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Follow-up of the ECHR case-law (May 18th – June 21st)

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Yengo v. France, 21 May 2015, (no. 50494/12) – *conditions of detention, remedy*

In the decision Yengo v. France (21 May 2015), France has been condemned because French law didn´t foresee any remedy enabling an incarcerated person to claim the end of the inhuman or degrading treatment of its conditions of detention. The Court stated again that obtaining reparation of the prejudice is not enough: a "preventive" remedy shall be installed in order to stop the violation (see Sikorski v. Poland, §159) – and these remedies should be complementary (Ananyev v. Russia, §98).

Relying on Article 3 (prohibition of inhuman or degrading treatment) and Article 13 (right to an effective remedy), Mr Yengo complained of the conditions of detention inflicted on him at the Camp Est prison in Nouméa.

The applicant complained about the conditions of detention he endured at Nouméa Prison (New Caledonia) during his pre-trial detention. M. Yengo explained that he´s been incarcerated in a 15m²-cell with five other persons, so that the lack of space obliged them to constantly stay on their bed. He also complained about the lack of an effective remedy by which to complain about them to the domestic authorities.

Complaint under Article 3

The Court took the view that the applicant could no longer claim to be a victim of a violation of that Article since he had obtained from the administrative court an advance on compensation for the damage caused to him by the conditions of his detention – which in the court's view had not ensured respect for human dignity – in the sense of Article 3. It has to be recalled that the Court requests that the applicant must be able to justify his or her status as a victim throughout the proceedings (Burdov v. Russia, § 30). In the present case since "*national authorities have acknowledged […] expressly […], and then afforded redress for the breach of the Convention*" (Scordino v. Italy (no. 1) [GC], § 180), the Court considered that the applicant should be deprive from his status of 'victim'. However, the Court usually considers that the redress should be appropriate and sufficient – especially when a violation of Article 3 is at stake (Gäfgen v. Germany [GC], §116) : in the present case the applicant was granted 1156euros for a bit less than a year spent in an overcrowded cell.

Complaint under Article 13

The Court mentions that "*an effective remedy concerning claims of bad conditions of detention must allow the imprisoned person to obtain from domestic jurisdictions a direct and appropriated solution, so that the violation can´t continue or s/he can obtain an improvement of its conditions of detention*" (§59 – see Mandić and Jović v. Slovenia, nos 5774/10 and 5985/10, §§ 107 and 116). Beyond that, "*the case must have been properly examined in conformity with norms issued from the Court´s jurisprudence*" (§62).

The Court observed 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 – or an improvement in – his conditions of detention. Neither a request for release from pre-trial detention (§65), nor an administrative complaint (even under the urgent administrative procedure – §§66-68) were, at the relevant time, effective preventive remedies.

As regards request for release in France, it can't be accepted as long as the applicant's health is not jeopardized by the conditions of detention he endures: poor conditions of detention without any effect on the applicant's health (in other words, « degrading treatments » in the meaning of Article 3, see Iotchev v. Bulgaria, §146) seem to be allowed under French law.

As regards administrative remedies, they are mainly of a compensatory nature in France as the Court pointed in a previous case (see Lienhardt v. France). Surprisingly, the Court went on to note that there has been important change in the administrative domestic courts' pratice (§68). This opinion is however based on two isolated cases, concerning a procedure that can't prevent a treatment contrary to Article 3 from happening.

S.S. v. the United Kingdom and F.A. and Others v. the United Kingdom, 21 May 2015, (nos. 40356/10 and 54460/10) – *social security benefits, psychiatric treatment*

The case concerned five convicted prisoners' entitlement to social security benefits whilst serving criminal sentences in psychiatric hospitals: in UK, prisoners in psychiatric hospitals cannot receive their social security benefits, until the date they would be entitled to release from prison. The applicants notably complained that denying them the social security benefits paid to all other patients in psychiatric hospitals had amounted to unjustified discrimination.

It should be noted that individuals who are convicted of a criminal offence but ordered to be detained for psychiatric treatment as an alternative to being given a prison sentence are not subject to this rule and are therefore entitled to receive benefits.

The Court rejected the application as manifestly ill-founded: "*The Court accepts as being within the respondent State's margin of appreciation, both as a matter of penal and social policy, the decision to apply a general rule disqualifying convicted prisoners from social security benefits*" (§45).

Firstly, the Court recalled that even if persons deprived of their liberty "*do not forfeit the remainder of their Convention rights [...] the manner and extent to which they may enjoy those other rights will inevitably be influenced by the prison context*" (§39 – see Shelley v. the United Kingdom, no.23800/06, 4 January 2008). As a result, the applicants' status as prisoners remained very relevant to the assessment of whether denying them social security benefits had amounted to discrimination.

Secondly, the Court went on to note that the "*Contracting States enjoy a margin of appreciation*" and that "*this margin is usually wide when it comes to general measures of economic or social strategy*". The Court states further that "*questions of prisoner and penal*

policy" (§43) – as a result "*in the instant case the margin of appreciation due to the respondent State should be a broad one*" (§44).

