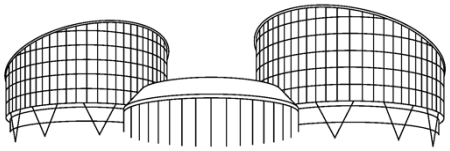

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF ROTH v. GERMANY

(Applications nos. 6780/18 and 30776/18)

JUDGMENT

Art 3 (substantive) • Art 13 (+ Art 3) • Degrading treatment • Lack of effective remedy • No legitimate purpose for repeated, random strip searches of prisoner receiving visitors and refusal to grant compensation for non-pecuniary damage • No connection with preservation of prison security or prevention of crime • Excessive humiliation • Liability proceedings lacking prospect of success despite unlawful conduct and potential fault of authorities

STRASBOURG

22 October 2020

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Roth v. Germany,

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

Síofra O'Leary, *President,*
Gabriele Kucsko-Stadlmayer,
Ganna Yudkivska,
Mārtiņš Mits,
Latif Hüseynov,
Anja Seibert-Fohr,
Mattias Guyomar, *judges,*
and Victor Soloveytchik, *Section Registrar,*

Having regard to:

the applications (nos. 6780/18 and 30776/18) against the Federal Republic of Germany lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a German national, Mr Peter Roth ("the applicant"), on 20 February 2018 and 26 September 2018 respectively;

the decision to give notice to the German Government ("the Government") of the applications;

the parties' observations;

Having deliberated in private on 29 September 2020,

Delivers the following judgment, which was adopted on that date:

INTRODUCTION

1. The applicant is serving a sentence in Straubing Prison. He complained under Articles 3, 6 and 13 of the Convention about repeated random strip searches prior to or after receiving visitors in prison and about the domestic courts' refusal to grant him compensation for the non-pecuniary damage he had suffered as a result of these searches.

THE FACTS

2. The applicant was born in 1960 and is currently serving a life sentence in Straubing Prison. He had been granted legal aid and was represented by Mr D. Thenhausen, a lawyer practising in Bielefeld.

3. The Government were represented by one of their Agents, Mr H.-J. Behrens, of the Federal Ministry of Justice and Consumer Protection.

4. The facts of the case, as submitted by the parties, may be summarised as follows.

I. BACKGROUND TO THE CASES

A. The Federal Constitutional Court's decision of 5 November 2016

5. On 5 November 2016 the Federal Constitutional Court, on a constitutional complaint lodged by a different person detained in Straubing Prison, declared that the random strip search of that detainee prior to his receiving outside visitors had been unconstitutional (file no. 2 BvR 6/16). The court found that the search had been carried out on an order issued by the prison authorities under section 91(2) of the Bavarian Execution of Sentences Act (see paragraph 30 below) to the effect that one prisoner out of five was to be strip-searched on that day. As the order did not permit such a search to be dispensed with in a particular case, it constituted a disproportionate interference with the detainee's personality rights (*allgemeines Persönlichkeitsrecht*) under Article 2 § 1 of the Basic Law read in conjunction with Article 1.

6. The Federal Constitutional Court considered that strip searches involving the inspection of body orifices that were usually covered constituted a serious interference with the personality rights of the individual concerned. This was also reflected in the case-law of the European Court of Human Rights regarding strip searches, which was to be taken into account in the interpretation of the Basic Law. In order to strike a fair balance between the detainee's personality rights and respect for his privacy on the one hand, and the prison's security interests on the other hand, it would have been necessary for the search order to permit the prison staff to dispense with a strip search in cases where an abuse of visiting rights by the prisoner concerned was very unlikely. The court's decision was published on 8 December 2016.

B. The decisions of the courts dealing with the execution of sentences on the lawfulness of the strip searches of the applicant

7. The applicant brought several sets of proceedings in the criminal courts dealing with the execution of sentences, requesting that a number of the strip searches he had been obliged to undergo in Straubing Prison be declared unlawful.

8. On 28 December 2016 the Nuremberg Court of Appeal declared that the random strip search of the applicant conducted prior to a prison visit by a records clerk of the Straubing District Court on 24 August 2015 had been unlawful. It referred to the reasons given in the Federal Constitutional Court's decision of 5 November 2016 (see paragraphs 5 et seq. above) which had concerned the same practice of strip searches in Straubing Prison. On 18 September 2017 the Regensburg Regional Court further declared that

a strip search of the applicant carried out on 11 February 2016 before a visit by a records clerk of the district court had been unlawful.

9. Furthermore, on 8 February, 7 April and 4 October 2017 respectively the Regensburg Regional Court, referring to the aforementioned decision of the Federal Constitutional Court, declared that the strip searches of the applicant on 3 December 2015, 13 June 2016 and 1 September 2016, which had been carried out after he had received visitors, had been unlawful. Following appeals against the first two decisions, those decisions were upheld by the Nuremberg Court of Appeal.

10. On 2 October 2017 the Nuremberg Court of Appeal, referring to its previous decisions, further found that the order for a strip search of the applicant on 19 January 2017 after a visit by a records clerk of the district court, and also the disciplinary measures taken against the applicant for refusing to undergo the search, had been unlawful. It considered that the applicant had a legal interest in that finding as there was a risk of repetition of such searches, given that the applicant would receive further visits in the future.

II. THE PROCEEDINGS AT ISSUE IN APPLICATION NO. 6780/18

A. The proceedings before the Regensburg Regional Court

11. On 6 February 2017 the applicant applied to the Regensburg Regional Court for legal aid in order to bring official liability proceedings under Article 839 of the Civil Code read in conjunction with Article 34 of the Basic Law (see paragraph 31 below). He intended to claim compensation for non-pecuniary damage on account of random strip searches based on section 91(2) of the Bavarian Execution of Sentences Act (see paragraph 30 below) and carried out prior to visits he had received in prison. He stated that he had had to undergo such illegal strip searches on 23 January 2014, 11 February 2014, 29 September 2014, 13 October 2014, 24 August 2015 and 11 February 2016.

