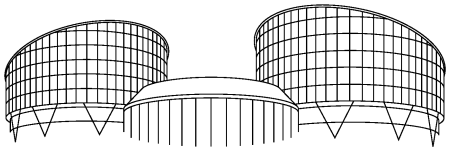

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF JAEGER v. ESTONIA

(Application no. 1574/13)

JUDGMENT

STRASBOURG

31 July 2014

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

In the case of Jaeger v. Estonia,

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

Isabelle Berro-Lefèvre, *President,*
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Paulo Pinto de Albuquerque,
Linos-Alexandre Sicilianos,
Erik Møse,
Ksenija Turković, *judges,*

and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 8 July 2014,

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

PROCEDURE

1. The case originated in an application (no. 1574/13) against the Republic of Estonia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an Estonian national, Mr Egon Jaeger ("the applicant"), on 18 December 2012.

2. The applicant, who had been granted legal aid, was represented by Mr J. Kuus, a lawyer practising in Tartu. The Estonian Government ("the Government") were represented by their Agent, Ms M. Kuurberg, of the Ministry of Foreign Affairs.

3. The applicant alleged, in particular, that his body search in Tartu Prison had been carried out in a degrading manner in breach of his privacy.

4. On 10 May 2013 the complaint concerning the applicant's body search was communicated to the Government and the remainder of the application was declared inadmissible.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1987. He is currently serving a prison sentence.

A. The applicant's search and domestic proceedings

6. On 10 October 2010 the applicant, who was serving his sentence in Tartu Prison, took a walk together with other detainees. When he entered the accommodation block, two prison guards searched him in the stairwell of the building. According to the applicant he was requested to lower his trousers and underpants twice and lift his sexual organ. A guard felt his underpants to find out whether any tobacco products had been hidden therein. According to the applicant he was in the sight of other detainees, since the door to the stairwell where the search was carried out had a transparent window. Another door leading from the stairwell to a corridor of the accommodation block also had a transparent window and detainees or female prison officers could have seen him through it or entered the stairwell at any time.

7. The applicant claimed from the prison administration 25,000 kroons (EEK) (corresponding to approximately 1,600 euros (EUR)) for the non-pecuniary damages he had allegedly sustained. He named three of the detainees who had been behind him when he had entered the building and had been searched.

8. The prison administration rejected the applicant's claim. Relying on the statements of one of the prison guards involved, the administration found that the search had been conducted in private and not in the sight of other detainees. According to the prison guard's written statements, the detainees had entered the stairwell one by one. One guard had searched their jackets and the other one had searched the detainees. In the event that they suspected a detainee, they had closed the door in order to create a private space and the detainee in question had been requested to lower his trousers. Only the detainee to be searched and two guards had been in the stairwell.

9. The applicant lodged a complaint with the Tartu Administrative Court. He reiterated his claim, named three detainees who had seen his search and included written statements from two of them.

10. By a judgment of 21 September 2011 the Administrative Court rejected the applicant's claim. It found reliable the statements of the prison guard, according to whom the applicant's privacy had been respected.

11. The applicant appealed to the Tartu Court of Appeal. At the Court of Appeal hearing he submitted that the windows of the doors to the stairwell had measured 1 m by 30 cm and that some days after his complaint to the Administrative Court they had been covered by metal sheets to prevent other detainees from seeing the searches.

12. By a judgment of 16 March 2012 the Tartu Court of Appeal dismissed the applicant's appeal. It established that the search had lasted for a few minutes at most and noted that the applicant had not been sure whether any other detainees had been in the stairwell. He had been unable to explain from where exactly the detainees named by him had seen his search.

The Court of Appeal concluded that his privacy had not been violated. It further found that in order to effectively manage a large number of detainees, the prison also had to have the possibility of carrying out a body search of a detainee, when necessary, in a location other than a private room designated for that purpose. In order to conduct such a search it was sufficient that the authorities had a suspicion that a detainee re-entering the building after a walk had hidden cigarettes – which were prohibited in prison – in his underwear.

13. By a judgment of 17 October 2012 the Supreme Court dismissed the applicant's appeal. It upheld the Court of Appeal's finding that the applicant's privacy had not been infringed and his dignity had not been diminished. One of the three judges delivered a separate opinion. He considered that it was not decisive whether the third persons had in fact seen the detainee's body search. It could not be presumed that a person who was being searched was able to establish at the same time whether the search had been seen, what exactly had been seen and by whom. When a body search was carried out in a situation and location where it was not guaranteed that third persons would not see the person's nudity, the person concerned was bound to feel that his privacy had not been respected and that other persons might have seen the procedure being performed. Such a situation damaged the person's dignity and could cause feelings of insecurity, anguish and degradation.

