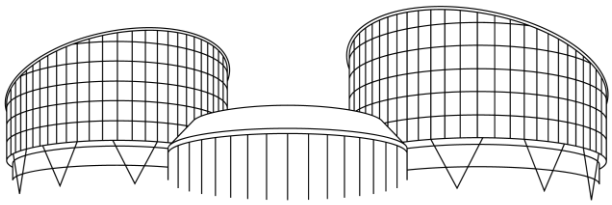

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF X v. TURKEY

(Application no. 24626/09)

JUDGMENT
[Extracts]

STRASBOURG

9 October 2012

FINAL

27/05/2013

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

In the case of X v. Turkey,

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

Françoise Tulkens, *President,*
Danutė Jočienė,
Dragoljub Popović,
Işıl Karakaş,
Guido Raimondi,
Paulo Pinto de Albuquerque,
Helen Keller, *judges,*
and Stanley Naismith, *Section Registrar,*

Having deliberated in private on 11 September 2012,

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

PROCEDURE

1. The case originated in an application (no. 24626/09) against the Republic of Turkey lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Turkish national, Mr X ("the applicant"), on 12 May 2009. The President of the Chamber acceded to the applicant's request not to have his name disclosed (Rule 47 § 3 of the Rules of Court). She also gave priority to the application under Rule 41 of the Rules of Court.

2. The applicant was represented before the Court by Mr S. Cengiz and Mr Akcı, lawyers practising in İzmir. The Turkish Government ("the Government") were represented by their Agent.

3. The applicant complained, in particular, about the conditions of solitary confinement that he had suffered in Buca Prison in İzmir. He also alleged that he had had no domestic remedy by which to request an end to his solitary confinement and a return to the ordinary prison regime. He relied on Articles 3, 5, 6, 8, 13 and 14 of the Convention.

4. On 1 September 2010 the President of the Second Section decided to give notice of the application to the Government. It was also decided that the Chamber would rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1989 and lives in İzmir. He is a homosexual. He is currently serving a prison sentence in Eskişehir Prison.

In 2009 a number of sets of criminal proceedings were instituted against the applicant for, *inter alia*, forgery of documents, deception, credit-card fraud and misrepresentation on official documents. On 2 June 2009 the Karşıyaka Assize Court sentenced him to one year and eight months' imprisonment at his first trial. The applicant appealed to the Court of Cassation. The case is apparently still pending before that court. On 28 December 2009 the İzmir Assize Court, for its part, sentenced the applicant to ten years, three months and twenty-two days' imprisonment for committing the offences referred to above more than once. The applicant appealed to the Court of Cassation against that judgment as well. The appeal is still pending.

A. The applicant's conditions of detention

6. On 24 October 2008 the applicant went to the Çiğli police station in İzmir and confessed to committing a series of offences, such as forgery of documents, deception, credit-card fraud and misrepresentation on official documents. He was subsequently remanded in custody by a justice of the peace and taken to Buca Prison in İzmir.

7. At Buca the applicant was first placed in a shared cell with heterosexual inmates.

8. On 5 February 2009 the applicant's representative asked the prison authorities to transfer the applicant, for safety reasons, to another shared cell with homosexual prisoners. In support of the request, he specified that his client had been intimidated and bullied by his fellow inmates. According to the record of his statement drawn up the same day and signed by two prison warders and the applicant, the latter made the following statement:

> "I am currently living in block no. 6. I have a homosexual condition ("*eşcinsellik hastalığ*"). When my fellow inmates found out about this, I started having problems. I have informed the prison governor about the situation through my lawyer. I wish to be transferred to a block adapted to my situation."

9. On 5 February 2009 the prison authorities decided to place the applicant on his own in an individual cell. The record of that decision contains the following passage:-

> "... the prisoner, who has said he has a homosexual condition, has been placed in an individual cell instead of his current block."

