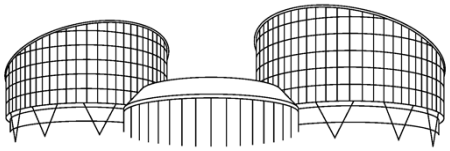

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF A.T. v. ESTONIA (No. 2)

(Application no. 70465/14)

JUDGMENT

STRASBOURG

13 November 2018

FINAL

18/03/2019

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of A.T. v. Estonia (no. 2),

The European Court of Human Rights (Second Section), sitting as a Chamber composed of:

Robert Spano, *President,*
Julia Laffranque,
Ledi Bianku,
Paul Lemmens,
Valeriu Griţco,
Jon Fridrik Kjølbro,
Stéphanie Mourou-Vikström, *judges,*
and Hasan Bakırcı, *Deputy Section Registrar,*

Having deliberated in private on 16 October 2018,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 70465/14) against the Republic of Estonia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an Estonian national, Mr A.T. ("the applicant"), on 2 December 2014.

2. The applicant was represented by Mr T. Kullerkupp, a lawyer practising in Tallinn. The Estonian Government ("the Government") were represented by their Agent, Ms M. Kuurberg, of the Ministry of Foreign Affairs.

3. The President of the Section decided under Rules 33 and 47 § 4 of the Rules of Court that the applicant should be granted anonymity and that the file should remain be confidential.

4. The applicant complained under Article 3 of the Convention about the additional security measures imposed on him in prison.

5. On 3 June 2016 the complaint concerning the prolongation of additional security measures between 10 August 2012 and 15 August 2013 was communicated to the Government and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1977 and is a life-sentenced prisoner. He has been detained in X Prison since 2008. During the relevant period he was detained in the increased surveillance wing of the prison.

7. In January 2012 the applicant had been relocated from one section of the increased surveillance wing to another.

A. Incident on 11 February 2012

8. On 11 February 2012 the applicant entered the cell of a fellow prisoner and stabbed him multiple times in the stomach, back and arms with a scissor blade. The attacked prisoner was taken to hospital following the incident. According to the applicant's explanation to the prison he had considered it necessary to punish his fellow inmate, as he had allegedly behaved arrogantly towards him.

B. Decision of 13 February 2012 on the application of additional security measures and the first set of court proceedings

9. On 13 February 2012 the prison administration decided to impose additional security measures (*täiendavad julgeolekumeetmed*) on the applicant. It took into account the stabbing incident of 11 February 2012, the applicant's history of aggressive behaviour and emotional characteristics (see paragraphs 12–13 below), and the need to ensure the health and safety of all those employed and detained in the prison. The measures entailed placing the applicant in a locked isolation cell (*eraldatud lukustatud kamber*); restricting his freedom of movement and communication inside the prison; banning him from using the prison's sports facilities; and handcuffing him whenever he was taken outside of his cell. The decision stated that the measures were to be applied until the grounds for them ceased to exist, but for no longer than six months. It also indicated that the decision had to be served on the applicant.

10. The applicant lodged a complaint against the decision with the Tartu Administrative Court, but as he had failed to pay the State fee, the court refused to examine it.

C. Decisions of 10 August 2012 on prolonging additional security measures

1. The decisions

11. On 10 August 2012 the prison administration took two decisions by which it decided to prolong the application of additional security measures. On 9 August 2012 the applicant had been given the possibility to express his opinion about the planned prolongation. The decisions indicated that they had to be served on the applicant.

12. In the first decision the authorities listed the applicant's five previous convictions (for, *inter alia*, theft, hooliganism, acts of violence, fraud, and extortion causing damage to life or health) before he was convicted and sentenced to life imprisonment. They then noted that the applicant had been convicted and given a life sentence in 2001 for the murder of two people and the attempted manslaughter of another person. The authorities also provided a detailed summary of incidents, altogether seventeen, which had occurred in prison between February 2002 and the incident of 11 February 2012 and which involved unlawful activity, disruptive behaviour and insubordination, and repeated violence or the threat of violence on the part of the applicant against the prison officers. They further listed a total of twenty-five prior decisions, taken since 2003, to apply additional security measures to the applicant.

13. The decisions also referred to a personal risk assessment dated 20 September 2011, which stated that the applicant had a low tolerance to stress and low self-criticism, which was supported by the fact that expressing anger had previously helped him get his way. He blamed others for his problems, and was found to resort to self-harm and injuring others to get what he wanted.

14. Taking this into account, as well as the fact that on 30 May 2012 the applicant had, in a telephone call to the Ministry of Justice, said that he would be left with no option but to assault a prison officer, the prison authorities held that it would not be possible to discontinue the additional security measures. The fact that the applicant did not have any valid disciplinary punishment at the time the decision was taken was not considered decisive.