B. Information about the applicant's disciplinary violations

14. According to information provided by the Government, the applicant had three reprimands on record at the time of the search in question, including for unauthorised possession of a cigarette. From the date of the events at issue until mid-2013, twenty further disciplinary punishments had been imposed on him, primarily for violations related to the possession of unauthorised items, mainly cigarettes.

II. RELEVANT DOMESTIC LAW

15. Article 26 of the Constitution of the Republic of Estonia (*Eesti Vabariigi põhiseadus*) reads as follows:

> "Everyone is entitled to respect for his or her private and family life. Government agencies, local authorities and their officials may not interfere with any person's private or family life, except in the cases, and pursuant to a procedure, provided for by law to safeguard public health, public morality, public order or the rights and freedoms of others, to prevent a criminal offence, or to apprehend an offender."

16. The Imprisonment Act (*Vangistusseadus*) provides as follows:

Section 68 – Search

"(1) In order to discover prohibited items or substances, prison service officers have the right to search prisoners, their personal effects, dwellings, non-work rooms, other premises and the grounds of the prison. A prisoner shall be searched by a prison officer of the same sex as the prisoner.

...

(4) The search procedure shall be established by a regulation of the Minister of Justice."

17. Regulation no. 23 of the Minister of Justice on the Procedure for Supervisory Control over the Execution of Imprisonment and Remand in Custody (*Vangistuse ja eelvangistuse täideviimise üle järelevalve korraldamine*), adopted on 1 April 2003 and as in force at the material time, provided as follows:

Section 47 – Search of a person

"(1) A person may be searched fully or partly.

(2) A person's full search shall be conducted in a place where his privacy is secured.

(3) A person shall be searched by persons of the same sex.

..."

Section 48 – Search of a prisoner

"(1) Search of a prisoner is compulsory in the following circumstances:

1. upon entry into and exit from the prison;

2. before and after a visit;

3. during the search of a place when the prisoner is present during the search;

4. before escorting.

(2) A prison service officer also has the right to search a prisoner in circumstances not mentioned in subsection (1)."

18. Pursuant to section 8-2 of Regulation no. 72 of the Minister of Justice on the Internal Prison Rules (*Vangla sisekorraeeskiri*), adopted on 30 November 2000 and as in force at the material time, a prisoner was allowed to smoke in the prison only in places designated for this purpose, and at the time when he had the right to be in such a place. A prisoner was not allowed to keep with him any tobacco products or smoking materials. Such products and materials were to be deposited by a prison service officer. The prison service would distribute tobacco products and smoking materials to a prisoner only for the time when he had the right to be in places where smoking was allowed.

19. Section 12(5) of Tartu Prison's House Rules (*Tartu Vangla kodukord*), as in force at the material time, provided that persons detained in Tartu Prison were allowed to smoke in designated areas of the exercise yard. Cigarettes were distributed to detainees at the beginning of a walk. After the walk, they were obliged to deposit any unused cigarettes at the place and time designated by a prison officer.

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 3 AND 8 OF THE CONVENTION

20. The applicant complained that his body search had been carried out in a degrading manner. The Court considers that the complaint falls to be examined under Articles 3 and 8 of the Convention, which read as follows:

Article 3

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

Article 8

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

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

21. The Government contested that argument.

A. Admissibility

22. The Government asked the Court to declare the application inadmissible in its entirety, considering it manifestly ill-founded.

23. As regards Article 8 of the Convention, the Government argued that this provision was not applicable. They pointed out that the applicant had not relied on Article 8 in the domestic proceedings and that domestic remedies had therefore not been exhausted in this respect.

24. The applicant disagreed, considering that Article 8 could be applicable to the body search. He rejected the Government's argument of non-exhaustion in this regard, contending that it had been enough that the search had been challenged in domestic proceedings.

25. As regards the applicability of Article 8, the Court notes that it has in several cases examined complaints related to strip searches under both Article 3 and Article 8 of the Convention (see, for example, *Wainwright v. the United Kingdom*, no. 12350/04, §§ 41-49, ECHR 2006-X, and *Julin v. Estonia*, nos. 16563/08, 40841/08, 8192/10 and 18656/10, §§ 185-93, 29 May 2012) and concluded that Article 8 was applicable to such searches. It sees no reason to reach a different conclusion in the present case.