10. The applicant stated that the cell in which he had been placed measured 7 m², with living space of no more than half that. It had a bed and toilets, but no washbasin, was very poorly lit and very dirty and rat-infested. The applicant said that there were ten other cells of the same type that were intended for solitary confinement as a disciplinary measure or for inmates accused of paedophilia or rape. After he had been put in an individual cell on 5 February 2009, the applicant was deprived of any contact with other inmates and any social activity. He had not been permitted any outdoor exercise and had been allowed out of his cell only to see his lawyer or attend hearings held approximately once per month.

11. The Government did not dispute those facts. They specified that the cell had been equipped with the furniture and facilities necessary for day-to-day living, such as lighting, toilets, a bed, wardrobe and chair. They explained that the applicant had been alone in the cell until another homosexual prisoner had arrived at the prison.

12. On 21 April 2009 the applicant lodged a request with the İzmir public prosecutor's office for the measures against him to be lifted. He specified that he was a homosexual and not a transvestite or transsexual. On account of his sexual orientation, he had been detained in an individual cell without any contact with other inmates and without being able to take part in any social activity. He had been detained in those conditions for three months and had had psychiatric problems as a result. He pointed out that in the Turkish prison system only inmates who had been sentenced to whole-life imprisonment were detained in similar conditions. He requested equal treatment to other inmates.

13. On 7 May 2009 the applicant lodged a further request, through his lawyer, with the İzmir Post-Sentencing Judge, who also had responsibility for monitoring conditions of pre-trial detention, seeking an end to his solitary confinement and a return to ordinary conditions of detention. He stated that there had been no basis for placing and keeping him in solitary confinement and that he had suffered detrimental and irreparable psychological effects as a result. He maintained that these inhuman and degrading conditions of detention had been imposed on him solely on the basis of his sexual orientation, on the pretext of protecting him from bodily harm. He had never asked to be put in cells with other inmates; his complaint was about the fact that for more than three months he had been unable to go outdoors and that the only person he had been able to talk to had been his lawyer. He requested equal treatment to other inmates, with the possibility of outdoor exercise and social activities with other inmates, by means of measures protecting his physical integrity. He observed further that the matters of which he complained amounted to a violation of Articles 3, 5, 6 and 8, taken in conjunction with Article 14 of the Convention.

14. On 25 May 2009 the Post-Sentencing Judge decided, after merely examining the file, that it was not necessary to decide the applicant's claim

on the merits. In doing so, he observed in particular that the applicant was not a "convicted prisoner" but was merely in pre-trial detention and that the practice of the prison authorities was in conformity with the law both in form and substance. He noted that the prison authorities had a discretionary power as Law no. 5275 on the execution of sentences and security measures did not contain specific rules for taking account of the wishes of remand prisoners regarding their placement in prisons, as was the case for the placement of convicted prisoners. He held, *inter alia*:

> "... it has been established that the applicant is being detained as a preventive measure in an individual cell as the State cannot run the risk of a transvestite being lynched [in a prison] ..."

15. On 29 May 2009 the applicant challenged that decision before the İzmir Assize Court. He stated in his pleadings that he had been placed in solitary confinement twenty-four hours per day in Buca Prison on no legal basis and that he had been deprived of any contact with other inmates or outdoor exercise. Drawing attention to his age and psychological condition, which had significantly deteriorated since he had been kept in solitary confinement, he explained that he was unable to endure such conditions of detention. He also stated that, notwithstanding the pretext that his physical integrity was at risk on account of his sexual orientation, the fact that he had been placed in solitary confinement was a highly inappropriate measure in his regard. He again requested equal treatment to other inmates and to be allowed outdoor exercise and social activities with other inmates, by means of measures capable of securing his physical integrity.

16. On 4 June 2009 the Assize Court dismissed the challenge, after receiving the prosecutor's opinion concerning the applicant's request, without holding a hearing and without first communicating the prosecutor's opinion to the applicant. The Assize Court confined itself to ruling that the Post-Sentencing Judge's decision was in conformity with the law.

17. During a hearing held on 12 June 2009 in another set of criminal proceedings against the applicant, the 5th Chamber of the İzmir Assize Court decided to send a letter to the Buca prison authorities requesting them to take all necessary measures regarding the applicant's complaints about his conditions of detention.

