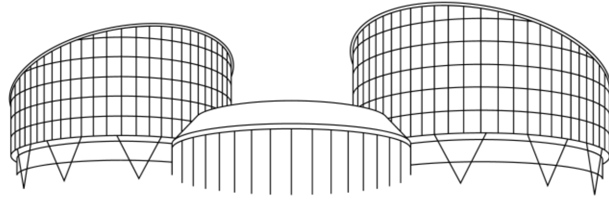

FIRST SECTION

CASE OF ONOUFRIOU v. CYPRUS

(Application no. 24407/04)

JUDGMENT

STRASBOURG

7 January 2010

FINAL

07/04/2010

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

In the case of Onoufriou v. Cyprus,

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

Christos Rozakis, *President*,
Anatoly Kovler,
Elisabeth Steiner,
Dean Spielmann,
Sverre Erik Jebens,
Giorgio Malinverni, *judges,*
Michael Fotiou, ad hoc *judge*,
and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 10 December 2009,

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

PROCEDURE

1. The case originated in an application (no. 24407/04) against the Republic of Cyprus lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Cypriot national, Mr Andreas Onoufriou (“the applicant”), on 14 April 2004.

2. The applicant was represented before the Court by Georgios E. Konnaris & Co., a firm of lawyers based in Limassol. The Cypriot Government (“the Government”) were represented by their Agent, Mr P. Clerides, Attorney-General of the Republic of Cyprus.

3. The applicant complained, in particular, of the conditions of his solitary confinement, including restrictions on his contact with his family, and the monitoring of his correspondence.

4. On 22 May 2006 the President of the First Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

5. Mr George Nicolaou, the judge elected in respect of Cyprus, withdrew from sitting in the Chamber (Rule 28). The Government accordingly appointed Mr Michael Fotiou to sit as an *ad hoc* judge (Article 27 § 2 of the Convention and Rule 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1951 and is currently detained in Nicosia Central Prison. He is serving concurrent eighteen-year sentences pursuant to his conviction for two counts of attempted murder.

7. On 5 September 2003 the applicant was permitted to leave detention on twenty-four hour leave granted by the prison director. He did not return to the prison when his leave expired. Following a search to trace his whereabouts, he was arrested on 21 September 2003. At the time of his arrest he was in possession of a gun and cartridges and was wearing a bullet-proof vest and a woman's wig. He was transferred to the maximum security wing of the prison and placed in solitary confinement. He was thus confined until 7 November 2003, that is, for a total of 47 days.

A. The conditions of the applicant's detention in solitary confinement

8. The parties' submissions concerning the conditions of the applicant's detention during the period of his solitary confinement differed.

1. The Government's description of the conditions of confinement

9. The Government agreed that the applicant had been detained in the prison's maximum security wing but maintained that he was detained in a normal cell. The dimensions of the cell were 2.8 metres by 2.1 metres, that is, 5.88 square metres. It was furnished with a bed, a cupboard and a table. The cell had two windows: an exterior one (0.8m by 0.6m) and a smaller one above the cell door (0.4m by 0.4m). The cell was opened about three times a day for a total of about an hour. This time was used for personal hygiene purposes and taking meals. It was the applicant's responsibility to clean his cell and he was provided with all the necessary equipment. He had regular direct contact with prison personnel. Moreover, newspapers had been provided in the wing and he had access to books from the prison library. There was a television set in the wing corridor to which the applicant could listen and he would have been provided with a radio if he had requested one.

10. During the applicant's confinement he had spent considerable time outside prison when attending court hearings on 2, 10, 13, 16, 22 and 29 October and 4 and 6 November 2003. He was seen on four occasions by the prison doctor (7, 18, 20 and 31 October 2003). He was also visited by a

welfare officer on 14 October 2003 and was seen by the prison psychologist on 3 and 30 October 2003.

11. Although the applicant was allowed to send letters to his family and friends twice a week, he did not attempt to send any such letters. He did not ask to make or receive telephone calls. Visits from family members while the applicant was in solitary confinement were not permitted but during the applicant's visits to the court, he could meet with his family and friends, and was in fact supplied with food, soft drinks and clothes by his family which he was allowed to take back to prison. On one occasion, a mobile telephone given to the applicant by a family member was confiscated upon his return to prison after a hearing.

2. The applicant's description of the conditions of confinement

12. The applicant disputed the Government's description of the conditions of his confinement. He alleged that following his return to prison on 21 September 2003 he was confined in a cold, damp cell of a maximum of five square meters without food, water or suitable clothing. The cell had no external window and the window of the cell door was considerably smaller than the Government had indicated. The applicant was excessively restricted in his ability to use the toilet or have a shower: for the first four days of his solitary confinement he was forced to use an empty water bottle to urinate and nylon bags for other needs. These were provided to him by a prison officer through the small window in the cell door. Due to the cold, his arm and shoulder had frozen and he suffered from pain but the doctor was not allowed by the prison authorities to provide him with painkillers. He was nevertheless given an anti-inflammatory gel by the doctor using her own funds. Relying on the prison logbook submitted to the Court by the Government, the applicant stated that he had not been allowed to go to the toilet prior to 24 September 2003 or to have food or the opportunity to shower before 25 September 2003, although he was given bottled water and an apple from time to time through his small cell window by a prison officer. He had no access to newspapers, books or television. Further, he was not regularly seen by a doctor and he was not allowed regularly to exit his cell for half an hour in the morning and half an hour in the afternoon, as required by the relevant regulations.

13. While in solitary confinement, the applicant was not permitted to have visits from his family or to make telephone calls. As for the Government's allegations that he had not asked to make telephone calls, the applicant replied it was not the practice of the prison authorities to give formal decisions refusing requests to make telephone calls in writing, there were no telephone booths in the maximum security block and, in general, prisoners were not allowed to receive calls from outside the prison. He had no contact with his family in the prison during the period of his solitary confinement and no contact was possible during his court visits. In

particular, when he attended hearings at the district court in Limassol, he was kept at the Limassol central police station's cells. It was only after the period of his solitary confinement that he could see his family and friends at the court's hearings.

14. The applicant also alleged that the maximum security wing was used to threaten or punish prisoners given the conditions of detention there and, in particular, the fact that another prisoner would beat up prisoners without any attempt by the authorities to protect them. The applicant alleged that he had been ill-treated in this manner on two occasions but did not provide further details.

3. The prison logbook

15. According to the entries in the prison logbook which was submitted to the Court by the Government, the applicant was returned to prison on 21 September 2003. On 24 September 2003, the logbook records that the applicant left his cell to use the toilet after special notification had been given to the security direction ("*φρουραρχείο*"). The following day, the entry in the logbook records that he met with the prison director and was given food.

16. Although the logbook records that on some days the applicant used the toilet on several occasions, on others it indicates that he only used the toilet once. On 4 October 2003, there is no record of the applicant leaving his cell to use the toilet. Access to shower facilities appears to have been sporadic: at times he showered every couple of days but on other occasions, according to the logbook, he did not leave his cell to shower for two weeks. Similarly, the prison logbook records that on some days the applicant was given two or three meals whereas on others, it would appear that he received only one. On 4 October 2003, there is no entry recording any meal given to the applicant.

17. The logbook indicates that the applicant saw a prison psychologist four times: on 23 and 26 September and on 3 and 31 October 2003. He saw the prison doctor on 7 and 20 October 2003. He met with the welfare officer on 14 October 2003. On 31 October 2003, he refused to attend a scheduled visit to see a surgeon at the General Hospital

18. The logbook records that the applicant attended court on seven occasions: on 10 October 2003 for about six hours; on 13 October 2003 for about five hours; On 16 October 2003 for about six hours; on 22 October 2003 for about eight hours; on 27 October 2003, for about one and a half hours; on 29 October 2003 for about seven and a half hours; and on 4 November 2003, for about two hours.

19. According to the logbook, on 1 November 2003, the applicant met a member of the Prisons Board. On 5 November 2003, he was taken to meet with the Prisons Board and was away from his cell for 20 minutes.

20. There are two entries in the logbook recording other relevant events. On 17 October 2003, he was taken to a conference room, where he remained for one hour and twenty minutes. On 4 November 2003, he was accompanied by a prison officer to visit a Mr A.T. and was away for about half an hour.

21. Although the applicant was in solitary confinement until 7 November 2003, only entries from the logbook up to 5 November 2003 have been submitted by the Government.

B. Criminal and Disciplinary Proceedings

22. On the date of the applicant's arrest following his failure to return to prison, a police investigation began into alleged offences committed while the applicant was at liberty. According to the Government, this was concluded on 11 November 2003 with the filing of charges against the applicant for the commission of various offences. The applicant maintained that he was charged on 10 October 2003.

23. In parallel, on 5 November 2003, the applicant was charged with several disciplinary offences concerning the breach of the terms of his leave. However, the disciplinary proceedings were not pursued.

