FIFTH SECTION

CASE OF HELLIG v. GERMANY

(Application no. 20999/05)

JUDGMENT

STRASBOURG

7 July 2011

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 Hellig v. Germany,

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

Dean Spielmann, *President,*
Elisabet Fura,
Boštjan M. Zupančič,
Isabelle Berro-Lefèvre,
Ann Power,
Ganna Yudkivska,
Angelika Nußberger, *judges,*
and Claudia Westerdiek, *Section Registrar,*

Having deliberated in private on 31 May 2011,

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

PROCEDURE

1. The case originated in an application (no. 20999/05) against the Federal Republic of Germany lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a German national, Mr Herbert Hellig ("the applicant"), on 31 May 2005.

2. The applicant was represented by Mr H.-O. Sieg, a lawyer practising in Frankfurt/Main. The German Government ("the Government") were represented by their Agent, Mrs A. Wittling-Vogel, of the Federal Ministry of Justice.

3. The applicant alleged, in particular, that his detention in a security cell amounted to inhuman and degrading treatment or punishment within the meaning of Article 3 of the Convention.

4. On 15 December 2009 the President of the Fifth Section decided to give notice of the application to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1953 and lives in Frankfurt/Main.

1. Background to the case

6. The applicant was serving a prison sentence in Butzbach prison. In October 2000 the Butzbach prison authorities ordered him to move from his single cell to a cell which he would have to share with two other inmates and which did not have a screen or curtain separating the toilet from the rest of the cell.

7. By letter of 11 October 2000 the applicant, referring to a decision given by the Frankfurt Court of Appeal in 1985 in a case concerning a different prisoner, informed the head of Butzbach prison that accommodation in such a cell was generally unlawful and that he refused to move. On that same date, the applicant lodged a motion with the Gießen Regional Court, which was brought to the attention of that court only after the applicant's transfer to the multi-occupancy cell.

8. On 12 October 2000 the prison staff ordered the applicant to vacate his single cell and announced that they would use force (*unmittelbarer Zwang*) if he refused to do so. Accordingly, the applicant vacated his cell and was taken to the multi-occupancy cell. At the door of that cell, however, he again refused to move into the cell. Subsequently, a scuffle ensued between the applicant and prison staff. According to the applicant's submissions, he was kicked and beaten by the prison staff, while he had merely passively resisted being placed into the multi-occupancy cell. According to the Government, the applicant kicked the prison staff.

9. Subsequently, the applicant was forcibly taken to a security cell which had no items which could cause danger (*besonders gesicherter Haftraum ohne gefährdende Gegenstände*), where he was strip-searched and undressed. It is not clear from the material submitted by the parties whether the applicant remained naked for the whole period of time he spent in the security cell.

10. The security cell had a size of approximately 8.46 square metres and was equipped as follows: two doors with chain link, two cameras, one milky glass pane for daylight, one mattress with fire-proof sheet, one squat toilet, one call system, two windows above the doors, aluminium ceiling with ventilation slits, tiled floor. The temperature of the cell was controlled to ensure comfort, and the meals were served at the usual times.

11. Following his placement in the security cell, the applicant was examined by the prison physician who diagnosed minor bruising on the applicant's front and his left shin and bruising and a small hematoma on his left thorax. On 12, 13, 16, 18 and 19 October 2000 the applicant was re-examined by the prison physician. According to the physician's report submitted on 31 October 2000, the injuries would heal without complications; the bruising in the thorax area could, according to medical experience, cause discomfort for a longer period of time.

12. On 14 October 2000 the applicant was visited by a psychiatrist.

13. On 15 October 2000 the prison pastor visited the applicant. In his letter to the police dated 12 January 2001 the pastor made the following statement:

> "As the security chain was locked, which permitted to open the door only slightly, I could see that the prisoner was naked. I am not sure whether he sustained injuries which exceeded bruises and refer to the medical report. However, the prisoner was in a very agitated state of mind and talked about having been beaten by prison staff."

14. On 16 October 2000 the head of the prison administration made the following report:

> "Since 12 October 2000 the prisoner is placed in the specially secured room ... Following his medical examination, it was intended to transfer him today to a multi-occupancy cell on station B I. In the presence of the prison guards B. and H. and myself the prisoner Hellig declared that he insisted on his right to be attributed a single cell as provided by the case-law of the Court of Appeal and that he would not leave the specially secured room. If this should be done by force, the prison guards would have to "beat him to death"."