18. On 8 July 2009 the İzmir public prosecutor's office transferred the applicant to Manisa Psychiatric Hospital for an assessment of his mental state.

19. From 8 July to 12 August 2009 the applicant was kept under observation at Manisa Psychiatric Hospital. The parties did not provide any precise information about that period in hospital. On 12 August 2009 a medical report was drawn up by three psychiatrists. According to that report, the applicant suffered from a homosexual identity problem ("*eşcinsel kimlik bozukluğu"*). It also said that the suffering related to his conditions of detention corresponded to symptoms of reactive depression. It was decided

that future psychiatric problems could be treated at the prison. The applicant was sent back to Buca Prison.

20. From 8 August 2009 another homosexual inmate was placed in the applicant's cell.

21. On 11 November 2009 the prison authorities decided to separate the two prisoners. From that date the applicant was again deprived of any contact with other inmates.

22. On 26 February 2010 the applicant was transferred to Eskişehir Prison and placed in a standard cell with three other inmates where he was given the same rights as other prisoners, such as outdoor exercise, sporting activities, regular contact with other inmates, and so on. According to his lawyer, the applicant still suffered from psychological problems – particularly depression and insomnia – on account of his previous solitary confinement at Buca Prison; he was taking anti-depressants and other medicines to calm him down and help him sleep.

...

II. RELEVANT DOMESTIC LAW AND PRACTICE

23. The Execution of Sentences and Security Measures Act (Law no. 5275), passed on 13 December 2004, contains no specific provisions regarding placing *remand prisoners* in prisons. The situation is different for convicted prisoners. In accordance with sections 24, 49 and 69 of that Act, the latter are grouped and placed in prisons according to their age, sex, the length of the prison sentence imposed, the nature of the offence of which they have been convicted and other relevant criteria.

24. Section 49(2) of that Act is worded as follows:

> "In the event of a serious threat (*ciddi tehlike*) to order in the establishment and to the safety of others, measures other than those expressly provided for in the present Law may be taken to preserve order. ..."

25. Under section 25, prisoners sentenced to whole-life imprisonment may take daily exercise in an inner courtyard adjoining their cell and, according to the circumstances, may be permitted to have limited contact with inmates from the same unit.

26. Under Rule 186 of the Rules governing the prison service and execution of sentences and security measures, published in the Official Journal on 6 April 2006, inmates may benefit from numerous rights afforded to prisoners, such as sporting and other physical activities, at least one hour's daily outdoor exercise (Rule 131), participating in cultural activities, visiting the library, attending lectures, seminars, and so on (Rules 84-96 and 110-117), attending courses, receiving visits, and so on (Rules 99-108).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

27. The applicant complained about the conditions of his detention in solitary confinement for thirteen months at Buca Prison. He relied on Article 3 of the Convention, which provides:

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

28. The Government contested that allegation.

...

B. Merits

1. The parties' submissions

29. The applicant submitted that on account of his sexual orientation he had been placed in an individual cell for more than thirteen months. He maintained that his solitary confinement and the harsh conditions in which he had been detained had had an irreparable and irreversible effect on his mental and physical health. He also alleged that there had been no legal basis for placing him in a small individual cell, that he had been detained twenty-four hours per day, deprived of any contact with other inmates and not allowed any outdoor exercise.

30. The Government submitted that the conditions of the applicant's detention did not amount to inhuman or degrading treatment in breach of Article 3, as the minimum level of severity had not been attained. They observed that the applicant had been placed in an individual cell at his own request because he had been intimidated and harassed by heterosexual inmates. The applicant's cell was equipped with furniture and facilities necessary for day-to-day living, such as lighting, toilets, a bed, wardrobe and chair. They explained that the applicant had been alone in his cell until another homosexual prisoner had arrived at the prison.

2. The Court's assessment

31. The Court must first determine the period of the applicant's detention in an individual cell to be taken into account in examining his complaints under Article 3. In that connection it observes that, in his application form of 12 May 2009, the applicant complained about the

conditions of his detention in Buca Prison, where he had been placed in an individual cell. After lodging his application, the applicant was hospitalised from 8 July to 12 August 2009 in a psychiatric hospital. At the same time another – homosexual – inmate was placed in the applicant's cell from 8 August 2009. Subsequently, between 11 November 2009 and 26 February 2010, the applicant was again on his own in his cell.