24. On 19 July 2005 the Limassol Assize Court convicted the applicant of escaping from custody and of other offences associated with his escape. The prison director stated in his evidence before the court that the applicant was placed in solitary confinement in order to protect him from other prisoners who were hostile towards him because of restrictions imposed in the prison affecting everyone as a result of the applicant's escape. The court noted in its judgment that the applicant had entered a plea of not guilty in respect of the disciplinary offences but that the proceedings were not pursued, no witnesses were heard and no sentence was imposed. Given that there had been no trial, no verdict and no imposition of a sentence in the disciplinary proceedings, the court concluded that the applicant's confinement could not be treated as a disciplinary sentence.

25. The applicant lodged an appeal against his conviction before the Supreme Court.

26. On 11 December 2007 the Supreme Court allowed the applicant's appeal against his conviction of the offence of escaping from custody given that, at the relevant time, he had been on temporary release and had merely failed to return to prison at the expiry of his release period.

C. Ombudsman's report of 21 November 2003 (no. 1355/2003)

27. The applicant, in a letter to the office of the Commissioner of Administration ("the Ombudsman") dated 6 October 2003, complained about his detention for an excessive period of time in the maximum security

wing, alleging in particular that during this period he was not able to have visits or contact with his family by telephone or correspondence and that he was only allowed to leave his cell in order to go to the toilet, have a bath or pick up his food tray. He subsequently complained that his letter addressed to the Ombudsman dated 6 October 2003 was delivered late, after having been sent by the prison director to the Director General of the Ministry of Justice.

28. According to the Ombudsman's report of 21 November 2003 the applicant had been confined to a cell in the security wing for 47 days. Having been contacted by the Ombudsman, the prison authorities stated that the applicant had been put in solitary confinement for his own protection given the possibility of retaliation by other prisoners due to the restrictive measures imposed on them as a result of the applicant's failure to return from home leave. The prison authorities confirmed that the applicant was not permitted any visits, telephone conversations or letters and that moreover, he was not allowed to exit his cell except in order to wash himself, to go to the toilet and to get his food. It was further noted that although the Senior Prison Inspector had given instructions on 31 October 2003 that the applicant be returned to normal detention, the applicant was kept confined to his cell until 7 November 2003 as the instructions had not been registered in the records of the wing but had merely been noted on a piece of paper which had been misplaced.

29. As regards the applicant's letter to the Ombudsman dated 6 October 2003, the report noted that a copy of that letter, as well as copies of three other letters addressed to recipients other than the prison authorities, had been sent by the prison director to the Director General of the Ministry of Justice in order to seek instructions as to whether the particular letters should be sent to the intended recipients. The Ombudsman received the letter addressed to her on 5 November 2003.

30. The Ombudsman in her report observed that it did not appear from the file that the confinement of the applicant had been of a disciplinary nature. She also noted that had the applicant's confinement been a preventive measure or a measure for the protection of the applicant, as claimed by the prison authorities, then under regulation 151(5) of the Prison (General) Regulations 1997 ("Prison Regulations" – see further "Relevant domestic law and practice", below) the written approval of the prison director would have been required. No such approval had been given. The Ombudsman therefore considered that the applicant's confinement was a punitive measure.

31. Moreover, the Ombudsman was not convinced that the denial of the applicant's right to receive visits, correspondence and telephone contact, for example with his eight year old son, had aimed to protect the applicant from his fellow inmates. She further observed the following:

> "It is noted that although in theory the total seclusion of a person in combination with his total social isolation is not acceptable, in practice the European Court of Human Rights and the European Commission have tolerated this type of total confinement in exceptional circumstances. However, this was done in cases concerning particularly dangerous terrorists who had been detained pending their trial and who had been allowed to go into the prison yard at some specific time in the day."

32. The Ombudsman concluded that the applicant's confinement for a total period of 47 days with no right to exit his cell for one hour a day as provided for in the Prison Regulations, in combination with the denial of the applicant's right to have contact with family and friends, was in breach of the Prison Regulations and constituted a violation of the applicant's rights under Articles 3 and 8 of the Convention.

33. As regards the applicant's complaint concerning the monitoring of the letter he sent to her, the Ombudsman emphasised the importance of allowing prisoners direct and uninhibited access to her office. In this connection she referred, *inter alia,* to the European Prison Rules and a report by the Council of Europe's Committee for the prevention of torture (see further "International materials", below), as well as the case of *Silver and others v. the United Kingdom,* (no. 5947/72; 6205/73; 7052/75; 7061/75; 7107/75; 7113/75; 7136/75, Commission's report of 11 October 1980, Decisions and Reports (DR) 9, p. 56).

D. Ombudsman's report of 15 March 2004 (no. 143/2004)

34. On 1 January 2004 the applicant submitted an additional complaint to the Ombudsman against the prison authorities. He complained that the prison authorities had, on 20 December 2003, refused to allow him to give his father, who had visited him in prison, a letter addressed to the Ombudsman requesting her to send him copies of past correspondence between them. The applicant claimed that he did not want the contents of his letters to the Ombudsman to be monitored by the prison personnel and that for this reason he had decided to send the letter through his father. He had complained on 30 December 2003 to the prison director.

35. The Ombudsman, in a report dated 15 March 2004, repeated that prisoners should be allowed unrestricted access to her office. She found that there had been unjustified difficulties and unnecessary obstacles in the direct and unhampered communication of the applicant with her office that had negatively affected the exercise of his rights. She noted that on 3 February 2004, at a meeting held in the Ministry of Justice, it was decided that a designated letter box would be placed in the central prisons to allow prisoners, freely and without procedural or substantive restrictions, to submit complaints to the Ombudsman concerning their conditions of detention.

E. Refusal of pardon

36. By letter of 22 May 2004 the applicant informed the Court that in May 2004, on the basis of a recommendation by the Attorney-General of Cyprus, fifty-four prisoners were granted an official pardon by the President and were consequently released. The applicant was not among the fifty-four.

II. RELEVANT DOMESTIC LAW AND PRACTICE

37. The Cypriot Constitution provides, in so far as relevant, as follows:

Article 8

"No person shall be subjected to torture or to inhuman or degrading punishment or treatment."

Article 15

"1. Every person has the right to respect for his private and family life.

2. There shall be no interference with the exercise of this right except such as is in accordance with the law and is necessary only in the interests of the security of the Republic or the constitutional order or the public safety or the public order or the public health or the public morals or for the protection of the rights and liberties guaranteed by this Constitution to any person."

Article 17

"1. Every person has the right to respect for, and to the secrecy of, his correspondence and other communication if such other communication is made through means not prohibited by law.

2. There shall be no interference with the exercise of this right except in accordance with the law and only in cases of convicted and unconvicted prisoners and business correspondence and communication of bankrupts during the bankruptcy administration."

Article 146

"1. The Supreme Constitutional Court shall have exclusive jurisdiction to adjudicate finally on a recourse made to it on a complaint that a decision, an act or omission of any organ, authority or person, exercising any executive or administrative authority is contrary to any of the provisions of this Constitution or of any law or is made in excess or in abuse of powers vested in such organ or authority or person.

2. Such a recourse may be made by a person whose any existing legitimate interest, which he has either as a person or by virtue of being a member of a Community, is adversely and directly affected by such decision or act or omission.

3. Such a recourse shall be made within seventy-five days of the date when the decision or act was published or, if not published and in the case of an omission, when it came to the knowledge of the person making the recourse.

4. Upon such a recourse the Court may, by its decision-

(a) confirm, either in whole or in part, such decision or act or omission; or

(b) declare, either in whole or in part, such decision or act to be null and void and of no effect whatsoever, or

(c) declare that such omission, either in whole or in part, ought not to have been made and that whatever has been omitted should have been performed.

...

6. Any person aggrieved by any decision or act declared to be void under paragraph 4 of this Article or by any omission declared there under that it ought not to have been made shall be entitled, if his claim is not met to his satisfaction by the organ, authority or person concerned, to institute legal proceedings in a court for the recovery of damages or for being granted other remedy and to recover just and equitable damages to be assessed by the court or to be granted such other just and equitable remedy as such court is empowered to grant."

38. Regulations 114 and 116 of the Prison Regulations deal with the contact rights of prisoners (correspondence, telephone calls and visits). In so far as relevant, they provide as follows:

Regulation 114

"1. A prisoner who has been sentenced to imprisonment can send letters to his family members, associates and friends twice a week, provided he submits these letters beforehand for examination by the competent officer in accordance with the provisions of the present regulations.

It is provided that the director can allow a prisoner to send more letters, if in his judgment this will help him to maintain beneficial contacts with the outside world.

2. There is no restriction on the number of letters a prisoner can receive in prison.

3. The prisoner can, if a direct need is shown, request permission from the director to contact by telephone, or to ask the competent prison officer to contact on his behalf, his lawyer or members of his family as well as professional or other associates for the settlement of personal, family and other matters in abeyance or differences ..."

Regulation 116

"1. Every prisoner is allowed to have visits by members of his family, relatives or friends up to six times a month ..."

39. Regulation 115 of the Prison Regulations deals with the monitoring of the correspondence of prisoners. The relevant provisions provide as follows:

Regulation 115 (2)

"The content of telephone calls or letters is monitored in cases where in the director's view such control is necessary for security reasons or for preventing the commission of a new offence or for any other justifiable reason."

