



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

FORMER SECOND SECTION

CASE OF FRÉROT v. FRANCE

EXTRACTS

(Application no. 70204/01)

JUDGMENT

STRASBOURG

12 June 2007

FINAL

12/09/2007

This judgment is final but it may be subject to editorial revision.

In the case of Frérot v. France,

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

András Baka, *President*,

Jean-Paul Costa,

Rıza Türmen,

Karel Jungwiert,

Mindia Ugrekhelidze,

Antonella Mularoni,

Elisabet Fura-Sandström, *judges*,

and Sally Dollé, *Section Registrar*,

Having deliberated in private on 28 March 2006 and on 22 May 2007,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 70204/01) 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 Maxime Frérot (“the applicant”), on 5 March 2001.

2. The applicant, who had been granted legal aid, was represented by Mr C. Nicolaÿ and Mr L. de Lanouvelle, of the *Conseil d'Etat* and Court of Cassation Bar. The French Government (“the Government”) were represented by their Agent, Mrs E. Belliard, Director of Legal Affairs at the Ministry of Foreign Affairs.

3. In decisions of 11 May 2004 and 28 March 2006 the Chamber declared the application partly admissible.

4. The applicant submitted further evidence (Rule 59 § 1 of the Rules of Court).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1956. He is currently detained in Lannemezan Prison.

A. The proceedings

6. The applicant is a former member of Action Directe, an extreme left-wing armed movement. He was taken into custody in Lyons Prison on 1 December 1987 after two detention orders had been issued by a Lyons investigating judge.

7. On 29 June 1989 the applicant was sentenced to life imprisonment by the Rhône Assize Court for attempted intentional homicide, armed robbery, and hostage-taking with a view to facilitating or preparing the commission of a criminal offence or committing a serious crime.

In a judgment of 14 October 1992 the Paris Assize Court found him guilty of murder, multiple counts of attempted murder and attempted intentional homicide, armed robbery, handling stolen goods, conspiracy, possessing and carrying illegal weapons, forging cheques and using forged cheques, using explosives to destroy or damage immovable or movable property and an explosives offence. It sentenced him to life imprisonment, with a minimum term of eighteen years. On 3 July 1995 the same court sentenced him to thirty years' imprisonment for unauthorised manufacture or possession of explosive substances or devices, theft, criminal damage and terrorism.

8. On 25 September 1994 the applicant applied to the Versailles Administrative Court for judicial review of certain provisions of circulars issued by the Minister of Justice on 14 March and 19 December 1986, the former relating to prisoner searches and the latter to prisoners' written and telegraphic correspondence. He submitted that the circulars contained provisions breaching the decrees and laws in force.

He complained in particular about the procedure for full body searches as laid down in the technical note appended to the circular of 14 March 1986, arguing that it infringed human dignity and thus contravened Article D. 275 of the Code of Criminal Procedure. He further objected to the fact that, with reference to Article D. 174 of the Code of Criminal Procedure, the circular afforded prison staff the possibility of using force to compel prisoners to submit to such humiliating procedures.

The applicant also complained that the circular of 19 December 1986 defined "correspondence" as "written communication between two named persons, as distinct from bulletins, letters, circulars, leaflets and printed matter, whose content does not specifically and exclusively concern the addressee". He argued that that definition, based on the content of the document, was at variance with freedom of correspondence as enshrined both in domestic law – which did not limit the number of letters that could be received and sent by convicted prisoners and other detainees and guaranteed them free choice as to their correspondents – and in Articles 9 and 10 of the Convention. In his view, it thereby introduced restrictions not envisaged by the law and conferred an arbitrary power of censorship on

prison governors. He added that by depriving those held in punishment cells of the possibility of corresponding with their friends or relatives and prison visitors, the circular imposed more restrictive conditions than those laid down in Article D. 169 of the Code of Criminal Procedure, which simply provided for restrictions on correspondence.

The applicant stated that the management of Fleury-Mérogis Prison had regularly sent him to the punishment block because of his refusal to open his mouth during full body searches in accordance with the first of the above-mentioned circulars. He added that on 28 June 1993 the prison governor, referring to the second circular, had refused to dispatch a letter the applicant had written to a friend in another prison – supplying information to assist him in applying for release on licence – on the ground that the letter did not “correspond to the definition of the concept of correspondence”.

In an order registered on 21 November 1994 with the secretariat of the Judicial Division of the *Conseil d'Etat*, the President of the Administrative Court transmitted the application to the *Conseil d'Etat*. On 8 December 2000 the *Conseil d'Etat* gave the following judgment:

“As to the circular of 14 March 1986 issued by the Minister of Justice on prisoner searches:

Article D. 275 of the Code of Criminal Procedure, as worded on the date of the impugned circular, provided: 'Prisoners must be searched frequently and as often as the prison governor deems necessary./ In particular, they shall be searched on their admission to the prison and each time they are temporarily removed from and returned to the prison for whatever reason. They may also be searched before and after visits or meetings of any kind./ Prisoners may be searched only by officers of the same sex and in conditions which, while ensuring that the checks are effective, maintain respect for the dignity inherent in the human being.'

In the first place, Mr Frérot seeks the annulment of the provisions of the circular of 14 March 1986 by which the Minister of Justice envisaged that prisoners could be subjected to full body searches, during which they would be required to undress completely in the presence of a prison officer, and laid down the procedure for carrying out such searches.

Even in the absence of any statute or regulation expressly authorising him to do so, the Minister of Justice, being responsible for the prison service, was empowered to lay down certain of the conditions in which prisoner searches would be carried out, in accordance with Article D. 275 of the Code of Criminal Procedure. Accordingly, Mr Frérot has no grounds for maintaining that the Minister of Justice was not competent to issue the disputed rules in the circular of 14 March 1986.

...

The disputed provisions of the circular of 14 March 1986 are designed to 'ensure that prisoners do not have any object or product on their person that could facilitate assaults or escapes, be the subject of trafficking or enable the consumption of toxic products or substances'. It does not appear from the evidence that the aims thus set forth could be achieved in equivalent conditions without the need to carry out full

body searches. The impugned rules provide that a full body search should normally be carried out by a single officer, who is not allowed to have any contact with the prisoner 'except ... when the hair is being inspected', and must take place in a room set aside for the purpose, unless this is impossible because of the layout of the premises, 'out of sight of other prisoners and of anyone not involved in the operation itself'. Regard being had to the measures envisaged to protect prisoners' privacy and dignity, and to the particular constraints inherent in the running of custodial facilities, the Minister of Justice neither interfered disproportionately with the principle set forth in Article 3 of the Convention ..., nor breached the provisions of Article D. 275 of the Code of Criminal Procedure, by which prisoner searches must be carried out 'in conditions which ... maintain respect for the dignity inherent in the human being'.

It follows that Mr Frérot has no grounds for seeking the annulment of the rules laid down in the circular of 14 March 1986 as examined above.