32. Thus, according to all the documents in the file, from 5 February 2009 and up until his transfer to Eskişehir Prison, the applicant was in solitary confinement in a cell measuring approximately 7 sq. m, with living space not exceeding half of that surface area. He was deprived of outdoor exercise at all times. Likewise, with the exception of the periods from 8 July to 12 August (hospitalisation) and from 12 August to 11 November 2009 (when another inmate was put in the applicant's cell), he was deprived of any contact with other inmates, up until 26 February 2010, when he was transferred to Eskişehir Prison. He was thus in solitary confinement for eight months and eighteen days.

The Court's examination will concern all the periods in question (see, to similar effect, *Ciucă v. Romania*, no. 34485/09, § 29, 5 June 2012).

33. With regard to the general principles governing the rights of prisoners to conditions of detention compatible with human dignity, the Court refers, among other authorities, to *Mouisel v. France* (no. 67263/01, § 37-40, ECHR 2002-IX) and *Renolde v. France* (no. 5608/05, §§ 119-20, ECHR 2008 (extracts)). In that connection it reiterates that Article 3 of the compels the State to ensure that a person is detained in 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 of an intensity 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, §§ 92-94, ECHR 2000-XI).

34. With regard to the conditions of detention, regard must be had to their cumulative effects and to the applicant's specific allegations (see *Dougoz v. Greece*, no. 40907/98, ECHR 2001-II). In particular, the period during which an individual has been kept in detention in the conditions complained of is an important factor to be taken into consideration (see *Alver v. Estonia*, no. 64812/01, 8 November 2005).

35. In the present case the Court observes that at the material time the applicant was awaiting trial for non-violent offences. He had spontaneously gone to the police to confess to the offences he had committed. His personal situation is thus radically different from that of the applicants in the cases of *Öcalan* and *Ramirez Sanchez* examined by the Court, which concerned convicted prisoners whose detention posed particular difficulties for the national authorities (see *Öcalan v. Turkey* [GC], no. 46221/99, §§ 32 and

192, ECHR 2005-IV, and *Ramirez Sanchez v. France* [GC], no. 59450/00, §§ 125 and 128, ECHR 2006-IX).

36. The Court observes that the applicant was placed in a cell measuring 7 m. sq, with living space not exceeding half of that surface area. It had a bed and toilets, but no washbasin. The Government did not dispute the applicant's submission that it was very poorly lit, very dirty and rat-infested. It was a cell intended for inmates in solitary confinement as a disciplinary measure or for inmates accused of pedophilia or rape. While in that cell the applicant was deprived of any contact with other inmates and of any social activity. He was given no access to outdoor exercise and was not permitted to leave his cell other than to see his lawyer or attend hearings, which were held at intervals of approximately one per month.

37. The Court observes that the applicant's isolation was neither complete sensory isolation nor total social isolation, but relative social isolation. However, the fact remains that certain aspects of those conditions were stricter than the Turkish prison regime for prisoners serving whole-life imprisonment (see paragraph 30 above). Whilst the latter can take daily exercise in an inner courtyard adjoining their cell and, depending on the circumstances, may be allowed limited contact with prisoners from the same unit, the applicant was deprived of such possibilities. Likewise, in the two cases referred to above, which concerned prisoners whose detention posed particular problems for the national authorities, there was no blanket prohibition on open-air exercise (see *Öcalan*, cited above, § 32, and *Ramirez Sanchez*, cited above, § 125).

38. In the Court's view, the blanket prohibition on open-air exercise – which remained in force throughout the applicant's detention in the individual cell – combined with his inability to have any contact with the other inmates, illustrates the exceptional nature of the applicant's conditions of detention.

