



## Stamen Filipov to the Constitutional Court

16/2006-0-0

**Country:** Macedonia

**Region:** Europe

**Year:** 2006

**Court:** Constitutional Court

**Health Topics:** Controlled substances, Mental health, Prisons

**Human Rights:** Freedom from torture and cruel, inhuman or degrading treatment, Freedom of expression, Right to bodily integrity, Right to due process/fair trial

### Facts

The Petitioner, Stamen Filipov, challenged Article 178, a provision regulating solitary confinement, of the Law on Execution of Sanctions (the Law).

The Law gave the Director of a prison or his/her substitute the power to institute certain disciplinary measures against convicted persons, including warnings, public warnings, confiscation of up to 20% of the compensation for work in prison, limitation of privileges for up to three months, and solitary confinement. The challenged Article 178 provided for the imposition of solitary confinement for 3 to 15 days, with or without the right to work, for a major breach of discipline. A major breach of discipline was defined in Article 177 of the Law as including escape, disobedience, assault, vandalism, abuse of privileges, intentional violation of safety regulations, bringing in alcohol, narcotics, or weapons, moneylending and repeated minor violations. The disciplined person was to be heard before imposition of a disciplinary punishment, and was given a right to appeal to the Director. Punishments could also be delayed under certain conditions, although if the convicted person committed another breach of discipline during the delay, he could face two consecutive solitary confinement periods, for a total of 30 days.

The Law also provided for the treatment of the convicted person in solitary confinement. Before imposing solitary confinement, the Director or his/her substitute needed to obtain an opinion regarding the health of the convicted person. During solitary confinement, the convicted person was entitled to hygienic and health services as needed, daylight, sanitary equipment, drinking water, a bed with sheets, heating, one hour per day of fresh air outside of the closed rooms, and a visit by a doctor every day and by the director of the institution once a week. The implementation of the measure would be stopped if it jeopardized the health of the convicted person.

The Petitioner argued that Article 178 was contrary to the constitutional rights of inviolability of physical and moral dignity and freedom from deprivation of liberty except with the decision of a court under a procedure determined by law. He argued that placing the convicted person in complete sensory isolation without a court order would amount to inhuman, uncivilized and degrading treatment and punishment. This dehumanized a citizen and subject of the law in a way that was contrary to the purpose of the punishment.

### Decision and Reasoning

The Court held that the challenged provisions were constitutional.

While the Court emphasized that the rights to moral and physical integrity, and freedom from torture, inhumane or degrading treatment and punishment were accepted constitutional values, it noted that solitary confinement was a final disciplinary measure for a person who had committed major violations of discipline through actions clearly defined by law. This disciplinary measure was applied only after certain procedural requirements were met, and if a doctor assessed the health of the convicted persons.

The Court also considered that convicted persons were expected to adjust their behavior to the special societal norms in prison facilities, including its house rules. While these rules and the disciplinary punishments for them could not be used to dehumanize the convicted person, the Court recognized that they had a role in keeping order and discipline and re-educating convicted persons. The Court found that the solitary confinement procedure under Article 178 provided sufficient guarantees for the physical and mental health of the prisoner so as not to be dehumanizing in this manner. In particular, given the requirements for

hygienic conditions, allowing visits by the doctor, newspapers, and 1 hour outside each day, solitary confinement was not "sensory isolation" and did not represent a large departure from conditions usually enjoyed by prisoners. As such, it did not violate the constitutional rights to moral and physical integrity, or freedom from torture, inhumane or degrading treatment.

The Court also rejected the Petitioner's arguments on arbitrary deprivation of liberty, stating that this constitutional right was less applicable to disciplinary measures for those already deprived of liberty. It further pointed out that solitary confinement was permissible under European law after an assessment of the physical and mental health of a prisoner.

### **Decision Excerpts**

"

Consequently, according to the concept of the Law in general and the orderliness of the procedure for pronouncing this type of disciplinary punishment, it cannot be accepted that the contested legal provision recedes from the constitutional guarantee for protection of the physical and the moral integrity of man, as well as that it leads to inhumane and degrading behavior and punishment. This is so especially taking into consideration that the room where the pronounced disciplinary punishment of solitary confinement is taking place should: fulfill the legally required hygienic-technical conditions; 1 hour stay in fresh air every day; daily visits by a doctor; and the possibility for reading books and newspapers (Article 181 of the Law), which ultimately does not represent a drastic recede from the conditions enjoyed by the rest of the confined persons." Section 6.

"The Court, also to confirm the expressed view affirmed that the revised text of the European Prison Rules foresees an option for punishment with disciplinary confinement meaning that this type of disciplining is not unknown to the wider European legislation. Namely, according to the rule 38.1 from the European Prison Rules, the punishment of disciplinary confinement, as any other punishment that could have an opposite effect on the physical and mental health of the prisoner, can only be applied if a doctor gives a written confirmation, after the examination, that the prisoner is capable to undergo this type of punishment." Section 6.

Copyright © 2015 [www.GlobalHealthRights.org](http://www.GlobalHealthRights.org)