Regulation 115 (5)

"The privilege of correspondence or telephone contact can be suspended following an order by the director in the case of a disciplinary offence by the prisoner."

Regulation 115 (6)

"Letters addressed by prisoners to any official authority of the Republic or to politicians or to the mass media are always sent through the director."

Regulation 115 (7)

"In the event that the director ascertains that their content does not come within the competence of the authority or person it is addressed to, or that in the letters improper or abusive language is used, or malicious allegations or unsubstantiated accusations are included against anyone or an attempt is made to distort facts or information concerning the security and in general the functioning of the prisons is revealed, the director can, in the interests of public security or public order or public morals or the protection of the reputation or rights of others or to prevent the revelation of confidential information or to preserve the authority and impartiality of the judiciary, prohibit the sending of these letters. The director informs the prisoner of his decision.

It is provided that prisoners can contact the Prisons Board by means of letters without any monitoring of their content by the prison authorities."

40. The Prison Regulations concerning solitary confinement provide, in so far as relevant, as follows:

Regulation 151(1)

"The prison director can, when he deems it appropriate, order the confinement or isolation of a prisoner for such period as he considers necessary for the purposes of

(a) preservation of discipline and order;

(b) protection of the interests of the prisoner himself or of other prisoners;

(c) confinement or isolation of violent prisoners, who by their behaviour cause problems and intimidate other prisoners;

(d) discipline ...”.

Regulation 151(5)

“The extension of the confinement of the prisoner in a special cell or isolated space (apart from the wing in which he resides for preventive and not disciplinary reasons) for over twenty-four hours requires the written approval of the director ... Prisoners under confinement or isolation have a right to exit the place of confinement or isolation for half an hour in the morning and half an hour in the afternoon.”

Regulation 155

“A prisoner who is to be accused of a disciplinary offence may be confined to his individual cell or a special cell, according to the situation and the seriousness of the offence, until the examination of the facts of the case is completed. The period of confinement of the prisoner must not exceed four days, unless the director approves the extension of the period of confinement of the prisoner for another two days.”

Regulation 156

“In the event that a prisoner is to be accused of a disciplinary offence, the accusation should be set out as soon as possible and the trial of the case should begin at the latest two months from the date of the commission of the offence and should be concluded as quickly as possible.”

Regulation 158(1)

“A prisoner shall not be punished before having acquired knowledge of the offence of which he is accused and without having been given the possibility to defend himself.”

III. INTERNATIONAL MATERIALS

A. Extracts from the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (“CPT”), Strasbourg, 5 April 2008

41. The CPT produced a report to the Government of Cyprus following its visit to Cyprus from 8 to 17 December 2004. As regards allegations of ill-treatment at the hands of other prisoners, the report noted as follows:

“59. The CPT is also concerned by several allegations received by the delegation that prison staff threatened inmates with transfer to Block 4 (the maximum security unit) and used one or more prisoners accommodated in Block 4 as a means of maintaining control over other inmates.

In this connection, one prisoner interviewed by the delegation claimed that, on 17 October 2004, he had been severely beaten by fellow inmates and subsequently placed in Block 4. A criminal investigation had apparently only been initiated after the prisoner concerned succeeded in bringing the matter to the attention of the Minister of Justice and Public Order, who transmitted the case to the competent authority.

A similar case was brought to the delegation's attention by an official report of the Office of the Commissioner for Administration. It would appear that, on 18 July 2003, one of the alleged perpetrators (I.C.) of the above-mentioned assault had severely beaten another inmate; the latter had required hospital treatment as a result. The Commissioner for Administration found that the case had not been investigated thoroughly by the establishment's management and added that 'the inexcusable delay in investigating such a serious incident gives good reason to suspect preferential treatment vis-à-vis I.C.'.

60. It would be entirely unacceptable for prison staff to threaten prisoners in the above-mentioned manner as a means of control, let alone place prisoners at risk of assault from fellow inmates. The CPT wishes to emphasise that the duty of care which is owed by the prison authorities to prisoners in their charge includes the responsibility to protect them from other prisoners who might wish to cause them harm. In particular, prison staff must be alert to signs of trouble and be both resolved and properly trained to intervene when necessary.

The CPT recommends that the Cypriot authorities take the necessary steps with a view to preventing inter-prisoner violence, in the light of the above remarks.

61. The diligent examination by prison management of all information which may come to its attention regarding possible ill-treatment of prisoners by staff or inter-prisoner violence (whether or not that information takes the form of a formal complaint) and, if necessary, the instigation of proceedings, is also essential. Indeed, the lack of an appropriate response by prison management can foster a climate in which those minded to ill-treat prisoners can quickly come to believe – and with very good reason – that they can do so with impunity. The delegation gained the impression that the management of Nicosia Central Prisons was reluctant to adopt a proactive approach in this respect ..."

42. The report also commented on measures of confinement in use in Cypriot prisons. It observed the following:

"62. The CPT must also express concern about the potential duration of measures involving the segregation of prisoners for disciplinary reasons (confinement to a special isolation cell for a period of up to sixty days and confinement to their own cell for up to ninety days), and the fact that inmates undergoing segregation for disciplinary reasons were deprived of outdoor exercise throughout their sanction (cf. paragraph 91).

...

86. ... The disciplinary penalties include confinement to a special isolation cell for up to 60 days, with simultaneous loss of contact with the outside world (correspondence, visits and telephone calls), or confinement to a personal cell for up to 90 days.

The CPT has serious reservations as to the maximum possible periods of disciplinary confinement; it considers that they should be substantially reduced ...

The CPT also wishes to stress that a disciplinary punishment should never involve a total prohibition on contact with the outside world. Further, under no circumstances should visits between a prisoner and his/her family be withdrawn for a prolonged period ...

...

88. The CPT also pays particular attention to any prisoner held, for whatever reason, under conditions akin to solitary confinement.

Under the terms of Section 151 of the Prisons Regulations, the director can order the confinement or isolation of a prisoner for such a period as he deems necessary for the purpose of: maintenance of order; protection of the interests of the prisoner himself or of other prisoners; violent behaviour; discipline. In this respect, the observations made by the delegation identified important lacunae as regards the guarantees which should surround such a measure. Indeed, no provision is made for those guarantees within the Prisons Regulations themselves.

89. The CPT wishes to stress that the principle of proportionality requires that a balance be struck between the requirements of the case and the application of a solitary confinement-type regime, which is a step that can have very harmful consequences for the person concerned. In particular, all forms of solitary confinement should be as short as possible. Further, they should be surrounded by certain guarantees. A prisoner in isolation or confinement or in respect of whom such a measure is extended, should be informed in writing of the reasons therefor (it being understood that there might be reasonable justification for withholding specific details related to security from the prisoner) and should be given an opportunity to express his views on the matter and have the right to appeal to an authority outside the prison establishment concerned against the imposition or extension of the measure. Further, the application of the measure should be fully re-examined at regular intervals (at least every three months). In addition, all such measures should be properly entered in a specific register.

...

The CPT recommends that the Cypriot authorities review the provisions of the Prisons Regulations relating to isolation and confinement, in the light of the above principles. It also recommends that a special register be kept of all isolation/confinement measures, recording the identity of the prisoner, the reasons for the measure, the date and time of the commencement and end of the measure, the deciding authority and the precise place(s) where the prisoner concerned has been accommodated.

90. Further, although the application of isolation/confinement for a prolonged period can be necessary in exceptional cases for reasons related to good order and safety, the CPT considers that the application of such a measure for disciplinary purposes is unacceptable; the use of isolation/confinement for such purposes should be governed exclusively by Sections 153 to 162 of the Prisons Regulations.

> The CPT recommends that the Cypriot authorities amend the Prisons Regulations accordingly."

43. As regards the conditions of the cells and the possibility of outdoor exercise for prisoners confined to their cells, the report found as follows:

> "91. Material conditions in the cells used for administrative separation or disciplinary purposes (16 cells in Block 8) were adequate.
>
> However, from the information received by the delegation during the visit, it emerged that prisoners in isolation or confined to their cells do not benefit from outdoor exercise, sometimes for extended periods. In particular, from an official investigation by the Office of the Commissioner for Administration, it emerged that one prisoner had been placed in confinement in Block 4 for 47 days without benefiting from outdoor exercise. Such a situation is unacceptable.
>
> The CPT recommends that the Cypriot authorities immediately take the necessary steps to ensure that all prisoners placed in an isolation cell or confined to their cells, for whatever reason, benefit from at least one hour of outdoor exercise each day."