Secondly, Article D. 174 of the Code of Criminal Procedure, as in force at the material time, provided: 'Prison staff must not use force against prisoners except in self-defence or in the event of an attempted escape or resistance through violence or through physical unresponsiveness to orders./ When resorting to force, they must limit themselves to what is strictly necessary.' In reiterating through the circular of 14 March 1986 that a prisoner's refusal to undergo a search may give rise to a disciplinary sanction and, if the prisoner persists in refusing, to the use of force subject to the conditions set out in the above-mentioned provisions, the Minister of Justice did not issue a new rule. Consequently, Mr Frérot's arguments in relation to the references in the circular to the consequences of a prisoner's refusal to undergo a search are inadmissible.

As to the circular of 19 December 1986 issued by the Minister of Justice on prisoners' written and telegraphic correspondence:

Article D. 169 of the Code of Criminal Procedure, as in force on the date of the impugned circular, provided: 'Detention in a punishment cell ... shall entail restrictions on correspondence other than with the prisoner's family. However, prisoners shall retain the possibility of communicating freely with their counsel ...'

By means of the impugned provisions set out in his circular of 19 December 1986, the Minister of Justice specified that remand and convicted prisoners placed in punishment cells would not be authorised during such placement to correspond with 'their friends or relatives' or with prison visitors. Those provisions, which are binding, rank as subordinate legislation. On account of their general nature, they breach the regulations referred to above and constitute illegal interference with the freedom of correspondence which prisoners should continue to enjoy even when detained in a punishment cell, subject to the restrictions that may be decided by the prison governor. Accordingly, without it being necessary to examine the other arguments submitted by Mr Frérot, his application for the annulment of the provisions in question is admissible and well-founded.

As to the refusal by the governor of Fleury-Mérogis Prison to dispatch correspondence from Mr Frérot:

The decision by which the governor of Fleury-Mérogis Prison refused to dispatch a letter addressed by Mr Frérot to another prisoner on 28 June 1993 was, regardless of the content of such correspondence, an internal regulatory measure. As such, it is not

amenable to judicial review. The submissions referred to above are manifestly inadmissible and cannot be examined in court proceedings; they must therefore be dismissed.

As to the decisions by the governors of Fleury-Mérogis and Fresnes Prisons to place Mr Frérot in a punishment cell:

In support of his arguments challenging several decisions by the governors of Fleury-Mérogis and Fresnes Prisons to detain him in a punishment cell, Mr Frérot simply objects that the provisions of the circular of 14 March 1986, whose annulment he is seeking through the present application, are unlawful. It follows from the findings set out above that the applicant has no grounds for seeking the annulment of those decisions.

DECIDES:

Article 1: The circular by the Minister of Justice dated 19 December 1986 is annulled in so far as it prohibits all correspondence between remand and convicted prisoners in punishment cells and 'their friends or relatives' or prison visitors.

Article 2: The remainder of the submissions in Mr Frérot's application are dismissed.

..."

B. Information provided by the applicant as to his detention arrangements

9. The applicant was held in solitary confinement from 2 December 1987 and has been detained under the ordinary regime since 22 December 1990. He is registered as a "high-risk prisoner" (*détenu particulièrement signalé*) but has apparently never been officially notified of this.

He has been held in various prisons: Lyons (early December 1987 to January 1988), Santé (January to March 1988), Fleury-Mérogis (March 1988 to May 1989), Lyons (May to September 1989), Bourgoin-Jallieu (mid-September 1989), Fleury-Mérogis (September to December 1989), Bois d'Arcy (December 1989 to December 1990), Santé (December 1990 to December 1991), Fleury-Mérogis (December 1991 to September 1994), Fresnes (September 1994 to December 1996), Les Baumettes (December 1996), Arles (December 1996 to December 2003) and Lannemezan (since December 2003), the last two being prisons for offenders serving long sentences (*maisons centrales*).

10. From the end of the trial in June 1989 until he was transferred to Fleury-Mérogis Prison in September 1989, the applicant was detained under the ordinary prison regime in Lyons and subsequently in Bourgoin-Jallieu; although his activities were severely restricted and he was placed in a wing with other high-risk prisoners, he was allowed to attend mass and to go to

the weights room with the other detainees. However, on being admitted to Fleury-Mérogis Prison, he was again placed in solitary confinement, without any reasons being given by the management. This regime continued at Bois d'Arcy Prison, where he was allowed to do exercise with a fellow prisoner only after an eight-day hunger strike; his solitary confinement was ended only after he was transferred to the Santé Prison, where, as subsequently in Fleury-Mérogis Prison, he was granted access to the sports hall, the exercise yard, mass and IT classes. However, in 1993, while in Fleury-Mérogis Prison, he was awoken every morning by the five o'clock patrol on the management's orders; in his submission, he was the only prisoner affected by this measure and when he protested, he was sent to a punishment cell for eight days.

11. On 15 March 1993, while in Fleury-Mérogis Prison, the applicant was for the first time required to open his mouth during a full body search. When he refused to obey, he was sent to the punishment block. From late January 1994 to 26 September 1994 (when he was transferred to Fresnes Prison) he was ordered to open his mouth after leaving the visiting room on one occasion, when leaving the prison premises on two occasions, and during all unannounced full body searches, which were conducted at the “unusual frequency” of three every two months.

12. On 26 September 1994, on account of his refusals to obey orders and his repeated placement in the punishment block, he was transferred to the higher-security Fresnes Prison. He was detained in the wing for high-risk prisoners (until June 1995), where there was only one other prisoner, who was seriously ill. Protesting at the “oppressive social exclusion” this entailed for him, he went on hunger strike for twenty-five days from 20 December 1994. In addition, from September 1994 to September 1996, each time he left the visiting room he was subjected to a full body search, which now included the obligation to “bend over and cough”. When he refused he was sent to a punishment cell. He was subjected to a similar search on 19 June 1995, after the first hearing during his trial in the Paris Assize Court, even though he had been permanently guarded by police officers or detained alone in a cell. When he refused to comply, he was immediately sent to the punishment block. His situation did not improve in that respect until late June 1995, after he had complained about the conditions of his detention at a hearing in the Assize Court.

13. The applicant produced two statements dated 7 November 2005 and 28 May 2006 by Mr Gabriel Mouesca, President of the French section of International Prison Watch, who had himself been held in Fresnes Prison between 1988 and 1996. They certified that in 1994, 1995 and 1996 all prisoners at Fresnes had been systematically subjected to a full body search on returning from the visiting room. Mr Mouesca added that after refusing to comply on one occasion in 1995, disciplinary proceedings had been instituted and he had been sent to a punishment cell for eight days.