12. The applicant stated that during these searches he had been obliged to undress completely. He had then been searched under the armpits and in the mouth and had had to bend down for an inspection of his anus. The searches had been ordered on a random basis in respect of one in five prisoners, without any exceptions being made. No security reasons for such searches had been demonstrated in his case. The searches had been carried out prior to his receiving visits from clerks of the district court registry who had come to take a record of the remedies of which he wished to avail himself before the courts. He stated his intention to claim compensation of 1,000 euros (EUR) per illegal strip search.

13. On 20 March 2017 the Regensburg Regional Court dismissed the applicant's legal aid request. It found, following a summary examination,

that the official liability proceedings which the applicant intended to bring did not have sufficient prospects of success (see Article 114 § 1, first sentence, of the Code of Civil Procedure, paragraph 36 below). Sufficient prospects of success existed only where the court, having regard to the claimant's description of the facts and the documents before it, considered the claimant's position to be at least arguable and was persuaded that the claimant could prove his or her allegations.

14. The Regional Court argued that, having regard to the case-law of the Federal Court of Justice and the Federal Constitutional Court (see paragraphs 33-34 below), not each and every breach of an individual's personality rights warranted the payment of compensation for non-pecuniary damage. Compensation was to be paid only for sufficiently serious breaches of those rights which could not be compensated for adequately by other means.

15. The Regional Court found that, in the applicant's case, adequate compensation had already been granted by other means. It referred in that regard to the findings of the Nuremberg Court of Appeal in its decision of 28 December 2016 (see paragraph 8 above) and those of the Federal Constitutional Court in its decision of 5 November 2016. It further considered that there had been no fault on the part of the prison staff, as the Regional Court itself had confirmed the lawfulness of random strip searches prior to the aforementioned decision of the Federal Constitutional Court.

B. The proceedings before the Nuremberg Court of Appeal

16. On 17 May 2017 the Nuremberg Court of Appeal dismissed an appeal lodged by the applicant. It confirmed that the applicant's intended official liability action had insufficient prospects of success. Having regard to all the circumstances of the case, it found that it was not necessary to award the applicant monetary compensation for the breach of his personality rights.

17. The Court of Appeal clarified that the strip searches of the applicant had been unlawful and had constituted a serious interference with his personality rights. The searches had been disproportionate as there had been no possibility of dispensing with a search in an individual case. This followed from the Federal Constitutional Court's decision of 5 November 2016 and the Court of Appeal's decision of 28 December 2016 (see paragraphs 5 and 8 above). The court further conceded that an abuse of visiting rights had been unlikely in the circumstances of the applicant's case.

18. However, the fault on the part of the prison staff who had ordered and carried out the searches in question prior to the Federal Constitutional Court's decision of 5 November 2016 had at most been minor. Both the Regional Court and the Court of Appeal had considered random strip

searches of prisoners prior to visits to be lawful before the Federal Constitutional Court's decision, arguing that the surprise element of random searches was decisive for their effectiveness. Moreover, according to the defendant's statements, the rules on strip searches in Straubing Prison had immediately been brought into line with the Federal Constitutional Court's decision, so that there was no risk of future random searches without an examination of the particular circumstances of the case.

19. The Court of Appeal further considered that the applicant had obtained sufficient just satisfaction also by virtue of the Nuremberg Court of Appeal's finding in its decision of 28 December 2016 (see paragraph 8 above) that one of the impugned strip searches, namely the search on 24 August 2015, had been unlawful. The reasons given in that decision applied equally to the other searches at issue in the applicant's case.

C. The proceedings before the Federal Constitutional Court

20. On 19 June 2017 the applicant lodged a constitutional complaint with the Federal Constitutional Court against the decisions of the Regional Court and the Court of Appeal refusing to grant him legal aid. He argued, in particular, that the impugned decisions had breached his personality rights and his right to court proceedings. Given the gravity of the interference with his personality rights on account of the strip searches, he should have been granted monetary compensation for the non-pecuniary damage suffered.

21. On 23 January 2018 the Federal Constitutional Court, without giving reasons, declined to consider the applicant's constitutional complaint (file no. 1 BvR 1688/17).

III. THE PROCEEDINGS AT ISSUE IN APPLICATION NO. 30776/18

22. On 9 October 2017 the applicant again applied to the Regensburg Regional Court for legal aid in order to bring official liability proceedings claiming compensation for non-pecuniary damage on account of strip searches carried out after visits he had received in prison. He had had to undergo such strip searches, based on section 91(3) of the Bavarian Execution of Sentences Act (see paragraph 30 below), on 27 February 2014, 18 June 2015, 3 December 2015, 13 June 2016, 1 September 2016 and 19 January 2017. He had received visits from a police officer on one occasion, and from clerks of the court registry recording various appeals he wished to lodge with the courts on the remaining occasions. He again intended to claim compensation of EUR 1,000 per illegal strip search.

23. On 20 March 2018 the Regensburg Regional Court granted the applicant legal aid in order to bring official liability proceedings claiming EUR 200 in compensation regarding the strip search of 19 January 2017. It dismissed the remainder of the applicant's request on the grounds that his

intended action lacked sufficient prospects of success in this regard (Article 114 § 1 of the Code of Civil Procedure).

24. The Regional Court considered that until the publication of the Federal Constitutional Court's decision of 5 November 2016 on 8 December 2016 it had been possible to grant adequate compensation for a breach of the applicant's personality rights by alternative means to monetary compensation. In particular, the Regensburg Regional Court, in its decisions of 8 February and 4 April 2017 which had been upheld on appeal, had declared that the strip searches of the applicant after the visits on two of the occasions at issue, on 3 December 2015 and 13 June 2016, had been unlawful (see paragraph 9 above). The court also gave the same reasons as in its decision of 20 March 2017 for concluding that additional monetary compensation was unnecessary in respect of the five searches between 27 February 2014 and 1 September 2016 (see paragraph 15 above).