15. On 17 October 2000 the applicant was visited by the prison psychologist Dr E. who made the following report on his conversation with the applicant:

> "I visited Mr Hellig on 17 October 2000 in the segregation cell with the intention of finding a way out of the deadlock situation. However, Mr Hellig proved to be unable to compromise and stubbornly insisted on his request to be transferred to a single cell ... He could hardly imagine to remain in this prison after having been abused in connection with his placement in the segregation cell ... I have the impression that Mr Hellig is so obsessed that he is currently unable to compromise and to discuss a temporary solution. He feels mistreated and deprived of the single cell he previously occupied as a prison

worker and station aid. Being a sportsperson and non-smoker, he could not be expected to share a cell with smokers."

16. The applicant stayed in the security cell until 11.30 a.m. on 19 October 2000 when he consented to being placed in the prison hospital. Thereafter the applicant instituted the following two sets of proceedings.

2. Proceedings relating to the alleged use of violence by the prison guards and the unlawfulness of the detention in the security cell

17. On 25 October 2000 the applicant requested the Gießen Regional Court to declare that his detention in the isolation cell and the force used by the prison authorities had been unlawful. He submitted that he had been kicked and beaten by prison staff even though he had not given the prison guards any reasons to use violence against him.

18. On 8 April 2004 the Regional Court rejected the request. The Court took note of the written statements made by the prison pastor, the head of the prison administration and the prison psychologist (see §§ 14-16, above). It further pointed out that it had been beyond doubt that accommodation in a multi-occupancy cell with toilets that were not separated by screens or curtains from the rest of the cell would have been unlawful, as the Frankfurt Court of Appeal had already established in its earlier case-law.

19. According to the Regional Court the fact that the applicant was taken to the isolation cell was not due to his refusal to move into the multi-occupancy cell. It was in particular not a disciplinary measure to punish him for resisting, but he was detained in the isolation cell because his behaviour constituted a specific risk of violence and physical harm to other persons (section 88 §§ 1, 2 no. 5 of the Prison Act, see "Relevant domestic law" below), which allows for temporary detention in security cells.

20. The court based its findings on the statements of the prison personnel, who had confirmed that the applicant had begun pushing and hitting prison staff and that he had become very aggressive when he was ordered to move to the multiple occupancy cell. According to the official statements made by the prison guards, only the prisoner himself had used violence. In view of the applicant's violent behaviour it had been necessary for the prison authorities to use force to take the applicant into the security cell in order to prevent him from causing harm to the prison guards.

21. The Regional Court further considered that "it could not be established for certain" whether there was a serious danger of self-injury or suicide during the time of his detention in the specially secured room.

22. Such detention was proportionate as it had not been possible to release the applicant from the cell before 19 October 2000. The applicant had announced that the staff members would have to kill him if they wanted to transfer him forcibly into the multi-occupancy cell. It was thus very likely that he would once again have resisted any such transfer. Therefore the specific risk of violent acts by the applicant persisted until 19 October 2000. Furthermore, the prison psychologist had stated that the applicant had not at all been ready to reach a compromise and, in particular, that he had stubbornly insisted on being transferred to a single cell.

23. On 8 April 2004 the applicant filed an appeal on points of law. He submitted in particular that, under the relevant guidelines, the duration of detention in a specially secured room should not exceed twenty-four hours. It followed that his seven-day placement had been disproportionate.

24. On 27 September 2004 the Frankfurt Court of Appeal declared the applicant's appeal inadmissible, reasoning that no decision in the matter was required for the purpose of further developing the law or to secure the consistency of the case-law.

25. On 26 October 2004 the applicant lodged a constitutional complaint. He alleged that he had been kicked and beaten before being brought in the security cell, even though he had offered to consent to his placement in the security cell. He further submitted as follows:

> "In the instant case, I do not complain about the deprivation of liberty as such. However, the constitutional complaint is directed against the exceptionally severe conditions of my temporary detention (*"besonders einschneidende Art und Weise meiner zeitweiligen Unterbringung"*) during the execution of sentence."