26. The Court further notes that the subject matter of the domestic court proceedings was the applicant's complaint that his dignity had been infringed as a result of being strip searched without respect for his privacy. Indeed, the Supreme Court found that the applicant's privacy had not been violated and that therefore his dignity had not been diminished (see paragraph 13 above). Thus, the Court is satisfied that the applicant's allegations of both degrading treatment and infringement of his right to respect for his private life were sufficiently raised and dealt with in the domestic proceedings. Therefore, the Government's objections in respect of Article 8 cannot be sustained.

27. The Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant

28. The applicant considered that his strip search had been carried out in a degrading manner and had caused him suffering that exceeded the minimum level of severity required for the finding of a violation of Article 3 of the Convention.

29. The applicant did not dispute, as such, that a prison had the right to conduct searches of prisoners on certain occasions in order to ensure safety and order. However, it had to be done in a manner that did not cause suffering and humiliation, and the measures applied had to be proportionate to their legitimate aims. In the case at hand the applicant disputed the need to search prisoners on their entry to the building and noted that it had been unclear what dangerous items or substances the prison officers had expected to find on him. While a strip search in the stairwell could have been justified, for example, in the event that the possession of weapons was suspected, it could not be justified in the event that inmates were suspected of being in possession of cigarettes.

30. The applicant contended under Article 8 of the Convention that his privacy had not been respected during the strip search in the stairwell,

because the doors leading to the stairwell had transparent glass windows. His search could therefore have been seen by other prisoners who had been waiting behind the door to be let into the building. It was impossible to conduct strip searches privately in the stairwell; such searches should have been carried out in specially designated rooms located on each floor of the building.

31. The applicant also argued that the question whether someone had actually seen him being searched was not decisive.

(b) The Government

32. The Government were of the opinion that even if the search in question had caused the applicant distress, that distress had not reached the minimum level of severity prohibited by Article 3. There had been a specific need to search the prisoners and, unlike in several cases dealt with by the Court, the applicant's search had not been a systematic, intrusive or exceptionally embarrassing check performed on him daily, or even several times a day without any necessity to ensure safety in the prison. There had been no debasing elements that significantly aggravated the inevitable humiliation of the procedure.

33. The Government argued that the applicant's search had had a legal basis and purpose, and that the measure had been proportionate. They pointed out that smoking was not allowed inside the cells. Instead, prisoners were allowed to smoke during walks – packs of cigarettes were handed out for the duration of the walk and had to be returned before the prisoners went back to their cells. Such restrictions were necessary in order to protect the health of other prisoners as well as to ensure safety in the prison. It was not possible to take the prisoners to a separate room for searches because in such an instance they would have been able to hide or hand over prohibited items to other prisoners before the search took place. Thus, for the effective detection of prohibited items it was important that the search was swift and carried out upon entry to the building.

34. The Government noted that the applicant had been found in possession of a prohibited cigarette less than two months before the search in question and on numerous occasions thereafter. Also during the search in question the guards had found many tobacco products hidden in prisoners' trousers.

35. The Government provided the Court with a plan and a video recording of the stairwell of the building concerned, which demonstrated the size of the area and the location of the outside door and the door to the accommodation block. In the Government's view, it was impossible that the applicant's search could have been observed by third parties.

36. As regards Article 8 of the Convention, the Government contended that even if that provision were applicable, it had not been breached. The interference had had a legal basis, it had pursued the legitimate aim of

prevention of disorder and crime, and it had not been disproportionate, having been carried out by prison officers of the same sex without any physical contact between them and the applicant, and the applicant's privacy had not been violated in any other manner.

2. The Court's assessment

(a) General principles

37. The Court reiterates that Article 3 of the Convention enshrines one of the most fundamental values of democratic societies. It prohibits in absolute terms torture and inhuman or degrading treatment or punishment, irrespective of the circumstances and the victim's conduct (see *Labita v. Italy* [GC], no. 26772/95, § 119, ECHR 2000-IV, and *Chahal v. the United Kingdom*, 15 November 1996, § 79, *Reports of Judgments and Decisions* 1996-V).

38. 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 (see, among other authorities, *Peers v. Greece*, no. 28524/95, § 67, ECHR 2001-III, and *Ireland v. the United Kingdom*, 18 January 1978, § 162, Series A no. 25).