44. In respect of contact with family and friends, the report noted:

> "92. The CPT wishes once again to underline the importance for prisoners of being able to maintain good contact with the outside world. Above all, they must be given the opportunity to safeguard their relationships with their family and friends, and especially with their spouse or partner and their children. The continuation of such relations can be of critical importance for all concerned, particularly in the context of prisoners' social rehabilitation. The guiding principle should be to promote contact with the outside world; any restrictions on such contacts should be based exclusively on security concerns of an appreciable nature or considerations linked to available resources.
>
> 93. Under the terms of the Prisons Regulations, in principle all prisoners (both remand and sentenced) have the right to receive up to six one-hour visits every month. In addition, a certain degree of flexibility is possible, for example, when the visitors concerned are family members living abroad. The CPT welcomes these arrangements. ...
>
> 95. Telephones have been installed within the prisons, one in each block for use by prisoners from 08.00 a.m. to 2.30 p.m. This is in principle a very positive development. However, apart from in Block 4, which was only accommodating approximately ten prisoners, access to the telephone was rarely straightforward given the number of prisoners involved."

45. Finally, as regards communication of complaints to the Ombudsman, the report stated:

> "98. During the visit carried out in December 2004, the delegation observed that, in response to the recommendation made by the CPT in its report on the 2000 visit, locked boxes had been installed, in which prisoners could put complaints for the attention of the Commissioner for Administration."

B. Extracts from Recommendation (Rec(2006)2) of the Committee of Ministers to Member States on the European Prison Rules, adopted on 11 January 2006 ("European Prison Rules")

"53.1 Special high security or safety measures shall only be applied in exceptional circumstances.

53.2 There shall be clear procedures to be followed when such measures are to be applied to any prisoner.

53.3 The nature of any such measures, their duration and the grounds on which they may be applied shall be determined by national law.

53.4 The application of the measures in each case shall be approved by the competent authority for a specified period of time.

53.5 Any decision to extend the approved period of time shall be subject to a new approval by the competent authority.

53.6 Such measures shall be applied to individuals and not to groups of prisoners.

53.7 Any prisoner subjected to such measures shall have a right of complaint in the terms set out in Rule 70.

...

70.1 Prisoners, individually or as a group, shall have ample opportunity to make requests or complaints to the director of the prison or to any other competent authority.

...

70.3 If a request is denied or a complaint is rejected, reasons shall be provided to the prisoner and the prisoner shall have the right to appeal to an independent authority ..."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3

46. The applicant complained under Article 3 of the Convention about the conditions of his solitary confinement for a period of 47 days. Article 3 provides as follows:

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

A. Admissibility

1. The parties' submissions

47. The Government contended that the application should be declared inadmissible under Article 35 § 1 of the Convention for non-exhaustion of domestic remedies. Citing the judgment of the Court in *Azinas v. Cyprus* [GC], no. 56679/00, § 39, ECHR 2004-III, they argued that the applicant could have filed a recourse to the Supreme Court under Article 146 of the Cypriot Constitution challenging the legality of the order for his solitary confinement and the conditions thereof, including the prohibition on family visits and the monitoring of his correspondence. They submitted that in the context of such proceedings, the applicant could have argued that the confinement and conditions violated his rights under Articles 3 and 8 of the Convention, and the corresponding articles of the Cypriot Constitution. Moreover, he could have applied for the suspension of his confinement and the restrictions on family visits pending the final outcome of the recourse.

48. The Government further submitted that the applicant had failed to complain to the Prisons Board. They noted that the Prisons Board was expressly included by law among the authorities to which a prisoner could address, in writing and immediately, any complaint concerning an illegal act against him or a violation of his rights in any way. The Government highlighted that the Prisons Board was an independent body appointed by the Council of Ministers. It was, at the relevant time, composed of twelve members drawn from both the public and private sectors, including representatives of non-governmental organisations and the Cyprus Bar Association. Its chairman was the Director-General of the Ministry of Justice. The Prisons Board had the power to hear and investigate complaints submitted to it by prisoners, including complaints as to their treatment, and to investigate prisoners' living conditions. For this purpose, its members were afforded the right of free entry at all times to all areas of the prison, of free communication with prisoners outside the presence of prison officers, of inspection of prison records and of the conduct of any investigation in the prison which they considered necessary. Under the Prison Regulations, letters could be addressed to the Prisons Board without any monitoring of their content by the prison authorities. If the Prisons Board found any shortcomings concerning the treatment of prisoners, it could communicate the matter to the relevant Minister and the prison director.

49. The applicant disputed that the remedies to which the Government referred were "effective" and that he was therefore required to exhaust them under Article 35 of the Convention. As regards Article 146 of the Constitution, the applicant highlighted that this would only provide a remedy to an existing problem or a decision confirming that there had been a violation by the relevant authority. There would be no investigation and

no further proceedings against the party guilty of the violation. The applicant further averred that in order to file a recourse with the Supreme Court, supporting evidence would have been required to prove that he had been isolated in conditions in breach of Articles 3 and 8 and that his correspondence had been monitored. He contended that his isolation precluded him from obtaining such proof and that, in the circumstances, an Ombudsman's investigation was necessary to collate the necessary proof. However, because of the monitoring of his correspondence, the Ombudsman only received his complaint on 5 November 2003 and her report dated 21 November 2003 was only brought to his attention some days later. He concluded that his failure to take proceedings before the Supreme Court was due to: the prison director, who deliberately made it difficult for him to collect the necessary papers for his application; the 75-day time limit for filing a recourse; his isolation which prevented him from submitting his application; and the refusal of lawyers to represent him.

50. In respect of the possibility of a complaint to the Prisons Board, the applicant pointed out that this was not a judicial remedy. In any case, he alleged that he had made a complaint to the Prisons Board. He contended that he was permitted just five minutes before the Prisons Board in which to explain his complaint and heard nothing further from them. Accordingly, to the extent that the remedy could be considered effective, he had sought to exhaust it.

2. The Court's assessment

51. The Court must consider whether a recourse lodged with the Supreme Court and a complaint to the Prisons Board constituted effective remedies in respect of the applicant's complaints and whether he was therefore required to exhaust such remedies before lodging an application with the Court.

52. The Court reiterates that, under Article 35 of the Convention, normal recourse should be had by an applicant to remedies which are available and sufficient to afford redress in respect of the breaches alleged (see *Apostol v. Georgia*, no. 40765/02, § 35, ECHR 2006-...; and *Barszcz v. Poland*, no. 71152/01, § 41, 30 May 2006).

53. In assessing whether a proposed remedy affords sufficient redress, the Convention provides for a distribution of the burden of proof and it is initially incumbent on the Government claiming non-exhaustion to convince the Court that the remedy relied upon was an effective one available in theory and in practice at the relevant time. This requires that the proposed remedy be accessible, be capable of providing redress in respect of the applicant's complaints and offer reasonable prospects of success (see, among other authorities, *Apostol*, cited above, § 35; *Sejdovic v. Italy* [GC], no. 56581/00, § 46, ECHR 2006-...; and *Selmouni v. France* [GC], no. 25803/94, § 76, ECHR 1999-V). Only after this burden of proof has

been discharged does it fall to the applicant to prove that there existed special circumstances absolving him from the requirement (see *Merit v. Ukraine*, no. 66561/01, § 57, 30 March 2004).

54. As to the possibility of a recourse under Article 146 of the Constitution, the Court notes that in order for a recourse to be lodged with the Supreme Court, an individual must demonstrate that there was an administrative or executive decision, act or omission open to challenge. In the present case, it is not clear that the decision of the prison director to place the applicant in solitary confinement and restrict his visitation rights or the decision to monitor the applicant's correspondence would constitute acts enabling the Supreme Court to exercise its revisional jurisdiction. In this regard, the Court observes that in the context of a separate application lodged with the Court (no. 42432/07 *Andreas Onoufriou v. Cyprus*), the applicant provided details of an attempt to challenge a decision of the prison director to restrict his visitation rights. In that case, the Supreme Court concluded that the relevant decision did not constitute an "administrative act" enabling the exercise of its revisional jurisdiction. Finally, the Court highlights that the Government have not referred to any decisions or judgments of the Supreme Court in which any decision of the nature in issue in the present case has been successfully challenged by way of an Article 146 recourse (see *Apostol*, cited above, § 38). In the circumstances, the Court is not persuaded that Article 146 of the Constitution offered an effective remedy for the applicant in respect of his present complaints.

55. The Government also proposed the possibility of a complaint to the Prisons Board. However, the applicant alleges that he did seek to complain to the Prisons Board and was granted a brief audience before them but heard nothing further. The Court observes that the prison diary submitted by the respondent Government records meetings between the applicant and the Prisons Board on 1 and 5 November 2003. It further observes that the Government have not disputed that the applicant sought to make a complaint to the Prisons Board. Accordingly, the Court concludes that the applicant did attempt to lodge his complaints with the Prisons Board but for reasons which are unexplained, the Prisons Board did not take any further action to investigate the complaints and report its findings to the applicant. In any event, in circumstances such as those arising in the present application, there is an obligation to conduct an *ex officio* investigation as soon as Article 3 is raised in substance (see *Selmouni*, cited above, §§ 79 to 80). To the extent that a complaint to the Prisons Board could be considered an effective remedy, the Court considers that the applicant has done what was required of him in order to exhaust that remedy.