14. The applicant produced a further statement dated 23 May 2006 by Ms Hélène Metchédé, a prison visitor, attesting that he had endured “inhuman humiliation and unacknowledged isolation” during his two years in Fresnes Prison. In her statement, referring to and attaching four letters which the applicant had sent her on 25 October and 1 and 10 December 1994 and on 11 January 1995, Ms Metchédé mentioned the refusal of his request for permission to attend IT classes, to go to mass and to do sport with other prisoners. She added that the applicant had been deprived of personal items and belongings, that he had never received a reply to his letters of complaint, that he had undergone full body searches after each visit from his mother – and that, after refusing to comply, he had been sent to the “cooler” “as a preventive measure” (thus being denied further visits from his mother, who came from Nice for a week every three months) – that he had twice been subjected to a search of this kind while on hunger strike and that the authorities had acted negligently towards him on that occasion.

In her statement Ms Metchédé mentioned that she had met the applicant in Fresnes Prison on 14 March 1996, when she had been able to gauge “the severity of his suffering and his distress, but also the dignity with which he endured them”. She concluded as follows:

“... Indeed, these repeated and distressing acts of harassment have not diminished the strength of Maxime Frérot's self-control; all this personal hounding of him has not made him submissive or desperate, but on the contrary, such vile behaviour has undoubtedly helped to strengthen his sense of fighting to ensure respect for prisoners' elementary rights. Even through his prolonged experience of the extreme suffering and the moments of discontent that may affect even the strongest people, Maxime Frérot has managed to control these feelings of distress and incorporate them into his daily life; his moments of anger and revolt have not affected his reason and he has not sunk into the despair that can push an overwhelmed person beyond the point of no return in relation to others or himself. ...”

15. The applicant produced two other statements. One of them, signed on 5 October 2005 by Mr Werner Burki, a former national prison chaplain, confirms that the applicant was not allowed to attend mass while in Fresnes Prison and also notes that he was plunged into “deep despair” as a result. The other, written by his mother and dated 8 May 2005, describes the conditions of his detention, with particular emphasis on the searches.

II. RELEVANT DOMESTIC LAW AND PRACTICE

16. Article 728 of the Code of Criminal Procedure provides: “The organisation and internal regulations of prisons shall be determined in a decree.”

A. Prisoner searches

1. *The Code of Criminal Procedure*

17. At the material time Article D. 275 of the Code of Criminal Procedure provided:

“Prisoners must be searched frequently and as often as the prison governor deems necessary.

In particular, they shall be searched on their admission to the prison and each time they are temporarily removed from and returned to the prison for whatever reason. They may also be searched before and after visits or meetings of any kind.

Prisoners may be searched only by officers of the same sex and in conditions which, while ensuring that the checks are effective, maintain respect for the dignity inherent in the human being.”

Other provisions of the Code of Criminal Procedure state that prisoners are to be searched on their arrival at the prison (Article D. 284), before being transferred or temporarily removed (Article D. 294) and before and after meetings in the visiting room (Article D. 406).

18. It is a second- and third-degree disciplinary offence respectively for a prisoner to refuse to comply with a security measure laid down in the internal regulations and instructions (Article D. 249-2, point (6), of the Code of Criminal Procedure) and to refuse to obey the orders of prison staff (Article D. 249-3, point (4), of the Code). Such an offence may result in a disciplinary sanction such as detention in a punishment cell for a specified period (Article D. 251-2 of the Code). The prison governor or a member of the prison staff to whom this power has been delegated in writing may, as a preventive measure and without waiting for a meeting of the disciplinary board, decide to place the prisoner in a punishment cell if the latter's conduct constitutes a second-degree offence and if such a measure is the only means of putting an end to the offence or preserving order inside the prison (Article D. 250-3 of the Code).

19. Article D. 283-5 (former Article D. 174) of the Code of Criminal Procedure is worded as follows:

“Prison staff must not use force against prisoners except in self-defence or in the event of an attempted escape or resistance through violence or through physical unresponsiveness to orders.

When resorting to force, they must limit themselves to what is strictly necessary.”

2. *Circular of 14 March 1986 on prisoner searches*

20. Circular no A.P.86-12 G1 of the Minister of Justice on prisoner searches, issued on 14 March 1986, reads as follows:

“The Prison Service, which is responsible for the implementation of custodial sentences imposed by the judiciary, has the primary function of ensuring custody of detainees. This function, which necessarily entails maintaining security and order in custodial facilities, must nevertheless always be discharged with due respect for human dignity.

The difficulty of reconciling these two imperatives is especially apparent during full body searches, where prison staff are compelled to interfere with prisoners' privacy, since the use of modern security equipment cannot replace active staff intervention in this sphere.

The purpose of searches is to ensure that prisoners do not have any object or product on their person that could facilitate assaults or escapes, be the subject of trafficking or enable the consumption of toxic products or substances.

In this connection, experience shows that, on account of the ingenuity which certain prisoners are capable of displaying, it is essential to perform not only rub-down searches but also full body searches.

Such searches must be carried out in conditions designed to ensure not only their effectiveness but also respect for the dignity of prisoners and of the staff performing the searches, in accordance with the provisions of Article D. 275 of the Code of Criminal Procedure as resulting from the decree of 6 August 1985.

Section I: Different types of body searches and conditions for conducting them

Prisoners may be searched only by officers of the same sex.

Prisoners are not asked to undress during rub-down searches. For full body searches, however, prisoners are required to undress completely in the presence of an officer.

Contrary to rub-down searches, all contact between the prisoner and the officer is prohibited during full body searches, except when the hair is being inspected.

Full body searches must be carried out in a room set aside for the purpose, where the temperature is acceptable at all times of the year and the location ensures both that the alarm and security facilities are effective and also that the searches take place out of the sight of other prisoners and of anyone not involved in the operation itself.

Collective full body searches are prohibited. Prisoners must therefore enter the room set aside for the purpose one by one.

The number of officers performing a full body search must be strictly limited to the needs assessed, taking into account the prisoner's circumstances and personality. Usually, in the case of prisoners not presenting a risk of any particular incident, the search will be carried out by a single officer.

If architectural constraints do not allow a room to be set aside for individual searches, prisoners undergoing a full body search must be separated from their fellow inmates by a mobile partition (screen, curtains, etc.).

Prisoners may not refuse to be searched; refusal will render them liable to disciplinary sanctions. Should a prisoner persist in refusing, force may be used where appropriate (Article D. 174 of the Code of Criminal Procedure).

The practical procedure for conducting searches is set out in the technical note appended to this circular.

Section II: Circumstances in which searches are to be carried out

I. Full body searches

(A) On entering and leaving the prison

Full body searches are to be systematically performed on prisoners when they enter and leave the prison premises.

(1) Entry

A full body search must be systematically performed on prisoners being taken into custody in the facility, whether they were formerly at liberty or have been transferred by an administrative or judicial authority.

A full body search is also compulsory where prisoners return to the facility after their temporary removal by court order or on medical grounds, or a period of leave. Searches are to be performed in the same conditions where prisoners return to the facility after an outside placement not subject to permanent supervision by prison staff or while they are subject to a semi-custodial regime, where the conditions of their accommodation mean that they are in contact with prisoners not subject to the same regime.