25. In contrast, the assessment of the further strip search of 19 January 2017, which had come after the publication of the Federal Constitutional Court's decision, raised difficult legal questions which had to be resolved in the main proceedings adjudicating on the official liability action. That action had sufficient prospects of success in respect of a claim for compensation amounting to EUR 200 as, if compensation was indeed appropriate, that amount appeared adequate. Moreover, as required under Article 114 § 1 of the Code of Civil Procedure on the conditions for being granted legal aid, the applicant was unable to afford the costs of the official liability proceedings.

26. On 4 June 2018 the Court of Appeal dismissed the appeal lodged by the applicant against the rejection of his legal aid request concerning the five strip searches carried out before the publication of the Federal Constitutional Court's decision of 5 November 2016. It repeated in substance the reasons it had given in its decision of 17 May 2017 (see paragraphs 16-19 above).

27. On 18 June 2018 the applicant lodged a constitutional complaint with the Federal Constitutional Court against the decisions of the Regional Court and the Court of Appeal refusing to grant him legal aid.

28. On 29 August 2018 the Federal Constitutional Court, without giving reasons, declined to consider the applicant's constitutional complaint (file no. 1 BvR 1322/18).

29. The applicant does not appear to have brought official liability proceedings in respect of any search on 19 January 2017, having realised that on that day he had not in fact undergone a strip search but had been sanctioned for refusing to undergo the strip search that had been ordered (see paragraph 10 above).

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. THE BAVARIAN EXECUTION OF SENTENCES ACT

30. Section 91 of the Bavarian Execution of Sentences Act, concerning searches, provides in so far as relevant as follows:

> "(1) It shall be permissible to search prisoners, their belongings and the cells. Searches of male prisoners may only be carried out by men, and searches of female prisoners only by women; this shall not apply to searches of prisoners by technical means or other devices. The need to protect prisoners' sense of modesty shall be duly taken into account.
>
> (2) Body searches involving the removal of clothing shall be permitted only in the event of an imminent threat or on an order by the prison governor in the individual case. When male prisoners are being searched, only men shall be present; when female prisoners are being searched, only women shall be present. Searches shall be carried out in a closed room without any other prisoners present.
>
> (3) The prison governor may issue a general order to the effect that prisoners must be searched in accordance with subsection (2) on admission to the prison, after contacts with visitors and following any absence from the prison.
>
> ..."

II. PROVISIONS AND PRACTICE GOVERNING OFFICIAL LIABILITY PROCEEDINGS

31. Under Article 34 of the Basic Law, taken in conjunction with Article 839 of the Civil Code, an individual has the right to be compensated by the State for any damage arising from a breach of official duty committed intentionally or negligently by a public servant.

32. Damages for breaches of official duty are afforded to the individual concerned in accordance with Articles 249 et seq. of the Civil Code. Under Article 253 § 1 of the Civil Code, compensation for non-pecuniary damage can be awarded only if it is provided for by law.

33. According to the established case-law of the Federal Court of Justice, a claim for non-pecuniary damage can arise in the event of a violation of an individual's personality rights under Articles 1 and 2 § 1 of the Basic Law. However, a claim for monetary compensation for a breach of these rights exists only where there has been a sufficiently serious interference with these rights which could not be compensated for in another manner. In this assessment, the reason why the State actor took the impugned measure and his or her motives, as well as the degree of fault, have to be taken into account (see, *inter alia*, Federal Court of Justice, no. III ZR 9/03, judgment of 23 October 2003, *Neue Juristische Wochenschrift (NJW)* 2003, pp. 3693 et seq., and no. III ZR 361/03, judgment of 4 November 2004, NJW 2005, pp. 58-60 with further references; see also Federal Constitutional Court, file no. 1 BvR 2853/08,

decision of 11 November 2009, § 21, and file no. 1 BvR 2639/15, decision of 14 February 2017, § 15 with further references).

34. While the Federal Constitutional Court considered this restriction on the right to claim damages following a breach of an individual's personality rights to be compatible in principle with the Basic Law, it stressed that the reasoning of the domestic courts in finding that no monetary compensation was necessary had to give due weight to the personality rights enshrined in the Basic Law (see Federal Constitutional Court, no. 1 BvR 2853/08, cited above, §§ 19-20, and file no. 1 BvR 2639/15, cited above, §§ 14-16 with further references).

III. PROVISIONS AND PRACTICE GOVERNING LEGAL REPRESENTATION AND LEGAL AID

35. Pursuant to Article 78 § 1 of the Code of Civil Procedure, representation by counsel is compulsory for parties to civil proceedings before the Regional Court, the Court of Appeal and the Federal Court of Justice. Under Article 78 § 3 of that Code, these rules are not to be applied to procedural acts that may be carried out before the records clerk of the court registry. A request for legal aid is such an act which can be carried out before the records clerk (see Article 117 § 1 of the Code of Civil Procedure).

36. Article 114 of the Code of Civil Procedure lays down the conditions for a party to civil proceedings to be granted legal aid. It provides as follows:

> "(1) Any party who, in view of his or her personal and economic situation, is unable to afford the costs of conducting the proceedings or is able to afford them only in part or as instalments shall be granted legal aid upon application, provided that the legal action he or she intends to bring ... has sufficient prospects of success and does not appear vexatious. ..."

37. Where a party has been granted legal aid, a lawyer of the party's choice who is prepared to represent him or her is officially appointed if representation by counsel is compulsory in the proceedings (Article 121 § 1 of the Code of Civil Procedure).

38. The court with jurisdiction to deal with the intended legal action has jurisdiction to decide on applications for legal aid; there is no oral hearing in legal aid proceedings (Article 127 § 1 of the Code of Civil Procedure). As a rule, an appeal lies against any decision refusing legal aid (Article 127 § 2 of the Code of Civil Procedure).

