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

SECOND SECTION

CASE OF GELFMANN v. FRANCE

(Application no. 25875/03)

JUDGMENT

STRASBOURG

14 December 2004

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Gelfmann v. France,

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

Mr A.B. BAKA, *President*,
Mr J.-P. COSTA,
Mr I. CABRAL BARRETO,
Mr V. BUTKEVYCH,
Mr M. UGREKHELIDZE,
Mrs E. FURA-SANDSTRÖM,
Ms D. JOČIENĖ, *judges*,

and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 23 November 2004,

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

PROCEDURE

1. The case originated in an application (no. 25875/03) against the French Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a French national, Mr Jean-Francois Gelfmann ("the applicant"), on 6 August 2003.

2. The applicant was represented by Mr E. Noël, a member of the Rouen Bar. The French Government ("the Government") were represented by their Agent, Mr R. Abraham, Director of Legal Affairs at the Ministry of Foreign Affairs.

3. On 16 September 2003 the President of the Chamber directed that the application should be communicated and given priority. In accordance with Article 29 § 3 of the Convention, he decided that the admissibility and merits of the application would be examined together.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1953 and is currently in Poissy Prison after periods in other prisons, including Fresnes. He is suffering from Aids, which he says he contracted in 1985, approximately nine years before he was sent to prison.

A. The applicant's criminal convictions

5. On 8 October 1994 a warrant was issued for the applicant's arrest in connection with a number of serious offences. On 26 June 1996 the Alpes Maritimes Assize Court convicted him of murder, attempt, armed robbery, and the false imprisonment and kidnapping of minors aged under fifteen and of adults. It sentenced him to twenty-one years' imprisonment, of which a minimum of fourteen years were to be served. On 3 March 1998 he received an eighteen-month sentence from the Albertville Criminal Court for attempted escape from lawful custody and assault. On 7 May 1998 the Savoie Assize Court convicted him of false imprisonment followed by mutilation, murder and attempted armed robbery. It sentenced him to twenty-two years' imprisonment, with a minimum of fourteen years and eight months to be served.

6. On 19 November 2002 the Investigation Division of the Chambéry Court of Appeal ordered that the sentences imposed by the two Assize Courts should run concurrently in part, with the overall sentence not to exceed the statutory maximum of thirty years. The minimum period to be served was increased to twenty years. The applicant will now become eligible for parole on 28 September 2023.

7. He has been held in various prisons. At the time his application was lodged, he had been in Fresnes Prison since April 2003.

8. In September 2003 it was decided to transfer him to Poissy Prison on the grounds that: “This transfer will enable family ties to be maintained with his partner, as the prisoner's condition appears to warrant”.

B. Application for a pardon

9. According to information supplied by the Government, the applicant lodged an application for a pardon on medical grounds on 1 February 2001 with the support of an association called Act Up. The Ministry of Justice asked the Principal Public Prosecutor at Reims Court of Appeal to appoint a medical expert to report on the applicant's condition and life expectancy, and to advise whether his condition and current or foreseeable treatment were compatible with his detention in prison or in a special facility.

10. The Government stated that the application was turned down on 21 November 2001, after the applicant had refused to agree to a medical examination or to allow the expert access to his records.

C. Applications for the sentence to be suspended

1. First application

11. While in Clairvaux Prison the applicant made an initial application for his sentence to be suspended under Article 720-1-1 of the Code of Criminal Procedure, a provision that had only recently been introduced.

12. The judge responsible for the execution of sentences ordered a medical report advising, *inter alia*, on the applicant's condition, whether he was suffering from an illness that compromised his chances of survival and whether his condition was permanently incompatible with his continued detention.

13. The expert, Dr B., lodged his report on 2 December 2002. After stating that the applicant had refused to undergo an examination and that the report was based solely on the medical records, he noted that the infection had spread and that the applicant's condition had deteriorated, in particular because he had refused all treatment for a year. He added:

> "His condition necessitates his total, unfailing commitment to take his medication regularly and to undergo regular biological tests to assess how he is responding to treatment and whether the illness has been stabilised. All opportunistic infection must be warded off. The promiscuous nature of the prison environment makes it a source of such infection. The current increase in the viral load means that the prognosis is very poor and, and unless the patient responds to treatment, things may deteriorate very rapidly."