(2) Exit

All prisoners who are discharged, whether prior to their transfer, temporary removal or release, must undergo a full body search before leaving the facility.

The same applies to anyone who is temporarily removed by order of an administrative or judicial authority or for medical reasons (admission to hospital or external consultation).

Prisoners who are granted leave are to be searched before their departure, as are prisoners who are granted an outside placement not subject to permanent supervision by prison staff.

(B) Movements within the detention facility

A full body search is to be systematically performed on prisoners:

- after visits by any person (relatives, friends, lawyers) who has been issued with a visitor's permit in accordance with Articles D. 64 and D. 403, where the meeting has taken place in a visiting room with no partition;

- prior to any placement in a punishment cell or in solitary confinement. To avoid any risk of an altercation, it is advisable for the search to be performed by a different officer from the one who reported the incident resulting in the prisoner's placement in the punishment block.

(C) Unannounced searches

Besides the cases listed in the preceding paragraphs, unannounced full body searches of one or more prisoners may be performed whenever the prison governor or one of his or her direct subordinates deems necessary.

Searches of this kind, which must, save in an emergency, take place on the basis of written instructions, may in particular be performed on occasions when prisoners move about within the detention facility (exercise, workshops, activity rooms).

They concern chiefly, although not exclusively, high-risk prisoners (*détenus particulièrement signalés*), remand prisoners and anyone whose personality and previous conduct make it necessary to carry out thorough checks.

II. Circumstances in which rub-down searches are to be carried out

Rub-down searches are to be carried out whenever the prison governor so requires, in particular when prisoners move about the detention facility individually or in a group, and must, save in an emergency, take place on the basis of written instructions.

Prisoners going to the visiting room must undergo a rub-down search, unless the prison governor issues a specific instruction for a full body search to be performed, on the basis of the prisoner's personality, the particular circumstances or the regulations on unannounced searches.

While it is appreciated that performing such searches entails both practical and psychological difficulties for warders, they must all be made aware of the importance of strict implementation of these instructions for the protection of staff as a whole and for the proper performance of the Prison Service's custodial function.

Prison governors and senior managers must take particular care to ensure that the instructions which it is their responsibility to give to staff in this sphere are carried out correctly.

Training officers, both at the National Prison Service College and in prisons, must endeavour to explain to trainees and newly recruited officers that, in this sphere especially, the proper implementation of instructions requires not only knowledge of techniques but also an appropriate psychological approach.

...

TECHNICAL NOTE

(A) Rub-down searches

The prisoner stands in front of the officer with his arms and legs apart, the palms of the hands facing the officer and the fingers apart.

The officer inspects the prisoner's hair, ears and neck as appropriate.

The officer then puts his hands on the prisoner's shoulder blades, placing his arms around him and moving them, if necessary, under the prisoner's unbuttoned jacket before sliding them from the shoulders down to the waist along the spinal column.

The officer continues the search in this way, inspecting if necessary the belt and the trouser hip pockets before proceeding to examine the rear thighs, the bend of the knees, the calves and finally the ankles.

After this inspection of the rear side of the body, the officer resumes the process from the level of the prisoner's torso, and in particular the chest, checking if necessary any shirt pockets at this level before doing the same for the belt and front trouser pockets and continuing the inspection from the groin down to the front side of the ankles.

(B) Full body searches

After ensuring that the prisoner's personal effects are removed from him, the officer proceeds to carry out a full body search in the following order.

The officer examines the prisoner's hair, ears and hearing aid if one is present, and subsequently his mouth by making him cough and also by asking him to lift his tongue and to remove any false teeth where necessary.

He then checks the armpits by making the prisoner raise and lower his arms, before inspecting the hands, asking him to keep the fingers apart.

As the crotch area may be used to conceal various objects, it is important for the officer to ensure that the prisoner's legs are spread apart in order to inspect this area.

In the specific case of searches for prohibited objects or substances, the prisoner may be required to bend over and cough. A doctor may also be called to assess whether the prisoner should undergo an X-ray or a medical examination in order to detect any foreign bodies.

Next, the prisoner's feet are inspected, in particular the arch of the foot and the toes.

While returning the prisoner's clothes in the reverse order in which the prisoner took them off, the officer inspects them, taking particular care to check the seams, hems, lining and especially the shoes, ensuring that the latter do not contain any hidden compartments."

...

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 3 AND 8 OF THE CONVENTION ON ACCOUNT OF THE FULL BODY SEARCHES TO WHICH THE APPLICANT WAS SUBJECTED

25. The applicant contended that the procedure for full body searches as laid down in the technical note appended to circular no. A.P.86-12 G1 of 14 March 1986 on prisoner searches was inhuman and degrading. He submitted that he had been systematically disciplined for refusing to undergo searches in accordance with this procedure. 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.”

The applicant argued that systematically subjecting prisoners to a full body search after every visit, as provided for in the circular of 14 March 1986, also constituted disproportionate interference with the right to respect for their private life. Moreover, since it had not been published in the Official Gazette, the circular lacked the accessibility, precision and foreseeability required to be classified as a “law” in accordance with the Court’s case-law. In that connection he relied on Article 8 of the Convention, which provides:

“1. Everyone has the right to respect for his private ... life ... and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

26. The Government disputed those arguments.

A. The parties' submissions

1. The Government

27. The Government submitted firstly that since the start of his detention the applicant had been held under a regime that complied with the provisions of the Code of Criminal Procedure and that he had not been subject to excessive surveillance in view of the charges against him. They pointed out that, as a precautionary security measure, the applicant had been placed in solitary confinement on 21 December 1987 in accordance with

Article D. 170 of the Code of Criminal Procedure, by decision of the governor of Lyons Prison, and that that measure had been renewed every three months until 22 December 1990, when he had been transferred to the Santé Prison and placed in a standard wing. Since then, the applicant had been detained under the ordinary regime; admittedly, he was registered as a high-risk prisoner, but as the Prison Service circular of 26 July 1983 pointed out, registration in that category was “a purely internal measure with no disciplinary or discriminatory effect, designed to ensure greater efficiency in supervising prisoners reputed to be dangerous, in particular when they move about or are removed or transferred from the prison, and to draw staff’s attention to them [;] it must not in itself entail under any circumstances the application of a particular regime that is less favourable, since the security measures provided for in the applicable statutory instruments and instructions must be applied on the basis of considerations relating to the case at hand and not on the basis of a systematic, preconceived approach.”

The Government added that when the applicant had been in solitary confinement in Fleury-Mérogis Prison, he had been allowed to do exercise with another prisoner. They also stated that, on the various occasions when he had gone on hunger strike (in March and November 1991, June and July 1993 and October and November 1994) in protest against the conditions of his detention, the applicant had received daily medical attention; furthermore, since the start of his detention, he had been able to correspond with his relatives, his mother and brother had obtained permission to visit him, and he had had been entitled to work, to receive education and training, to practise his religion, to do exercise and to take part in the other sports activities on offer.