26. On 28 December 2004 the Federal Constitutional Court, relying on its Rules of Procedure, refused to admit the applicant's constitutional complaint, without giving further reasons.

3. Criminal proceedings

27. On 12 March 2001 the Gießen Public Prosecutor's Office discontinued the criminal proceedings against the prison staff involved in the applicant's transfer to the security cell. The Prosecutor's Office noted that the applicant's medical examination on 12. October 2000 established that he had sustained bruises. An x-ray taken some days later did not reveal any fractures or other bone injuries. It was thus established that the applicant suffered injuries on the occasion of his transfer into the security cell. It could, however, not be established whether these injuries had been caused by the prison staff, in particular by kicking or beating, or if they had been the unavoidable effect of his forced transfer to the security cell.

II. RELEVANT DOMESTIC LAW

28. The relevant provisions of the Prison Act read as follows:

Section 88 (Special Precautions)

> "(1) Special precaution may be ordered in respect of a prisoner where, in view of his behaviour or on account of his mental state, there is increased danger of his escaping or danger of violent attacks against persons or property or the danger of suicide or self-injury.
>
> (2) The following measures shall be permissible as special precautions:
>
> ...
>
> 5. detention in a specially secured room containing no dangerous objects,
>
> ...
>
> (5) Special precautions shall be continued only as long as is required by their purpose."

Section 92 (Supervision by Medical Officer)

> "(1) Where a prisoner is detained in a specially secured cell or shackled (section 88 (2) nos. 5 and 6) the medical officer shall visit him soon and, if possible, daily thereafter ...
>
> (2) The medical officer shall be consulted regularly as long as a prisoner is deprived of daily outdoor exercise."

Section 96 (Principle of Proportionality)

> "(1) From among several possible and suitable measures of direct coercion those shall be chosen which will presumably least affect the individual and the general public.
>
> (2) Direct coercion shall not be applied where any damage likely to be caused thereby would obviously be out of proportion to the desired result."

Section 109 (Request for a Court Ruling)

"(1) A measure regulating individual matters in the field of execution of imprisonment may be contested by requesting a court ruling ..."

III. COUNCIL OF EUROPE DOCUMENTS

29. The following extracts are taken from the 2nd General Report of the European Committee for the Prevention of Torture (CPT/Inf (92) 3):

"56. The CPT pays particular attention to prisoners held, for whatever reason (for disciplinary purposes; as a result of their 'dangerousness' or their 'troublesome' behaviour; in the interests of a criminal investigation; at their own request), under conditions akin to solitary confinement.

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. Solitary confinement can, in certain circumstances, amount to inhuman and degrading treatment; in any event, all forms of solitary confinement should be as short as possible ..."

From the CPT report on Finland 1998 (CPT/Inf (96)28):

"102. It should be added that the unit also contained an "observation cell" in which prisoners considered to be suicidal or likely to injure themselves could be located. Surveillance was maintained via an internally mounted CCTV camera ...
The delegation was informed that prisoners placed there would often be stripped of their clothes and left naked in the cell. Such a practice is completely unacceptable.

The CPT recommends that the practice of placing prisoners naked in the observation cell be ended immediately; prisoners placed in this cell should be provided with tear-proof clothing and bedding ..."

From the CPT report on Belgium 2009 (CPT/Inf (2010)24 (translation from the French original):

"130. ... To keep a prisoner naked in a cell constitutes, according to the CPT, degrading treatment. The CPT recommends that this practice be stopped immediately. Specially adapted clothing exists which permits the prisoner to keep a minimum amount of clothing while taking into account the risk of suicide."

THE LAW

I. COMPLAINT ABOUT THE APPLICANT'S ALLEGED ILL-TREATEMENT BY PRISON STAFF

30. The applicant complained about having been kicked and beaten by prison guards prior to his placement in the security cell. He relied on Article 3 of the Convention, which reads as follows:

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

31. The Government referred to the findings in the decision of the Gießen Regional Court dated 8 April 2004.

32. The Court notes that it is not clear from the parties' submission of which legal remedies the applicant availed himself with the aim of enforcing a criminal prosecution of the prison guards who allegedly mistreated him. Even assuming exhaustion of domestic remedies, the applicant's complaint about the alleged maltreatment has to be declared inadmissible as being manifestly ill-founded on the following grounds.