14. Dr B. also noted that mentally the applicant was opposed to and refused all medical treatment and regular monitoring. He said in conclusion:

> "Mr Jean-François Gelfmann's chances (of survival) can be regarded as compromised. While it is neither possible, nor realistic, to predict the future, the following remarks may be made on the basis of the information in the medical records:
>
> Despite having had no treatment for a year and the increase in his viral load, Mr Gelfmann has not had any major life-threatening problems of infection requiring highly specialised care in a special facility.
>
> The treatment Mr Jean-François Gelfmann is required to take is oral, simple and can be administered in a prison environment. Monitoring is the responsibility of a medical team that is aware of the problem and composed of prison doctors and specialists in infectious diseases of the highest order.
>
> No one can safely predict what Mr Jean-François Gelfmann's attitude will be and whether he will agree to treatment in a particular environment.
>
> Although I have not been able to examine Mr Gelfmann, having read the voluminous file and last year's medical records and having questioned prison staff, I consider that his condition is currently compatible with continued detention. It will always be possible, if he so wishes and if his symptoms worsen, for him to be re-examined at a later date, at which point the opinion of a psychiatrist should also be sought."

2. Second application

15. Following his transfer to Fresnes Prison, the applicant made a fresh application to the Paris Regional Parole Court on 4 March 2003 for an order suspending his sentence.

16. In an order of 14 May 2003, the judge responsible for the execution of sentences requested medical reports from Dr F. and Dr S.

17. In his report of 28 May 2003, Dr F. noted:

> "Mr Jean-François Gelfmann is carrying a serious disease: Aids. The diagnosis has been confirmed by the biological analyses (serology, viral and lymphocyte T4 count) and by the existence of other diseases, so called communal diseases, in association with HIV.
>
> The disease was contracted long ago. Mr Jean-François Gelfmann himself says that it dates from 1985 and openly admits that he refused treatment until 1997.
>
> The prognosis, whether in the short, medium or long-term, is grim. The specific treatment is onerous and can only be administered – with difficulty because the prisoner is uncooperative – in custody or in a relatively restrictive structure. This is the crux of the matter. In view of the seriousness of Mr Jean-François Gelfmann's condition and his disorders, which may be described as severe borderline syndrome, what is the solution? On one point, we entirely agree with the prisoner: he must be admitted to hospital for an assessment of the Aids position and its potential evolution and a check on the associated diseases: mycosis of the digestive tract, cutaneous mycosis, neuropathy and particularly tuberculosis. Although the tuberculosis appears to have been cured, in the United States Aids patients with tuberculosis are kept in permanent quarantine, as the American specialists consider that they are unable to cure tuberculosis in Aids patients and that the risk of infection is too high. That concern needs to be addressed.
>
> All things considered, Mr Jean-François Gelfmann is able to tolerate detention in prison provided he is kept under strict medical supervision.
>
> Detention in a hospital would, however, be more compatible with his condition. Beyond the short term, that is to say the assessment of the potential evolution of the diseases, the question of compatibility will need to be reviewed, it being borne in mind that, since we are dealing with diseases that are severe, infectious and fatal, continued treatment outside the current setting would be risky."

18. Dr F. said in conclusion:

> "Jean-François Gelfmann is receiving treatment for a confirmed case of Aids. He has also been treated for tuberculosis. These diseases, related illnesses (mycosis, various infections, neuropathy) and severe psychopathy require assessment and his admission to hospital.
>
> The treatment he is receiving in detention in Fresnes is entirely appropriate, compatibility with detention is reasonable under medical supervision, but it would be more coherent for him to be treated in hospital."

19. In his report of 30 May 2003, Dr S. gave the following answers to questions he had been put by the judge:

"... **3/ Seriousness of the illness and prognosis**

Mr Gelfmann has been infected by the Aids virus, category C3 under the Atlanta classification. He has had opportunistic complications that have been treated. He will shortly have been receiving treatment for five years, starting with a bitherapy which proved ineffective after six months followed by tritherapy, which was effective, but was suspended five months later in May 2000 owing to neurological complications.