15. By the first decision of 10 August 2012 the following additional security measures were imposed on the applicant:

(i) placement in a locked isolation cell to better monitor him and prevent contact with other prisoners, towards whom he might become violent;

(ii) restriction on his freedom of movement and communication inside the prison to prevent contact with other prisoners, whose health he might endanger;

(iii) a ban on using the prison's sports facilities, as it was not possible to ensure the restrictions on his freedom of movement and communication while escorting him to these facilities.

16. The use of handcuffs on the applicant outside of his prison cell was at first not prolonged, but the decision was amended by another decision of the same date which required him to be handcuffed via the hatch on his cell door even before anyone entered. It was considered that he might pose a danger to the prison officers, particularly at the moment when the door was being opened, regardless of whether or not he was to be escorted outside of his cell.

17. The measures were subject to review within no more than six months after being served on the applicant.

2. Proceedings in respect of the decisions of 10 August 2012 (the second set of court proceedings)

18. On 30 September 2012 the applicant lodged a complaint with the Tartu Administrative Court, seeking to have the decisions of 10 August 2012 annulled. On 31 January 2013 the court found that the prison authorities had duly considered the applicant's most recent actions, as well as his overall prior behaviour and personal risk assessment. It found that the application of additional security measures to the applicant had been justified in the interests of other prisoners and the prison officers, and dismissed his complaint.

19. On 2 March 2013 the applicant lodged an appeal with the Tartu Court of Appeal, requesting that the judgment of the Tartu Administrative Court be quashed and that the decisions of 10 August 2012 be declared unlawful, as it was no longer necessary to annul them as they had ceased to have effect six months after they had been adopted.

20. On 8 April 2013 the Court of Appeal allowed an application by the applicant to have the annulment proceedings reclassified as proceedings for the determination of unlawfulness.

21. On 9 January 2014 the Tartu Court of Appeal adopted a decision to join the cases in the second and third sets of court proceedings (see paragraph 29 below).

22. On 28 February 2014 it dismissed the applicant's appeal against the judgment of the Administrative Court in the second set of court proceedings. The court noted that the prison had discretion in deciding whether to apply additional security measures and thus the judicial review of such decisions was limited. It found that in the present case the additional security measures had not been applied as a punitive measure, but to prevent possible harm to the life and health of the prison officers and other prisoners. The unpredictable, aggressive and violent behaviour of the applicant had given grounds for a reasonable fear that he might pose such a danger. The Court of Appeal also took a decision regarding the judgment of

the Administrative Court of 4 October 2013 in the third set of court proceedings (see paragraph 30 below).

23. On 1 April 2014 the applicant lodged an appeal on points of law with the Supreme Court against the judgment of the Court of Appeal in the joined cases. On 5 June 2014 it refused to examine the appeal.

D. Decision of 15 February 2013 to prolong the application of additional security measures

1. The decision

24. On 15 February 2013 the prison administration prolonged the application of additional security measures after giving the applicant the opportunity to express his opinion about the planned prolongation. The decision stated that it had to be served on the applicant.

25. The decision relied on the already mentioned information (see paragraphs 12 and 16 above) and a new personal risk assessment dated 26 September 2012 (which considered the applicant to be dangerous; it noted that he had a low tolerance to stress and that aggressive behaviour was one of the coping strategies which helped him get his way). In addition, the prison authorities relied on information from the security department that the applicant had attempted to obtain prohibited items through other prisoners so that he could "settle scores", once the additional security measures were discontinued, with those he had had disagreements with. Based on the above, the security measures were considered necessary to prevent the likely harm the applicant might cause. The same security measures as applied by the decisions of 10 August 2012 were imposed (see paragraphs 15 and 16 above) and were again subject to review within no more than six months after being served on the applicant.

2. Proceedings in respect of the decision of 15 February 2013 (the third set of court proceedings)

26. On 7 April 2013 the applicant lodged a complaint with the Tartu Administrative Court, seeking to have the decision of 15 February 2013 annulled.

27. On 4 October 2013 the court dismissed the complaint. It found that the prison authorities had correctly assessed that the applicant could still be considered unpredictable and dangerous to other prisoners and the prison officers and that the application of security measures – as a preventive step – had been justified.

28. On 5 November 2013 the applicant lodged an appeal with the Tartu Court of Appeal.

29. As noted above, on 9 January 2014 it adopted a decision to join the administrative cases in the second and third sets of proceedings (see paragraph 21 above).