56. The Government's objections as to non-exhaustion must therefore be dismissed. Furthermore, having regard to the parties' submissions, the Court considers that the complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other grounds for

declaring it inadmissible have been established. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

a. The Government

57. The Government observed that, in assessing whether solitary confinement complied with Article 3, the Court must have regard to the particular conditions, the stringency of the measure, its duration, the objective pursued and its effects on the person concerned. They contended that in the present case, the measure was not sufficiently severe to fall within the scope of Article 3. They argued that there was no sensory isolation brought about by a substantial reduction in stimulation of the sensory organs. Nor was there any medical evidence to suggest that the applicant had suffered mental or physical deterioration as a result of his confinement or that the physical conditions entailed distress and hardship beyond that which was necessarily incidental to such confinement.

58. As regards the physical conditions of detention, the Government argued that the cell was sufficiently large and that the applicant had regular access to toilet facilities and food. They emphasised that the applicant's complaint to the Ombudsman was not directed at the physical conditions of his cell. Accordingly, the Ombudsman did not investigate or make any findings concerning this matter.

59. The Government further argued that the applicant had daily contact with prison personnel and unrestricted access to newspapers and books. He was seen on several occasions by the prison doctor in the prison medical facility, he was visited by a welfare officer and was seen by the prison psychologist. There was no evidence that he was prevented from sending letters to friends and family, or that letters from friends and family members were withheld from him during his confinement. Although the applicant did not make or receive any telephone calls, there was no evidence that he had ever applied to make any telephone calls or that anyone had called him and was not permitted to speak to him. Furthermore, during the applicant's visits to court, he was able to communicate with his family.

60. As for the legal basis of the applicant's confinement, the Government argued that the applicant's confinement was not ordered by way of punishment for a disciplinary offence following his escape from prison, nor was it ordered pending investigation of such a disciplinary offence or solely as a precautionary measure for the applicant's own protection. Instead, they contended that he was confined under regulation

151(1)(a), (b) and (d), which permitted confinement for such time as the director considered necessary in the circumstances to preserve discipline and order, to protect the prisoner himself or other prisoners and to discipline the prisoner.

61. Relying on case-law of the Convention organs, the Government argued that the segregation of a prisoner from the prison community does not of itself constitute a form of inhuman treatment. In particular, confinement to prevent the risk of disturbance in the prison, to prevent the commission of criminal acts or to protect the prisoner from other inmates had been found not to be a form of inhuman treatment (referring to, *inter alia*, (see *G. Ensslin and Others v. Germany*, no. 7572/76, Commission decision of 8 July 1978, Decisions and Reports (DR) 14, p. 91); (see *X. v. the United Kingdom*, no. 8158/78, Commission decision of 10 July 1980, DR 21, p. 95); *Rohde v. Denmark*, no. 69332/01, §§ 92 to 97, 21 July 2005; and *Ramirez Sanchez v. France* [GC], no. 59450/00, §§ 120, 123, 129, 132, 136, 145 and 150, ECHR 2006-IX). In the present case, the decision to confine the applicant was not arbitrary and was based on relevant regulations in force which had been published in the Official Gazette. There were pressing and valid reasons for the confinement until such time as the investigations into possible offences committed by the applicant while he was at liberty had been identified and appropriate charges had been filed against him.

62. The Government invited the Court to hold that there was no violation of Article 3.

b. The applicant

63. The applicant contended that the physical conditions of his confinement were such as to attain the minimum level of severity required for Article 3 to apply. He pointed to the lack of food, adequate clothing and access to toilet and shower facilities during his period of confinement. He also emphasised the absence of contact with the outside world, and in particular his inability to communicate with his family. He concluded that there had been a breach of Article 3 in his case.

64. The applicant disputed the Government's explanation concerning the legal basis of his confinement and explained that it was the prison authorities themselves who had declared that his confinement was only a precautionary measure necessary for his own protection, as had been subsequently confirmed by the Ombudsman. The applicant was never provided with written authorisation for his confinement. He maintained that he had been informed that the reason for his confinement was that he had violated his home leave, and he referred to the indictment served on him in November 2003, the first count of which consisted of an allegation of a violation of the conditions of his home leave. Moreover he claimed that given the presence of at least nine other prisoners in the block where he was

detained the Government could not realistically maintain that he was kept in that particular block to protect him.

65. The applicant further claimed that no other prisoner had been subjected to solitary confinement for breaching his home leave conditions. He claimed that he had been discriminated against by the Government and the prison authorities because of the nature of his conviction.

2. The Court's assessment

a. General principles

66. Article 3 of the Convention enshrines one of the most fundamental values of democratic society. It prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the circumstances and the victim's behaviour (see *Labita v. Italy* [GC], no. 26772/95, § 119, ECHR 2000-IV).

67. According to the Court's case-law, 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 level of severity is relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim. Furthermore, in considering whether treatment is "degrading" within the meaning of Article 3, the Court will have regard to whether its object is to humiliate and debase the individual in question and whether, as far as the consequences are concerned, it adversely affected his or her personality in a manner incompatible with Article 3. However, the absence of any such purpose cannot conclusively rule out a finding of a violation of Article 3 (see *Peers v. Greece*, no. 28524/95, § 74, ECHR 2001-III; and *Valašinas v. Lithuania*, no. 44558/98, § 101, ECHR 2001-VIII).

68. The Court has consistently stressed that the suffering and humiliation involved must in any event go beyond that inevitable element of suffering or humiliation connected with a given form of legitimate treatment or punishment (see *Enea v. Italy* [GC], no. 74912/01, § 56, 17 September 2009). Measures depriving a person of his liberty may often involve an element of suffering or humiliation. However, the State must ensure that a person is detained under conditions which are compatible with respect for his human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured (see *Kudła v. Poland* [GC], no. 30210/96, §§ 92 to 94, ECHR 2000-XI; and *Cenbauer v. Croatia*, no. 73786/01, § 44, ECHR 2006-III). 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 (*Dougoz v. Greece*, no. 40907/98, § 46, ECHR 2001-II). It is also relevant to recall that the authorities are under an obligation to protect the health of persons deprived of liberty (see *Hurtado v. Switzerland*, judgment of 28 January 1994, Series A no. 280-A, opinion of the Commission, pp. 15-16, § 79; and *Enea*, cited above, § 58). The lack of appropriate and timely medical care may amount to treatment contrary to Article 3 (see *İlhan v. Turkey* [GC], no. 22277/93, § 87, ECHR 2000-VII).

69. The Court has previously indicated that 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 (see *Öcalan v. Turkey* [GC], no. 46221/99, § 191, ECHR 2005-IV; and *Ilaşcu and Others v. Moldova and Russia* [GC], no. 48787/99, § 243, ECHR 2004-VII). While prolonged 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 *inter alia*, *X v. the United Kingdom*, cited above; and *Rohde*, cited above, § 93).

70. Finally, in order to avoid any risk of arbitrariness resulting from a decision to place a prisoner in solitary confinement, the decision must be accompanied by procedural safeguards guaranteeing the prisoner's welfare and the proportionality of the measure. First, solitary confinement measures should be ordered only exceptionally and after every precaution has been taken, as specified in paragraph 53.1 of the European Prison Rules. Second, the decision imposing solitary confinement must be based on genuine grounds both *ab initio* as well as when its duration is extended. Third, the authorities' decisions should make it possible to establish that they have carried out an assessment of the situation that takes into account the prisoner's circumstances, situation and behaviour and must provide substantive reasons in their support. The statement of reasons should be increasingly detailed and compelling as time goes by. Finally, a system of regular monitoring of the prisoner's physical and mental condition should also be put in place in order to ensure that the solitary confinement measures remain appropriate in the circumstances (see *Ramirez Sanchez*, cited above, § 139).

b. Application of the general principles to the facts of the case

71. The Court notes at the outset that the applicant was not informed at any stage officially and in writing of the reasons for his solitary confinement or of its expected duration. No formal record of the decision authorising the solitary confinement or any extension has been provided; indeed, the Government have not made any submissions regarding the manner in which the decision was made. The justification for the confinement provided for by the prison authorities following the

Ombudsman's investigation was that the applicant was placed in solitary confinement in order to ensure his own protection. However, the Court does not consider that this reason can justify the applicant's detention in solitary confinement (see, *mutatis mutandis*, *Lelièvre v. Belgium*, no. 11287/03, § 104, 8 November 2007). Moreover, the Court is not convinced by the Government's subsequent explanation of the reasons for the applicant being placed in solitary confinement – namely, for the preservation of discipline and order, the protection of the interests of the applicant himself and of other prisoners and discipline – given that this explanation was first advanced in their observations to the Court. Accordingly, the Court concludes that the applicant was detained in solitary confinement for reasons which are unclear and which were never explained to him. The Court observes in this regard that a solitary confinement measure is one of the most serious measures which can be imposed within a prison. Despite the gravity of the measure, there is no evidence that the authorities assessed all the relevant factors in the applicant's case before placing him in solitary confinement (see *Ramishvili and Kokhreidze*, cited above, § 83). It is also of significance that although instructions were given on 31 October 2003 to release the applicant from solitary confinement, the instructions were misplaced and as a consequence the applicant spent a further seven days in solitary confinement after his release had been ordered.