A few months later he began quadritherapy in Troyes but stopped taking his medication for a period of a year and a half.

He resumed treatment in July 2002 following the reappearance of adenopathy and a genital infection, but this has produced no results as he has refused treatment since October 2002. Since his transfer to Fresnes, the situation has got worse and the level of T4 has decreased.

There is a risk of death in the short to medium term.

4/ Treatment required

The quadritherapy started four years ago is no longer effective. The patient is due to attend Fresnes Hospital for medical treatment which has become more onerous as a result of his poor general health. A more thorough examination is needed and can only be performed in a special facility. There is virtually no other treatment left to offer Mr Gelfmann against the Aids virus, beyond the detection and treatment of other opportunistic infections, in particular, of the digestive tract...

5/ Whether his condition is compatible with detention in prison or requires special treatment that is only available in hospital

Mr Gelfmann's condition is no longer compatible with detention in prison and requires treatment that is only available in hospital.

6/ Whether he is suffering from a disease that compromises his chances of survival

Yes, Mr Gelfmann is suffering from a disease that compromises his chances of survival in the short to medium term.

7/ Information and observations that may assist the court

If the position concerning the viral load and T4 continues to deteriorate, complications may develop (lymphoma, pneumopathy, toxoplasmosis, CMV infection or dementia). The hospital assessment will afford more detailed information on the evolution of the illness. Unforeseeable intercurrent lethal complication is possible."

20. The judge also ordered a psychiatric report, which stated that the applicant was not suffering from a mental disorder amounting to insanity warranting psychiatric treatment, but had presented since childhood emotional imbalance marked by personality organisation with characteristic psychopathic traits which was not incompatible with continued detention. It was further noted that the applicant remained of dangerous criminal propensity and that, owing to his refusal to receive any psychotherapeutic treatment, there was no point in offering him such treatment in detention or making it a condition of a suspended sentence, since his active participation was the only guarantee of possible success.

D. Decisions of the parole courts

21. The Paris Regional Parole Court met on 25 June 2003. In a judgment delivered that same day, it ordered the applicant's sentence to be suspended on the grounds that it had been established by two concurring expert reports that he was suffering from a disease that compromised his chances of survival and was thus eligible for a suspended sentence.

22. The Principal Public Prosecutor's Office appealed against that judgment, which the National Parole Court quashed on 18 July 2003 for the following reasons:

> "... a medical report dated 28 May 2003 shows that the treatment for the diseases from which Mr Gelfmann is suffering is onerous and can only be administered '– with difficulty because the prisoner is uncooperative – in custody or in a relatively restrictive structure'. The practitioner adds: 'This is the crux of the matter' and that detention remains 'compatible with his condition'. Another medical expert, in a report lodged on 2 December 2002, states that the treatment which Mr Gelfmann must take is 'simple and can be administered in a prison environment'.
>
> Lastly, the impugned decision notes that a psychiatric expert has stated that Jean-François Gelfmann 'remains of' dangerous criminal propensity and that his 'active participation' in the treatment is the only guarantee of possible success, 'in view of the way his personality is structured'.
>
> In these circumstances, it does not appear appropriate to suspend the sentence and the impugned decision must be reversed."

23. In a letter of 23 July 2003, the applicant's lawyer was advised by a member of the *Conseil d'État* and Court of Cassation Bar whom he had contacted that, by virtue of Article 720-1-1 of the Code of Criminal Procedure, no appeal lay against a decision of the National Parole Court, unless it could be shown that it had acted in excess of its authority, which did not appear to be the position in the applicant's case.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Domestic law and practice

1. Medical treatment in custody

24. Legislation introduced on 18 January 1994 transferred responsibility for treating prisoners to the public hospital service. Medical treatment for prisoners is thus provided by medical structures within the prisons (consultation and outpatient care units) directly affiliated to the local public hospitals that are to be found in the vicinity of each prison (Article D. 368 of the Code of Criminal Procedure).

2. Prisoners' health and parole or suspension of sentence

25. A prisoner's state of health may be taken into account in deciding whether he or she should receive a pardon from the French President (Articles 17 and 19 of the Constitution) or be granted parole under Article 729 of the Code of Criminal Procedure.