39. Thus, the Court has held treatment to be "inhuman" because, *inter alia*, it was premeditated, was applied for hours at a stretch and caused either actual bodily injury or intense physical and mental suffering. It has also held treatment to be "degrading" because it was such as to arouse in the victims feelings of fear, anguish and inferiority capable of humiliating and debasing them (see, for example, *Kudła v. Poland* [GC], no. 30210/96, § 92, ECHR 2000-XI, and *Van der Ven v. the Netherlands*, no. 50901/99, § 48, ECHR 2003-II). In order for punishment or treatment to be "inhuman" or "degrading", the suffering or humiliation involved must in any event go beyond that inevitable element of suffering or humiliation connected with a given form of legitimate treatment or punishment (see, for example, *V. v. the United Kingdom* [GC], no. 24888/94, § 71, ECHR 1999-IX, and *Van der Ven*, loc. cit.).

40. The Court has examined the compatibility of strip and intimate body searches with the Convention in a number of cases. It has found that whilst strip searches may be necessary on occasion to ensure prison security or prevent disorder or crime, they must be conducted in an appropriate manner and must be justified (see *Yankov v. Bulgaria*, no. 39084/97, § 110, ECHR 2003-XII (extracts); *Valašinas v. Lithuania*, no. 44558/98, § 117, ECHR 2001-VIII; and *Iwańczuk v. Poland*, no. 25196/94, § 59, 15 November 2001). However, where the manner in which a search is carried out has debasing elements which significantly aggravate the inevitable humiliation

of the procedure, Article 3 has been engaged, for example, where a male prisoner was obliged to strip in the presence of a female officer, and his sexual organs and food were touched with bare hands (*Valašinas*, loc. cit.), and where a search was conducted in front of four guards who derided and verbally abused the prisoner (*Iwańczuk*, loc. cit.). Similarly, where the search has no established connection with the preservation of prison security and the prevention of crime or disorder, issues may arise (see, for example, *Iwańczuk*, cited above, §§ 58-59, where a search of the applicant, a remand prisoner detained on charges of non-violent crimes, was conducted when he wished to exercise his right to vote, and *Van der Ven*, cited above, §§ 61-62, where strip-searching was a systematic and long-term practice without convincing security needs). Where the treatment in question does not reach the minimum level of severity prohibited by Article 3, it may nevertheless be in breach of the requirements under Article 8 § 2 of the Convention (see *Wainwright*, cited above, § 46; *Julin*, cited above, § 185; and *Voloshyn v. Ukraine*, no. 15853/08, § 53, 10 October 2013).

(b) Application of the principles to the present case

41. Turning to the present case, the Court notes that the applicant's complaint concerns a strip search carried out on his return to the prison's accommodation block after a walk. It is not disputed that the purpose of the search was to prevent the spread of unauthorised items, notably cigarettes, and thereby prevent disorder and crime in the prison.

42. The Court further notes that the applicant mainly argued that the manner in which the search had been carried out had amounted to degrading treatment owing to the fact that the prison officers had failed to secure his privacy during his body search. The Court notes that it has not been argued that the purpose of the body search was to degrade the applicant. Furthermore, it observes that the search was performed by two prison officers of the same sex; the applicant's sexual organs were not touched by the officers; no allegations have been made about any verbal abuse by the officers who conducted the search; and the applicant was not searched in front of other detainees. Although the applicant, like all detainees, was in a vulnerable position in the hands of the authorities, he was not in a particularly helpless situation (compare and contrast, *Wieser v. Austria*, no. 2293/03, § 40, 22 February 2007, and *Wiktorko v. Poland*, no. 14612/02, §§ 53-54, 31 March 2009). Thus, the Court concludes that the applicant's body search in the present case did not involve elements which have led it in several previous cases to find that a prisoner's or detainee's strip search amounted to degrading treatment. The Court also notes that the applicant's complaint relates to a body search on one occasion, unlike in the cases of *Ciupercescu v. Romania* (no. 35555/03, 15 June 2010), *Van der Ven* (cited above), *Lorsé and Others v. the Netherlands* (no. 52750/99, 4 February 2003), and *McFeeley and Others v. the United Kingdom*, (no. 8317/78,

Commission decision of 15 May 1980, Decisions and Reports 20, p. 44), or a number of searches, as in the cases of *El Shennawy v. France* (no. 51246/08, 20 January 2011) or *Frérot v. France* (no. 70204/01, 12 June 2007).

43. The Court has also had regard to information submitted by the Government concerning the applicant's disciplinary punishments, including for possessing unauthorised items. Although most of the disciplinary violations occurred after the search at issue in the present case, this information nevertheless characterises the applicant's attitude towards the prison regulations and his behaviour in general.