30. On 28 February 2014 it adopted a judgment reversing the judgment of the Tartu Administrative Court of 4 October 2013 in part. The court held that the first-instance court should have found the decision of X Prison of 15 February 2013 unlawful with regard to the period 10 to 14 February 2013, since X Prison had been obliged to review its decisions of 10 August 2012 within no more than six months. It upheld the remainder of the judgment of the Tartu Administrative Court of 4 October 2013. In doing so, the court relied, *inter alia*, on the information gathered by the prison security department (see paragraph 25 above), which the court examined in closed proceedings as the material was confidential. The court found that the aforementioned information gave X Prison sufficient grounds to believe that, upon the lifting of the additional security measures, the applicant would pose a danger to other prisoners and the prison officers.

31. On 1 April 2014 the applicant lodged an appeal on points of law against the judgment of the Court of Appeal, but on 5 June 2014 the Supreme Court refused to examine it.

E. The applicant's living conditions, activities and social contact under the additional security measures

1. The Government's account

32. The applicant was kept in different cells over the relevant period, all measuring approximately 9.9 square metres. The Government provided photographs of the relevant cells and a list of the personal items the applicant had in his cells. According to the list, the applicant had had a television set in his cell since 26 July 2012. The applicant was authorised to wear his own clothes.

33. The applicant was able to have long-term and short-term visits from his next-of-kin. Between 10 August 2012 and 15 August 2013 he was authorised to have thirteen long-term visits (of up to twenty-four hours) to meet his wife and daughters and two short-term visits. On some occasions the visits were cancelled, as the visitors did not attend. During the period concerned he had one meeting with his lawyer.

34. The applicant had the right to make telephone calls and send letters. He could use the Internet to access legislation and could borrow books from the library.

35. He had an opportunity to spend one hour daily in the open air and do physical exercises alone in the prison exercise yard, which measured 22.7 square metres.

36. Between 5 September 2012 and 13 March 2013 the applicant participated in a social reintegration programme entitled "The Right Moment" (focusing on issues such as the mapping of problems, emotions and thoughts; expression and verbalisation of feelings; coping with conflict and tolerating different viewpoints) and between 27 March and 31 July 2013 in the "Anger Management" programme. Both programmes entailed discussions with a psychologist to analyse the covered topics.

37. Between 28 October 2012 and 4 August 2013 the applicant participated, on an individual basis, in musical activity under the guidance of a recreation leader (*huvijuht)*. According to the information provided by the Government, the activity took place between seven and ten times a month.

38. The applicant was under constant medical supervision. During the period from November 2006 to August 2016, he turned to the prison medical services with different health issues a total of 1102 times. On 23 August 2016 a psychiatrist issued a certificate stating that, based on a psychological assessment, the applicant did not have an irrational fear of forests (see paragraphs 41 and 58 below).

39. According to a statement (*õiend*) issued by the prison on 1 January 2017, between 11 February 2010 and 11 August 2013 the applicant's cell did not overlook a forest. He was placed in a cell with a forest view on 12 August 2013.

2. The applicant's account

40. The applicant submitted that he had not been allowed to take part in any social events or recreational activities, and had been totally prevented from associating with other inmates. He added that "during the first few years" (which includes the relevant period in the present case) in a locked isolation cell, he had not been able to use a television set or a radio and that these had been provided only "some two years" after his initial placement in the locked isolation cell. He submitted, however, a reply from X prison dated 10 October 2013, in which the authorities refused to grant him permission to have a radio (as every prison cell already had a built-in radio), but noted that he had been authorised to have a television and thus had been guaranteed sufficient access to information.

41. In a certificate (*tõend*) dated 16 August 2013 a psychiatrist asked for the applicant to be relocated to a cell without a forest view. In an opinion dated 23 August 2013 a clinical psychologist discouraged his placement in such cells as they might increase his feeling of loneliness and isolation, particularly at night.

42. With reference to his musical activity, the applicant submitted a document dated 1 December 2014 in which the X prison authorities explained that in relation to the incident of 11 February 2012, the applicant

had not been allowed to take part in musical or art activity, but added that such a right had been granted as of October 2014.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Relevant legislation

1. Imprisonment Act

43. Section 69 of the Imprisonment Act (*Vangistusseadus*) provides:

> "(1) Additional security measures shall be imposed on a prisoner who systematically violates the requirements of this Act or the internal rules of the prison, damages his or her health or is likely to attempt suicide or escape, or to a prisoner who poses a threat to other persons or security in the prison. Additional security measures may also be imposed for the prevention of serious offences.
>
> (2) The following additional security measures shall be permitted:
>
> 1) a restriction on a prisoner's freedom of movement and communication inside the prison;
>
> 2) a ban on a prisoner wearing his own clothes or using personal belongings;
>
> 3) a ban on a prisoner taking part in sports;
>
> 4) placement of a prisoner in a locked isolation cell;
>
> 5) use of means of restraint.
>
> (3) The application of additional security measures shall be terminated if the circumstances specified in subsection (1) of this section cease to exist.
>
> (4) Additional security measures shall be imposed by the prison service. In cases of emergency, additional security measures shall be imposed by the most senior prison officer present at the time."

