



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

Information Note on the Court's case-law 244

October 2020

***Roth v. Germany* - 6780/18 and 30776/18**

Judgment 22.10.2020 [Section V]

Article 3

Degrading treatment

No legitimate purpose for repeated, random strip searches of prisoner receiving visitors and refusal to grant compensation for non-pecuniary damage: *violation*

Article 13

Effective remedy

Refusal to grant compensation for non-pecuniary damage resulting from unlawful random strip searches of prisoner receiving visitors: *violation*

Facts – The applicant was subjected to repeated, random strip searches prior to and after receiving visitors in prison. The domestic courts refused to grant him compensation for the non-pecuniary damage he had suffered as a result of these searches.

Law – Article 3:

The strip searches of the applicant, which had included an inspection of the anus and thus also entailed embarrassing positions, had been intrusive. The repeated searches had been random searches, which had been ordered against one in five prisoners at the relevant time without any possibility to dispense with a search in a particular case. On all occasions on which the applicant had been searched, he had expected visits from, or had met public officials, including clerks of the district court registry. There had been no concrete security concerns relating to the applicant. However, the manner in which the system of random strip searches had been applied had not permitted to take into account the applicant's conduct when determining whether or not a search should be carried out.

In these circumstances, the searches had not had an established connection with the preservation of prison security or the prevention of crime.

The manner in which the repeated searches had been carried out had not entailed any other elements unnecessarily debasing or humiliating the applicant. However, owing to the absence of a legitimate purpose for these repeated and generalised searches, the feeling of arbitrariness and the feelings of inferiority and anxiety often associated with them, as well as the feeling of a serious affront to dignity indisputably prompted by the obligation to undress in front of another person and submit to inspection of the anus, had resulted in a degree of humiliation exceeding the, unavoidable and hence tolerable, level that strip-searches of prisoners inevitably involve. The searches had thus gone beyond the inevitable element of suffering or humiliation connected with a given form of

legitimate treatment. They had therefore diminished the applicant's human dignity and had amounted to degrading treatment.

Conclusion: violation (unanimously).

Article 13 (in conjunction with Article 3):

In the domestic court's view, sufficient compensation for the interference with the applicant's personality rights had been granted by means other than monetary compensation. Despite the fact that the domestic courts had themselves classified the strip searches as a serious and unlawful interference with the applicant's personality rights, they had considered it sufficient that the courts dealing with the execution of sentences and the Federal Constitutional Court had previously found the applicant's (or comparable) strip searches to have been unlawful. They had further taken into consideration that the fault on the part of the prison staff who had ordered and carried out the searches had at most been minor and that there was, in the courts' view, no risk of future random searches of the applicant.

The Court had previously found that in respect of arguable claims of a breach of Article 3 notably by ill-treatment or poor conditions of detention, there was a strong presumption that they had caused non-pecuniary damage to the aggrieved person. Making the award of compensation for measures in breach of Article 3 conditional on the claimant's ability to prove fault on the part of the authorities and the unlawfulness of their actions may as such render existing remedies ineffective. The applicant's official liability proceedings had been found to have no prospects of success despite the fact that the measures against him had been classified as unlawful and despite the fact that there had, at least potentially, been fault on the part of the authorities.

Moreover, it could not be concluded that the breach of Article 3 was of such a minor nature that compensation would have exceptionally been unnecessary. It could not be derived from the Court's case-law that the fact that the national authorities had not been aware of having violated the Convention, or that the applicant would probably not be subjected again to such treatment in breach of his fundamental rights, constituted decisive grounds for not awarding compensation in respect of the non-pecuniary damage suffered as a result of a breach of a Convention right.

There had therefore been no effective remedy before a national authority to deal with the substance of the applicant's complaint under Article 3.

Conclusion: violation (unanimously).

Article 41: EUR 12,000 in respect of non-pecuniary damage.

(See also for Article 3, *Frérot v. France*, 70204/01, 12 July 2007, [Information Note 98](#); *Bouyid v. Belgium* [GC], 23380/09, 28 September 2015, [Information Note 188](#); for Article 13, *Ananyev and Others v. Russia*, 42525/07 and 60800/08, [Information Note 148](#)).