39. Under the Federal Constitutional Court's well-established case-law, the courts' refusal to grant legal aid for bringing proceedings raises an issue under the constitutional right of equal access to court. It was constitutional to grant legal aid only in cases in which the legal action the claimant intended to bring had sufficient prospects of success and did not appear

vexatious. However, the examination of the prospects of success in the summary legal aid proceedings may not replace the main proceedings but should only make them available (see Federal Constitutional Court, no. 2 BvR 94/88, decision of 13 March 1990, §§ 23-26, BVerfGE 81, 347 *et seq.*).

THE LAW

I. JOINDER OF THE APPLICATIONS

40. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment (Rule 42 § 1 of the Rules of Court).

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

41. The applicant complained about the repeated strip searches he had been obliged to undergo in Straubing Prison prior to or after receiving visitors. He relied on Article 3 of the Convention, which reads as follows:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

A. Admissibility

1. The parties' submissions

(a) The Government

42. In the Government's submission, the applicant had not exhausted domestic remedies as required by Article 35 § 1 of the Convention in respect of his complaint about the strip searches as such. The applicant had merely brought proceedings before the domestic courts requesting legal aid in this regard. In the legal aid proceedings, the domestic courts had only examined in a summary manner whether the action the applicant intended to bring with the help of legal aid had sufficient prospects of success. However, the applicant had not brought the main official liability proceedings concerning a possible right to compensation in respect of the strip searches, and had thus failed to obtain a decision of the domestic courts regarding those searches.

43. In these circumstances, the Federal Constitutional Court had only had jurisdiction to examine whether the right of equal access to legal protection had been violated; this corresponded to the rights the applicant claimed under Articles 6 § 1 and 13 of the Convention. In contrast, that court had not been empowered to examine the constitutionality of the strip searches in substance.

44. In the Government's view, the applicant could reasonably have been expected to bring the main official liability proceedings, despite the fact that representation by counsel was compulsory in those proceedings under Article 78 of the Code of Civil Procedure (see paragraph 35 above) and despite the refusal of legal aid. They noted that the applicant had previously been able to be represented by counsel in different proceedings in which he had not been granted legal aid, as well as in the impugned legal aid proceedings.

45. The Government further argued that, in any event, the applicant could no longer claim to be the victim of a violation of Article 3. The domestic authorities had granted the applicant sufficient redress for a breach of that provision by declaring the strip searches unlawful, making monetary compensation unnecessary.

(b) The applicant

46. The applicant took the view that he had exhausted domestic remedies as required by Article 35 § 1 of the Convention. He submitted that, following the refusal to grant him legal aid, he had not been in a position to bring official liability proceedings claiming compensation in respect of the strip searches. Representation by a lawyer was compulsory in those proceedings and court costs had to be paid, but he did not have the means to cover those costs. The fact that his lawyer had been prepared to support him in the legal aid proceedings in view of the obvious prospects of success of the intended official liability proceedings did not change that fact. In their decisions not to grant him legal aid, the domestic courts had indirectly decided on his official liability action and rejected it.

47. The applicant further contested that he had lost his victim status in the absence of any monetary compensation for the breach of Article 3 by the repeated strip searches.

2. The Court's assessment

(a) Relevant principles concerning the exhaustion of domestic remedies

48. The Court reiterates that, whereas Article 35 § 1 of the Convention must be applied with some degree of flexibility and without excessive formalism, it does not require merely that applications should be made to the appropriate domestic courts and that use should be made of remedies designed to challenge decisions already given. It normally requires also that the complaints intended to be brought subsequently before the Court should have been made to those same courts, at least in substance and in compliance with the formal requirements and time-limits laid down in domestic law (see, *inter alia*, *Cardot v. France*, 19 March 1991, § 34, Series A no. 200; *Akdivar and Others v. Turkey*, 16 September 1996, §§ 66

and 69, *Reports of Judgments and Decisions* 1996-IV; and *Storck v. Germany* (dec.), no. 61603/00, 26 October 2004).

49. The Court also reiterates that the requirement of exhaustion of domestic remedies is intended to provide national authorities with the opportunity of remedying violations alleged by an applicant (see, *inter alia*, *López Ostra v. Spain*, 9 December 1994, § 38, Series A no. 303-C, and *Tomé Mota v. Portugal* (dec.), no. 32082/96, ECHR 1999-IX). While recognising the principle that an applicant is excused from pursuing domestic remedies which are bound to fail, the Court nevertheless finds that in such cases an applicant has to show either by providing relevant court decisions or by presenting other suitable evidence that a remedy available to him would in fact have been of no avail. The Court further observes that the existence of mere doubt as to the chances of success of a domestic remedy does not exempt an applicant from the obligation to exhaust it (see, *inter alia*, *T.A. and others v. Germany* (dec.), no. 44911/98, 19 January 1999; *Tomé Mota*, cited above; and *Storck*, cited above).

50. The Court further observes that it has had to deal with the question of exhaustion of domestic remedies in a number of cases in which the applicant, having been refused legal aid due to the fact that the intended proceedings did not have reasonable prospects of success, did not pursue the main proceedings and thus did not avail him or herself of all the remedies which should, in principle, be exhausted in order to comply with Article 35 § 1 of the Convention (see, in particular, *Gnahoré v. France*, no. 40031/98, §§ 46-48, ECHR 2000-IX; *Storck*, cited above; *L.L. v. France*, no. 7508/02, §§ 22-23, ECHR 2006-XI; *Eckardt v. Germany* (dec.), no. 23947/03, 10 April 2007; *Vinke v. Germany* (dec.) [Committee], no. 36894/08, 12 June 2012; and *Annen v. Germany*, no. 3690/10, § 37, 26 November 2015).

51. In this context, the Court has repeatedly considered that an applicant could not be considered to have failed to exhaust domestic remedies by not continuing with proceedings after the decision dismissing his or her legal aid request, notably in cases in which that request had been made for the purpose of lodging an appeal on points of law (see *Storck*, cited above; and *Annen*, cited above, § 37). One relevant element for finding that the applicant was excused from pursuing main proceedings as these were bound to fail was that the same judges who found in their decision on the legal aid request that the intended proceedings had no reasonable prospects of success were competent to adjudicate on the applicant's case in the main proceedings (see *Storck*, cited above, and *Annen*, cited above, § 37).