2. Regulation No. 72 of the Minister of Justice, "Internal Prison Rules"

44. Section 8 of the Internal Prison Rules (*Vangla sisekorraeeskiri*) provides:

> **Section 8 – Movement of prisoners**
>
> "(1) A prisoner, except a prisoner in an open prison or the open wing of a prison, is not obliged to stay in a cell when engaged in reintegration activities. A prisoner may move around outside his or her cell within the limits of his or her wing for the time prescribed by the internal rules of the prison. The free time designated for movement within a prisoner's own wing must amount to at least four hours.
>
> ...
>
> (4) The right of movement established in subsection (1) does not apply to a prisoner who is in a punishment cell, locked isolation cell, separate cell before the completion of disciplinary proceedings in the event of a serious disciplinary violation, inpatient

facility of the prison medical or health-care unit, or temporarily in another prison in connection with a court hearing or the carrying out of a procedural measure ..."

45. Under section 45 of the rules, a prisoner is allowed at least one long-term visit every six months.

B. Relevant case-law

46. In a judgment of 2 June 2010 in case no. 3-3-1-33-10 the Supreme Court assessed the lawfulness of additional security measures (restrictions on freedom of movement and communication and placement in locked isolation cells). First, the court explained that when the grounds listed in section 69(1) of the Imprisonment Act existed, it was the discretionary choice of the prison whether to apply any additional security measures and, if needed, to choose a specific measure. In the light of this, the court's control was limited to deciding whether mistakes had been made in the exercise of that discretion (the same was repeated by the Supreme Court in a judgment of 6 May 2015 in case no. 3-3-1-84-14). The court found that additional security measures served a preventive or deterrent purpose and in deciding to apply them the prison authorities were anticipating a future situation. In the light of this, it was not always necessary to first verify the circumstances serving as the basis for applying additional security measures within disciplinary, misdemeanour or criminal proceedings. In order to apply such security measures, it was sufficient that the prison had developed a justified fear of potential harm. The court also stressed that after the application of additional security measures, the prison had the duty to assess whether the application of the measures continued to be justified and – if new circumstances so warranted – decide whether to discontinue the measures.

47. The importance of the regular verification of the existence of the grounds for the application of additional security measures was also highlighted in a Supreme Court judgment of 20 April 2011 in case no. 3-3-1-94-10. In that case, the court stressed that the longer the duration of additional security measures, the more thorough the reasoning for their application should be. It also noted that additional measures were applied for preventive or deterrent purposes, not for a punitive purpose (which was repeated in a Supreme Court judgment of 6 May 2015 in case no. 3-3-1-84-14).

48. In a judgment of 19 June 2012 in case no. 3-3-1-18-12 the Supreme Court noted that the assessment whether the application of security measures should be continued or ceased had to be systematic. In the case in question it had been impossible to ascertain whether such assessment had taken place.

III. RELEVANT INTERNATIONAL LAW AND PRACTICE

A. Recommendation Rec(2006)2 of the Committee of Ministers to member States on the European Prison Rules

49. On 11 January 2006 the Committee of Ministers of the Council of Europe adopted Recommendation Rec (2006) 2 to member States on the European Prison Rules, which replaced Recommendation No. R (87) 3 on the European Prison Rules accounting for the developments which had occurred in penal policy, sentencing practice and the overall management of prisons in Europe. The relevant rules concerning prison regime, contact with family, exercise and recreation, and special high security or safety measures are set out in the case of *Ramirez Sanchez v. France* [GC] (no. 59450/00, § 85, ECHR 2006-IX).

B. "Living space per prisoner in prison establishments: CPT standards"

50. On the basis of standards which have been frequently used in a large number of European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) country visit reports, the CPT decided in November 2015 to provide a clear statement of its position and standards regarding minimum living space per prisoner. This was the aim of the document entitled "Living space per prisoner in prison establishments: CPT standards" (CPT/Inf (2015) 44 of 15 December 2015).

51. In that document, the CPT considered that the recommended minimum living space in a single-occupancy cell should be 6 square metres, excluding the sanitary facility.