33. According to the Court's case-law, Article 3 does not prohibit in absolute terms the use of force against persons in public custody. However, such force may be used only if indispensable and must not be excessive.
In respect of a person deprived of his liberty, recourse to physical force which has not been made strictly necessary by his own conduct diminishes human dignity and is in principle an infringement of the right set forth in Article 3 (see, among other authorities, *Ribitsch v. Austria*, 4 December 1995, § 38, Series A no. 336 and *Staszewska v. Poland*, no. 10049/04, § 53, 3 November 2009).

34. The Court reiterates that allegations of ill-treatment must be supported by appropriate evidence (see, among other authorities, *Jalloh v. Germany* [GC], no. 54810/00, § 67, ECHR 2006-IX; and,*mutatis mutandis, Klaas v. Germany*, 22 September 1993, § 30, Series A no. 269).
It notes that the Gießen Regional Court, having thoroughly examined the applicant's allegations and the statements made by the prison guards and further witnesses, concluded that only the applicant had used violence against the prison guards, but not *vice-versa*. The Court notes that the applicant has not submitted any evidence which would lead to a different conclusion.

35. The Court further notes that the prison physician, having examined the applicant immediately after his placement in the security cell, had diagnosed only minor bruising and a small hematoma, which would heal without complications. An x-ray taken a few days after the incident did not reveal any fractures or other bone injuries. The Court accepts that these injuries could be explained by the fact that the applicant had resisted when being forcibly taken to the security cell.

36. The Court further notes that the Gießen Regional Court acknowledged that it would not have been lawful to place the applicant in a multi-occupancy cell, as it was not equipped for three occupants. It appears, however, that no appropriate accommodation had been available for the applicant at the relevant time. Under these circumstances, the Court considers that the applicant, in the interest of the maintenance of prison order, could have been reasonably expected to pursue his legal complaint against his transfer, and eventually to claim damages for any inappropriate accommodation occurring in the meantime, instead of physically resisting his transfer.

37. Taking all these circumstances into account, and in particular the minor extent of the injuries sustained by the applicant, the Court concludes that the threshold for inhuman treatment was not reached in respect of the applicant's treatment during the transfer. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 § 3 (a) of the Convention.

II. COMPLAINT ABOUT THE LAWFULNESS OF THE DETENTION IN THE SECURITY CELL

38. The applicant complained that his placement in the security cell and his detention there for seven days without clothes amounted to inhuman and degrading treatment within the meaning of Article 3 of the Convention.

39. The Government contested that argument.

A. Admissibility

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

B. Merits

1. Submissions by the applicant

41. The applicant complained about having been detained for seven days in the security cell, where he was without clothes and did not have facilities for personal hygiene. He emphasised that it had been confirmed by the domestic courts that his placement in a multi-occupancy cell, as originally envisaged by the prison authority, would have been unlawful. It followed that he was entitled to resist the prison officer's coercive measures aimed at forcing him into the multi-occupancy cell. Consequently, there was no legal ground for transferring him to the security cell.

42. The applicant further submitted that it had not been true that he had violently attacked prison staff, as was already demonstrated by the fact that none of the prison officers had been injured. He had merely wished to remain in a single cell. He would have left the specially secured room immediately and without resistance if he had been offered such accommodation.

43. The applicant further submitted that his confinement in the security cell had been intended to coerce him into consenting to placement in a multi-occupancy cell.

2. Submissions by the Government

44. The Government considered that the applicant's placement in a security cell, in view of the specific circumstance of the present case, did not amount to inhuman or degrading treatment within the meaning of Article 3 of the Convention. The applicant's treatment had been in line with the relevant provisions of the Prison Act and of the administrative guidelines.

45. With regard to the length of the placement, the Government did not consider that the threshold for inhuman treatment had been crossed. The specific circumstances of his confinement did not cause the applicant to suffer physical or emotional distress to the extent that it could be viewed as inhuman treatment. They pointed out that the applicant, besides having been visited by the medical service on an almost daily basis, also received visits by the psychological service and by a spiritual adviser.