28. The Government further submitted that the system of searches was the same in remand and post-conviction prisons, and that the applicable regulations did not expressly state the frequency with which searches were to be carried out (that being the prerogative of the prison governor) but made them compulsory whenever prisoners had had contact with anyone from outside: on their admission to the prison, whenever they were removed from and returned to the prison and before and after all visits (Articles D. 275, D. 284, D. 294 and D. 406 of the Code of Criminal Procedure); furthermore, the circular of 14 March 1986 “invited” governors to search prisoners on each occasion when they were placed in a punishment cell or in solitary confinement, with a view to ensuring their safety and, in particular, avoiding any risk of physical injury. The Government added that the circular defined two types of search: full body searches – where the prisoner was naked – and rub-down searches. Full body searches involved no contact between the prisoner and the officer, except when the hair was being inspected; they could not be performed collectively, normally took place in a room set aside for the purpose and at all events out of the sight of anyone not involved in the operation, and were generally conducted by a

single officer. The Government referred to the text of the circular, which in their submission “gave a precise definition of the professional actions to be performed during a full body search” so that operations of this kind could be conducted with due respect for prisoners' dignity. They emphasised that while prisoners could be required to bend over and cough, this took place solely “in the specific case of searches for prohibited objects or substances” and not in any other cases. Rub-down searches were “ordered by the governor whenever he deem[ed] necessary, in particular when prisoners moved about the detention facility”. The prisoner remained clothed, standing in front of the officer with his arms and legs apart, and “as appropriate”, the officer could “inspect the prisoner's hair, ears and neck”.

The Government observed that there was no evidence to suggest that the applicant had been subjected to special measures in terms of the frequency and manner of the searches in any of the facilities in which he had been held, but added that, in view of the offences of which he was accused, his membership of a terrorist group, his registration as a high-risk prisoner and his placement in solitary confinement for several months, the prison authorities had been required, for security reasons, to carry out strict and regular searches after any contact with the outside world (for example, after receiving visits and leaving the premises) or as an unannounced measure. In the Government's submission, it could be noted from the relevant incident reports that the applicant's refusals to undergo searches had always concerned regulation searches, after receiving visits, when leaving the premises, after doing exercise or while detained in the punishment block; they referred in that connection to eleven reports, dated 15 March 1993, 28 June, 9 August, 13 September, 19 and 21 December 1994, 25 March, 13 and 20 May 1995, and 26 and 27 May 1996, six of which (those of 19 and 21 December 1994, 25 March, 13 and 20 May 1995 and 27 May 1996) stated that the applicant had refused to “bend over and cough”. The Government pointed out that, having regard to the applicant's position of principle in systematically refusing to undergo searches, it had been necessary, for the purposes of ensuring order and safety in the prisons in question, for the prison authorities to take disciplinary sanctions against him. They added that from the end of 1996 the applicant had complied with the measures in force and had no longer been the subject of disciplinary proceedings for refusing to undergo searches.

29. In the Government's submission, the circumstances of the present case were not comparable to those in *Van der Ven v. the Netherlands* (no. 50901/99, ECHR 2003-II) and *Lorsé v. the Netherlands* (no. 52750/99, 4 February 2003), in which the Court had found a violation of Article 3 in the context of strip-searches of detainees. They observed in that connection that in France, the system of strip-searches was strictly framed by statutory and regulatory instruments (the Government referred in particular to Articles 728 and D. 275 of the Code of Criminal Procedure), the scope for

circulars being marginal in that they were limited to setting out the manner in which such instruments were to be applied and implemented. They added, firstly, that the frequency of searches was laid down in the instruments in question and that the applicant had been strip-searched only in the circumstances envisaged in them and not in any systematic or repetitive manner, and, secondly, that the full body searches to which he had been subjected had addressed security concerns since they had taken place after he had been in contact with persons from outside the prison (prison visits and temporary removals) or other prisoners (after exercise). In any event, the “frequency” of searches was not sufficient to make them “a routine operational aspect of detention”, and the circular of 14 March 1986 encouraged supervisory staff not to make such acts commonplace. The Government also pointed out that the applicant was detained under the ordinary regime and not subject to any special supervisory measures, and emphasised that full body searches did not involve any contact between prisoners and prison staff, did not include anal inspections (for which the intervention of a doctor was compulsory) and ensured respect for prisoners' human dignity and intimacy. Lastly, the Government observed that the judgments cited above indicated, among other things, the Court's acceptance that strip-searches might sometimes be necessary to ensure prison security or to prevent disorder or crime.

30. As regards Article 8, the Government accepted that the full body searches to which the applicant had been subjected had entailed interference with his private life, within the meaning of that provision. They submitted, however, that they had been in accordance with the law (the Code of Criminal Procedure as supplemented by the circular of 14 March 1986, such instruments being clear, precise and accessible), had pursued a legitimate aim and had been necessary in a democratic society. As to the first point, they stated that although the circular of 14 March 1986 had not been published in the Official Gazette, it was accessible to anyone on application to the authorities; however, they added, “for obvious security reasons, the note appended to the circular, setting out the practical procedure for carrying out searches, cannot be disclosed since it contains technical and methodological instructions for supervisory staff, publication of which could jeopardise prison security if they became known to prisoners”.

2. The applicant

31. The applicant observed that the Court had held in its *Van der Ven* and *Lorsé* judgments (cited above) that strip-searches constituted degrading treatment in that they were carried out as a matter of routine, were not based on any concrete security need or the prisoners' behaviour, and obliged them to undress in the presence of prison staff and to adopt “embarrassing positions”.

He further submitted that in addition to the power of the prison governor to order searches whenever he “deemed necessary” – which left him considerable discretion – the Code of Criminal Procedure required prisoners to undergo searches on entering and leaving the prison and after each visit, and the circular of 14 March 1986 also provided that searches were to be carried out before and after any placement in a punishment cell or in solitary confinement. He asserted that the circular permitted prisoner searches on an excessive number of occasions, leading inevitably to the routine criticised by the Court in the judgments cited above. He added that the procedure for full body searches was degrading: prisoners, while naked, could be required to open their mouths, like slaves or animals for sale, and to undergo “anal inspections”.

In the applicant's submission, both the frequency and the manner of full body searches envisaged by the circular were incompatible with the requirements of Article 3 of the Convention.

