective remedy, constituted "inhuman or degrading treatment", in breach of Article 3.

Article 14 in Conjunction with Article 3

The Court reiterated that Article 14 protects people from discrimination on the grounds of sexual orientation. It noted that, when a difference in treatment relates to an intimate and vulnerable aspect of private life, only very powerful arguments will justify the difference. When the different treatment is based on sex or sexual orientation, the margin of appreciation accorded to the state in question is very thin. The principle of proportionality not only requires that a measure is appropriate given the intended objective, but also requires that it is necessary given the circumstances in question. The Court observed that the treatment in this case was so severe as to amount to a violation of Article 3.

The Court also noted that the authorities have an obligation under Article 14 combined with Article 3 to take all possible measures to verify whether a discriminatory attitude to the applicant had played a role in his complete exclusion from the activities of the prison (see *mutandis mutandis, B.S. v Spain*, App No. 47159/08).

The Court held that the prison authorities had failed to properly assess the situation and that the measures taken were not aimed at protecting the physical integrity of the applicant but were taken because of the sexual orientation of the applicant. As a result of this, the Court held a violation of Article 14 in conjunction with Article 3.

Remedy

The Court held that the government was to pay the applicant 18,000 Euros (EUR) in respect of non-pecuniary damage and EUR 4,000 in respect of costs and expenses.