(b) Application of these principles to the present case

52. The Court notes that the applicant in the present case, following the refusal of legal aid, did not bring official liability proceedings to determine on the merits whether he had a right to compensation in respect of the allegedly degrading strip searches. He only brought preliminary

proceedings, and exhausted the available domestic remedies, in respect of his legal aid request concerning such official liability proceedings in the two sets of proceedings before the domestic courts here at issue.

53. In determining whether the applicant was excused, exceptionally, from bringing the main official liability proceedings, the Court notes that in the aforementioned two sets of legal aid proceedings, the domestic courts examined in a detailed manner whether the official liability proceedings which the applicant intended to bring were potentially well founded, before concluding that those proceedings did not have sufficient prospects of success. Having regard to the standards of domestic law (compare Article 114 § 1, first sentence, of the Code of Civil Procedure, see paragraph 36 above), this meant that the domestic courts, which also had jurisdiction to deal with the intended actions themselves, did not consider the applicant's position to be at least arguable.

54. The Court does not overlook that the domestic courts made their findings after conducting only a preliminary examination of the intended official liability actions on the basis of the case file alone, as is usual in legal aid proceedings (see paragraph 38 above). However, it cannot but note that in the particular circumstances of the present case, the domestic courts must be considered to have determined the stance they would take in potential future official liability proceedings to an extent which no longer left any real doubts about the outcome of those proceedings.

55. The Court observes that the domestic courts had to establish whether it was at least arguable that there had been a sufficiently serious breach of the applicant's personality rights which could not be compensated for adequately by other means than monetary compensation. In this context, the appeal courts found that there was no need to grant the applicant monetary compensation despite the fact that they recognised that the repeated unlawful strip searches of the applicant had constituted a serious interference with his personality rights, that an abuse of visiting rights by the applicant had been unlikely and that there may have been some minor fault by the prison staff who had ordered and carried out the searches in question (see, in particular, paragraphs 17 to 19 and 26 above).

56. The Court further notes that in the proceedings at issue, the domestic courts had had regard to several decisions handed down by the courts dealing with the execution of sentences in which a number of the strip searches of the applicant had been declared unlawful after main proceedings conducted before these courts. As even in these circumstances the domestic courts did not consider the applicant's intended action at least arguable, the Court is satisfied that conducting the main official liability proceedings before the same courts would have been to no avail.

57. The Court concludes that the objection of non-exhaustion of domestic remedies raised by the Government, having regard to the specific facts of the case, must be rejected.

(c) Loss of victim status

58. As for the Government's objection that the applicant at least lost his status as a victim of a violation of Article 3, for the purposes of Article 34 of the Convention, the Court considers that the adequacy or otherwise of the authorities' response to the impugned strip searches must be considered in the light of the severity of the treatment possibly in breach of Article 3. The issue of whether the applicant lost his victim status shall therefore be addressed under the merits of the applicant's complaint under Article 3 (compare also *Gäfgen v. Germany* [GC], no. 22978/05, § 78, ECHR 2010; and *Furcht v. Germany*, no. 54648/09, § 34, 23 October 2014). The Court therefore joins to the merits the Government's objection concerning the loss of victim status.

(d) Conclusion

59. The Court further notes that the present complaint is neither manifestly ill-founded nor inadmissible on any other ground listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. Compatibility of the random strip searches with Article 3

(a) The parties' submissions

(i) The applicant

60. The applicant submitted that the repeated random strip searches had been clearly unnecessary in the circumstances and had served only to debase him, in breach of Article 3 of the Convention. The conduct of the procedure, in which he had had to undress at the outset and had been subjected to a search, including an inspection of his anus, by two prison guards for several minutes, had not been professional and had infringed his sense of modesty.

61. Given that he had received visits from public officials prior to or after the strip searches and that he had been separated from these officials by a glass partition, no security concerns whatsoever had been discernible, such as a risk that he might attempt to smuggle particular objects into or out of the prison, nor had such concerns been advanced by the authorities. The searches had therefore clearly been arbitrary.

(ii) The Government

62. The Government conceded that the strip searches of the applicant could be considered as degrading treatment, but could not be classified as torture or inhuman treatment, for the purposes of Article 3. The random

searches had been carried out in a professional manner and had not entailed any unnecessary humiliation. The applicant had not been treated differently compared to other detainees in Straubing Prison.

63. The Government stressed that strip searches could, in certain circumstances, be compatible with Article 3 in order to maintain security and order in prison. They could prevent objects such as drugs, weapons or mobile phones from being smuggled into prison or plans for flight or instructions to commit offences from being smuggled outside prison. The searches had been based on section 91 §§ 2 or 3 of the Bavarian Execution of Sentences Act. Given that prior to the Federal Constitutional Court's decision of 5 November 2016 the domestic courts had considered the impugned practice of strip searches to be lawful, the prison staff could hardly be criticised for having had recourse to that practice prior to that decision.

(b) The Court's assessment

(i) Relevant principles

64. Ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3 of the Convention. The assessment of this minimum level of severity is 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 health of the victim. In considering whether a treatment is "degrading" within the meaning of Article 3, the Court will have regard to whether its object is to humiliate and debase the person concerned and whether, as far as the consequences are concerned, it adversely affected his or her personality in a manner incompatible with Article 3. However, the absence of such a purpose does not conclusively rule out a finding of a violation (see *Labita v. Italy* [GC], no. 26772/95, § 120, ECHR 2000-IV; *Peers v. Greece*, no. 28524/95, §§ 67, 68 and 74, ECHR 2001-III; and *Valašinas v. Lithuania*, no. 44558/98, § 101, ECHR 2001-VIII). Furthermore, the suffering and humiliation must in any event go beyond the inevitable element of suffering or humiliation connected with a given form of legitimate treatment or punishment (see *Kudła v. Poland* [GC], no. 30210/96, § 92, ECHR 2000-XI; *Valašinas*, cited above, § 102; *Jalloh v. Germany* [GC], no. 54810/00, § 68, ECHR 2006-IX, and *Wainwright v. the United Kingdom*, no. 12350/04, § 41, ECHR 2006-X).