C. Extract from the 21st General Report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

52. An extract on the "Solitary confinement of prisoners" from the 21st General Report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), published in 2011 (CPT/Inf(2011)28-part2), states:

> **"(c) Administrative solitary confinement for preventative purposes**
>
> The law in most European countries allows for an administrative decision to place into solitary confinement prisoners who have caused, or are judged likely to cause, serious harm to others or who present a very serious risk to the safety or security of the prison. This may be for as short as a few hours, in the case of an isolated incident, or for as long as a period of years in cases involving prisoners who are considered as particularly dangerous and to continue to pose an imminent threat.

> This is potentially the longest lasting type of solitary confinement and often the one with the fewest procedural safeguards. It is therefore crucial that there be rules to ensure that it is not used too readily (e.g. as an immediate response to every disciplinary infraction pending adjudication), too extensively or for too lengthy periods... .”

THE LAW

ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

53. The applicant complained, relying on Article 3 of the Convention, that the conditions of his detention under the additional security measures, in particular the use of handcuffs on him at all times when he was outside of his cell and his being banned from using the prison’s sports facilities and exercising, the restriction on his movement and communication with others and the ban on participating in social and family events, had amounted to inhuman and degrading treatment.

Article 3 of the Convention reads as follows:

> “No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

A. Admissibility

54. The Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. Parties’ submissions

(a) The applicant

55. The applicant considered that there had been an interference with his rights under Article 3 of the Convention. He claimed that there had been no factual circumstances to warrant the application of additional security measures and that the decisions prolonging those measures had not been substantiated and had made reference to time-barred violations.

56. The applicant did not deny that the incident of 11 February 2012 had taken place, but considered that such an outcome had been highly predictable for the prison authorities. It had been the result of a vindictive decision to relocate him from one section to another (see paragraph 7

above), despite the prison authorities having been aware that he had an unresolved disagreement with an inmate in the new wing. He also claimed that the information about the threats made over the telephone to the Ministry of Justice was untrue (see paragraph 14 above).

57. The applicant submitted that under the restrictive measures he had not been allowed to take part in any recreational activities (see paragraph 42 above) or social events with families, or have a television in his cell (see paragraph 40 above). He had made requests for social visits, but these had been denied. He was, however, unable to prove having made the requests as the prison authorities had not issued him with copies of them. In any event, the prison authorities had not provided any good reasons why he had not been allowed to attend a family day event. Other prisoners had not been allowed to talk to him either, facing disciplinary sanctions if they did. He claimed that the cell had been smaller than suggested by the Government (see paragraph 32 above).

58. The applicant noted that the isolation resulting from the security measures had had harmful effects on his mental health – his doctors had diagnosed him with hylophobia (an irrational fear of forests, as he could see one from his cell window) and he had attempted to kill himself. His doctor, psychiatrist and supervision officer had all stated that the isolation was burdensome on his mental health and that the restrictions should be lifted.

59. The applicant furthermore submitted that he had been subject to strip searches on a daily basis, as had members of his family when they had come to visit.

60. The applicant considered that the application of additional security measures had been disproportionate – the prison authorities could have simply relocated him to the wing where he had initially been held, as he had had friendly relations with all the inmates. In any event, the use of handcuffs in a situation where he had already been effectively isolated had been unlawful.

(b) The Government

61. The Government submitted that the applicant had not been subjected to inhuman or degrading treatment. They argued that the additional security measures had had a legal basis – section 69 of the Imprisonment Act (see paragraph 43 above) – and had served the legitimate purpose of ensuring the security of the prison officers and other prisoners and preventing probable future offences. The Government noted that the prison authorities were obliged to protect the life and health of all persons in prison, and could not allow, due to a failure to apply the necessary security measures, a further assault to be committed. Such a failure would be seen as a violation of the positive duty to take appropriate steps to safeguard the lives of those within their control. The preventive aim of additional security measures and the

prison's discretion when applying them had been confirmed by the domestic case-law (see paragraphs 46 and 47 above).

62. In deciding to apply and prolong additional security measures, the prison had taken into account the most recent actions of the applicant (see paragraphs 8, 14 and 25 above), his criminal record from the time before he had been sentenced to life imprisonment, the criminal offence for which he was serving the life sentence, his overall conduct in prison (see paragraphs 12 and 16 above) and his personal risk assessment (see paragraphs 13 and 25 above). In assessing the applicant's overall criminal conduct, the Government noted that the applicant's crimes had become more severe over time, extending from crimes against property and hooliganism to those involving violence, physical abuse and extortion, including an aggravated murder, attacking a prison officer, and handling narcotic substances in prison. It was irrelevant whether the violations had become time-barred (see paragraph 55 above) as reference to them had primarily been made to demonstrate the applicant's character. It had been shown that the applicant had good organisational skills, while his behaviour was highly unpredictable and thus the threat he posed was realistic and could materialise at any time. The fact that the applicant blamed the prison authorities for the incident on 11 February 2012 (see paragraph 56 above) showed that he was incapable of taking responsibility for his actions and that he could offend again in situations where he did not get his way. The information that the applicant had made threats during a telephone call to the Ministry of Justice (see paragraph 14 above) had been established in the disciplinary proceedings conducted by the prison.

