[J.M. v. France (application no. 71670/14)](http://www.prisonlitigation.org/?email_id=130&user_id=140&urlpassed=aHR0cDovL2h1ZG9jLmVjaHIuY29lLmludC9lbmc%2FaT0wMDEtMTk4OTky&controller=stats&action=analyse&wysija-page=1&wysijap=subscriptions" \t "_blank)

Facts - The applicant, who suffered from mental disorders, alleged that he had been beaten by the guards and hosed down with a fire hose before being transferred half-naked to another prison, where his injuries, including signs of strangulation, had been noted. The judicial authorities have ruled out any criminal offence.

Law - Article 3 Substantive aspect – It was not disputed that on 5 and 6 July 2007 the prison wardens had repeatedly used force against the applicant. Four medical certificates had all noted numerous injuries. In addition to the applicant’s physical suffering, the Court considered that the treatment to which he had been subjected had caused him fear, anguish and mental suffering. It therefore remained to be ascertained whether or not the physical force used against the applicant had been strictly necessitated by his conduct. The Court noted, like the domestic courts, that the applicant had been in an extremely agitated state at the time. However, it observed that he had also been in psychological distress. On the morning of 5 July 2007 he had been taken to the outpatient department after deliberately cutting himself on the arm. Hence, the applicant had been particularly vulnerable owing to his psychological problems and the fact that he was in detention. As to the risk of fire, the Court noted that the prisons inspectorate had itself found that the use of a fire hose had been disproportionate in the circumstances. The use of a fire hose rather than an extinguisher had been bound to flood the cell. This lack of judgment on the part of the warden had led to the applicant and his belongings being drenched unnecessarily, creating a feeling of humiliation. The Court also observed that the various medical certificates had noted numerous bruises on the applicant’s body. Despite the preliminary and judicial investigations carried out, the cause of the 18 cm strangulation mark on the applicant’s neck had never been established. Lastly, when being transferred from Salon-de-Provence Prison to the prison at Varennes-le-Grand, the applicant had been dressed only in a T-shirt with just a sheet to cover himself. Such treatment had caused feelings of arbitrariness, inferiority, humiliation and anguish and showed a serious lack of respect for his human dignity. The Court therefore held that the applicant had been subjected to inhuman and degrading treatment. It followed that there had been a violation of the substantive aspect of Article 3.

 Article 3 Procedural aspect – The Court noted that independent investigations had been conducted speedily. On the very day of the applicant’s arrival at Varennes-le-Grand Prison, the public prosecutor’s office had instituted an investigation of its own motion into the circumstances of the applicant’s transfer and his allegations of violence. An investigation had been carried out by a judge who had not merely echoed the findings of the internal administrative investigation and the investigation by the prisons inspectorate, but had interviewed and questioned the applicant and all the wardens involved before issuing a reasoned decision finding that there was no case to answer. Nevertheless, the Court noted that the investigation had not led to the identification and punishment of those responsible for the inhuman and degrading treatment it had established. In the Court’s view the investigating judge and the Investigation Division appeared to have applied different criteria in assessing the different witness statements, with the applicant’s statement being considered subjective, unlike those of the wardens. The credibility of the latter’s statements should have been checked carefully. Furthermore, certain measures required in order to elucidate the facts had not been ordered. For instance, no medical and technical expert report had been ordered with a view to establishing the cause of the strangulation mark that had been observed. The Court held that the applicant had not had the benefit of an effective investigation, and found a violation of the procedural aspect of Article 3." (excerpt from the press release).