



Repeated full body searches, recorded on video and conducted by law-enforcement officers wearing balaclavas, were humiliating and unwarranted

In today's Chamber judgment in the case [El Shennawy v. France](#) (application no. 51246/08), which is not final¹, the European Court of Human Rights held, unanimously, that there had been:

A violation of Article 3 (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights

A violation of Article 13 (right to an effective remedy) of the Convention.

The case concerned the repeated strip-searching of the applicant by officers of the various law-enforcement agencies supervising him during his removal to the assize court in the course of his trial.

Principal facts

The applicant is a French national who was born in 1954 and is currently held in Saint-Maur Prison (France), where he is serving various criminal sentences.

The applicant was first sentenced in 1977 to life imprisonment, commuted to 20 years, for armed robbery and kidnapping. He has been on the register of "high-risk prisoners" since 18 August 1977. Several more convictions followed, including a 16-year sentence following his escape from the psychiatric ward of a hospital using a fire arm, and a 13-year sentence for unlawful arrest and confinement and armed robbery committed as a repeat offender, imposed following an assize court trial from 9 to 18 April 2008. During the trial, in view of the danger posed by the applicant, exceptionally tight security arrangements were in place with regard to identity checks and the detection of dangerous objects (parking restrictions were in place around the courthouse, the windows and side doors were kept closed and the lift was not in use), and to the conditions in which the applicant and his co-defendant were temporarily removed from prison and their supervision during the hearings.

With a view to his appearance at the hearings the applicant was transferred to Pau Prison, where he claimed to have been placed in solitary confinement under the supervision of officers of the regional security and intervention force (ERIS) throughout his trial. He stated that ERIS officers wearing balaclavas had subjected him to a particularly thorough strip-search routine, including visual examinations of the anus during which they had used force if he refused to bend over and cough. The searches

¹ Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution

had been video-recorded and most had been conducted in the presence of an officer from the national police intervention force (GIPN).

On 14 April 2008 Mr El Shennawy applied to the urgent-applications judge seeking suspension of the routine of full body searches comprising between four to eight anal examinations a day recorded on video. In an order of 15 April 2008 the judge rejected the application, taking the view that the security measures implemented each time the prisoner was moved to and from the prison had formed an integral part of the assize court proceedings and that the application to have the full body searches suspended did not fall within the jurisdiction of the administrative court.

According to an ERIS report submitted the same day, the applicant had been taken from the prison at 9 a.m. on 9 and 10 April, had made a return journey to the prison for the midday meal and had returned there for the night at 5.30 p.m. On each occasion he had been taken from the prison by four ERIS officers, who had handed him over to the GIPN.

Following his trial the applicant appealed on points of law against the order of 15 April 2008. In a judgment of 14 November 2008 the *Conseil d'Etat* set aside the order by the urgent-applications judge on the grounds that decisions by the prison authorities subjecting prisoners to full body searches formed part of the State's administration of the prison service and fell within the jurisdiction of the administrative court, including in cases where the search operations were carried out within the courthouse and during the trial. The *Conseil d'Etat* nevertheless dismissed the urgent application on grounds of lack of urgency (in particular, it had not been alleged that the applicant would be subjected to the search routine the next time he was moved from prison).

Complaints, procedure and composition of the Court

Relying on Article 3 (prohibition of inhuman or degrading treatment) and Article 8 (right to respect for private life), the applicant complained of the strip-searches carried out by the police and prison authorities during his assize court trial. He further complained under Article 13 (right to an effective remedy) of his inability to challenge these measures.

The application was lodged with the European Court of Human Rights on 15 October 2008.

Judgment was given by a Chamber of seven, composed as follows:

Peer **Lorenzen** (Denmark), *President*,
Jean-Paul **Costa** (France),
Karel **Jungwiert** (the Czech Republic),
Mark **Villiger** (Liechtenstein),
Isabelle **Berro-Lefèvre** (Monaco),
Mirjana **Lazarova Trajkovska** (the Former Yugoslav Republic of Macedonia),
Ganna **Yudkivska** (Ukraine), *Judges*,

and also Claudia **Westerdiek**, *Section Registrar*.