63. The Government noted that the application of additional security measures had been directly linked to the applicant's behaviour and specific risk profile. Applying any of those measures alone would not have been efficient, and thus it had been important for the different restrictions aimed at limiting contact between the applicant and other inmates to complement each other.

64. The Government pointed out that in order to balance the above-mentioned restrictions the applicant had had different opportunities to maintain social contact and engage in hobbies and self-development. He had been able to have long-term and short-term visits from members of his family, have contact with a psychologist and recreation leader in the context of social reintegration programmes and individual musical activity (see paragraphs 33, 36 and 37 above) and communicate with his prison contact person. He had also had an opportunity to spend one hour daily in the open air and exercise (see paragraph 35 above). He had also been permitted to wear his own clothes and use his personal belongings (see paragraph 32 above). The Government stressed that the living conditions in the applicant's cell had been the same as for the other prisoners in the same wing and that his placement in a locked isolation cell could not be equated

to being placed in a punishment cell or imposition of a punishment cell regime. The applicant's situation had not resembled what the Court had defined as complete sensory isolation or total isolation. During the relevant period, the applicant had not been placed in a cell with a forest view (see paragraph 39 above).

65. The Government stressed that the need for prolonged application of the additional security measures had been reviewed every six months (see paragraphs 17 and 25 above) and substantive reasons had been given for each prolongation, relying on, *inter alia*, the new circumstances that had emerged in the meantime (see paragraphs 14 and 25 above).

66. The Government admitted that the applicant had not been allowed to attend the so-called family day on 25 November 2012 at the prison, but explained that in view of the large number of people present at that event, including children, the applicant's participation would have defeated the purpose of imposing additional security measures on him.

67. Regarding the applicant's mental health, the Government noted that he had a long history of self-harm (making reference to sixteen occasions between 2002 and 11 February 2012), submitting that he had injured himself to protest against the system and manipulate the decisions being made about him. According to the extracts from the applicant's medical file issued by the head of the prison medical unit, he had not been diagnosed with a permanent psychiatric disorder requiring treatment (see paragraph 38 above). Moreover, the documents presented by the applicant with reference to his medical problems, including his fear of forests, all related to a period outside the scope of the present case. The medical specialists who had treated him had not considered the application of security measures to be contraindicated. His suicide attempts could not therefore be directly linked to the application of additional security measures during the period in question. In any case, the applicant had been under constant medical supervision (see paragraph 38 above).

68. The Government also pointed out that the applicant had not raised the issue of strip searches either at domestic level or in his initial application to the Court.

2. The Court assessment

(a) General principles

69. Article 3 of the Convention enshrines one of the most fundamental values of democratic societies. Even in the most difficult of circumstances, such as the fight against terrorism or crime, the Convention prohibits in absolute terms torture or inhuman or degrading treatment or punishment (see *Ramirez Sanchez,* cited above, § 115).

70. Ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum depends on

all the circumstances of the case, such as the duration of the treatment, its physical or mental effects and, in some cases, the sex, age and state of health of the victim (see *Muršić v. Croatia* [GC], no. 7334/13, § 97, ECHR 2016). In assessing the evidence on which to base the decision whether there has been a violation of Article 3, the Court adopts the standard of proof "beyond reasonable doubt". However, such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see *Ramirez Sanchez,* cited above, § 117).

71. The Court notes that measures depriving a person of his liberty may often involve an inevitable element of suffering or humiliation connected with a given form of legitimate treatment or punishment (*Ramirez Sanchez,* cited above, paragraph 119). However, to fall under Article 3, the suffering and humiliation involved must in any event go beyond that inevitable element of suffering and humiliation connected with detention. The State must ensure that a person is detained in conditions which are compatible with respect for human dignity, that the manner and method of the execution of the measure do not subject him or her to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his or her health and well-being are adequately secured (see *Muršić,* cited above, § 99, and the cases cited therein). Further, when assessing conditions of detention, account has to be taken of the cumulative effects of those conditions, as well as the specific allegations made by the applicant (see *Ramirez Sanchez,* cited above, § 119).