32. The applicant stated that during his eighteen years of detention he had been held in some fifteen different prisons and that, although he had systematically and repeatedly undergone full body searches, each establishment had followed its own practices regarding prisoner searches. In particular, for more than sixteen years of this eighteen-year period he had not been asked to open his mouth or bend over and cough while naked; such obligations had been imposed on him only at Fleury-Mérogis (opening the mouth) and Fresnes (opening the mouth and bending over). He submitted in that connection that in those two prisons he had been systematically required to open his mouth during each unannounced search. He added that half the incident reports referred to by the Government concerned his refusal to “bend over and cough” – in other words, he contended, his refusal to undergo an “anal inspection” – and that the Government had not provided any details of the nature of the prohibited objects or substances being searched for on those occasions; in fact, there was no indication that the measures had been taken as part of a specific search, especially as all prisoners were subjected to them.

33. As to the prison regimes under which he had been and was currently being subjected, the applicant pointed out that he was the only member of the “Lyons branch” of Action Directe to have been held in “total segregation” for so many years. He added that such a regime – which by its very nature deprived the prisoners concerned of access to the group activities available to others – had been singularly demanding; in particular, he had been allowed to do exercise with another prisoner at Bois d'Arcy Prison only after going on hunger strike for eight days. He added that, although he had been detained under the ordinary regime since 1990, he had not had access either to the chapel or to the prayer room at Fresnes Prison, where he had been transferred in 1994; this showed that he had not always retained the ability to exercise his fundamental rights. Furthermore, contrary

to what the Government maintained, the registration of prisoners in the “high risk” category amounted to a particular prison regime, which had no legal basis and in practice deprived the prisoners concerned of a number of rights they should be able to enjoy: contact with other prisoners – and hence exercise and activities – was limited (very often, their daily schedule consisted of one hour's solitary exercise and twenty-three hours in the cell), their correspondence was subject to increased monitoring, they were accompanied by a warder whenever they moved about the prison, they were not allowed to work in the general service or in a workshop that did not have the necessary security arrangements in place, they were frequently transferred to a higher-security prison and, depending on the prison where they were being held, they were required to change cells frequently and to undergo additional searches. As regards the last-mentioned point, they were particularly at risk of being subjected to unannounced searches, as the circular of 14 March 1986 explicitly stated that such searches “concern chiefly, although not exclusively, high-risk prisoners” and, as the Government had indicated in their observations before the Court, full body searches; classification as a high-risk prisoner was thus an aggravating factor in the performance of checks.

34. With regard to Article 8 specifically, the applicant highlighted the fact that the Code of Criminal Procedure did not define either the procedure for searches or their frequency, nor did it provide for full body searches. Such searches, which were infinitely more humiliating than rub-down searches since they required prisoners to “undress completely”, were envisaged only by the circular of 14 March 1986, which went beyond a mere description of the procedure for applying and implementing requirements laid down in regulations and was all the more unfit to qualify as a “law” for the purposes of the Court's case-law in that it had never been published in the Official Gazette. He also complained in particular that Article D. 275 § 1 of the Code and the circular provided for the possibility of unannounced searches, conferring on the prison governor an arbitrary discretion that was unacceptable in a democratic society and had also been criticised in the report by the National Assembly's Commission of Inquiry on the situation in France's prisons (see paragraph 23 above). He contended that the possibility of unannounced searches should be expressly provided for by law on the basis of clearly defined security requirements.

B. The Court's assessment

35. The Court reiterates at the outset 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 (see, for example, *Labita v. Italy* [GC], no. 26772/95, § 119, ECHR

2000-IV, and *Van der Ven* and *Lorsé*, both cited above, §§ 46 and 58 respectively), even in the most difficult circumstances, such as the fight against terrorism and organised crime (see *Ramirez Sanchez v. France* [GC], no. 59450/00, § 115, ECHR 2006-IX).

Ill-treatment must also attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum 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, among other authorities, *Ireland v. the United Kingdom*, 18 January 1978, § 162, Series A no. 25, and *Van der Ven* and *Lorsé*, both cited above, §§ 47 and 59 respectively). Thus, 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, and also “degrading” because it was such as to arouse in the victims feelings of fear, anguish and inferiority capable of humiliating and debasing them (see, for example, *Kudła v. Poland* [GC], no. 30210/96, § 92, ECHR 2000-XI, and *Van der Ven* and *Lorsé*, both cited above, §§ 48 and 60 respectively). In order for punishment or treatment 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, for example, *V. v. the United Kingdom* [GC], no. 24888/94, § 71, ECHR 1999-IX, and *Van der Ven* and *Lorsé*, both cited above).

36. Conditions of detention – including the procedure by which prisoners are required to undergo searches – may entail treatment contrary to Article 3 (see, for example, *Van der Ven* and *Lorsé*, both cited above, §§ 49 and 61 respectively), as may a single strip-search (see *Valašinas v. Lithuania*, no. 44558/98, ECHR 2001-VIII, and *Iwańczuk v. Poland*, no. 25196/94, 15 November 2001; see also *Yankov v. Bulgaria*, no. 39084/97, § 110, ECHR 2003-XII).

Accordingly, where, as in the instant case, a person complains that he has suffered inhuman or degrading treatment on account of the searches to which he has been subjected while in detention, the Court may be required to examine the procedure for such searches in the context of the particular prison regime in which they are ordered, so that account may be taken of the cumulative effects of the conditions of the applicant's detention (see, for example, *Van der Ven*, cited above, §§ 49 and 62-63).

37. Measures depriving a person of his liberty inevitably involve an element of suffering and humiliation. Although this is an unavoidable state of affairs which, in itself as such, does not infringe Article 3, that provision nevertheless requires the State to ensure that all prisoners are detained in conditions which are compatible with respect for their human dignity, that the manner of their detention does not subject them to distress or hardship

of an intensity exceeding the unavoidable level of suffering inherent in such a measure and that, given the practical demands of imprisonment, their health and well-being are adequately secured (see *Kudla*, cited above, §§ 92-94, and *Ramirez Sanchez*, cited above, § 119); furthermore, the measures taken in connection with the detention must be necessary to attain the legitimate aim pursued (see *Ramirez Sanchez*, *ibid.*).

38. With regard to the specific issue of strip-searches of prisoners, the Court has no difficulty in accepting that a person obliged to submit to treatment of this nature might view that procedure in itself as undermining his privacy and dignity, particularly where the measure involves undressing in front of others, and even more so where he has to place himself in embarrassing positions.

Such treatment, however, is not in itself illegal: strip-searches, and even full body searches, may be necessary on occasion to ensure prison security – including the prisoner's own safety – or to prevent disorder or crime (see *Valašinas*, § 117, *Iwańczuk*, § 59, *Van der Ven*, § 60, and *Lorsé*, § 72, all cited above).

Nevertheless, while strip-searches may be “necessary” to achieve one of those aims (see *Ramirez Sanchez*, cited above, § 119), they must also be conducted in an “appropriate manner” (see *Valašinas*, *Iwańczuk*, *Van der Ven* and *Lorsé*, all cited above), so that the prisoner's suffering or humiliation does not go beyond the inevitable element of suffering or humiliation connected with this form of legitimate treatment. Otherwise, they will infringe Article 3 of the Convention.