26. Further, the Rights of Patients and Quality of the Health Service Act of 4 March 2002 inserted a new Article 720-1-1 into the Code of Criminal Procedure which enables an application to be made for suspension of sentence on medical grounds.

27. An Act of 15 June 2000 brought issues relating to parole within the sole jurisdiction of the ordinary courts and, in particular, the judge responsible for the execution of sentences. It also created two new bodies, the Regional Parole Courts and the National Parole Court.

28. The relevant provisions of the Code of Criminal Procedure now provide:

Article 720-1-1

"Irrespective of the type of sentence or the length of sentence still to be served, suspension [of sentence] may also be ordered, for a period that not need be specified, for convicted persons who are shown to be suffering from a disease that compromises their chances of survival or whose condition is permanently incompatible with continued detention, other than persons in respect of whom a hospital order has been made owing to mental disorder.

Suspension may be ordered only if two medical experts state in separate, concurring reports that the convicted person comes within one of the categories referred to in the preceding sub-paragraph.

The judge responsible for the execution of sentences shall have jurisdiction to suspend the sentence, in accordance with the procedure set out in Article 722, if the custodial sentence passed is for ten years or less or if, irrespective of the initial sentence, the period still to be served is three years or less.

In all other cases, the Regional Parole Court shall have jurisdiction to suspend the sentence, in accordance with the procedure set out in Article 722-1.

The judge responsible for the execution of sentences may at any time order medical reports on a convicted person whose sentence has been suspended under this Article and reinstate it if the conditions on which the sentence was suspended have not been complied with...”

Article 722-1

The regional parole court shall have power to grant, adjourn, refuse or revoke measures relating to parole that are not within the jurisdiction of the judge responsible for the execution of sentences in a reasoned decision on an application by the convicted person or the principal public prosecutor, after consulting the Execution of Sentences Consultative Board.

A regional parole court shall be attached to each court of appeal and be composed of a divisional president or judge of the court of appeal, who shall preside, and two judges responsible for the execution of sentences within the jurisdiction of the court of appeal, including one from the court with jurisdiction for the prison in which the convicted person is being held if the decision concerns a grant or refusal of parole or an adjournment.

The functions of the public prosecutor shall be performed by the principal public prosecutor or one of his or her advocates-general or deputies and those of the registry by a registrar from the court of appeal.

The regional parole court shall give its ruling in a reasoned decision following an adversarial hearing in private at which it shall hear the submissions of the prosecution and the observations of the convicted person and, if applicable, his counsel.

The convicted person or the prosecution may appeal to the National Parole Court against a decision of the regional parole court within ten days after being notified of it. Such decisions shall be provisionally enforceable. However, an appeal by the principal public prosecutor within twenty-four hours after receiving notification shall operate to stay execution of the decision until the National Parole Court has given its ruling. The National Parole Court shall examine the case no later than two months after the appeal, failing which the appeal will be void.

The National Parole Court shall be composed of the President of the Court of Cassation or a judge of that court appointed as his or her representative, who shall preside, two judges from the seat of the court, a representative of the national association for the rehabilitation of convicted offenders and a representative of the national association for victim support. The functions of the prosecution shall be performed by the Principal Public Prosecutor at the Court of Cassation. The National Parole Court shall give its ruling in a reasoned decision against which there shall be no right of appeal whatsoever. The hearing shall be held and the decision given in private, after the court has heard the observations of the convicted person.

The arrangements for implementing this Article shall be determined by decree. The decree will specify where the adversarial hearing which the regional parole courts are required to hold will be held when it concerns convicted prisoners.”

The system has been changed by an Act of 9 March 2004 which came into force on 1 January 2005. Henceforth, the relevant decisions are to be taken by the judge responsible for the execution of sentences and a new court, the court responsible for the execution of sentences.