72. The Court reiterates that solitary confinement is not in itself in breach of Article 3. Whilst extended removal from association with others is undesirable, whether such a measure falls within the ambit of Article 3 of the Convention depends on the particular conditions, the stringency of the measure, its duration, the objective pursued and its effects on the person concerned (see *Rohde v. Denmark*, no. 69332/01, § 93, 21 July 2005, and *Rzakhanov v. Azerbaijan*, no. 4242/07, § 64, 4 July 2013). A prohibition of contact with other prisoners for security, disciplinary or protective reasons does not in itself amount to inhuman treatment or punishment (see *Ramirez Sanchez*, cited above, § 123, and the cases cited therein). On the other hand, complete sensory isolation, coupled with total social isolation, can destroy the personality and constitutes a form of inhuman treatment which cannot be justified by the requirements of security or any other reason (ibid., § 120).

73. Solitary confinement, even in cases entailing only relative isolation, cannot be imposed on a prisoner indefinitely and should be based on genuine grounds, ordered only exceptionally with the necessary procedural safeguards and after every precaution has been taken (see *Rzakhanov,* cited above, § 73). In order to avoid any risk of arbitrariness, substantive reasons

must be given when a protracted period of solitary confinement is extended. The decision should thus make it possible to establish that the authorities have carried out a reassessment that takes into account any changes in the prisoner's circumstances, situation or behaviour (see *Csüllög v. Hungary*, no. 30042/08, § 31, 7 June 2011).

(b) Application of the above principles in the present case

74. The Court first notes that the domestic law allows using additional security measures for preventive purposes when a prisoner poses a threat to other inmates or prison officers. However, the application of such measures is only allowed where circumstances warrant it (see paragraphs 43 and 46 to 48 above).

75. In the present case, four out of the five security measures allowed by domestic law were applied. The applicant had to stay in a locked isolation cell, his freedom of movement and communication were restricted, he was not allowed to use the prison's sports facilities, and he had to be handcuffed whenever anyone entered his cell. He was allowed to wear his own clothes and use his personal belongings.

76. The Court finds that contrary to the applicant's arguments (see paragraphs 55 and 56 above), the prison had well-founded reasons to believe that he could pose a threat to other prisoners and the prison officers. Not only had the applicant attacked another prisoner with a scissor blade, but – during the period under review in the present case when the security measures were already being applied – he had made threats over the telephone to a Ministry of Justice official about assaulting prison officers. Moreover, the prison had information that the applicant planned to "settle scores" with those he had had disagreements with (see paragraphs 8, 14, 25, 30 and 62 above). It should be noted that apart from those concrete incidents, the applicant had a history of violent behaviour and, in accordance with his personal risk assessment, he was considered to be aggressive and have a low tolerance to stress.

77. Next, the specific conditions under which the applicant was held during the application of additional security measures must be examined.

78. As to the physical conditions, the Court notes that the applicant did not complain about the general prison conditions (such as heating, lighting, ventilation, hygiene conditions, food and so on). The Government submitted that although the applicant was held in different cells during the relevant period, they were all of the same size, that is to say approximately 9.9 square metres (see paragraph 32 above). According to the security measures, the applicant was in his cell alone. Although the applicant asserted that the cell was smaller than suggested by the Government (see paragraph 40), he did not specify that claim or argue that the cell had been smaller than 6 square metres, the size the CPT considers advisable for single-occupancy cells (see paragraph 51 above). Despite not being allowed

to use the prison's other sports facilities, the applicant was allowed to spend one hour daily outdoors in the prison exercise yard.

79. Regarding the social conditions, the applicant was prevented from associating with other prisoners. He claimed, in addition, that he had not been allowed to participate in any recreational activities or social events with families. The Court finds it convincing, based on the detailed information provided by the Government about the social reintegration programmes, that the applicant was able to participate in them on a regular, albeit individual, basis, and have discussions with a psychologist on those occasions (see paragraph 36 above). In the light of contradictory information submitted by the parties, the Court is unable to verify whether the applicant was allowed to participate in musical activity (see references to information provided by the Government in paragraph 37 and by the applicant in paragraph 42 above). The applicant did not contest the information provided by the Government that he was able to use the Internet (with access to limited websites) and borrow books in prison. Although the applicant claimed that he was not allowed to have a television in his cell, the Court does not find this claim convincing in the light of the information provided by the Government (see reference to a list of the items in the applicant's cell in paragraph 32 above) and the applicant himself (see reference in paragraph 40 above to the document submitted by the applicant from which it can be concluded that he had been authorised to have a television).