72. The Court recalls the recommendations contained in the report of the CPT following its visit to Cyprus in 2004. The CPT considered that any person placed in solitary confinement should be informed in writing of the reasons for his confinement. He should be given an opportunity to express his views and there should be a possibility to appeal to authorities outside the prison should he wish to challenge the decision to place him in solitary confinement or to extend the duration of such confinement. Further, the confinement should be re-examined at regular intervals and should cease when no longer merited. The European Prison Rules also refer to the need for clear procedures when applying solitary confinement measures.

73. It is clear that the applicant's detention in solitary confinement was not attended by any of the procedural safeguards required in order to protect against the arbitrary application of excessively restrictive conditions of detention, regardless of the duration of the confinement. The Court refers to the CPT's conclusion following the visit to Cyprus that there was a lacuna in the Prison Regulations as regards the guarantees to be afforded to those placed in solitary confinement. In the present case, the Court emphasises the lack of an adequate justification for the applicant's detention in solitary confinement, the uncertainty concerning its duration, the failure to put in place a reliable system to record solitary confinement measures and to ensure that the applicant was not confined beyond the authorised period, the absence of any evidence that the authorities carried out an assessment of the

relevant factors before ordering his confinement and the lack of any possibility to challenge the nature of his detention or its conditions.

74. As regards the physical conditions of the applicant's detention, the Court takes note of the parties' different accounts and considers the prison logbook submitted by the respondent Government to be of particular assistance in clarifying both the physical conditions of the applicant's confinement and the other restrictions applied during the 47-day period.

75. In the Court's view, the prison logbook confirms the applicant's account that he was subjected to a very restrictive regime of detention for 47 days. It is clear from the entries in the logbook that the applicant's cell had neither sanitary facilities nor running water. Accordingly, the applicant was required to ask the prison guards to allow him to go to the toilet. The Court's examination of the prison logbook shows that on a number of occasions the applicant only used the toilet once in the course of the day, which would appear to confirm his assertion that during certain periods of his detention he had to use water bottles and nylon bags for his needs. The Court considers that such a practice was humiliating (see *Cenbauer*, cited above, § 48).

76. As to the physical conditions of the cell, the Government submitted that it measured 5.88m^2; the applicant contended that it was less than 5m^2. He also alleged that it was cold and damp. The Court observes that where there is a dispute between the parties as to the relevant facts, it will have regard to the parties' submissions and to any relevant findings of the CPT in order to assess the extent to which the applicant's complaints are credible (*Cenbauer*, cited above, § 45). In its report on Cyprus, the CPT did not comment on the physical conditions of cells in Nicosia Central Prison, except to say that material conditions in cells used for administrative separation or disciplinary purposes in block 8 were adequate. The Ombudsman, in her report on the applicant's complaints, did not consider the physical conditions of the applicant's detention. However, the Court notes that the applicant sustained an injury to his shoulder, which he alleges was a result of the cold and damp of the cell. The Government do not dispute the allegation. In the circumstances, the Court considers that the applicant's injury would appear to support his contention that the cell was cold and damp.

77. As to whether the applicant was given appropriate medical care while in confinement, the Court observes that the prison logbook records two visits from the doctor. It further notes that the applicant refused to attend a scheduled appointment with the surgeon on 31 October 2003. The Court accordingly does not consider that the standard of care and attention showed to the applicant's health by the prison authorities was deficient during the time spent in solitary confinement.

78. However, the Court recalls that the CPT commented with concern on the significant duration of solitary confinement measures in Cyprus. It also

criticised the lack of opportunity for detainees to leave their cells and to benefit from outdoor exercise, highlighting the applicant's case which it concluded was unacceptable. It is clear from the prison logbook that the time spent by the applicant outside his cell was limited. Although, according to the prison logbook, he visited court on seven occasions, for the remainder of his solitary confinement he rarely left his cell. Most days, the cell was opened only for a brief period to allow him to use the shower or toilet or to collect his food. In this regard, the Court notes that in *Cenbauer v. Croatia* (cited above, § 49) it considered that the period of the applicant's confinement to his cell, between 7p.m. and 7a.m. and for several hours during the day, was "substantial". Furthermore, it is also clear from the prison logbook that human contact was mostly limited to the applicant's dealings with prison staff and his visits to court. The CPT, in its report on Cyprus, condemned the absolute prohibition on contact with the outside world attendant on solitary confinement in Cyprus, insisting that restrictions on visits should be based only on security concerns of an appreciable nature or on the availability of resources.

79. Finally, the Court has previously indicated that the obligation on prison authorities to ensure the health and well-being of detainees implied an obligation to provide appropriate nourishment (*Kadiķis (no. 2)*, cited above, § 55). It notes that, according to the prison logbook, the applicant was served food at irregular intervals, sometimes receiving only one full meal per day.

80. Accordingly, the Court concludes that the stringent custodial regime to which the applicant was subjected during his period in solitary confinement, including the prohibition on visits and the material conditions in which he was detained, caused him suffering clearly exceeding the unavoidable level inherent in detention. His exposure to these conditions for a period of 47 days amounted to degrading treatment contrary to Article 3 of the Convention.

81. There has accordingly been a violation of that provision.

II. ALLEGED VIOLATION OF ARTICLE 8

82. The applicant complained under Article 8 of the Convention about the restrictions on contact with his family during the period of his confinement and about the prison authorities' monitoring of his correspondence. Article 8 provides as follows:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the

country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

A. Admissibility

83. The Government maintained that the applicant had not exhausted domestic remedies in respect of his Article 8 complaints (see §§ 47 to 48 above). Having regard to its findings above (see §§ 54 to 56), the Court rejects this objection. Furthermore, having regard to the parties’ other submissions, the Court considers that the complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other grounds for declaring it inadmissible have been established. It must therefore be declared admissible.

B. Merits

1. Restrictions on contact with family

a. The parties’ submissions

i. The Government

84. The Government submitted that although the prohibition on family visits constituted an interference with the applicant’s exercise of his right to respect for his family life, such interference did not violate Article 8 of the Convention.

85. They argued that the domestic law, which formed the basis of the interference, was the Prison Regulations, which had the force of law and were published in the Republic’s Gazette. Under regulation 151(1), it was reasonably foreseeable that confinement could entail restrictions on visits. The interference was therefore in accordance with the law.

86. The Government also alleged that the applicant’s father had, on the applicant’s instructions, assisted him in removing incriminating evidence in relation to the crime for which he was serving a sentence at the time of his failure to return from home leave. Accordingly, they argued that the interference pursued the legitimate aim of ensuring public safety and the prevention of crime and disorder.

87. Finally, the Government insisted that the measure was necessary and proportionate. They pointed out that the restrictions had been imposed at a time when a police investigation was being carried out into the applicant’s involvement in criminal acts committed during the time he was at large. Until the completion of the investigation, the exact nature and extent of criminal activities and persons involved could not be known. Although

during his confinement the applicant had received no visits, his communication with his friends and family had not been materially disrupted. The applicant had on eight occasions during the 47 days of confinement spent considerable time outside prison when he attended court hearings. The Government maintained that the applicant had contact with his family and friends on all of these occasions, when he was allowed to move around within the court building and was supplied by his family with refreshments, clothes and other materials. Accordingly, the measure had not hindered the applicant's effective contact with family members. The Government relied on *Messina v. Italy (no. 2)*, no. 25498/94, §§ 59 to 74, ECHR 2000-X.

88. Further, the Government maintained that during the period of his confinement the applicant was entitled to send letters of a private nature twice a week. However, he had not attempted to send or receive any letters to his family during this period. Prisoners were also allowed to make telephone calls to members of their family, subject to obtaining the prison director's permission and following a written application to this effect, under regulation 115 (1) and (2) of the Prison Regulations. Such telephone calls could be made from telephone booths installed in designated areas of the prisons. However, the applicant did not make or receive any telephone calls during the relevant period and there was no evidence of any request being made to this effect. Hence, his complaints in this respect were of a general nature, not referring to any specific instances of such restrictive measures being applied to him.

ii. The applicant

89. The applicant insisted that during his solitary confinement, he was prohibited from making and receiving telephone calls. As to the Government's objection that no evidence had been provided that he submitted any request to make a telephone call, the applicant replied that prisoners did not receive receipts for applications to make calls. He further alleged that prisoners were not allowed to receive calls from outside the prison. He disputed that there was any possibility that the authorities would have allowed him to send any letters or make or receive any telephone calls from his family during his confinement given that he was merely allowed to exit his cell for the purposes of using the toilet and the shower facilities.

90. As for visits, the applicant denied that his father had been involved in any criminal activities and that this constituted sufficient grounds for refusing visitation rights. He contested the Government's allegations that he had contact with his family during his court visits and stated that contact only resumed after he was transferred to normal conditions of detention.

b. The Court's assessment

91. The Court reiterates that any detention which is lawful for the purposes of Article 5 of the Convention entails by its nature a limitation on private and family life. However, it is an essential part of a prisoner's right to respect for family life that the prison authorities assist him as far as possible to create and sustain ties with people outside prison and to maintain contact with his close family (see *Messina (no. 2)*, cited above, § 61; *McCotter v. the United Kingdom*, no. 18632/91, Commission decision of 9 December 1992, DR 25, p. 265).

