EUROPEAN COURT OF HUMAN RIGHTS

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CHAMBER JUDGMENT
FREROT v. FRANCE

The European Court of Human Rights has today notified in writing its Chamber judgment[1] in the case of ***Frérot v. France*** (application no. 70204/01).

The Court held unanimously that there had been:

- **a violation of Article 3** of the European Convention on Human Rights (prohibition of degrading treatment) on account of the strip searches imposed on the applicant;
- **a violation of Article 8** (right to respect for correspondence) of the Convention;
- **a violation of Article 13** (right to an effective remedy);
- **a violation of Article 6 § 1** (right to a fair trial within a reasonable time).

Under Article 41 (just satisfaction), the Court awarded the applicant 12,000 euros (EUR) for non-pecuniary damage. (The judgment is available only in French.)

1. Principal facts

The applicant, Maxime Frérot, is a French national who was born in 1956. He is a former member of the extreme left armed movement "Action directe" and is currently serving a sentence of life imprisonment in Lannemezan (France).

In 1989 the applicant was sentenced to life imprisonment for attempted murder, armed robbery, and hostage-taking committed in order to facilitate or prepare the commission of a criminal offence or serious crime. In 1992 he was again sentenced to life imprisonment, 18 years of which were to be served before he became eligible for parole, for murder, attempted premeditated murders, attempted murders, armed robbery, receiving, conspiracy, possessing and carrying prohibited weapons, forging cheques, uttering forged cheques, causing criminal damage through the use of explosive substances and breaches of the legislation on explosives. In 1995 he was sentenced to 30 years' imprisonment for unauthorised manufacture or possession of explosive substances or devices, robbery, criminal damage and terrorism.

In 1994 the applicant lodged an administrative appeal seeking annulment of provisions in circulars sent out by the Minister of Justice in 1986 concerning, in one case, strip searches and, in the other, prisoners' correspondence in writing or by telegram. He argued that the

[1] Under Article 43 of the Convention, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

passages concerning the censorship of prisoners' correspondence, the imposition of strip searches on prisoners and the possibility of using force to carry out such searches infringed human dignity. On 8 December 2000 the *Conseil d'Etat* dismissed the applicant's complaint concerning strip searches and annulled the ministerial circular concerning the prohibition of all correspondence between remand and convicted prisoners placed in punishment cells and "their friends or relations" or prison visitors.

The applicant was placed in solitary confinement on 2 December 1987. He has been subject to the ordinary prison regime since 22 December 1990. Since 1987 he has been detained in 13 different prisons.

In 1993, while in Fleury-Mérogis Prison, he was subjected for the first time to a strip search during which he was told to open his mouth. When he refused he was taken to the disciplinary wing. From late January 1994 to 26 September 1994 he was compelled to open his mouth during a number of strip searches, either without warning, or when he was leaving the visiting room, and twice on the occasion of trips outside the prison. While imprisoned in Fresnes, from September 1994 to September 1996, he was subjected, each time he left the visiting room, to a strip search which now included the obligation to "lean forward and cough". When he refused he was taken to a disciplinary cell.

2. Procedure and composition of the Court

The application was lodged on 5 March 2001 and declared partly admissible in decisions of 11 May 2004 and 28 March 2006.

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

András **Baka** (Hungarian), ***President***,
Jean-Paul **Costa** (French),
Riza **Türmen** (Turkish),
Karel **Jungwiert** (Czech),
Mindia **Ugrekhelidze** (Georgian),
Antonella **Mularoni** (San Marinese),
Elisabet **Fura-Sandström** (Swedish), ***judges***,

and also Sally **Dollé**, ***Section Registrar***.

3. Summary of the judgment[1]

Complaints

Relying on Articles 3 (prohibition of inhuman or degrading treatment), 8 (right to respect for correspondence), 13 (right to an effective remedy) and 6 § 1 (right to a fair trial within a reasonable time), the applicant complained that he had been subjected to inhuman and degrading strip searches. He further complained of an infringement of his right to respect for his correspondence and of the length of the administrative proceedings he had brought.

Decision of the Court

[1] This summary by the Registry does not bind the Court.

Article 3

The Court accepted that a prisoner obliged to submit to a body search might view the procedure as an excessively intimate infringement of his dignity, especially when it required him to undress in front of another person and even more when he was instructed to place himself in embarrassing positions. However, body searches, including full body searches, might sometimes be necessary to maintain security inside a prison, to prevent disorder or prevent criminal offences.

The Court noted that the circular of 14 March 1986 specified that searches were designed to ensure that prisoners were not concealing about their persons any object or product capable of facilitating assaults or escapes, of being traded or of permitting the consumption of toxic products or substances. The procedure for a full body search was described in a technical note as follows: the prisoner had to strip off and the officer carrying out the search then examined his body; among other requirements, the prisoner had to open his mouth, cough, raise his tongue and "if necessary" remove any false teeth; he also had to spread his legs to show that he had nothing hidden between them; "in the specific case of a search for prohibited objects or substances", he could be obliged to lean forward and cough (clearly in order to permit a visual inspection of the anus); a doctor could also be called, to decide whether the prisoner should be required to undergo radiography or a medical examination to locate any foreign bodies.