3. Case-law

In a judgment of 12 February 2003 concerning the application of the aforementioned Article 720-1-1 (*Papon*, *Gazette du Palais*, 11-12 April 2003), the Court of Cassation stated:

> "The principal public prosecutor argued that – in view of the seriousness and impact of a conviction for crimes against humanity – the court of appeal was not entitled to decide that Mr [Papon]'s age and condition made it unlikely that suspending his sentence would prejudice public order, without first examining whether there were external factors that needed to be taken into consideration. That argument must fail.
>
> Article 720-1-1 sub-paragraph 1..., which enables a custodial sentence to be suspended for a period that not need be specified, irrespective of the type or length of sentence, in respect of convicted prisoners who are shown to be suffering from a disease that compromises their chances of survival or whose condition is permanently incompatible with continued detention, does not lay down any conditions as to the nature of the offences for which sentence has been passed or risk of prejudice to public order."

4. Statistics

29. According to figures published in an article in the *Le Monde* newspaper on 25 March 2004, 83 prisoners had had their sentences suspended since the entry into force of the Act of 4 March 2002: "In the year 2003, 63 applications for suspension of sentence were granted, 52 were refused and 49 were being examined. At the same time, there were 82 non-suicide related deaths in custody in 2003".

B. Recommendation no. R (93) 6 of the Committee of Ministers to member States concerning prison and criminological aspects of the control of transmissible diseases including Aids and related health problems in prison

30. The appendix to the Recommendation provides, *inter alia*:

"I. Prison Aspects

A. The general principles

...

14. Prisoners with terminal HIV disease should be granted early release, as far as possible, and given proper treatment outside the prison."

Reference should also be made to Recommendation no. R (98) 7 of the Committee of Ministers to member States concerning the ethical and organisational aspects of health care in prison.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

31. The applicant submitted that his continued detention in his condition violated Article 3 of the Convention, which provides:

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

A. Admissibility

32. The Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and that there are no other grounds for declaring it inadmissible. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

33. The applicant said that he had been suffering from Aids since 1985 and from so-called opportunistic illnesses (mycosis of the digestive tract, cutaneous mycosis, neuropathy and tuberculosis) which, although apparently cured, could return at any time. He maintained that his condition was so serious that – as the evolution of the various indicators (the number of T4 lymphocytes, the viral load) showed – his continued detention entailed distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention. He relied on the findings of the various expert reports, in particular that his condition was not compatible with detention in prison.

34. Although it was true that there had been periods in custody in which he had refused treatment that he had been prescribed, this had been, as a medical certificate produced by the Government showed, as a result of a "reactive depressive syndrome" and his refusal was not permanent.

35. The applicant further pointed out that the treatment he was receiving was extremely onerous and frequently had highly undesirable side-effects on the digestive system which on a number of occasions had caused him to suspend his treatment in order to be able to eat. In addition, his illness was currently incurable and the medication could do no more than delay the inevitable. This had been noted by the experts, who considered that his chances of survival were compromised.

36. As to the allegation that he would receive appropriate care in custody for his condition, he relied on the reports of the experts, in particular, Dr F., who described the treatment as "onerous" and said that "[d]etention in a hospital would, however, be more compatible with his condition", and Dr S., who stated:"[the applicant's] condition is no longer compatible with detention in prison and requires treatment that is only available in hospital".

37. On the latter point, the applicant explained that "long-term" admission to the Fresnes Prison Hospital was not possible, as sick prisoners were only admitted for short stays and there had been times when he had been refused admission, as the two beds allocated to prisoners requiring close supervision were both occupied. In conclusion, he said that only a proper hospital would be able to provide him with suitable care.

38. He added that criticism of his request to be held in isolation was unfounded.

39. Lastly, he said that the Court of Cassation had ruled that Article L. 720-1-1 of the Code Criminal Procedure: "does not lay down any conditions as to the nature of the offences for which sentence has been passed or risk of prejudice to public order". Accordingly, when deciding an application for a sentence to be suspended, the courts were required to take only medical grounds into account and determine whether either of the two statutory conditions applied, namely that the prisoner's chances of survival were compromised or his or her condition was incompatible with detention. He argued that in the instant case the National Parole Court had reintroduced the issue of dangerous propensity and, consequently, of prejudice to public order, by taking into account the psychiatric report.