It is also self-evident that the greater the invasion of the privacy of a prisoner being strip-searched (particularly where the procedure involves having to undress in front of others, and even more so where the prisoner has to adopt embarrassing positions), the greater the caution required.

39. Thus, in the *Valašinas* case (cited above, § 117) the Court held that a full body search was degrading within the meaning of Article 3 on the ground that “[o]bliging [a male prisoner] to strip naked in the presence of a woman, and then touching his sexual organs and food with bare hands showed a clear lack of respect for the applicant, and diminished in effect his human dignity. It must have left him with feelings of anguish and inferiority capable of humiliating and debasing him.”

The Court reached a similar conclusion in *Iwańczuk* (cited above, §§ 58-59), in which a remand prisoner who wished to exercise his right to vote in parliamentary elections and had asked for permission to use the voting facilities for detainees in the prison where he was being held was ordered to undress in front of four warders so that a prior strip-search could be carried out. The Court held, firstly, that in the circumstances of the case, no reasons had been adduced to show that this order was necessary and justified by security reasons, in the light of the applicant's personality in particular, and,

secondly, that the warders in question had verbally abused and derided the applicant, thus demonstrating their intention to humiliate and debase him.

In *Van der Ven* and *Lorsé* (cited above, §§ 62-63 and 74 respectively) the Court did not examine a particular strip-search, as in the other cases described above, but the general rules on strip-searches to which detainees in an “extra security institution” were subjected: prior to and following an “open” visit, after each visit to the clinic, the dentist's surgery or the hairdresser's, and at the time of each weekly cell inspection. Detainees being searched in this way were obliged to undress in the presence of prison staff and, among other things, to have their rectum inspected, which required them to adopt embarrassing positions. The Court considered that in a situation where the applicants were already subjected to a great number of surveillance measures, and in the absence of convincing security needs, the practice of weekly strip-searches to which Mr Van der Ven had been subjected for approximately three and a half years and Mr Lorsé for more than six years had diminished their “human dignity” and must have given rise to feelings of anguish and inferiority capable of humiliating and debasing them. The Court went on to conclude that the combination of routine strip-searching and the other stringent security measures in the institution had amounted to “inhuman or degrading” treatment in breach of Article 3 of the Convention.

40. In the instant case it was not disputed that, like any prisoner, the applicant was subject to the rules on searches, which were mainly laid down in the circular of 14 March 1986 and the technical note appended to it.

The circular states that “[t]he purpose of [rub-down or full] searches is to ensure that prisoners do not have any object or product on their person that could facilitate assaults or escapes, be the subject of trafficking or enable the consumption of toxic products or substances”.

The “practical procedure” for full body searches is set out in the technical note. The prisoner must undress completely. The officer in charge of the search examines the prisoner's hair, ears and mouth; the prisoner has to open his mouth, cough, lift his tongue and “where necessary” remove any false teeth. The officer also checks the prisoner's armpits by making him raise and lower his arms, before inspecting the hands, asking him to keep the fingers apart; the feet are also examined, in particular the arch of the foot and the toes. The prisoner must also spread his legs apart so that the officer can ensure that no objects are being concealed in the crotch area. Lastly, “in the specific case of searches for prohibited objects or substances”, the prisoner may be required to bend over and cough (with the buttocks facing the officer carrying out the search, clearly in order to permit a visual inspection of the anus); the note adds that a doctor may also be called upon to assess whether the prisoner should undergo an X-ray or a medical examination in order to detect any foreign bodies.

As the Government stated, the procedure for full body searches includes precautions designed to preserve prisoners' dignity. Article D. 275 of the Code of Criminal Procedure thus provides that prisoners may be searched only by officers of the same sex and, in general terms, "in conditions which, while ensuring that the checks are effective, maintain respect for the dignity inherent in the human being". The above-mentioned circular, which reiterates these principles, states that all contact between the prisoner and the officer is prohibited, except when the hair is being inspected. It adds that "the number of officers performing a full body search must be strictly limited to the needs assessed, taking into account the prisoner's circumstances and personality"; normally, however, they will be carried out by a single officer. Collective full body searches are prohibited; prisoners enter the room set aside for the purpose one by one, so that the search can take place out of the sight of other prisoners and of "anyone not involved in the operation itself". If architectural constraints do not allow a room to be set aside for individual searches, prisoners being searched must be separated from their fellow inmates by means of a mobile partition (such as a screen or curtain).

41. The Court can accept that despite these precautions, prisoners who are strip-searched in this way might feel that their dignity has been undermined. It considers it equally obvious that the more intrusive the invasion of prisoners' privacy, the stronger this feeling is likely to be; it thus finds it entirely understandable that the applicant should complain vehemently that he was ordered on certain occasions to undergo oral or anal inspections.

The Court considers, however, that the procedure described above is generally appropriate. Viewed in isolation, a strip-search conducted in that manner, which in practical terms is necessary to ensure prison security or prevent disorder or crime, is not incompatible with Article 3 of the Convention; unless there are special circumstances relating to the situation of the person undergoing them, it cannot be said that in principle such searches involve an element of suffering or humiliation going beyond what is inevitable (see, *mutatis mutandis*, *Kleuver v. Norway* (dec.), no. 45837/99, 30 April 2002). The Court would add that this applies even where the prisoner is obliged to bend over and cough in order to permit a visual inspection of the anus "in the specific case of a search for prohibited objects or substances", provided that such a measure is permitted only where absolutely necessary in the light of the special circumstances and where there are strong and specific reasons to suspect that the prisoner might be hiding such an object or substance in that part of his body.

Accordingly, the Court is not persuaded by the applicant's argument that the procedure applied is inhuman or degrading in general terms.

42. The Court further notes that the applicant did not claim that the full body searches he had undergone had failed to follow the procedure outlined

above or that their purpose, or that of any other search, had been to humiliate or debase him. In particular, he did not allege that the warders had been disrespectful towards him or had behaved in a manner indicating any such intention.

In that respect his case differs from those of the applicants in *Valašinas* and *Iwańczuk* (both cited above).

Nevertheless, that cannot conclusively rule out a finding of a violation of Article 3 (see, for example, *Van der Ven*, § 48, and *Ramirez Sanchez*, § 118, both cited above): as was reiterated above, in assessing whether the level of severity beyond which treatment falls within the scope of Article 3 has been attained, regard must be had to all the circumstances of the case. Thus, the Court concluded that that level had been exceeded in the cases of *Van der Ven* and *Lorsé* (both cited above), concerning strip-searches which were each carried out in a “normal” manner, on the ground that such searches had been “performed systematically on a weekly basis as a matter of practice which lacked clear justification in the particular case of the applicant”; it held that the practice of strip-searching in such circumstances “had a degrading effect and violated Article 3 of the Convention” (see *Yankov*, cited above, § 110).