Thirdly, the Court considered that the justifications put forward by the Government were well founded. First, the applicant wouldn´t be left without a means of subsistence due to the non-payment of benefits as the state already meets the basic needs of prisoners detained in psychiatric hospitals. Secondly, the applicants "*were first and foremost prisoners as they had been placed in hospital after having been convicted of serious criminal offences and found to be deserving of incarceration as a form of punishment*" (press release). Besides, the Court surprinsigly noted in support to its reasoning that "*the 2006 European Prison Rules of the Council of Europe, does not envisage the payment of subsistence benefits of prisoners but only refers to those prisoners who perform work*" (Rule 26.17).

Songül İnce and Others v. Turkey, 26 May 2015, (nos. 25595/08 and 34252/10) – *use of violence during a security forces operation, right to life, procedural obligation*

The 18 applicants are Turkish nationals, and their complaint concerns the violence they endured during the operation "back to life" conducted by the Bayrampaşa prison authorities against the "death fast" (a hunger strike launched by a large number of prisoners in Turkey in October 2000 in protest at a prison project involving reducing cell sizes for prisoners).

Relying on Articles 2 and 3, the applicants complained of the use of force, which they consider to have been excessive and disproportionate.

Complaint under Article 2

The Court considered that the high level of violence and the modalities of the security forces intervention justify the application of Article 2 even if the applicants' injuries were not life-threatening (§72 – see on the same facts Erol Arıkan and Others v. Turkey, §§ 70-71).The Court went on to note that it is under the State's responsibility to prove that the use of force was strictly necessary; and that in the present case the Turkish authorities are unable to establish the circumstances and investigating the cause of the applicants' injuries (excessive delay in the launching of the official criminal inquiry, lack of efficiency of the inquiry).The Court concluded accordingly that there had been a violation of Article 2 (§83).

Complaint under Article 3

Firstly, the applicants complained that they had been subjected to excessive violence and that they had suffered from several injuries and scalds. The Court considered that the Government is not able to explain the level of force that lead to these injuries: as a result, the use of force can't be regarded as legitimate. The Court concluded that there had been a violation of Article 3.

Secondly, the applicants complained that they had been subjected to the unjustified use of teargas. The Court noted that the security forces used a high quantity of teargas in a very confined place: as a result, the treatment suffered by the applicants reached the gravity threshold required by Article 3 (§99). The court went on to note that the security forces' use of

teargas was not regulated neither by law nor by the relevant administration (§102 – on the regulation of the use of teargas see *mutatis mutandis* Ataykaya c. Turquie, no. 50275/08, § 57, 22 juillet 2014). Last, the Court considered that the State did not comply with its obligation to launch an effective inquiry that could have enable to establish the circumstances of the death and injuries caused by the operation (§§103-106). Accordingly the Court concluded that there had been a violation of Article 3.

Lutsenko v. Ukraine (no. 2), 11 June 2015, (no. 29334/11) – *material conditions of detention, inadequate medical treatment*

The applicant is a Ukrainian national. He was the Minister of the Interior of Ukraine from 2005 to 2006 and from December 2007 to March 2010. Since August 2014 he has been the leader of the Bloc of the Petro Poroshenko party.

The case concerns several complaints about the conditions of his pre-trial detention (material conditions of detention, inadequate medical treatment) and his treatment during court hearings.

Conditions of detention

First, the Court examined the complaint regarding material conditions of detention. From December 2010 to May 2011, the applicant had been kept in a cell measuring less than nine square meters, which he had to share with two other detainees. The personal space at the applicant's disposal was therefore under 3 square meters; moreover "*given that the cell also contained sanitary facilities, furniture and fittings, the floor area available to the applicant had been further reduced*" (§117). In the light of his constant jurisprudence, the Court concluded that there had been a violation of Article 3 (§ 120 – see *i. a.* Melnik v. Ukraine, no. 72286/01, § 103, 28 March 2006). Conversely, as regard the remaining period of detention, the Court noted that the applicant had more than four square meters of individual space at his disposal, he was allowed a one-hour period of outdoor exercise daily, there is no evidence that the internal lighting or ventilation systems were deficient, windows in the cells were not fitted with metal shutters or other devices preventing natural light from penetrating into the cells. Therefore, the Court considered that the cumulative effect of these conditions "*did not reach the threshold of severity required to characterize the treatment as inhuman or degrading within the meaning of Article 3 of the Convention*" (§124).

Inadequate medical treatment

Second, concerning the allegation of inadequate medical treatment, the Court noted that "*it transpires from the voluminous case-file materials and submissions by the parties that the applicant's health received considerable attention from the domestic authorities*" (§134): the applicant was under regular supervision by doctors of the prison's medical unit and underwent several examinations in hospital. The Court went on to note that the applicant was on hunger strike during more than 30 days, that it significantly affected his state of health, and that "*as regards the new illnesses which could have been caused by the hunger strike, the applicant had been constantly receiving adequate medical treatment*" (§136). The Court concluded that "*the domestic authorities afforded the applicant comprehensive, effective and transparent medical assistance*" and considered that there had not been a violation of Article 3.