65. The Court has found that strip searches may be necessary on occasion to ensure prison security or to prevent disorder or crime (see *Valašinas*, cited above, § 117; *Iwańczuk v. Poland*, no. 25196/94, § 59, 15 November 2001; *Van der Ven v. the Netherlands*, no. 50901/99, § 60, ECHR 2003-II; *Frérot v. France*, no. 70204/01, § 38, 12 June 2007; and *Dejnek v. Poland*, no. 9635/13, § 60, 1 June 2017). They should be carried

out in an appropriate manner with due respect for human dignity and for a legitimate purpose (see *Wainwright*, cited above, § 42; and *Dejnek*, cited above, § 60).

66. The Court further reiterates that, in respect of a person who is deprived of his liberty, or, more generally, is confronted with law-enforcement officers, any recourse to physical force which has not been made strictly necessary by his own conduct diminishes human dignity and is, in principle, an infringement of the right set forth in Article 3 (see, among other authorities, *Ribitsch v. Austria*, 4 December 1995, § 38, Series A no. 336; *El-Masri v. the former Yugoslav Republic of Macedonia* [GC], no. 39630/09, § 207, ECHR 2012, and *Bouyid v. Belgium* [GC], no. 23380/09, § 88, ECHR 2015).

67. The Court emphasises that the words "in principle" cannot be taken to mean that there might be situations in which such a finding of a violation is not called for because the above-mentioned severity threshold (see paragraph 64 above) has not been attained (see *Bouyid*, cited above, § 101). Any interference with human dignity strikes at the very essence of the Convention. For that reason any conduct by law-enforcement officers *vis-à-vis* an individual which diminishes human dignity constitutes a violation of Article 3 of the Convention (see *Bouyid*, cited above, § 101, and *Zherdev v. Ukraine*, no. 34015/07, § 86, 27 April 2017).

68. Where the manner in which a search is carried out has debasing elements which significantly aggravate the inevitable humiliation entailed in the procedure, Article 3 has been engaged: for example, where a prisoner was obliged to strip in the presence of a female officer, and his sexual organs and food were touched with bare hands (see *Valašinas*, cited above, § 117), and where a search was conducted before four guards who derided and verbally abused the prisoner (see *Iwańczuk*, cited above, § 59).

69. Similarly, where the search has no established connection with the preservation of prison security and prevention of crime or disorder, issues may arise (see, for example, *Iwańczuk*, cited above, §§ 54, 56 and 58-59, where the search of the applicant, a remand prisoner who had not given grounds for security concerns, was conducted when he wished to exercise his right to vote, and *Van der Ven* (cited above, §§ 61-62) and *Frérot* (cited above, § 47), where the strip-searching was systematic and long term without convincing security needs; see also *Wainwright*, cited above, § 42).

(ii) Application of these principles to the present case

70. The Court observes that the eleven strip searches of the applicant, which included an inspection of the anus and thus also entailed embarrassing positions, were intrusive. It is further uncontested that the repeated searches which the applicant had to undergo were 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 was searched, he expected visits from, or had met public officials. On ten occasions, the applicant received visits from clerks of the district court registry in order for them to take record of legal remedies of which he wished to avail himself before the courts. No concrete security concerns relating to the applicant had either been discernible or brought forward by the domestic authorities. However, the manner in which the system of random strip searches was applied did not permit to take into account the applicant's conduct when determining whether or not a search should be carried out. The domestic courts had indeed acknowledged that an abuse of the visiting rights had been unlikely in the applicant's case (see paragraph 17 above).

71. In these circumstances, the Court is not satisfied that the searches of the applicant had an established concrete connection with the preservation of prison security or the prevention of crime.

72. The Court finds that the manner in which the repeated searches as such were carried out did not entail 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, resulted in a degree of humiliation exceeding the – unavoidable and hence tolerable – level that strip-searches of prisoners inevitably involve (compare *Frérot,* cited above, § 47). The searches thus went beyond the inevitable element of suffering or humiliation connected with a given form of legitimate treatment. The Court concludes that the impugned strip searches to which the applicant was subjected in Straubing Prison diminished his human dignity and therefore amounted to degrading treatment within the meaning of Article 3. The Government indeed appears to concede this.

2. Loss of victim status

(a) The parties' submissions

(i) The Government

73. The Government considered that, in any event, the applicant had lost his status as a victim of a breach of Article 3. They argued that the Federal Constitutional Court, in its decision of 5 November 2016, had considered the impugned practice of random strip searches without the possibility to dispense with a search in a particular case as unconstitutional (see paragraph 5 above). Moreover, the domestic courts had acknowledged that three of the strip searches of the applicant at issue in the present applications – the searches of 24 August 2015, 3 December 2015 and 13 June 2016 – had been unlawful (see paragraphs 8 and 9 above). Furthermore, the impugned searches had been carried out prior to the Federal Constitutional Court's said decision. As Straubing Prison had subsequently amended its rules on carrying out strip searches in order to comply with that court's decision, there was no risk of repetition of the practice. Since the Federal Constitutional Court's decision of 5 November 2016 there had been very few instances in which the domestic courts had considered strip searches in Straubing Prison to be unlawful as having been disproportionate in the circumstances. The above-mentioned court decisions and the measures taken in Straubing Prison therefore constituted sufficient redress, making monetary compensation unnecessary.

(ii) The applicant

74. The applicant submitted that in view of the gravity of the breach of his fundamental rights, the mere finding by the domestic courts that the impugned strip searches had been unlawful, without any award of monetary compensation for the non-pecuniary damage caused by those searches, was clearly insufficient. The applicant stressed that Straubing Prison had not immediately changed the impugned practice of strip searches after the Federal Constitutional Court's decision, as illustrated by the order for him to undergo a strip search on 19 January 2019 and by similar orders concerning other prisoners.