46. Because the facts of the case dated back almost ten years, the full details of the placement could no longer be ascertained. The written documents did not clearly show whether the applicant was naked during his entire stay in the security cell. However, it was common practice to place inmates without clothing in this type of cell in order to protect them from self-injury as long as their excitable and/or emotional condition persisted. The decision as to whether this danger persisted was made in consultation with the medical service. It was also the general rule that prisoners received two blankets when being placed in this type of cell and that the room-temperature was adapted to their wishes.

47. The applicant's placement in the security cell was the only remaining possibility of averting a present danger of injuries to the prison guards and of guaranteeing security and order in view of the applicant's recognisable propensity for violence, as was evidenced by the attack on the prison guards. The proportionality of the measure was monitored at appropriate intervals. The prison management had been endeavouring to

lift the security measure as soon as possible. However, this was initially made impossible by the applicant's lack of co-operation. With his consent, the applicant was temporarily transferred to the hospital on 19 October 2000 because no single-occupancy cell had been available at the prison.

48. The Government further considered that neither the short duration of the applicant's confinement, nor the concrete circumstances, nor the aims pursued brought the applicant's detention within the scope of Article 3 of the Convention. The purpose of placing the applicant in the security cell had not been to punish him for his refusal to move into a multi-occupancy cell; rather, the placement had been due to the fact that a significant disruption in the prison order was to be feared because of his attack on the prison guards and his subsequent conduct.

49. The Government finally submitted that it should also be taken into account that the applicant had, in the end, reached his aim not to be placed in a multi-occupancy cell.

3. Assessment by the Court

50. The Court reiterates that 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. 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 (see,*inter alia*, *Price v. the United Kingdom*, no. 33394/96, § 24, ECHR 2001-VII and *Jalloh*, cited above, § 67). Allegations of ill-treatment must be supported by appropriate evidence (see, *mutatis mutandis*, *Klaas*, cited above, § 30 and *Jalloh*, cited above, § 67). To assess this evidence, the Court adopts the standard of proof "beyond reasonable doubt" but adds that such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see*Ireland v. the United Kingdom*, 18 January 1978, § 161 *in fine*, Series A no. 25; *Labita v. Italy* [GC], no. 26772/95, § 121, ECHR 2000-IV and *Jalloh*, cited above, § 67).

51. Treatment has been held by the Court to be "inhuman" because, *inter alia*, it was premeditated, was applied for hours at a stretch and caused either actual bodily injury or intense physical and mental suffering (see *Labita*, cited above, § 120). Treatment has been considered "degrading" when it was such as to arouse in its victims feelings of fear, anguish and inferiority capable of humiliating and debasing them and possibly breaking their physical or moral resistance (see *Hurtado v. Switzerland*, 28 January 1994, opinion of the Commission, § 67, Series A no. 280), or when it was such as to drive the victim to act against his will or conscience (see, for example, *Denmark, Norway, Sweden and the Netherlands v. Greece* (the "*Greek case*"), nos. 3321/67, 3322/67, 3323/67 and 3344/67, Commission's report of 5 November 1969, Yearbook 12, p. 186 and *Keenan v. the United Kingdom*, no. 27229/95, § 110, ECHR 2001-III). Furthermore, in considering whether treatment is "degrading" within the meaning of Article 3, one of the factors which the Court will take into account is the question whether its object was to humiliate and debase the person concerned, although the absence of any such purpose cannot conclusively rule out a finding of a violation of Article 3 (see *Raninen v. Finland*, 16 December 1997, § 55, *Reports of Judgments and*

Decisions 1997-VIII; *Peers v. Greece*, no. 28524/95, §§ 68 and 74, ECHR 2001-III; and *Jalloh*, cited above, § 68). In order for a punishment or treatment associated with it to be “inhuman” or “degrading”, the suffering or 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 *Labita*, cited above, § 120 and *Jalloh*, cited above, § 68).

52. Turning to the circumstances of the instant case, the Court observes, at the outset, that the applicant had been placed in the security cell in order to prevent him from attacking prison staff. With regard to the specific circumstances of his detention, the Court notes that the cell had a surface of approximately 8.46 square metres and was equipped with a mattress and a squat toilet. The Court considers that the very basic facilities found in the security cell were not suited for long-term accommodation. The Court notes, however, that the applicant's placement in this cell was, at no time, considered by the prison authorities as a long-term measure. This is demonstrated by the fact that the prison authorities and the psychological service, on 16 and 17 October 2000, tried to convince the applicant to vacate the security cell and eventually moved him to the prison hospital as no other single occupancy cell had been available at the relevant time.