43. In the instant case, no precise information is available as to the frequency of the searches (both rub-down and full) which the applicant underwent, the proportion that were full body searches, or the number of such searches during which he was ordered to “bend over and cough”.

44. However, it appears from the relevant instruments that in principle, prisoners are searched at frequent intervals (both rub-down and full body searches). Article D. 275 of the Code of Criminal Procedure states that “[p]risoners must be searched frequently and as often as the prison governor deems necessary”, and that “[i]n particular, they shall be searched on their admission to the prison and each time they are temporarily removed from and returned to the prison for whatever reason [and] may also be searched before and after visits or meetings of any kind”; other provisions of the Code of Criminal Procedure state that prisoners are to be searched on their arrival at the prison (Article D. 284), before being transferred or temporarily removed (Article D. 294) and before and after meetings in the visiting room (Article D. 406).

The Code of Criminal Procedure does not indicate the circumstances in which searches are to take the form of a full body search or a rub-down search. The circular of 14 March 1986, however, specifies that a full body search is to be systematically performed on prisoners when they enter and leave the prison premises, whatever the reason for their movement (including, for example, admission to hospital or external consultations), after visits by any person (relatives, friends, lawyers) where the meeting has taken place in a visiting room with no partition, and before being placed in a punishment cell or in solitary confinement. The circular adds that

unannounced full body searches of one or more prisoners may be carried out “whenever the prison governor or one of his or her direct subordinates deems necessary”, in particular “on occasions when prisoners move about within the detention facility (exercise, workshops, activity rooms)”; “[t]hey concern chiefly, although not exclusively, high-risk prisoners, remand prisoners and anyone whose personality and previous conduct make it necessary to carry out thorough checks” (see paragraphs 17-20 above).

It therefore appears that while they are deprived of their liberty, all prisoners are likely to have to undergo full body searches at frequent intervals. It is also apparent from the very wording of the circular that “high-risk prisoners”, such as the applicant, are even more exposed to the possibility of searches of this kind.

45. These considerations bear out the applicant's assertion that he was often required to undergo a full body search.

However, as the Government pointed out, that cannot be seen as a “routine” comparable to the one criticised by the Court in the cases of *Van der Ven* and *Lorsé* (cited above), in which the applicants were systematically strip-searched on a weekly basis, on each occasion undergoing a rectal inspection.

In the instant case, the applicant was required to undergo full body searches in the context of events where they were clearly necessary in order to maintain security or prevent crime. They took place either prior to his placement in a punishment cell, to make sure that he had nothing on his person with which he might harm himself, or after he had been in contact with the outside world or other prisoners – in other words, in a position where he might have been handed prohibited objects or substances. Furthermore, they did not systematically include an anal inspection.

46. The Court is, however, struck by the fact that the application of the most intrusive procedures in terms of physical intimacy varied from one place of detention to another in the applicant's case.

It appears from his undisputed submissions that he was first ordered to open his mouth during a full body search on 15 March 1993 at Fleury-Mérogis Prison, although he had been deprived of his liberty since 1 December 1987. The Court further notes that the Government likewise did not deny that subsequently, from late January 1994 until 26 September 1994, the applicant was ordered to open his mouth during several full body searches at the same prison, which were unannounced in more than one case or were performed after receiving a visit (once) and when leaving the prison premises (twice).

Furthermore, and most importantly, the Government did not deny that during a period of two years in Fresnes Prison, where he was transferred on 26 September 1994, the applicant was subjected to a full body search after every visit, in addition being ordered to “bend over and cough” on each occasion, or that he was subjected to a search of that nature on 19 June 1995

following the first hearing at his trial in the Paris Assize Court, or that on several occasions he was sent to the punishment block for not obeying those orders.

Although the precise number and frequency of the full body searches during which the applicant was ordered to open his mouth or to “bend over and cough” are not known, the Government acknowledged that there had been at least eleven such incidents, on 15 March 1993, 28 June, 9 August, 13 September and 19 and 21 December 1994, 25 March and 13 and 20 May 1995 and 26 and 27 May 1996, after visits, when he was temporarily removed from the facility, following exercise or when he was placed in a punishment cell; on six of those occasions (19 and 21 December 1994, 25 March and 13 and 20 May 1995 and 27 May 1996) the applicant had refused to “bend over and cough”. It is therefore plausible – having regard also to the observations set out above (see paragraph 44) – that, during the period of the applicant's detention between the start of 1993 and the end of 1996, the number and frequency of the searches were considerable.

47. The Court observes in particular that the applicant was required to undergo anal inspections in only one of the many facilities in which he was held, namely Fresnes Prison. It further notes that the Government did not claim that, in the particular circumstances in which such measures had been taken, they had been based each time on strong and specific suspicions that the applicant had “prohibited objects or substances” concealed in his anus, or even that a change in the applicant's behaviour had rendered him particularly suspect in that regard. In fact, it appears from the applicant's undisputed submissions that in the prison concerned, when detainees were searched after each visit, they were systematically ordered to “bend over and cough”. In other words, there was a presumption in that prison that any prisoner returning from the visiting room was concealing objects or substances in the most intimate parts of his body.

The performance of anal inspections in such conditions cannot be said to have been duly based on “convincing security needs” (see *Van der Ven*, cited above, § 62) or on the need to prevent disorder or crime. The Court therefore finds it understandable that the prisoners concerned, such as the applicant, might feel that they are the victims of arbitrary measures on that account. It can accept that this feeling might be aggravated by the fact that the rules on prisoner searches in general, and full body searches in particular, are mainly set out in an instruction issued by the Prison Service itself – the circular of 14 March 1986 – and, moreover, allow each prison governor a large measure of discretion.

In the Court's view, the combination of that feeling of arbitrariness, the feelings of inferiority and anxiety often associated with it, and the feeling of a serious affront to dignity indisputably prompted by the obligation to undress in front of another person and submit to a visual inspection of the anus, in addition to the other intrusively intimate measures entailed by full

body searches, results in a degree of humiliation exceeding the – unavoidable and hence tolerable – level that strip-searches of prisoners inevitably involve. Moreover, the humiliation felt by the applicant was aggravated by the fact that on a number of occasions his refusal to comply with such measures led to his being placed in a punishment cell.

48. The Court accordingly concludes that the full body searches to which the applicant was subjected in Fresnes Prison between September 1994 and December 1996 amounted to degrading treatment within the meaning of Article 3. There has therefore been a violation of that Article.

However, it considers that the level of severity required to constitute “inhuman” treatment has not been attained in the instant case.

49. Lastly, seeing that the Court has considered the issue of the full body searches to which the applicant was subjected under Article 3 of the Convention and has found a violation of that provision, it is unnecessary to examine it also under Article 8 of the Convention.

...

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 3 of the Convention on account of the full body searches to which the applicant was subjected, and that it is unnecessary to examine this issue under Article 8 of the Convention;

...

Done in French, and notified in writing on 12 June 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sally Dollé
Registrar

András Baka
President