39. The Court considers that these conditions are closer to those it examined in the case of *Payet v. France* (no 19606/08, 20 January 2011) in which the applicant had remained in solitary confinement for approximately two months in a small, badly lit cell in which the living space available to him was approximately 4.15 m². However, in that case the period of detention was shorter than in the present case, and the applicant was also able to leave his cell for one hour's daily exercise.

40. In assessing whether solitary confinement falls within the ambit of Article 3 of the Convention, regard must be had to the particular conditions, the stringency of the measure, its duration, the objective pursued and its effects on the person concerned (see *Rohde v. Denmark*, no. 69332/01, § 93, 21 July 2005). In that connection the length of the period in question requires careful examination by the Court as to its justification, the need for the measures taken and their proportionality with regard to other possible restrictions, the guarantees offered to the applicant to avoid arbitrariness and

the measures taken by the authorities to satisfy themselves that the applicant's physical and psychological condition allowed him to remain in isolation (see *Ramirez Sanchez*, cited above, § 136).

41. The applicant was placed in solitary confinement and kept there on the basis of section 49(2) of the Execution of Sentences and Security Measures Act, which allows the prison authorities to take alternative measures to those provided for in that Act where there is a risk amounting to a "serious threat" (see paragraph 24 above). It is thus an entirely administrative procedure.

42. The Court notes the prison authorities' concern that the applicant risked being physically abused. Admittedly, such fears cannot be said to be totally unfounded in so far as the applicant had himself complained of intimidation and bullying while he had been detained with other inmates. However, even if those fears made it necessary to take certain security measures to protect the applicant, they do not suffice to justify a measure totally isolating the applicant from the other prison inmates. In that connection the Court notes that the Government were unable to explain why the applicant was not given the opportunity to take regular open-air exercise and, in accordance with his many requests (see paragraphs 12, 13 and 15 above), was not allowed even limited contact with other inmates.

43. The Court also notes that the applicant's attempts to have the measure in question reviewed by a post-sentencing judge and by the Assize Court did not yield any concrete result as his appeals were all dismissed without being examined on the merits. The judge merely pointed out that the prison authorities had a discretionary power in such matters, without even examining whether the measure placing the applicant in an individual cell was appropriate to the actual situation complained of by the applicant and without ruling on his requests for alleviation of the effects of his solitary confinement (see paragraph 14 above).

There is no doubt that it was a particularly serious measure, as, in addition to the psychological factor, his solitary confinement, whilst not being recognised as a punishment, imposed substantial material limitations on the applicant's rights.

44. Consequently, the Court concludes that the applicant was deprived of an effective domestic remedy regarding his complaint about the conditions of his detention and that he was not detained in appropriate conditions that respected his dignity.

45. The Court considers that in the present case the applicant's conditions of detention in solitary confinement were capable of causing him both mental and physical suffering and a feeling of profound violation of his human dignity. These conditions, exacerbated by the lack of an effective remedy, thus amount to "inhuman and degrading treatment" inflicted in breach of Article 3 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION TAKEN IN CONJUNCTION WITH ARTICLE 3

46. Relying on Article 14 taken in conjunction with Article 3 of the Convention, the applicant complained that he had been discriminated against on the basis of his sexual orientation. He submitted that, on account of his sexual orientation, he had been held in solitary confinement in a small cell with no contact with other inmates and no access to outdoor exercise.

Article 14 of the Convention provides:

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

47. The Government disputed that allegation and stated that the applicant had been put in an individual cell, at his request, for his own protection and not to discriminate against him.

...

48. The Court has already held on many occasions that Article 14 is not an autonomous provision. It only complements the other substantive provisions of the Convention and its Protocols. It has no independent existence since it has effect solely in relation to "the enjoyment of the rights and freedoms" safeguarded by those provisions. Although the application of Article 14 does not presuppose a breach of those provisions – and to this extent it is autonomous – there can be no room for its application unless the facts at issue fall within the ambit of one or more of them (see, among other judgments, *Van Raalte v. the Netherlands*, 21 February 1997, § 33, *Reports of Judgments and Decisions* 1997-I, and *Gaygusuz v. Austria*, 16 September 1996, § 36, *Reports* 1996-IV).