40. The Government explained the recent changes in the domestic legislation and recapitulated the case-law of the Convention institutions on the subject. They noted, firstly, that the applicant was already suffering from the illness when he was sent to prison and that his condition had deteriorated as result of his refusal to follow the prescribed treatment properly. In addition, it was at the applicant's own request that he had been held in isolation and it had not assisted his recovery, particularly psychologically.

41. The applicant had been offered an opportunity to convalesce in the best possible conditions as regards medication, detention and admission to hospital when his condition required.

42. He had been offered medical care in detention or as a hospital outpatient, depending on his state of health. For instance, he was admitted to the Fresnes General Hospital several times in 1998 and again from 2 to 20 June 2003, on the latter occasion for an assessment of the changes in his general condition.

43. The Government stressed that the applicant had been convicted of major offences and had adopted a particularly "uncooperative" attitude in prison which had resulted in his being repeatedly transferred from one prison to another for security reasons following the discovery of escape plans in 1995 and again in 1996, two attempted breakouts in 1997, and two further escape plans in 1998 and 2000. On 28 February 2003 he had taken part in a mutiny at Clairvaux Prison.

44. The Government pointed out that despite the special security arrangements required to accommodate him the applicant had been transferred whenever necessary to prisons equipped to deal with his condition. Thus, in December 1998 he had been transferred to Lannemezan Prison after refusing to take food or his medication. In October 2000 he was transferred to Fresnes when the doctor treating him decided that the prison in which he was being held (Villeneuve lès Maguelonne) was no longer equipped to provide him with the necessary care. Similarly, in June 2003 the prison authorities had granted his request to be moved to isolation quarters. They had also granted a request by his partner for him to be transferred to Poissy Prison (despite the fact that it did not normally take "particularly high-profile" prisoners). The Government said that medical care could be provided by the Poissy Intermunicipal Hospital.

45. Relying on various medical certificates, the Government added that the applicant's repeated refusal to receive treatment should be taken into account.

46. As to whether his condition was currently compatible with detention, the Government said that, while the experts were not entirely in agreement, they had not indicated that detention was causing any deterioration in his health.

47. Lastly, the Government submitted that in its decision of 18 July 2003 the National Parole Court had cited a number of factors that had been noted in the experts' reports, namely that the treatment could only be given in detention or in a restrictive structure, that the treatment was simple and could be administered in a prison environment and that the applicant continued to have dangerous criminal propensities. Referring to the *Mouisel v. France* judgment, the Government said that, by seeking, on the basis of the 2000 and 2002 Acts, a balance between "the protection of prisoners' health and well-being" and "the legitimate requirements of a custodial sentence", the National Parole Court's order for the applicant to remain in custody had been lawful and did not violate Article 3 of the Convention.

2. The Court's assessment

48. The Court reiterates that, according to its case-law, ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3 of the Convention. The assessment of this minimum level of severity is, in the nature of things, 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 (see *Kudła v. Poland* [GC], no. 30210/96, § 91, ECHR 2000-XI; and *Mouisel v. France*, no. 67263/01, § 37, ECHR 2002-IX). Regard is to be had to the particular circumstances of each specific case (*Papon v. France (no. 1)* (dec.), no. 64666/01, ECHR 2001-VI).

49. Thus, the Court has been called upon to examine, *inter alia*, whether it is compatible with Article 3 for the following categories of persons to be detained: persons suffering from mental disorder (*Kudła* cited above; and *Keenan v. the United Kingdom*, no. 27229/95, ECHR 2001-III) or serious illness (*Mouisel* cited above, *Matencio v. France*, no. 58749/00, 15 January 2004; and *Sakkopoulos v. Greece*, no. 61828/00, 15 January 2004), the disabled (*Price v. the United Kingdom*, no. 33394/96, ECHR 2001-VII), the elderly (*Papon* decision cited above) or drug addicts suffering withdrawal symptoms (*McGlinchey and Others v. the United Kingdom*, no. 50390/99, ECHR 2003-V).

50. Article 3 of the Convention cannot be interpreted as laying down a general obligation to release a detainee on health grounds or to transfer him to a civil hospital, even if he is suffering from an illness that is particularly difficult to treat (see *Mouisel*, judgment cited above, § 40). However, this provision does require the State to ensure that prisoners are detained in conditions which are compatible with respect for human dignity, that the manner and method of the execution of the measure do not subject them to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, their health and well-being are adequately secured by, among other things, providing them with the requisite medical assistance (see *Kudła*, judgment cited above, § 94; and *Mouisel*, judgment cited above, § 40).