53. The Court further observes that it is not clear from the material submitted by the parties if the applicant, after having been strip-searched and placed in the security cell, remained naked during his entire stay in that cell. The Court notes in this respect that it does not appear that the applicant had, at any time during his placement in the security cell or during the proceedings before the domestic courts, expressly complained of having been denied access to clothes. He only complained about having been naked in his complaint before the Court.

54. On the other hand, the Court takes note of the Government's submissions that it had been common practice to place inmates without clothing in this type of cell in order to protect them from self-injury as long as their agitated state persisted. The Court further notes that the prison pastor, who briefly visited the applicant three days after his placement in the security cell, in his statement recorded in the decision given by the Gießen Regional Court on 8 April 2004, had reported that the applicant, who had been in a very agitated state, had been naked.

55. The Court, assuming the application of the general rule referred to by the Government (see §§ 46 and 54, above) in the applicant's case, concludes that there are sufficiently strong, clear and concordant indications that the applicant had been naked during the entire period of his stay in the security cell. The Court further observes that the domestic authorities had knowledge of these indications and would have been in a position further to examine these facts. Accordingly, the Court bases its further examination of the applicant's complaint on the assumption that the applicant had indeed been naked during his seven-day placement in the security cell.

56. The Court considers that to deprive an inmate of clothing is capable of arousing feelings of fear, anguish and inferiority capable of humiliating and debasing him. As to the aims pursued, the Court takes note of the Government's submissions that, as a rule, inmates were placed without clothes in the security cell in order to prevent them from inflicting harm on themselves. The Court notes, however, that the Gießen Regional Court, which had the benefit to examine the facts of the case at an earlier stage than the Court and to hear witnesses, could not establish for certain whether there was a serious danger of self-injury or suicide during the time of the applicant's placement in the cell. The Court further observes that there is no indication that the prison authorities had considered the use of less intrusive means, such as providing the applicant with tear-

proof clothing, as recommended by the European Committee for the Prevention of Torture (see § 29, above).

57. Having regard to all these elements the Court considers that the seven days placement in the security cell as such may have been justified by the circumstances of this particular case. However, the Court considers that the Government have failed to submit sufficient reasons which could justify such harsh treatment as to deprive the applicant of his clothes during his entire stay. The applicant has therefore been subjected to inhuman and degrading treatment contrary to Article 3.

58. It follows that there has been a violation of Article 3 of the Convention.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

59. The applicant further complained that the length of the proceedings about his placement in the security cell violated his right to an effective remedy under Article 13 of the Convention. Furthermore, the decision given by the Gießen Regional Court was inconsistent with its own case-law and thus violated his right to equal treatment under Article 14 of the Convention.

60. However, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

61. It follows that these complaints are manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

62. 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."

63. The applicant claimed 40,000 euros (EUR) in respect of non-pecuniary damage as compensation for pain and suffering resulting from the injuries, from his forced transfer to the security cell and his detention therein.

64. The Government referred to their submissions that there had been no violation of Article 3 of the Convention.

65. The Court observes that the applicant's complaint was only partially successful. Ruling on an equitable basis, it awards the applicant EUR 10,000 in respect of non-pecuniary damage.

A. Costs and expenses

66. The applicant also claimed EUR 200 for the costs and expenses incurred before the domestic courts and EUR 5,000 for those incurred before the Court.

67. The Government did not comment.

68. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. The Court notes that the applicant has not submitted any documentary evidence for his alleged expenses before the domestic courts and did not further specify the costs claimed by his counsel for his

representation before the Court. Under these circumstances, the Court considers it reasonable to reject the claim for expenses in the domestic proceeding and to award the applicant the sum of EUR 3,500 for the proceedings before the Court.

B. Default interest

69. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning the lawfulness of the detention in the security cell admissible and the remainder of the application inadmissible;

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

3. *Holds*
   (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,
      (i) EUR 10,000 (ten thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 3,500 (three thousand five hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 7 July 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek Dean Spielmann
Registrar President

HELLIG v. GERMANY JUDGMENT