49. It is not in dispute between the parties that the facts of the instant case fall within the ambit of Article 3 of the Convention. Article 14 is therefore applicable to the facts of the case.

50. The Court also reiterates that sexual orientation attracts the protection of Article 14 (see, among other authorities, *Kozak v. Poland*, no. 13102/02, § 83, 2 March 2010, and *Alekseyev v. Russia*, nos. 4916/07, 25924/08 and 14599/09, § 108, 21 October 2010). Furthermore, where the distinction in question operates in this intimate and vulnerable sphere of an individual's private life, particularly weighty reasons have to be advanced before the Court to justify the measure complained of. Where a difference of treatment is based on sex or sexual orientation, the margin of appreciation afforded to the State is narrow, and in such situations the principle of proportionality does not only require that the measure chosen be generally adapted to the objective pursued; it must also be shown that it was necessary in the circumstances. If the reasons advanced for a difference in treatment were based solely on the applicant's sexual orientation, this would

amount to discrimination under the Convention (see *Alekseyev*, cited above, § 102).

51. In the circumstances of the present case the Court notes that the situation complained of by the applicant, namely, the inappropriateness of the measure totally excluding him from prison life has led to the finding of a violation of Article 3 of the Convention (see paragraph 45 above). The Court reiterates its finding above that the prison authorities' concern that the applicant risked being physically abused if he remained in a standard shared cell are not entirely unfounded (see paragraph 42). However, as observed above, even though those fears made it necessary to take certain safety measures to protect the applicant, they do not suffice to justify a measure totally segregating him from the prison community.

52. Furthermore, the Court does not agree with the Government that the applicant was isolated at his own request. The applicant or his representative asked the prison authorities to transfer him to another shared cell with homosexual inmates or to a suitable block (see paragraph 8 above). In support of that request the applicant's representative specified that his client had been intimidated or bullied by his fellow inmates. The applicant, for his part, had stated that he had "had problems". In sum, the requested lodged with the authorities was for a transfer to a shared cell appropriate to the applicant's situation.

53. However, the applicant, who was charged with committing non-violent offences, was placed in a cell intended for solitary confinement as a disciplinary measure or inmates accused of pedophilia or rape. While in the cell he was deprived of any contact with other inmates and of any social activity. He had no access to outdoor exercise and was only rarely allowed out of his cell.

54. The Court observes, *inter alia*, that the applicant repeatedly disputed the measures in question, specifying in his request of 7 May 2009 that "these conditions of detention were imposed on him purely on the basis of his sexual orientation, on the pretext of protecting him from bodily harm" (see paragraph 13 above). Likewise, he expressly requested equal treatment to other inmates with access to outdoor exercise and social activities with other inmates, by means of measures capable of protecting him from bodily harm (see paragraphs 12, 13 and 15 above). Moreover, he specified that he was a homosexual and not a transvestite or transsexual (see paragraph 12 above).

Those arguments were not, however, taken into account by the post-sentencing judge, who confined himself to observing that the prison authorities had a discretionary power to decide such matters and pointing to a hypothetical risk, namely, of "a transvestite being lynched", without, however, substantiating the argument that the applicant risked serious bodily harm on account of his sexual orientation and that totally excluding

him from prison life was the most suitable measure (see paragraph 14 above).

55. The authorities have an obligation, which was incumbent on them under Article 14 of the Convention taken in conjunction with Article 3, to take all possible measures to determine whether or not a discriminatory attitude had played a role in adopting the measure totally excluding the applicant from prison life (see, *mutandis mutandis*, *B.S. v. Spain*, no. 47159/08, § 71, 24 July 2012).

56. In any event, in the Court's view, the prison authorities did not undertake an adequate assessment of the risk posed to the applicant's safety. On account of the applicant's sexual orientation, the prison authorities believed that he risked serious bodily harm. Furthermore, as far as the Court is concerned, the measure fully excluding the applicant from prison life could not in any circumstances be regarded as justified. In particular, no explanation has been given as to why the applicant was completely deprived of even limited access to outdoor exercise.