44. The above considerations are sufficient for the Court to conclude that although the search in question must have caused the applicant distress, that distress did not reach the minimum level of severity prohibited by Article 3.

45. The Court finds that this is a case which falls within the scope of Article 8 of the Convention and which requires due justification under its second paragraph (compare *Wainwright*, cited above, § 46; *Kleuver v. Norway* (dec.), no. 45837/99, 30 April 2002; and *Julin*, cited above, § 190).

46. The Court notes that there is no dispute that the search had a legal basis. It is further satisfied that it pursued the legitimate aim of prevention of disorder and crime. The Court therefore needs to proceed to determine whether the search in question, in the manner in which it was carried out, was proportionate to that legitimate aim.

47. The Court considers that many of the elements assessed above in the context of Article 3 are also relevant for the assessment of the proportionality of the measure under the second paragraph of Article 8. It is therefore unnecessary to repeat these factors that are normal in any search procedure and do not refer to any suffering or humiliation going beyond that inevitable element of suffering or humiliation connected with the given form of legitimate treatment. Indeed, the applicant's main argument was only related to the alleged lack of privacy and this is, in the Court's view, the key element to be assessed under Article 8 in the present case.

48. The Court has taken note of the applicant's argument that strip searches should have been performed in specially designated rooms which were available on each floor of the building. The Court has no reason to doubt that more appropriate conditions for such a procedure could be expected in a room set aside for that purpose. At the same time, it considers that a requirement cannot be derived from Article 8 of the Convention that a body search that is not carried out in a special room is in breach of that provision. Rather, regard must be had to the specific circumstances of the case, including the exigencies of prison security as well as the physical features of the location of the search. In this connection, the Court finds that there is some force in the Government's argument that the search had to be

carried out on entry to the building in order to prevent the prisoners from hiding or handing over unauthorised items. Thus, the Court does not exclude that a body search in a corridor or in a stairwell of a prison building immediately after a prisoner's entry could be acceptable provided that the procedure is carried out with due respect for the prisoner's privacy.

49. As regards the question whether the applicant's privacy was respected in the present case, the Court notes that the domestic courts were not convinced by the applicant's argument, supported by his fellow prisoners' statements, that the latter had seen his search. The Court reiterates that it is not its task to substitute its own assessment of the facts for that of the domestic courts and, as a general rule, it is for those courts to assess the evidence before them (see, for example, *Klaas v. Germany*, 22 September 1993, § 29, Series A no. 269). However, the Court considers that the question whether any fellow prisoner actually observed the applicant's search is not of decisive importance. A person's perception that he was exposed undressed to the view of others can, in the Court's opinion, create in him a strong sensation that his privacy has been disrespected, regardless of whether someone in fact saw him. Mindful that the strip search in question was performed in a stairwell accessed through two doors with uncovered transparent glass windows, the Court considers that the applicant's feeling of disrespect for his privacy was not unfounded. It concludes that in the circumstances of the case the applicant's right to respect for his private life was interfered with in a disproportionate manner, and there has accordingly been a violation of Article 8 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

50. 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

51. The applicant claimed 1,600 euros (EUR) in respect of non-pecuniary damage.

52. The Government were of the opinion that as the Convention had not been violated, there was no basis for awarding any compensation. In the event that the Court found a violation, such a finding itself would constitute sufficient just satisfaction. If the Court decided to award monetary compensation, the sum should not exceed that claimed by the applicant in the domestic proceedings (EUR 1,597.79).

53. The Court notes that it is not bound by the amount claimed by the applicant for non-pecuniary damage in the domestic proceedings. It considers that the applicant must have sustained non-pecuniary damage which cannot be compensated for solely by the finding of a violation. In view of the circumstances of the present case, it awards the applicant the sum claimed (EUR 1,600) in respect of non-pecuniary damage, plus any tax which may be chargeable on that amount.

B. Costs and expenses

54. The applicant also asked the Court to take into account an invoice for legal services in the amount of EUR 850.

55. Since the applicant has already received this sum in legal aid, there is no call for the Court to make any further award for costs and expenses.

C. Default interest

56. 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. *Declares* the complaint concerning the applicant's body search admissible;

2. *Holds* that there has been no violation of Article 3 of the Convention;

3. *Holds* that there has been a violation of Article 8 of the Convention;

4. *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, EUR 1,600 (one thousand six hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses* the remainder of the applicant's claim for costs and expenses.

Done in English, and notified in writing on 31 July 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen	Isabelle Berro-Lefèvre
Registrar	President