(b) The Court's assessment

75. The Court reiterates that a decision or measure favourable to the applicant is not, in principle, sufficient to deprive him of his status as a "victim" for the purposes of Article 34 of the Convention unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for the breach of the Convention (see, *inter alia*, *Eckle v. Germany*, 15 July 1982, § 66, Series A no. 51; *Dalban*

v. Romania [GC], no. 28114/95, § 44, ECHR 1999-VI; and *Scordino v. Italy (no. 1)* [GC], no. 36813/97, § 180, ECHR 2006-V).

76. As to the redress which is appropriate and sufficient in order to remedy a breach of a Convention right at national level, the Court has generally considered this to be dependent on all the circumstances of the case, having regard, in particular, to the nature of the Convention violation at stake (compare, for instance, *Scordino (no. 1)*, cited above, § 186; *Gäfgen*, cited above, § 116, and *Bivolaru v. Romania (no. 2)*, no. 66580/12, § 170, 2 October 2018).

77. Under the Court's case-law as it emerges from the cases cited above (see paragraphs 65-69), it is recognised that a breach of Article 3, a core right of the Convention, as a rule causes the person concerned non-pecuniary damage which is to be compensated for by a monetary award. The Court's awards in respect of non-pecuniary damage serve to give recognition to the fact that non-material damage occurred as a result of a breach of a fundamental human right and reflect in the broadest of terms the severity of the damage (see *Varnava and Others v. Turkey* [GC], nos. 16064/90 and 8 others, § 224, ECHR 2009; *Al-Jedda v. the United Kingdom* [GC], no. 27021/08, § 114, ECHR 2011; and *Nagmetov v. Russia* [GC], no. 35589/08, § 73, 30 March 2017 with further references).

78. It is only in exceptional circumstances that the Court, having regard to what is just, fair and reasonable in all the circumstances of the case, considers that the finding of a violation constitutes in itself sufficient just satisfaction and that no monetary award is made. This concerns, in particular, cases in which the violation found is considered to be of a minor nature or as relating only to procedural deficiencies (compare, for instance, *Nikolova v. Bulgaria* [GC], no. 31195/96, § 76 *in fine*, ECHR 1999-II; *Vinter and Others v. the United Kingdom* [GC], nos. 66069/09 and 2 others, § 136, ECHR 2013 (extracts); *Janowiec and Others v. Russia* [GC], nos. 55508/07 and 29520/09, § 220, ECHR 2013; and *Stollenwerk v. Germany*, no. 8844/12, § 49, 7 September 2017).

79. The Court observes that in the present case the domestic courts acknowledged that the strip searches of the applicant had been unlawful and conceded that the interference with the applicant's personality rights on account of these searches had been serious (see paragraphs 17 and 26 above). The national authorities can be considered to have recognised thereby, at least in substance, a breach of Article 3.

80. However, the national authorities, when refusing to grant the applicant legal aid in order to bring official liability proceedings, considered that granting him monetary compensation for the non-pecuniary damage caused by that breach was not necessary. The Court, however, does not discern any grounds warranting the conclusion that in the applicant's case the breach of Article 3 by the repeated strip searches is of a minor nature (see paragraph 72 above), such that compensation would be unnecessary.

81. It follows that the applicant may still claim to be the victim of a violation of Article 3 within the meaning of Article 34 of the Convention.

82. There has therefore been a violation of Article 3 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

83. The Court gave notice to the Government of the applicant's complaint about the repeated strip searches in prison also under Article 8 of the Convention.

84. However, in view of its finding that the searches were in breach of Article 3 of the Convention, the Court does not consider it necessary to examine the impugned measures under Article 8 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 13 READ IN CONJUNCTION WITH ARTICLE 3 OF THE CONVENTION

85. The applicant further complained that he had not had an effective remedy by which to obtain compensation for the damage caused by the illegal strip searches. He relied on Article 13 of the Convention, which reads as follows:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

86. The Court will examine the applicant's complaint under Article 13 read in conjunction with Article 3 of the Convention.

A. Admissibility

87. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

88. The applicant argued that the domestic courts had prevented him from claiming compensation for the non-pecuniary damage suffered as a result of the manifestly illegal strip searches.

89. In the Government's submission, the applicant had had at his disposal an effective domestic remedy in respect of his complaint under Article 3 or Article 8 of the Convention concerning the strip searches, as required by Article 13 of the Convention. He could have brought official liability proceedings claiming compensation for the damage allegedly caused by the searches. They further submitted that the applicant had been

granted sufficient compensation for the breach of his personality rights, and that the additional monetary compensation sought was unnecessary. Monetary compensation for non-pecuniary damage was likewise not necessary in each case according to the case-law of this Court (they referred to *Nikolova v. Bulgaria* [GC], no. 31195/96, § 76, ECHR 1999-II, and *Freimanis and Līdums v. Latvia*, nos. 73443/01 and 74860/01, § 68, 9 February 2006 in support of their view).

2. The Court's assessment

(a) Relevant principles

90. Article 13 requires the provision of a domestic remedy to deal with the substance of an "arguable complaint" under the Convention and to grant appropriate relief (see, *inter alia*, *Kudła v. Poland* [GC], no. 30210/96, § 157, ECHR 2000-XI; *Ramirez Sanchez v. France* [GC], no. 59450/00, § 157, ECHR 2006-IX, and *A.K. v. Liechtenstein (no. 2)*, no. 10722/13, § 84, 18 February 2016).

91. The scope of the Contracting States' obligations under Article 13 varies depending on the nature of the applicant's complaint; however, the remedy required by Article 13 must be "effective" in practice as well as in law (see, for example, *İlhan v. Turkey* [GC], no. 22277/93, § 97, ECHR 2000-VII; *Kudła*, cited above, § 157, and *Ramirez Sanchez*, cited above, § 158). The "effectiveness" of a "remedy" within the meaning of Article 13 does not depend on the certainty of a favourable outcome for the applicant (see *Kudła*, cited above, § 157; *Sürmeli v. Germany* [GC], no. 75529/01, § 98, ECHR 2006-VII, and *Ramirez Sanchez*, cited above, § 159).