92. The Court observes, and the Government do not dispute, that for 47 days, the applicant was subject to a particularly stringent prison regime which involved an absolute prohibition on visits from friends and family. In light of the restrictions imposed by his detention in solitary confinement and following examination of the relevant Prison Regulations, the Court further considers it unlikely that any request by the applicant for telephone communication with his family would have been granted. The Court concludes that there was an interference with the exercise of the applicant's right to respect for his family life guaranteed by Article 8 § 1 of the Convention. Such interference can only be justified if it was in accordance with the law, pursued one or more of the legitimate aims contemplated in paragraph 2 of Article 8 and could be regarded as a measure which was "necessary in a democratic society".

93. A measure will be in accordance with the law if it satisfies three conditions. First, it must have some basis in domestic law. Second, the law must be adequately accessible: the citizen must be able to have an indication that is adequate, in the circumstances, of the legal rules applicable to a given case. Finally, a norm cannot be regarded as a "law" unless it is formulated with sufficient precision to enable the citizen to regulate his conduct: he must be able – if need be with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail (see Sunday Times *v. the United Kingdom (no. 1)*, 26 April 1979, §§ 47 and 49, Series A no. 30).

94. Further, a law which confers a discretion must indicate the scope of that discretion. However, the Court has already recognised the impossibility of attaining absolute certainty in the framing of laws and the risk that the search for certainty may entail excessive rigidity. Many laws are inevitably couched in terms which, to a greater or lesser extent, are vague and whose interpretation and application are questions of practice (see Sunday Times *(no. 1)*, cited above, § 49; and *Silver and Others*, cited above, § 88).

95. The Government have alleged that the prohibition on family visits was in accordance with the law as it was reasonably foreseeable from the terms of regulation 151(1) of the Prison Regulations that visits would not be permitted. The Court notes that this provision gives the prison director the power to "order the confinement or isolation of a prisoner for such period as

he considers necessary", for one of more of the purposes outlined in that regulation. The regulation provides no detail of what is meant by the phrase "confinement or isolation" or the degree of confinement or isolation envisaged. It makes no express reference to the curtailment of the general right granted by regulation 116 to visits from family and friends up to six times per month. It provides no guidance as to how a prison director might decide whether complete suspension of visitation rights is merited in a particular case, and what factors might be relevant to that decision. It is of significance in this respect that the applicant was given no formal notification that his visitation rights had been suspended, nor was he advised at the time of the reasons for the suspension. In the circumstances, it is not clear why and under what authority the applicant's visitation rights were suspended.

96. Unlike the Government, the Court does not consider that the Prison Regulations stipulate an absolute prohibition on visits for those in solitary confinement. In short, the Prison Regulations do not indicate with reasonable clarity the scope and manner of the exercise of any discretion conferred on the relevant authorities to restrict visitation rights (see *Domenichini v. Italy*, 15 November 1996, §§ 32 to 33, *Reports of Judgments and Decisions* 1996-V; *Messina (no. 2)*, cited above, § 81; and *Kornakovs v. Latvia*, no. 61005/00, §§ 159 to 160, 15 June 2006)

97. The Court concludes that the suspension of visitation rights in the applicant's case was not in accordance with the law. There has accordingly been a violation of Article 8 § 1 of the Convention.

2. Monitoring of correspondence

a. The parties' submissions

i. The Government

98. The Government identified four letters written by the applicant which had been sent to the Director General of the Ministry of Justice for inspection before being forwarded to their intended recipients. Three of the letters were addressed to the Ombudsman and one to the Attorney General. However, they contended that there was no violation of Article 8 § 1.

99. First, they submitted that the monitoring was in accordance with the law. Regulations 115(6) and (7) provided for certain correspondence to be sent through the director of the prison, who had the power to prevent letters being sent in specified circumstances.

100. They emphasised that the purpose of monitoring letters to public authorities was to ensure that officials did not receive large volumes of letters outside their areas of competence and that the language used was not

improper or insulting. Accordingly, they argued that the measure had a legitimate aim.

101. The Government also contended that the measure was necessary and proportionate (relying on *Boyle and Rice v. the United Kingdom*, 27 April 1988, §§ 68 to 76, Series A no. 131; and *Silver and Others*, cited above, §§ 86 to 90 and 97 to 98). In the applicant's case, the letters were transmitted by the prison director to the Director General of the Ministry of Justice to ensure that the letters were suitable to be dispatched to their recipients. The Government referred to *Silver and Others* (cited above, § 104), in which the Court stated that where prison authorities were in doubt as to the exercise of their right to stop correspondence, they must be able to seek instructions from a higher authority. In the applicant's case, the letters were not stopped: they were subsequently forwarded to the Ombudsman and Attorney-General, the parties to whom they were addressed. The delay of approximately three to four weeks in the delivery of the applicant's correspondence was compatible with the requirements of Article 8. In this regard, the Government referred to the Court's finding in *Silver and Others* (cited above, § 104) where the Court found a delay of three weeks to allow instructions to be sought on a prisoner's correspondence to be compatible with the requirements of Article 8.

102. Finally, the Government relied on the fact that from February 2004 onwards a box was placed in the prison in which prisoners could put their letters addressed to the Ombudsman which would be picked up by the Ombudsman directly.

ii. The applicant

103. The applicant disputed the Government's observations and stated that there was a practice of censorship of prisoners' correspondence, the purpose of which was to prevent complaints about the prison administration and conditions of detention reaching the office of the Ombudsman and other high-ranking officials. He complained that his letters had been stopped and that he was never informed of this fact. He did not provide any details of the letters allegedly involved. He submitted that because of the monitoring of his correspondence by the prison authorities, his letter addressed to the Ombudsman dated 6 October 2003 arrived at her office only on 5 November 2003. On 20 December 2003 he tried to give a letter addressed to the Ombudsman to his father during the latter's visit to the prison. However, the authorities prohibited him from handing this letter over to his father. When the applicant reminded the authorities of the Ombudsman's report of 21 November 2003 concerning the monitoring of his correspondence, the officer in charge replied that he did not care about the Ombudsman's reports. The applicant argued that the recent introduction of post boxes for correspondence to the Ombudsman demonstrated that his complaint had merit and that there was a problem with the previous practice.

104. The applicant also alleged that the prison administration had opened his letters to and from the Court and that a letter to the Court was sent to the Director General of the Ministry of Justice for inspection.

iii. The Court's assessment

105. The Court observes that it has not been alleged that the applicant's letters were censored. The issue in the present case concerns the fact that some of the applicant's letters were screened and their delivery delayed by a referral to the Director General of the Ministry of Justice for further inspection. The applicant also alleges that unidentified letters were stopped.

106. The Government acknowledged that three letters written by the applicant to the Ombudsman and one to the Attorney General were sent to the Ministry of Justice and thus delayed. They did not contest the allegation that one letter to the Court was also sent to the Ministry of Justice for inspection. Accordingly, the Court will proceed on the basis that some of the applicant's letters to the Ombudsman and at least one of his letters to the Attorney General and the Court were monitored by the prison authorities, such monitoring consisting of the screening, opening and reading of the letters by the prison authorities followed on a number of occasions by their referral to the Ministry of Justice for further inspection of their contents. Although monitoring could, under the terms of regulation 115(7), result in the prohibition of the sending of particular letters, in the absence of further details from the applicant, there is no evidence that any letters written by him were stopped by the prison authorities. All letters inspected ultimately reached their intended recipients, with a maximum delay of about a month.

107. The Court finds that the above monitoring of the applicant's correspondence did constitute an interference with his right to respect for his correspondence under Article 8 of the Convention (see *Silver and Others*, cited above, § 84 and *Kornakovs*, cited above, § 158). This interference can only be justified if it was in accordance with the law, pursued a legitimate aim and was necessary in a democratic society in order to achieve that aim.

108. The condition that a measure be in accordance with the law requires in particular that it have some basis in domestic law. The applicant does not dispute the Government's assertion that the Prison Regulations had the force of law. Accordingly, the Court sees no reason to disagree with the Government and finds that the Prison Regulations can be considered "law" for the purposes of Article 8 § 2. However, although the Prison Regulations permit the monitoring of correspondence addressed to official authorities of the Republic, correspondence with the Court does not fall within the categories listed in regulation 115(7) of the Prison Regulations. Accordingly, the monitoring of the applicant's letter to the Court had no basis in domestic law.