80. The applicant was also allowed to have long-term and short-term visits, make telephone calls and send letters. During the relevant period, thirteen long-term visits (of up to twenty-four hours) to meet his wife and daughters and two short-term visits had been authorised, although not all of them took place. He was also able to meet his lawyer (see paragraph 33 above). Against that background, the Court finds it established that the applicant could have regular contact with his family and does not consider it necessary to assess his claim that he had submitted more requests for social visits which had been turned down (see paragraph 57 above). In any event, the Government did not deny that the applicant had not been allowed to participate in the family day in 2012 (see paragraph 66 above).

81. As to the medical conditions in the prison and the impact of additional security measures on the applicant, the Court acknowledges that restricted movement and communication inside a prison entail a risk of harmful effects upon mental health. This is particularly relevant in the present case, where the applicant had previously demonstrated a tendency to self-harm. However, in the light of the information provided by the Government, the Court accepts that the applicant had been under regular medical supervision (see paragraph 38 above). Moreover, with regard to his references to a fear of forests, the Court notes that the applicant was not placed in a cell overlooking a forest during the relevant period (see

paragraph 39 above). All the medical documents concerning this problem concerned a period outside the scope of the present case. In any event, although the medical specialists recommended not placing the applicant in a cell overlooking a forest, they did not ask for the additional security measures to be lifted altogether (see paragraph 41 above).

82. The Court will not address the applicant's claim about having been subjected to strip searches, as this was not raised before the domestic courts.

83. In the light of the above-mentioned circumstances pertaining to the physical, social and medical aspects of the applicant's detention under the special security measures, the Court finds that although he was forced to be alone in his cell for most of the day and his outdoor exercise was limited to one hour, he could have visits from his family, participate in social reintegration programmes and have contact with a psychologist and other prison medical staff. The Court concludes that he cannot be considered to have been in complete sensory isolation or to have been totally isolated from social contact, and that his isolation was partial and relative (see *Ramirez Sanchez*, cited above, § 135; *Rzakhanov,* cited above, § 72; and *Csüllög*, cited above, § 33).

84. Although the simultaneous application of different security measures undoubtedly enhanced the effect of isolation, the Court notes that the prison authorities provided justification for each of the measures in the light of their purported objective, namely to prevent the realisation of the potential threat the applicant was considered to pose (compare and contrast *Csüllög*, cited above, § 34, where some of the restrictions could not have been related to the purpose of the security measures, and *Horych v. Poland*, no. 13621/08, § 99, 17 April 2012, where the application of handcuffs was considered to be a matter of everyday procedure unrelated to any specific circumstances concerning the prisoner's past or current behaviour). The assumption of the applicant posing a risk of causing serious harm was based on the regular personal risk assessments and on his previous behaviour, which included violence or the threat of violence against other prisoners and prison officers (see paragraphs 12, 13 and 25 above; compare and contrast *Rzakhanov*, cited above, § 74, where the Government did not convincingly show why it was necessary to separate the applicant from other prisoners, and where one of the reasons cited was that the prisoner had sent unsubstantiated complaints to various authorities; and *Csüllög*, cited above, § 36, where there was no evidence that the measure had been applied on the basis of the applicant's personal characteristics). The decisions to prolong the application of such measures were based on objective concordant evidence specific to the applicant and cannot thus be considered to have been made arbitrarily. Against that background, the Court also finds convincing the Government's argument that as the aim of the security measures was to prevent the applicant harming either other prisoners or the prison officers, applying just one of the measures (for example placing him

in a cell alone) would not have been effective without simultaneous application of the others (for example, limiting his free movement and communication with other prisoners).

85. As to procedural safeguards, the Court observes that the applicant was afforded a possibility to express his opinion about the prolongation of the additional security measures and that the decisions were served on him (see paragraphs 11 and 24 above), thus making it possible for him to challenge them in court (compare and contrast *Onoufriou v. Cyprus*, no. 24407/04, § 71, 7 January 2010). The decisions were reasoned and the application of additional security measures was reviewed on a regular basis every six months (see paragraphs 17 and 25 above). The Court highlights, in particular, that when deciding to prolong the security measures, the prison authorities did not simply rely on the same set of information about the applicant's past behaviour, but took into account new circumstances which had emerged while the security measures had been applied (see paragraphs 14 and 25 above; compare and contrast *Razvyazkin v. Russia*, no. 13579/09, § 105, 3 July 2012, and *Csüllög*, cited above, § 37).

86. In the light of the above-described security measures resulting in relative isolation of the applicant, and taking into account the procedural safeguards when applying them, the Court concludes that there has been no violation of Article 3 of the Convention.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been no violation of Article 3 of the Convention.

Done in English, and notified in writing on 13 November 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı	Robert Spano
Deputy Registrar	President