92. The Court further reiterates that where an arguable breach of one or more of the rights under the Convention is in issue, there should be available to the victim a mechanism for establishing any liability of State officials or bodies for that breach. Furthermore, in appropriate cases, compensation for the pecuniary and non-pecuniary damage flowing from the breach should in principle be available as part of the range of redress (see, for instance, *T.P. and K.M. v. the United Kingdom* [GC], no. 28945/95, § 107, ECHR 2001-V (extracts)).

93. In respect of arguable claims of a breach of Article 3 notably by ill-treatment or poor conditions of detention, the Court has repeatedly found that there is a strong presumption that they have caused non-pecuniary damage to the aggrieved person (*Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, § 229, 10 January 2012). In these circumstances, making the award of compensation conditional on the claimant's ability to prove fault on the part of the authorities and the unlawfulness of their actions may render existing remedies ineffective (see *Burdov v. Russia (no. 2)*, no. 33509/04, § 109, ECHR 2009; *Ananyev and*

Others, cited above, § 229, and *Reshetnyak v. Russia*, no. 56027/10, §§ 66-67, 8 January 2013 with further references). Furthermore, the level of compensation awarded for non-pecuniary damage must not be unreasonable in comparison with the awards made by the Court in similar cases (*Ananyev and Others*, cited above, § 230).

(b) Application of these principles to the present case

94. The Court has found above that the strip searches of the applicant amounted to degrading treatment in breach of Article 3 (see paragraphs 70-72). The applicant's complaint in this regard is therefore "arguable" for the purposes of Article 13.

95. As for the effectiveness, for the purposes of Article 13, of the official liability proceedings which the applicant attempted to bring in order to obtain compensation for the non-pecuniary damage flowing from that breach, the Court observes that in the domestic court's view, sufficient compensation for the interference with the applicant's personality rights had been granted by other means 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 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 further took 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.

96. The Court refers to its case-law to the effect that 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 (see paragraph 93). It observes that the applicant's official liability proceedings were found to have no prospects of success even despite the fact that the measures against him were classified as unlawful and despite the fact that there had – at least potentially – been fault on the part of the authorities.

97. Moreover, as found above (see paragraph 80), the Court does not see any reason for concluding that in the applicant's case the breach of Article 3 by the repeated strip searches was of such a minor nature that compensation would exceptionally be unnecessary. It would add in this context that it cannot be derived from its case-law (see paragraphs 64-69 above) that the fact that the national authorities were not 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.

98. In these circumstances, the Court cannot but conclude that the applicant did not have at his disposal an effective remedy before a national authority to deal with the substance of his complaint under Article 3. There has accordingly been a violation of Article 13 read in conjunction with Article 3 of the Convention.

V. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

99. The applicant complained that the domestic courts' refusal to grant him legal aid in order to bring official liability proceedings claiming compensation for the non-material damage caused by the illegal strip searches had been arbitrary and had thus breached his right of access to court. He relied on Article 6 § 1 of the Convention, which, in so far as relevant, reads as follows:

> "In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

100. The Court notes that this complaint is neither manifestly ill- founded nor inadmissible on any other ground listed in Article 35 of the Convention. It must therefore be declared admissible.

101. The Court found above that although the applicant had been refused legal aid in order to bring official liability proceedings for compensation for the damage caused by the repeated strip searches, he had exhausted domestic remedies in respect of his substantive complaint about these searches. The Court further examined the compliance of these searches with Article 3 alone and read in conjunction with Article 13 and found a violation of those rights, in particular, because the applicant was refused monetary compensation following these strip searches. In these circumstances, the Court does not consider it necessary to examine the applicant's complaint under Article 6 § 1 of the Convention.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

102. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

103. The applicant claimed a total of EUR 12,000 in respect of non-pecuniary damage. He argued that he had been unable to obtain

compensation before the domestic courts as a result of their refusal to grant him legal aid.

104. In the Government's submission, the applicant's Convention rights had not been breached and he did not therefore have any claim to compensation. However, if the applications were held to be admissible and well-founded, the Government would not contest the amount of compensation as such claimed by the applicant.

105. The Court observes that it has found a violation of the applicant's rights under Article 3 alone and read in conjunction with Article 13 of the Convention in respect of both sets of impugned proceedings before the domestic courts. Making its assessment on an equitable basis, it awards the applicant EUR 12,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

106. Submitting documentary evidence, the applicant also claimed EUR 770.53 (including value-added tax (VAT)) for the lawyers' costs incurred before the domestic courts in the legal aid proceedings.

107. The Government did not contest the amount of costs and expenses as such claimed by the applicant.

108. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession, the above criteria and the fact that it found a breach of the applicant's Convention rights under Article 3 alone and read in conjunction with Article 13 of the Convention regarding the impugned legal aid proceedings, the Court awards the applicant the sum of EUR 770.53 (including VAT) claimed for costs and expenses in the domestic proceedings, plus any tax that may be chargeable to the applicant.

C. Default interest

109. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;

2. *Decides* to join to the merits the Government's preliminary objection regarding the loss of the applicant's victim status concerning the

complaint about the strip searches and, having examined the merits, dismisses it;

3. *Declares* the application admissible;

4. *Holds* that there has been a violation of Article 3 of the Convention;

5. *Holds* that there is no need to examine the complaint about the strip searches also under Article 8 of the Convention;

6. *Holds* that there has been a violation of Article 13 read in conjunction with Article 3 of the Convention;

7. *Holds* that there is no need to examine the complaint under Article 6 § 1 of the Convention;

8. Holds

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
   (i) EUR 12,000 (twelve thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
   (ii) EUR 770.53 (seven hundred and seventy euros and fifty-three cents), including VAT, plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

Done in English, and notified in writing on 22 October 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Victor Soloveytchik
Registrar

Síofra O'Leary
President