109. As outlined above (§§ 93 to 94) the expression “in accordance with law” does not merely require that the measure have some basis in domestic law but also relates to the quality of the domestic law. The Court observes that Article 17 of the Cyprus Constitution guarantees respect for the secrecy of correspondence except in cases of, *inter alia*, convicted prisoners and in accordance with the law. No reference is made in Article 17 to the need for any interference to be necessary in a democratic society. The Court has previously considered the quality of the law to be deficient and thus found a violation of Article 8 § 1 where the domestic system provided for automatic screening of prisoners’ correspondence, on the basis that such an approach did not draw any distinction between the different categories of persons with whom the prisoners could correspond and that the relevant provisions did not lay down any principles governing the exercise of the screening. In particular, they failed to specify the manner and the time-frame within which it should be effected. As screening was automatic, the authorities were not obliged to give a reasoned decision specifying grounds on which it had been effected (see, *inter alia*, *Niedbała v. Poland*, no. 27915/95, § 81, 4 July 2000; and *Sałapa v. Poland*, no. 35489/97, § 97, 19 December 2002. See also *Petrov v. Bulgaria*, no. 15197/02, § 44, 22 May 2008, where the Court considered these issues in its examination of the necessity of the measure).

110. In the present case, the Court notes that the law provided for the intercepting, opening and reading of prisoners’ correspondence to identified categories of addressees only. However, the Court would make two observations in this regard. First, in respect of the defined categories, the monitoring was automatic and there was no procedure for the applicant to challenge the application of the monitoring procedure to those categories of recipients. Second, although the categories of “politicians” and “mass media” are relatively well-defined and restricted, the same cannot be said of the category of “official authority of the Republic”, which would appear to cover a variety of bodies and institutions, including at the relevant time the Ombudsman.

111. As regards the manner and time-frame of the monitoring exercise, the regulation sets out the basic right of the prison authorities to conduct the monitoring and the reasons for which a letter can be prohibited. However, it provides no time-limits to ensure that monitoring does not result in excessive delays, nor does it envisage the direct participation or involvement of prisoners at any stage in the monitoring process. Regulation 115(7) simply provides that a prisoner will be informed of a decision to prohibit the sending of a letter.

112. Finally, regulation 115(7) does not require prison authorities to provide reasons for any decision to subject a prisoner’s letter to closer scrutiny, and in particular to send it for further inspection to the Ministry of Justice. In the present case, the prison authorities did not explain to the

applicant at the time of the interference with his correspondence why these letters were sent for further inspection before being forwarded to their intended recipients. The applicant did not receive a reasoned decision specifying the grounds on which the referral had been made. Before this Court, the Government argued that the measure was intended to protect the rights of the applicant, the Ombudsman and other State authorities. They contended that the inspection and consequent delay was necessary in order to ensure that officials did not receive excessive number of letters from prisoners on subjects over which they had no competence, which were insulting or which were improper. However, the Court notes that the Government do not explain why it was considered that the applicant's letters potentially fell within the categories outlined in regulation 115(7), such that their further inspection by the Ministry of Justice was thought necessary. The Court considers it relevant, in assessing the appropriateness of the prison authorities' approach, that all of the letters concerned were eventually sent to the addressees.

113. In the circumstances the Court is not satisfied that the law indicated with reasonable clarity the scope and manner of exercise of the discretion conferred on the prison authorities in respect of screening prisoners' correspondence (see, *inter alia*, *Labita*, cited above, §§ 176 and 180 to 184; and *Enea*, cited above, § 141 and 143). In reaching this conclusion, the Court emphasises that where measures interfering with prisoners' correspondence are taken, it is essential that reasons be given for the interference, such that the applicant and/or his advisers can satisfy themselves that the law has been correctly applied to him and that decisions taken in his case are not unreasonable or arbitrary. The Court further emphasises the Ombudsman's role as a guardian of human rights and fundamental freedoms, and the importance of respect for the confidentiality of correspondence of prisoners with the Ombudsman since it could – and in this case did – concern allegations against the prison authorities (see, *mutatis mutandis*, *Campbell v. the United Kingdom*, 25 March 1992, § 62, Series A no. 233). It follows that the general reasons advanced by the Government for the interference with letters to the Ombudsman in the present case are especially inadequate.

114. In conclusion, the monitoring of the applicant's correspondence was not in accordance with the law and there has therefore been a breach of Article 8 in this respect.

III. ALLEGED VIOLATION OF ARTICLE 13

115. The Court has also examined *ex officio* the availability of an effective remedy in the national system in relation to the applicant's complaints under Articles 3 and 8 of the Convention and concerning issues

arising from the application of legislation concerning complaints about the conditions of detention of prisoners and control of their correspondence. The Court has had regard to Article 13 of the Convention, which, insofar as relevant, reads:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

A. Admissibility

116. Having regard to the parties' submissions, the Court considers that the complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

117. The applicant denied that he had access to any effective remedies in Cyprus and relied on his submissions regarding the Government's preliminary objection (§§ 49 to 50, above). He contested that the recourse to the Supreme Court under Article 146 of the Constitution was effective. He further alleged that he did complain to the Prisons Board, but did not hear anything further from them. Accordingly, he disputed that a complaint to the Prisons Board could be considered effective for the purposes of Article 13.

118. The Government referred to their submissions on exhaustion of domestic remedies (§§ 47 to 48 above). They maintained that it was open to the applicant to challenge the legality of the order to place him in solitary confinement under Article 146 of the Constitution. Had he done so, he would have been able to raise all of his Convention complaints before the Supreme Court. Accordingly, Article 146 offered the applicant an effective remedy in respect of his Convention complaints. The applicant could also have complained to the Prisons Board, which could have heard and investigated his complaints and communicated its findings to the Minister of Justice and the director of the prison.

2. The Court's assessment

119. As the Court has held on many occasions, Article 13 of the Convention guarantees the availability at national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever

form they may be secured in the domestic legal order. The effect of Article 13 is thus to require the provision of a domestic remedy to deal with the substance of an "arguable complaint" under the Convention and to grant appropriate relief (see, for example, *Kudła v. Poland*, cited above, § 157; and *Ramirez Sanchez v. France*, cited above, § 157).

120. The scope of the Contracting States' obligations under Article 13 varies depending on the nature of the applicant's complaint. However, the remedy must be "effective" in practice as well as in law (see *İlhan v. Turkey* [GC], no. 22277/93, § 97, ECHR 2000-VII).

121. The "effectiveness" of a "remedy" within the meaning of Article 13 does not depend on the certainty of a favourable outcome for the applicant. Nor does the "authority" referred to in that provision necessarily have to be a judicial authority; but if it is not, its powers and the guarantees which it affords are relevant in determining whether the remedy before it is effective. Also, even if a single remedy does not by itself entirely satisfy the requirements of Article 13, the aggregate of remedies provided for under domestic law may do so (see, among other authorities, *Silver and Others v. the United Kingdom*, cited above, § 113; and *Chahal v. the United Kingdom*, 15 November 1996, § 145, *Reports of Judgments and Decisions* 1996-V).

122. The Court must determine whether it was possible under Cypriot law for the applicant to raise his complaints under the Convention about the decisions to place him in solitary confinement, the conditions of his confinement and the monitoring of his correspondence, including any procedural irregularities, and whether the remedies were "effective" in the sense that they could have prevented the alleged violation occurring or continuing or could have afforded the applicant appropriate redress for any violation that had already occurred

123. The Court refers to its previous finding (§ 54 above) to the effect that the possibility of lodging a recourse under Article 146 of the Constitution did not constitute an effective remedy which the applicant was required to exhaust in the present case. It also refers to its finding (§ 55 above) regarding the attempts of the applicant to lodge a complaint with the Prison Board. Although a remedy, in order to be considered "effective", is not required to lead to a favourable outcome for the applicant, it is necessary that the authorities take the positive measures required in the circumstances to ensure that the applicant's complaints are properly dealt with and that the remedy is effective in practice (see *Selmouni v. France*, cited above, §§ 79 to 80). The Court also takes note of the recommendations of the CPT, which strongly advocated an appeal to an outside authority when solitary confinement is ordered. It observes that no such appeal was possible in the applicant's case.

124. It follows from the above and from the Court's findings in respect of the Government's objection as to the exhaustion of domestic remedies

that there has been a violation of Article 13 of the Convention in the present case.

IV. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION

125. The applicant also complained under Article 14 of the Convention about the exercise of the Attorney-General's power to recommend to the President the granting of a pardon to certain prisoners. He argued that because of the Attorney-General's selection process, not all prisoners were given equal consideration.

126. In the light of all the material in its possession, and in so far as the matters complained of were within its competence, the Court finds no appearance of a violation of the rights and freedoms set out in the Convention or its Protocols arising from this complaint. The complaint must therefore be declared inadmissible pursuant to Article 35 §§ 3 and 4 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

127. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

128. The applicant did not submit a claim for just satisfaction. Accordingly, the Court considers that there is no call to award him any sum on that account.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaints under Articles 3, 8 and 13 admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 3 of the Convention;

3. *Holds* that there has been a violation of Article 8 of the Convention in respect of the suspension of family visits and the monitoring of the applicant's correspondence;

4. *Holds* that there has been a violation of Article 13 of the Convention.

5. *Holds* that there is no call to award just satisfaction.

Done in English, and notified in writing on 7 January 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President