Conditions of detention during the hearing

The Court recalled that the State's obligation regarding conditions of detention "*also apply to the conditions of detainees' transportation to and from a court-house and of their confinement in the court-house including a proper catering*" (§155 – see Yevgeniy Bogdanov v. Russia, no. 22405/04, §§ 101-105, 26 February 2015). Overall, the applicant had attended 79 hearings

before the trial court over a period of about eight months, while he suffered from several diseases requiring continuous treatment. Moreover, on several occasions he was not given appropriate food regarding his state of health.
Accordingly, the Court considered that "*in the circumstances of the present case the cumulative effect of malnutrition and state of health [were] of an intensity such as to induce in the applicant physical suffering and mental fatigue. This must [was] further aggravated by the fact that the above treatment occurred during the applicant's trial, a time when he most needed his powers of concentration and mental alertness. The Court therefore concludes that the applicant was subjected to inhuman and degrading treatment contrary to Article 3 of the Convention*" (§160).
Placement in a metal cage during the trial
The Court recalled that it had "*previously examined the issue of holding a person in a metal 'cage' during court hearings in a number of cases, a practice which is still present in a few Member States including Ukraine*" (§169) – and that it found a violation of Article 3 when "*the applicants were accused of non-violent crimes, they had no criminal record, there was no evidence that they were predisposed to violence, and the 'security risks' were not supported by any specific facts*" (*idem*). As in those cases, the applicant had no criminal record at the time of the trial and he was not suspected of a violent crime. Moreover, behind the bars the applicant had been exposed not only to people attending the hearing but, given the presence of journalists and photographers at the trial, also to a much larger public following the proceedings in the media. The Court thus considered that the security arrangements had been excessive and could have reasonably been perceived as humiliating by the applicant and by the public. There had been therefore a violation of Article 3 "*in that the treatment was degrading within the meaning of this provision*" (§173)

- **Tychko v. Russia, 11 June 2015, (no. 56097/07)** – *material condition of detention, lack of an effective remedy, unilateral declaration (rejected)*

The case essentially concerns the conditions of the applicant's detention and the criminal proceedings against him. The applicant spent his detention between October 2001 and November 2002 and between January 2003 and September 2008 in a Volgograd remand prison. According to his submissions, the cells were so severely overcrowded that prisoners had to take turns to sleep, were in a poor sanitary condition, infested with insects and rodents and permanently lit; the food was of poor quality (§§21-25).

The applicant also complained that he was transported from the remand prison to the courthouse and back more than a hundred times between 2001 and 2008 in a van with no windows, no seat belts or other safety equipment to prevent inmates from falling and hitting themselves against the walls, and that offered no access to natural light or air, no artificial lighting or ventilation either (§34). At the courthouse, the applicant was detained in a cell measuring about three square metres and accommodated five to six inmates: "On each occasion the applicant spent as long as seven or eight hours in such conditions" (§35).

The Government acknowledged the violation of Article 3 (§51), the applicant had not had at his disposal an effective remedy with regard to his complaints under Article 3 (§56) and proposed to make a unilateral declaration (Rule 62A) and requested the Court to strike the appli-

cation out of the list of cases – in accordance with Article 37 of the Convention. The applicant rejected the Government offer, and so did the Court (§§39-41) – certainly because poor conditions of detention are still a large-scale problem in Russia.

Having regard to the applicant's submissions and the Government acknowledgment, the Court considered that the conditions of the applicant's detention, the condition of his detention is the courthouse, and the conditions in which he was transported between the prison and the courthouse amounted to inhuman and degrading treatment. There had accordingly been a violation of Article 3 of the Convention (§53). Moreover, the Court added that there had been a violation of Article 13 in conjunction with Article 3, because the applicant had no remedy to challenge the lawfulness of these conditions of detention before an appropriate institution (§58).

- **Ghiroga v. Romania (no.53168/12) and Constantin Nistor v. Romania (no.35091/12), 16 June 2015** – *material conditions of detention*

In both cases the applicant complained about the conditions of their detention – overcrowding, poor hygiene conditions, forced cohabitation with smokers (Ghiroga, §31). In both cases, the Court recalled that it found a violation of Article 3 in similar cases where it highlighted that poor conditions of detention (including overcrowding and poor hygiene conditions) were problems of structural nature (Ghiroga §32, Constantin Nistor §32 – see, inter alia Iacov Stanciu v. Romania, no.35972/05, 24 July 2012, §195).

The Court notes that the Government has failed to put forward any argument that would allow the Court to reach a different conclusion in the current cases, and considers that the same findings shall apply.

Accordingly there has been a violation of Article 3 on account of poor conditions of detention on both cases (Ghiroga §34, Constantin Nistor §33).