Decision of the Court

Article 3

The Court reiterated that strip-searches and even full body searches could be necessary on occasion to ensure prison security – including the prisoner's own safety – or to

prevent disorder or crime. However, in addition to being “necessary” for the achievement of one of these aims, they also had to be conducted in an “appropriate manner”, so that the prisoner’s distress or humiliation did not exceed the level which such searches inevitably entailed.

With regard to the number of full body searches to which the applicant had been subjected – on which the parties disagreed – the Court based its conclusions on the findings of the *Conseil d’Etat*, according to which they had taken place between four and eight times a day. In addition to having to undress, the applicant had been required to bend over, something which did not normally form part of search routines at that time, and force had been used if he resisted.

In France, full body searches mainly concerned high-risk prisoners, a category to which the applicant belonged. The Court shared the view of the French Government that the applicant’s history and criminal background justified a high level of security when he was being taken from prison to the assize court, although it observed that it had been four years since his escape and he had not been involved in his co-defendant’s planned escape. The Court further noted the exceptionally tight security measures put in place during the applicant’s trial.

Mr El Shennawy had undergone repeated searches by officers of the different law-enforcement agencies involved in supervising him – prison officers and police officers – despite the fact that a Ministry of Justice memorandum concerning ERIS searches had warned against unwarranted repetition of searches, in particular when a prisoner was being handed over to the GIPN. The Court noted that between 9 and 11 April – when the applicant had returned to the prison for lunch – the searches had been very frequent.

As to the searches carried out by men wearing balaclavas, the Court reiterated that it had recently expressed concern² at this “intimidating practice” which, while not intended to humiliate, was liable to cause feelings of anxiety. It saw no reason to depart from that finding in the present case.

Furthermore, the searches had been recorded on video, at least during the opening days of the trial. The rules governing video-recording had not been clearly defined and a 2009 memorandum had stated that full body searches of prisoners “should not be video-recorded, as this could be construed as a violation of human dignity”.

The searches in question had not been duly based on pressing security needs or on the need to prevent disorder or crime. Although they had taken place over a short period of time they had been liable to arouse in the applicant feelings of arbitrariness, inferiority and anxiety characteristic of a degree of humiliation going beyond the level which the strip-searching of prisoners inevitably entailed.

The Court took note in this regard of the 2009 Prison Act, which provided a legislative framework for the searching of prisoners. Section 57 of the Act, while not relating specifically to high-risk prisoners, imposed tight restrictions on full body searches, which were henceforth permitted only “if rub-down searches or the use of electronic detection methods [were] insufficient”.

The Court therefore held that there had been a violation of Article 3 in Mr El Shennawy’s case.

² See *Ciupercescu v. Romania*, no. 35555/03, § 116, 15 June 2010.

Article 8

In view of its finding of a violation of Article 3, the Court held that it was not necessary to examine the applicant's complaint under Article 8.

Article 13

The applicant had not had any opportunity to challenge, by way of an urgent application for protection of a fundamental freedom, the strip-search routine to which he had been subjected. His case had in fact been the reason for the change in the case-law of the *Conseil d'Etat*, according to which decisions by the prison authorities subjecting prisoners to strip-searches in order to ensure security in prison or during temporary removals came within the jurisdiction of the administrative court, making use of the urgent-application procedure possible.

Accordingly, the Court held that the applicant had not had an effective remedy by which to assert his Article 3 complaint.

Article 41

Under Article 41 (just satisfaction), the Court held that France was to pay the applicant 8,000 euros (EUR) in respect of non-pecuniary damage and EUR 5,000 for costs and expenses.

The judgment is available only in French.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.