Although prisoners were body-searched by an officer of the same sex, individually, in a room set aside for the purpose, the Court understood that those who underwent such searches might feel that their dignity had been infringed. However, the Court considered that on the whole the above procedure, including visual inspection of the anus "in the specific case of a search for prohibited objects or substances", was appropriate, provided that such a measure was permitted only where absolutely necessary in the light of the special circumstances and where there were serious reasons to suspect that the prisoner was hiding such an object or substance in that part of the body. The Court accordingly took the view that that body-search procedure was not, generally speaking, inhuman or degrading.

Under the provisions of the Criminal Code and the 1986 circular, prisoners were liable to undergo frequent strip searches and "prisoners identified as special cases", like the applicant, were even more likely to undergo that type of search. That confirmed the applicant's allegation that he was frequently subjected to strip searches.

In the present case strip searches had been imposed on the applicant in the context of events which clearly made them necessary in order to maintain security or prevent criminal offences. However, the Court was struck by the fact that, from one prison to another, the search procedure varied.

Although it was not known exactly how often and how frequently the applicant had undergone strip searches during which he was instructed to open his mouth or "lean forward and cough", the French Government had admitted that there had been at least 11 incidents of that type, which had occurred when the applicant was leaving the visiting room, when he was being taken out of his cell, following exercise or on being taken to a disciplinary cell; on six of these occasions the applicant had refused to "lean forward and cough". The frequency of the searches was therefore probable.

The Court noted that the applicant had been expected to submit to anal inspections only in Fresnes, where there was a presumption that any prisoner returning from the visiting room was hiding objects or substances in the most intimate parts of his person. That being so, the Court could understand how the prisoners concerned, like the applicant, might feel that they were the victims of arbitrary measures, especially as the search procedure was laid down in a circular and allowed each prison governor a large measure of discretion.

That feeling of arbitrariness, the feelings of inferiority and anxiety often associated with it, and the feeling of a serious encroachment on one's dignity undoubtedly prompted by the obligation to undress in front of another person and submit to a visual inspection of the anus, added to the other excessively intimate measures associated with strip searches, led in the Court's view to a degree of humiliation which exceeded that which was inevitably a concomitant of the imposition of body searches on prisoners. Moreover, the humiliation felt by the applicant had been aggravated by the fact that on a number of occasions his refusal to comply with these measures had resulted in his being taken to a disciplinary cell.

The Court accordingly concluded that the strip searches to which the applicant had been subjected while imprisoned in Fresnes, between September 1994 and December 1996, amounted to degrading treatment within the meaning of Article 3.

It held that there had been a violation of Article 3 and that it was not necessary to examine the question under Article 8.

Article 8

The Court noted that the governor of Fleury-Mérogis Prison had decided not to pass on letters from the applicant to another prisoner in a different prison because, in his words, they "[did] not correspond to the definition of the notion of correspondence". The Court considered that not delivering the mail concerned constituted "interference" with the applicant's right to respect for his correspondence. That interference had not been "in accordance with the law", a fact that was especially striking since the right of prisoners to correspond freely was amply recognised in the Code of Criminal Procedure.

The Court further noted that the definition of the term "correspondence" used in the 1986 circular excluded, among other categories "letters … whose content does not specifically and exclusively concern the addressee". It considered such a definition incompatible with Article 8 of the Convention, being based on the content of "correspondence" and resulting in the automatic exclusion from the protection of Article 8 of an entire category of private exchanges in which prisoners might wish to take part.

The Court accordingly found a violation of Article 8.

Article 13

The Court noted that the *Conseil d'Etat* had declared inadmissible the applicant's application to set aside a decision in which the governor of Fleury-Mérogis Prison had refused to pass on mail to another prisoner, citing as the sole reason the fact that that was an internal regulatory measure, not amenable to judicial review. As the French Government had not asserted that the applicant had any other remedy at his disposal, the Court considered that the applicant

had been deprived of all remedies as regards the complaint of an infringement of his right to respect for his correspondence. It accordingly held that there had been a violation of Article 13.

Article 6 § 1

The Court considered that the length of the proceedings, namely six years for one level of jurisdiction, was excessive and failed to satisfy the "reasonable time" requirement. It accordingly held that there had been a violation of Article 6 § 1.

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The Court's judgments are accessible on its Internet site (http://www.echr.coe.int).

Press contacts
Emma Hellyer (telephone: 00 33 (0)3 90 21 42 15)
Stéphanie Klein (telephone: 00 33 (0)3 88 41 21 54)
Beverley Jacobs (telephone: 00 33 (0)3 90 21 54 21)
Tracey Turner-Tretz (telephone : 00 33 (0)3 88 41 35 30)

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.*