57. Having regard to the foregoing, the Court is not satisfied that the need to take security measures to protect the applicant from bodily harm was the predominant reason for totally excluding him from prison life. In the Court's view, the applicant's sexual orientation was the main reason for adopting that measure. Accordingly, it considers it established that the applicant suffered discrimination on grounds of his sexual orientation. It further observes that the Government did not provide any justification showing that the distinction in question was compatible with the Convention.

58. Accordingly, the Court concludes that in the present case there has been a violation of Article 14 of the Convention taken in conjunction with Article 3.

...

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

59. 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."

A. Damage

60. The applicant claimed 130,000 euros (EUR) in respect of the non-pecuniary damage he had sustained.

61. The Government disputed that sum.

62. The Court considers that the applicant should be awarded EUR 18,000 in respect of non-pecuniary damage.

...

FOR THESE REASONS, THE COURT

...

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

3. *Holds*, by six votes to one, that there has been a violation of Article 14 of the Convention taken in conjunction with Article 3;

...

5. *Holds*, by six votes to one,

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State, at the rate applicable at the date of settlement:

(i) EUR 18,000 (eighteen thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

...

Done in French, and notified in writing on 9 October 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith	Françoise Tulkens
Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the partly dissenting separate opinion of Judge Jočienė is annexed to this judgment.

PARTLY DISSENTING OPINION OF JUDGE JOČIENĖ

(Translation)

I fully agree with the majority that there has been a violation of Article 3 of the Convention on account of the fact that the applicant was not detained in appropriate conditions that respected his dignity.

However, I cannot agree with the conclusion that there has been a violation of Article 14 taken in conjunction with Article 3 of the Convention because I do not see any evidence in the case that the applicant was put in solitary confinement and deprived of all contact with other inmates on account of his sexual orientation.

I would reiterate that Article 14 has no independent existence, but plays an important role by complementing the other provisions of the Convention and the Protocols, since it protects individuals, placed in similar situations, from any discrimination in the enjoyment of the rights set forth in those other provisions. Where a substantive Article of the Convention has been invoked both on its own and together with Article 14 and a separate breach has been found of the substantive Article, it is not generally necessary for the Court to consider the case under Article 14 also, though the position is otherwise if a clear inequality of treatment in the enjoyment of the right in question is a fundamental aspect of the case (see *Chassagnou and Others v. France* [GC], nos. 25088/94, 28331/95 and 28443/95, § 89, ECHR 1999-III, and *Dudgeon v. the United Kingdom*, 22 October 1981, § 67, Series A no. 45).

In the circumstances of the present case I consider that sufficient regard was had to the treatment of which the applicant claimed to be a victim, namely, total segregation from the prison community, in the preceding assessment which led to a finding of a violation of a substantive provision of the Convention (see paragraph 51 of the judgment). I would also point out that I agree with the Chamber that the prison authorities' concerns that the applicant risked bodily harm if he remained in a standard shared cell were not entirely unfounded (see paragraph 42). The authorities intervened at the specific request of the applicant, who had complained of intimidation and bullying by heterosexual inmates in the shared cell. They took what they deemed to be security measures to protect the applicant and guarantee him humane conditions of detention. Even if those measures did in fact infringe Article 3 of the Convention, I do not see any evidence that the applicant's total exclusion from prison life was decided on account of his sexual orientation. In my opinion, there is no factual basis for the Chamber's conclusion in that respect. I would even say that there was no intention on the part of the authorities to discriminate. In my view, having regard to the positive obligations under the Convention, the prison authorities pursued the legitimate aim of protecting the applicant from

discriminatory attacks that he would have suffered at the hands of other inmates on account of his sexual orientation.

I observe that the finding of a violation of Article 3 in the present case addresses the main legal question raised by the applicant. It is not therefore necessary to examine the same facts separately under Article 14 of the Convention (see *Metropolitan Church of Bessarabia and Others v. Moldova*, no. 45701/99, § 134, ECHR 2001-XII). For the same reason I voted against the amount awarded to the applicant by the Chamber. I find the sum excessive.