51. As the Court noted in the aforementioned cases of *Mouisel* and *Matencio* (at §§ 44 and 80 respectively), the procedural arrangements introduced by the Acts of 15 June 2000 and 4 March 2002, which supplement the right to seek a Presidential pardon on health grounds by enabling prisoners whose health has deteriorated significantly to apply for release at short notice, may provide sufficient guarantees to ensure the

protection of prisoners' health and well-being which States must reconcile with the legitimate requirements of a custodial sentence.

52. The applicant has been able to make effective use of that machinery in the present case. Although the Regional Parole Court suspended his sentence, the National Court overruled it in reliance in particular on the reports of the experts, Dr F. and Dr B., and of the psychiatric expert, who noted that the applicant had "dangerous criminal propensities". In that connection, the Court has held that, on the question of whether a person should remain in detention, it is precluded from substituting the domestic courts' assessment of the situation with its own (see *Sakkopoulos*, cited above, § 44), especially when, as in the instant case, the domestic authorities have generally discharged their obligation to protect the applicant's physical integrity, notably by providing appropriate medical care (ibid.).

53. The Court notes that the applicant does not in fact contest the quality of the care he has received up till now, both in prison and in the various hospitals to which he has been admitted. Nor as he complained of the physical conditions of his detention. It is true that he has complained of his recent transfer to Poissy Prison, but – irrespective of whether this was at his own or his partner's request – he has not suggested that his detention there was ill-adapted to his condition or the treatment of his illnesses.

54. The Court must therefore decide whether his continued detention is compatible with Article 3 of the Convention in view of his condition.

55. The Court notes that the applicant has been suffering from Aids for almost twenty years and has contracted a number of so-called opportunistic infections, which currently appear either to have been cured or stabilised, even though a recurrence obviously cannot be ruled out.

56. The Court has examined the reports of the experts appointed in connection with the applicant's two applications for suspension of sentence. The three experts concerned noted that the applicant was "uncooperative" and had refused or suspended his treatment on various occasions, sometimes for lengthy periods.

57. While all three found that the applicant's chances of survival were compromised in the short to medium term (since, although considerable advances had been made in the treatment of Aids, it could not yet be considered a wholly curable disease), they did not agree on the compatibility of his condition and its treatment with detention. Dr S. considered that the applicant's condition necessitated his admission to hospital and was not compatible with detention in prison, whereas Dr B. concluded that it was compatible with detention, as the treatment was simple and could be administered in a prison environment, and Dr F.

concluded that (medical) care in custody was entirely appropriate, and that compatibility with detention was reasonable under medical supervision although it would be more coherent for him to be detained in hospital.

58. The material before the Court also shows that the authorities are heedful of the applicant's condition. He was admitted to Fresnes Public Hospital from 2 to 20 June 2003 for an assessment of changes in his general condition. The Government stated that, as additional tests had proved negative and there was no sign of intercurrent infection, the hospital had authorised his discharge and the applicant had subsequently returned to prison, where the medical care he receives was of the same quality as that available to him outside. The case file also shows that the applicant is currently in Poissy Prison and his medical condition is being monitored by Poissy Intermunicipal Hospital, a civil hospital.

59. In these circumstances, on the basis of the evidence before it and assessing the relevant facts as a whole, the Court finds that neither the applicant's current state of health, nor his alleged distress, presently attains a sufficient level of severity to entail a violation of Article 3 of the Convention (see *Kudła*, judgment cited above, § 99; and *Matencio*, judgment cited above, § 89). In any event, should his health deteriorate, French law empowers the national authorities to intervene in various ways (see *Papon (no. 1)*, decision cited above). In particular, the applicant could make a further application for suspension of his sentence, in which eventuality further expert reports will be ordered.

60. In the light of the foregoing, the Court concludes that has been no violation of Article 3 of the Convention.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;

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

Done in English, and notified in writing on 14 December 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

A.B. BAKA
President